

TERMS AND CONDITIONS FOR SALE OF GOODS

These are the terms on which Polyportables Limited company number 0330451 ('Company') do business. They do not affect your statutory rights. They are designed to set out clearly the Company's responsibilities and your rights.

1. DEFINITIONS:

1.1 In these terms and conditions (hereinafter collectively referred to as 'Conditions'):

'**Buyer**' means you, the corporate entity or individual purchasing Goods from the Company.

'**Contract**' means any contracts made between the Company and the Buyer for the sale and purchase of Goods which shall include (but not limited to) contracts entered into between the Parties arising from the Order.

'**Damage**' means Damage as defined in Clause 4.1 below.

'**Goods**' mean any product, article or item which the Company sells (including part or parts of it).

'**Order**' means any order (whether oral and written) for Goods made by the Buyer to the Company including those made through the Company's order form.

'**Parties**' mean the Company and the Buyer.

1.2 In these Conditions, references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions headings will not affect the construction of these Conditions.

2. TERMS OF ACCEPTANCE

2.1 The Buyer agrees that these Conditions shall be the exclusive basis on which any Contracts made between the Company and Buyer are transacted and processed unless otherwise agreed in writing by the manager of the Company.

- 2.2 These Conditions shall not create any agency or partnership between the Parties or any third party.
- 2.3 Any quotations and/or estimates given by the Company shall be deemed as an 'invitation to treat' and not an offer. A Contract is formed between the Buyer and the Company when (and not before) the Company notifies the Buyer by e-mail, letter, electronically and/or signing the Company's order form (as the case may be) that the Buyer's Order has been accepted.
- 2.4 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply in any Contracts.

3. ORDERING AND DELIVERY OF GOODS

- 3.1 An Order may be made through:
 - 3.1.1 signing the Company's order form;
 - 3.1.2 a fax on 01299 251947;
 - 3.1.3 telephone on 01299 254499 [between the hours of 9am to 5pm from Monday - Friday]; or
 - 3.1.4 postal order by posting such order to Polyportables Limited, 60 Kings Walk, Gloucester, GL1 1LA, England
- 3.2 Where an Order is not made through the Company's order form, and unless the preceding requirement is waived by the Company, an Order made by the Buyer shall clearly state (1) the type of Goods; (2) the quantities ordered; and (3) the location where the Goods are to be delivered. Where an Order is placed orally or in the event of any dispute as to the Order, the Company's version of the Order shall be deemed as the authoritative Order and the Buyer shall not dispute the correctness of the same.
- 3.3 The Company will notify the Buyer when the Goods are ready for collection and the Buyer shall collect the Goods from the Company's premises.
- 3.4 Where the Company agrees to deliver the Goods to the Buyer, the Goods will be delivered to the address which the Buyer has specified in the Company's order form and/or addressed notified by the Buyer to the Company (as the case may be). In addition, the Company will use reasonable endeavours to meet any delivery dates specified in the

Order, but any such dates shall be estimates only and time shall not be of the essence for the delivery of the Goods.

- 3.5 For the avoidance of doubt, where Clause 3.4 applies, as the actual delivery of the Goods may be carried out by third party couriers, in such a case, the Company shall be under no liability for any delay or failure to deliver the Goods except to return the purchase price.
- 3.6 Where Clause 3.4 applies, unless otherwise agreed in writing by the Parties, the Buyer agrees that risk or loss or damage of Goods passes to the Buyer upon delivery of the Goods or on the date of first attempted delivery by the Company.
- 3.7 If the Company is unable to effect delivery due to any fault of the Buyer, the Buyer may incur additional delivery charges.
- 3.8 The Company reserves the right to deliver Goods by instalments and in any sequence of the Order in question and the Company may invoice the Buyer separately for each and every instalment. Where Goods are delivered by instalments, the Contract shall be deemed to be severable and each instalment shall be deemed to be the subject of a separate Contract.
- 3.9 Each delivery of the Goods shall be accompanied by a delivery note from the Company showing the Order Number, the Delivery Date, the type and quantity of Goods included in the Order and in the case of an Order being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4. LOSS OR DAMAGE

- 4.1 Any Goods delivered to the Buyer shall be deemed to be in good order unless the Buyer informs the Company of any defects, damage and/or faults to the Goods (collectively as 'Damage') within 3 working days from the day of collection or receipt of the Goods (as the case may be) unless the Damage is not ascertainable from reasonable inspection; in which case, the Buyer shall inform the Company of the faults as soon as it is practicable.
- 4.2 Subject to Clause 8.2, the Company shall (at its sole discretion), make good any Damage in respect of the Goods or reimburse the Buyer for the whole or part of the price of the Goods (if the quantity of Goods is more than 1).

5. PRICE AND PAYMENT

- 5.1 Any price quoted or provided by the Company to the Buyer is based on its current price as on the date the quotation is made or provided by the Buyer but the actual price payable for the Goods shall be based on the actual current price of the Company as at the time of acceptance of the Order.
- 5.2 Notwithstanding Clause 5.2 above, the Company may increase the price of the Goods before delivery is affected if the cost of the Goods to the Company were to increase e.g. increase in raw materials and the Buyer agrees to such increase.
- 5.3 The Buyer shall make payment to the Company in respect of the Goods within 30 days after receipt of the Company's invoice (or pursuant to such instructions as set out in the aforementioned invoice) or make such payment as maybe specified in the Company acceptance of order form (as the case may be).
- 5.4 No payment for the Goods shall be deemed to have been received until the Company has received cleared funds for the whole sum specified in such invoice.
- 5.5 If the Buyer fails to settlement any payment due to the Company within the stipulated time, the Company shall be entitled (without prejudice to any other right or remedy it may have) to charge the Buyer interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from the date the payment was due until the payment is whether before or after judgement; and/or suspend further deliveries of any Goods ordered by the Buyer.

