

POLOPLAST America, Inc. Sales and Delivery Conditions

1. Purchase of Products.

(a) Except to the extent otherwise agreed upon in writing, the terms set forth herein shall govern the sale and delivery of the products and components described in the purchase order (“Products”) by POLOPLAST America, Inc. (“Seller”) and purchased by the purchaser named in the purchase order (“Purchaser”).

(b) These conditions apply to all future deliveries until new sales and delivery conditions apply. By placing an order, the Purchaser accepts our conditions. The Seller does not accept general terms and conditions or purchase conditions of the Purchaser, unless the Seller has expressly accepted such conditions in writing. The Seller’s deliveries, services and offers are based exclusively on the following conditions and any terms proposed by Purchaser are hereby rejected.

(c) All dealings between the parties shall be in writing and no order of Purchaser shall be binding on Seller until approved in writing by Seller.

(d) Unless specifically agreed upon to the contrary, prices of Products are subject to change without notice, and all references in sales brochures, technical data sheets and offers as to size, weight, and other details of the Products are approximate only. No such term shall be binding on Seller unless expressly incorporated in a purchase order which is approved and accepted by Seller in accordance with the terms hereof, provided that Seller may reasonably adjust prices for orders subject to delivery after three (3) months of placement of the order.

(e) Any purchase contract hereunder shall become effective upon acceptance of Purchaser’s order by Seller.

(f) Unless specifically agreed upon in writing, Purchaser acknowledges that it has not relied on Seller’s skills, product descriptions or advertising materials in determining the suitability of the Products for any particular use or application.

2. Delivery.

(a) The terms of delivery are ex works Seller’s loading dock. Seller will use commercially reasonable efforts to make the Products available for pick-up and delivery by Purchaser or ship the Products pursuant to Purchaser’s instructions.

(b) Delivery times are estimates only, even if this is not expressly stated. Seller will use commercially reasonable efforts to make deliveries and services during the calendar week confirmed in writing by Seller, but in no case, before an agreement on all performance details has been made. Every partial delivery is deemed an independent order.

(c) Purchaser bears the risk of loss or destruction of the Products upon and after the first to occur of (i) pick-up or acceptance of the Products by Purchaser or its common carrier at Seller’s place of business, or (ii) the ten (10) day after written notification from Seller that the Products are ready for pick-up at Seller’s place of business. In case Purchaser requests a delay in delivery, Purchaser assumes all risk of loss, damage and/or destruction of the Products from the

date the Products are ready to be delivered.

(d) Seller reserves the right to make deliveries in installments, unless otherwise expressly stipulated to the contrary in a written document signed by Seller. Delay in delivery of any installment shall not relieve Purchaser of its obligation to accept remaining deliveries.

3. Force Majeure.

Notwithstanding anything to the contrary, Seller shall not be liable for any delay or failure to perform hereunder when such failure or delay is, directly or indirectly, caused by, or in any manner arises from fire, floods, accidents, civil unrest, acts of God, war, terrorism, governmental interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials, or supplies, breakage of machinery or apparatus, transportation delays, or any other cause or causes (whether or not similar in nature to any of those hereinbefore specified) beyond its control.

4. Warranties and Claims.

Seller warrants that the Products will, when delivered, substantially conform to the respective limited Product warranty agreement (the "Product Warranty Agreement") description furnished to Purchaser and attached hereto, which is available for Purchaser's acceptance.

THE WARRANTIES SET FORTH IN THE POLOPLAST STANDARD PRODUCT WARRANTY AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES, AND DAMAGES ARISING OUT OF THE PURCHASE, UNLOADING, HANDLING, AND USE OF ANY PRODUCTS, OTHER THAN OR IN EXCESS OF THOSE SET

FORTH UNDER THE POLOPLAST STANDARD WARRANTY.

The Purchaser shall inspect and accept or reject acceptance of the Products immediately upon the arrival and shall, within five (5) days after the arrival, give written notice to Seller of any claim that the Product(s) do not conform with the terms of the order. If the Purchaser shall fail to give such notice, the Product(s) shall be deemed to have been accepted and the Purchaser shall pay for the products in accordance with the terms of the order. The purchaser expressly waives any rights the Purchaser may have to revoke acceptance after such five (5) day period.

