

POLYFLON TECHNOLOGY LIMITED - STANDARD CONDITIONS OF SALE

1. DEFINITIONS.

In these Conditions, the following definitions apply:

Bespoke Goods: goods which are not stocked as standard and in relation to which the Purchaser has provided specifications pursuant to clause 17.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 3.

Contract: the contract between the Seller and the Purchaser for the sale and purchase of the Goods in accordance with these Conditions.

Goods: the goods, including Bespoke Goods (or any part of them) as set out in the Order.

Order: the Purchaser's order for the Goods, as set out in the Purchaser's purchase order form, the Purchaser's written acceptance of the Seller's quotation, or overleaf, as the case may be.

Purchaser: the person or firm who purchases the Goods from the Seller.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Purchaser and the Seller.

Seller: Polyflon Technology Limited of Unit 16, Raleigh Hall Industrial Estate, Eccleshall, Stafford ST21 6JL (company number 02461161).

Tooling: the specialist tooling manufactured by the Seller in order to manufacture the Bespoke Goods on the Purchaser's behalf.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Purchaser to purchase the Goods in accordance with these Conditions. The Purchaser is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order (Order Confirmation), at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Purchaser acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract.

2.5 A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 30 Days from its date of issue.

3. VARIATIONS OF CONDITIONS

The Goods are supplied by Seller only on these Conditions and no variations of or addition thereto (whether contained in any document emanating from the Purchaser or made orally by any person acting or purporting to act on behalf of the seller) shall have effect unless it is in writing signed by the Seller.

4. TITLE IN THE GOODS

4.1 The property in the Goods shall notwithstanding delivery to Purchaser remain in Seller until Purchaser has paid in full (in cash or cleared funds) for the Goods as well as all other sums whatsoever due to Seller.

4.2 Until title to the Goods has passed to the Purchaser, the Purchaser shall:

4.2.1 store the Goods separately from all other goods held by the Purchaser so that they remain readily identifiable as the Seller's property;

4.2.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

4.2.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

4.2.4 notify the Seller immediately if it becomes subject to any of the events listed in clause 23.2; and

4.2.5 give the Seller such information relating to the Goods as the Supplier may require from time to time.

4.3 If before title to the Goods passes to the Purchaser the Purchaser becomes subject to any of the events listed in clause 23.2, then, without limiting any other right or remedy the Seller may have:

4.3.1 the Purchaser's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

4.3.2 the Seller may at any time:

4.3.2.1 require the Purchaser to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

4.3.2.2 if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored in order to recover them.

5. PASSING OF RISK

The risk in the Goods shall pass to the Purchaser on delivery to the Purchaser's designated premises or to the carrier nominated by the Purchaser (whichever shall first occur). In the case of Goods supplied by sea or air transport the Seller may, at its discretion, and at the Purchaser's written request, cost and risk, arrange for the Purchaser's instructions as to transit and packaging for sea or air transport to be carried out but shall bear no risk or responsibility in relation to the same.

6. DESPATCH/DELIVERY

6.1 Any dates quoted for delivery are approximate only and the time of delivery is not of the essence.

6.2 Where it is necessary for Purchaser to supply particulars as to packaging or otherwise in connection with the Goods or do any other act to enable Seller to despatch the Goods, such particulars must be furnished or such other act performed in sufficient time to enable Seller to effect despatch on the date stated in the Contract. In the event of Purchaser's failure to comply with this condition, Seller may at its option cancel the Contract in whole or in part by giving written notice thereof to the Purchaser.

7. DELIVERY BY INSTALMENTS

7.1 If any order for Goods is to be delivered by instalments to the Purchaser, each such instalment shall be treated as a separate and identifiable Contract and the rights of either party thereunder shall be construed accordingly, save only that Seller may suspend delivery thereof whilst payment is overdue in respect of any previous instalment.

7.2 If Seller shall fail to make delivery or shall make a defective delivery of any instalment, such failure or defective delivery shall not affect the obligations of the parties in respect of the other instalments.

8. NON-DELIVERY/LOSS/DAMAGE/DEFECT

8.1 The Purchaser shall notify the Seller in writing of the non-receipt of any Goods by the Purchaser or his nominated carrier within 10 days of the due date of delivery, failing which Seller shall be under no liability whatsoever to the Purchaser, who shall hold Seller indemnified against any loss arising or damage suffered through failure to inform the carriers or the insurers within required time limits.