6. CANCELLATIONS

- 6.1 Without prejudice to Clause 8.2, no cancellations of Orders shall be permitted unless agreed in advance by a director of the Company.
- 6.2 Without prejudice to Clause 4.2, if Goods have been delivered, the Goods may not be returned unless agreed in advance by a director of the Company. Any return which has been agreed shall be subject to the following conditions:
- 6.2.1 the Goods are in brand new and in unused condition;
- 6.2.2 the packaging of the Goods remain intact and unbroken and in reasonable condition;
- 6.2.3 the Goods are returned at the cost of the Buyer; and

6.2.4 the returned Goods are received within 14 days from when a director of the Company agreed to accept the returned Goods.

6.3 Where Goods are cancelled or returned pursuant to this Clause 6, the Company reserves the right to charge a reasonable administration cost.

7. **DISPUTES AND SET OFF**

Any liability of the Company under any Contract is subject to and conditional upon the Buyer duly performing and observing all its obligations under the relevant Contract and these Conditions.

8. **WARRANTIES AND LIABILITY**

8.1 The Company will use its reasonable endeavours to pass on any manufacturer's warranty to the Buyer (where applicable).

8.2 Notwithstanding Clause 4.2 above but subject to Clause 8.4, the Company shall not be liable for any Damage in respect of the Goods if:

8.2.1 such Damage arose as a result of the Goods being improperly assembled, used and/or not used in accordance with the manufacturer's manual; or

8.2.2 such Damage was the result of unauthorised modification of the Goods without the written consent of the Company.

8.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Conditions and/or Contracts.

8.4 Nothing in this Agreement excludes or limits the liability of the Company for death or personal injury caused by the Company' negligence or for fraudulent misrepresentation.

8.5 Subject to Clauses 4.2, 8.2, 8.3, 8.4 and 8.6, the Company' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Conditions shall be limited to:

8.6 in respect of matters for which the Company does not carry insurance, the price of the Goods; and

8.7 in respect of matters for which the Company carries insurance, the insured value.

- 8.8 Subject to Clause 8.2, 8.3 and 8.4, the Company shall not be liable to the Buyer for any indirect or consequential loss or damage, for loss of profit, loss of management time, depletion of goodwill or otherwise, loss of productivity, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with these Conditions or Contracts.
- 8.9 The provisions of this Clause 8 shall survive the termination of these Conditions and/or Contracts.
- 8.10 The exclusions and limitations of liability set out in this Clause 8 shall be considered severally. The invalidity or unenforceability of any one of these sub-clauses shall not affect the validity or enforceability of any other part of this Clause 8.

9. TERMINATION AND SUSPENSION

- 9.1 Without prejudice to the rights and remedies available to the Company (whether under these Conditions, Contracts or otherwise), the Company shall be entitled to (at its sole discretion) upon providing the Buyer with notice of such intention, terminate and/or suspend in whole or in part, any Contracts entered into between the Buyer and the Company if:
- 9.1.1 The Buyer fails or refuses to take delivery of any Goods in accordance with these Conditions;
- 9.1.2 The Buyer commits any material breach of these Conditions;
- 9.1.3 The Buyer fails to pay any sums due to the Company; or
- 9.1.4 The Buyer makes any composition or voluntary arrangement with its creditors or becomes bankrupt or enters into administration or goes into liquidation (other than for the purpose of amalgamation or reconstruction).

10. TITLE AND RISK

- 10.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery of the Goods to the Buyer's premises but title in the Goods only shall pass upon full payment for the Goods and no other sums are then outstanding from the Buyer to the Company on any account the Buyer may have with the Company whatever whether or not such sums have become due for payment.
- 10.2 Until such time as title in the Goods have passed to the Buyer the Buyer shall:

- 10.2.1 hold the Goods on a fiduciary basis only and as the Company's bailee for the company.
 - 10.2.2 store the Goods (without charge to the Company) separately from all other goods held by the Buyer so that the Company's Goods are clearly identifiable;
 - 10.2.3 not remove, deface or obscure any identifying mark or packaging on or relating to such Goods; and
 - 10.2.4 maintain such Goods in good condition and insure the Goods to their full value against all risks to the reasonable satisfaction of the Company.
- 10.3 The Company shall be entitled to repossess at any time any of the Goods of which, title remains vested in the Company and in this regard, the Company or any of its agents or authorised representatives shall be entitled at any time and without notice to enter upon any premises in which the Goods or any part thereof are installed, stored or kept, or are reasonably believed so to be to retrieve the Goods and the Company shall not be liable for any damage or loss caused to the Buyer or the Buyer's premises provided that the Company has taken reasonable care when retrieving such Goods.

11. FORCE MAJEURE

The Company shall not be liable to the Buyer or be deemed to be in breach of these Conditions or any Contracts by reason of any delay in performing or any failure to perform any of its obligations in relation to the Goods if the delay or failure was beyond the Company's reasonable control including Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; and/or strikes, lockouts or other industrial actions or trade disputes.

12. NOTICE

Any notice required to be given to the Company shall be given by fax or first class post addressed to the Company's trading address.

13. LAW AND JURISDICTION

These Conditions shall be governed by and construed in accordance with English law and the English Courts shall have jurisdiction.