5. Product Prices.

(a) All prices quoted by Seller shall be on a net basis ex works Seller's loading dock. If discounts are granted on list prices, such discounts shall apply to the respective delivery only and are not binding for all standard products or subsequent orders.

(b) All prices quoted by Seller are subject to adjustment due to Purchaser's change orders, if any.

(c) Unless otherwise expressly agreed upon in writing, the price quoted excludes the cost of packaging and the cost of special containers, packaging, crating, palletizing, applicable taxes and duties, shipping, insurance or other incidental expenditures of Seller.

(d) Any current or future tax or any charge of any nature imposed by any governmental or taxing authority that is or becomes payable by reason of the production, transportation, sale, storage, processing, use, consumption or delivery of any Products sold to Purchaser, other than taxes based on Seller's net income or profit, will be for Purchaser's account and will either be added

to the price of Products (unless Purchaser provides Seller with an exemption certificate acceptable to the applicable taxing authorities) and paid for by Purchaser or billed to Purchaser separately (unless Purchaser provides Seller with an exemption certificate acceptable to the applicable taxing authorities), as Seller may elect in its sole discretion.

6. Payment.

(a) Unless otherwise set forth in the order or Seller's acceptance of the order, payment is due within thirty (30) days of the invoice, date without set-off or discount.

(b) Purchaser shall not set-off, withhold or reduce payments on account of complaints, claims, or counterclaims not acknowledged and accepted by Seller.

(c) A payment shall be deemed made when the payment of invoice amount has been received by Seller and credited to Seller's bank account.

(d) Seller may delay, condition or cancel, any orders or deliveries, if it deems itself insecure, as determined by it.

(e) The Seller may send invoices electronically to an email address to be specified by the Purchaser. The email shall be deemed as served on the transmission date. The Purchaser shall be responsible for the proper processing of the invoice. The Purchaser shall be responsible for any delayed processing of invoices by the Purchaser.

7. Default.

(a) Purchaser shall be in default (hereinafter "Default") under this Agreement and Seller may terminate this Agreement and exercise all other remedies in law or in equity if Purchaser: (i) fails to make payment

hereunder to Seller when due; or (ii) breaches any other term, provision or condition contained in this Agreement; or (iii) is declared to be in default under any other agreement between Purchaser and Seller, and if in any of the foregoing cases set out in (i), (ii) or (iii), Purchaser fails to cure any said breach or default within ten (10) days following written notice thereof from Seller.

(b) Upon the occurrence of a Default, Seller may elect to exercise any one or more of the following options:

i. Seller may hold the Products until such time as Purchaser has paid the respective purchase price and any expenses (including finance charges, returned check fees and interest determined at a rate equal to the lower of eighteen percent (18%) per annum or the maximum rate permitted by applicable law incurred by Seller as a consequence of such default.

ii. Seller may sell the Products to a third party and require Purchaser to reimburse Seller for any losses, or expenses associated therewith.

iii. Seller may require payment in cash prior to future delivery of any Products hereunder.

iv. Seller may withhold any Products not delivered to Purchaser at the time of the default.

v. Seller may terminate or suspend any pending order for Products.

vi. Seller may exercise all other rights hereunder and may seek all other remedies available to it in law or in

equity.

(c) Purchaser agrees that, in the event any legal action should be deemed necessary by Seller to recover any sums due hereunder or under any promissory note, trade acceptance, or invoice, or, if applicable, to recover possession of the Products, as defined hereinabove, or any proceeds from the sales thereof, there shall be added to the sums due from Purchaser to Seller the costs of collection, including reasonable attorney's fees.

(d) When reasonable grounds for insecurity arise with respect to Purchaser's performance, Seller may in writing demand assurance of due performance and until it receives such assurance may suspend any performance for which it has not already received payment.

8. Protection of Trade Secrets and Confidential Information.

The parties hereto agree that

(a) Except as provided for in subsection (b) of this Section, Purchaser shall not disclose any Trade Secrets or Confidential Information of the other party to any individual or entity not a party to this Agreement.

(b) Purchaser may make available Trade Secrets or Confidential Information to its qualified employees, as defined hereinafter, to the extent that such information must be disclosed to such qualified employees to apply the Trade Secrets or Confidential Information to its intended use. A "qualified employee" shall mean any individual employed by or affiliated with Purchaser who is bound by a valid and fully enforceable confidentiality agreement which contains confidentiality

obligations substantially similar to the confidentiality obligations stated herein, prior to disclosure of the Trade Secrets and Confidential Information to such employee.

(c) For purposes of this Agreement the following terms shall have the meanings set forth below:

i. The term "Trade Secrets" shall mean and include any and all designs, plans, processes, tools, mechanisms, programs or compounds known to only Seller, or to those of its clients and employees to whom they must be confided in order to be applied to the uses intended, some or all of which may arise to the level of being patentable or subject to copyrights, all as further defined under the laws of the State of Michigan.

ii. The term "Confidential Information" shall mean and include information not rising to the level of Trade Secret and not generally known to or by a business in competition with the Seller or otherwise publicly disseminated by the protected party hereto, the disclosure of which may be beneficial to a competing business or detrimental to Seller.

9. Security Interest. To secure the payment of any amount due and owing by Purchaser to Seller under any of the provisions of this Agreement, Purchaser hereby grants to Seller a purchase money security interest in all current and future inventory of Products, including in any returned or repossessed Products, as well as in Purchaser's rights as a seller of goods under the Uniform Commercial Code, and in all proceeds (including insurance proceeds) and accounts receivable arising from the sale of such products (all of the foregoing is hereinafter

collectively referred to as the “Collateral”). Purchaser agrees to keep the insurable aspects of the Collateral fully insured against all risks and casualties customarily insured against and to protect the Collateral from adverse environmental conditions, fire, theft and vandalism. Purchaser shall not remove the inventory comprising part of the Collateral from its ordinary storage facilities other than in conjunction with the sale of the Products or in the ordinary course of business. Purchaser hereby irrevocably grants to Seller a power of attorney to sign on behalf of Purchaser, as its attorney in fact, all UCC 1 financing statements and all other documentation and instruments in order to perfect, continue and appropriately amend the security interest granted by this section.

10. Arbitration.

Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall be submitted to and be finally resolved by arbitration, to be conducted by the American Arbitration Association (“AAA”), with such arbitration to be held in Houston, Texas in accordance with the AAA’s Commercial Arbitration Rules then in effect. Each party hereby irrevocably agrees that service of process, summons, notices, as other communications related to the arbitration procedures shall be deemed served and accepted by the other party five (5) working days after having been mailed by first class registered mail, return receipt requested, postage prepaid, to the other party, or if actually received by the other party. The arbitration shall be conducted by one arbitrator, as selected by the AAA. Any award or decision rendered in such arbitration shall be final and binding on both parties, and judgment may be entered thereon in any court of competent jurisdiction if necessary. Except as may be provided to the contrary herein, each party hereto shall pay any and all expenses incurred by such party in connection with such arbitration proceeding, unless

otherwise determined by the arbitrator.

11. Miscellaneous.

(a) Purchaser may not assign any order or contract for Products without the express prior written consent of Seller.

(b) Except as otherwise expressly provided in Section 1(e) hereof or in a written document, signed by Seller and Purchaser, this document, the offer and attachments and exhibits thereto constitute the entire agreement between Seller and Purchaser with respect to the subject matter herein contained and all prior agreements and communications between Seller and Purchaser, whether oral or written, are superseded by this Agreement.

(c) No modification, limitation, waiver or discharge of this Agreement or of any of its terms shall bind Seller unless in writing and signed by a duly authorized employee of Seller. The failure of Seller to insist, in one or more instances, on performance by Purchaser in strict compliance with the terms and conditions hereof shall not be deemed a waiver or relinquishment of any right granted hereunder with respect to any succeeding breach of the same or other provision hereof.

(d) All notices required hereunder shall be in writing and sent by first class mail or by telefax or Email with written confirmation to such addresses as stated on the reverse side hereof.

(e) This Agreement shall be governed by, and construed, interpreted and enforced under the laws of the State of Texas without giving effect to the conflict of laws principles.

(f) In connection with any litigation,

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including appellate proceedings, arising out of or pertaining to any of the contractual relationships between Seller and Purchaser or the breach thereof, as contemplated herein, all costs and expenses, including reasonable attorneys fees, shall be borne by the losing party or, as the case may be, shall be prorated to properly reflect any partial losing or prevailing of the parties to such litigation.

In case any conditions of this Agreement should be or become unenforceable under applicable law, the remaining provisions, stipulations and conditions of this Agreement shall not be affected thereby.