8.2 The Purchaser must notify Seller of any alleged defect in or damage to the Goods within 14 days of actual receipt of the Goods and thereafter shall be deemed to have accepted the Goods in all respects. Any such notice must specify the particular defect and must afford the Seller reasonable opportunity to inspect the Goods. If the Goods are agreed by Seller to be defective or faulty the Seller will at its option, rectify the defect or fault replace any such Goods; or credit the invoice value of the Goods and such action shall be in full satisfaction of any claim by the Purchaser.

9. PRICE VARIATIONS

9.1 The Seller may, by giving notice (Price Variation Notice) to the Purchaser at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

9.1.1 any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

9.1.2 any request by the Purchaser to change the delivery date(s), quantities or types of Goods ordered, or other particulars of the Order; or

9.1.3 any delay caused by any instructions of the Purchaser or failure of the Purchaser to give the Seller adequate or accurate information or instructions.

9.2 If the price at the date of delivery shall be higher than that at the date the Order Confirmation, the Purchaser may within 7 days of receipt of the Price Variation Notice and provided the Goods are not already in transit terminate the Contract.

10. PRICE AND PAYMENT

10.1 The purchaser shall pay the price of the Goods as set out in the Order Confirmation, on or by the last day of the month following the date of invoice unless otherwise agreed in writing. Receipts for payment will be issued only upon request.

10.2 Time of payment is of the essence.

10.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Purchaser.

10.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Purchaser shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

10.5 If the Purchaser fails to make any payment due to the Seller under the Contract by the due date for payment, then the Purchaser shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank PLC base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Purchaser shall pay the interest together with the overdue amount.

10.6 If the Purchaser fails to make any payment due to the Seller by the due date for such payment, the Seller may place the Purchaser's credit account on hold and delay or cancel any future deliveries until any amounts due to the Seller have been paid.

10.7 The Purchaser shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Purchaser against any amount payable by the Seller to the Purchaser.

11. RETURNS

11.1 The Seller may, at its discretion, accept the return of Goods for reasons other than those detailed within clause 8 provided that the Purchaser returns the Goods within 14 days of delivery of the Goods.

11.2 The Seller reserves the right to charge a handling fee of 10% of the value of the Goods returned.

11.3 Delivery or collection charges and any additional charge including any administration fees will not be refunded.

11.4 This clause 11 does not apply to Bespoke Goods, in relation to which no returns or refunds will be accepted.

12. TOOLING

12.1 If the Purchaser wishes to purchase Bespoke Goods that require manufacture from Tooling, the Purchaser shall be liable for the costs incurred by the Seller in the production of the Tooling.

12.2 The costs incurred by the Seller in the production of the Tooling shall be paid in cleared funds by the Purchaser before commencement of the manufacture of the Bespoke Goods.

12.3 The Seller shall at all times retain risk and title of the Tooling.

13. LIMITATION OF LIABILITY

- 13.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:
- 13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 13.1.2 fraud or fraudulent misrepresentation;
- 13.1.3 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 13.2 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.
- 13.3 Subject to the above:
- 13.3.1 the Purchaser shall be under a duty to mitigate any loss, damage, costs or expenses that it may suffer;
- 13.3.2 the Seller shall under no circumstances whatever be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 13.3.3 the Seller's total liability to the Purchaser in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods supplied within the last 12 months.

14. FORCE MAJEURE

Seller shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by any event beyond the Seller's reasonable control, which by its nature it could have not foreseen, or, if it could have foreseen was unavoidable, including acts of God, war, riots, civil commotions, strikes, lock-outs, trade disputes, fires, breakdowns, interruptions of transport, Government action, delay in delivery by Seller's suppliers failure of energy sources or transport network, national or international calamity, malicious damage.

15. SAMPLES

- 15.1 At the written request of the Purchaser, the Seller may supply a sample of the Goods.
- 15.2 Any samples supplied to the Purchaser shall be accepted by the Purchaser as supplied solely for information as in no way importing any express or implied conditions or warranties as to quality, description, colour, fitness or merchantable quality of the Goods and shall not form part of the Contract or have any contractual force.
- 15.3 In the event that a sample is requested by the Purchaser and supplied by the Seller, production of the Goods cannot commence until a Sample Approval Form has been completed.
- 15.4 If the Purchaser approves any sample produced by the Seller, then the Purchaser shall have no claim in respect of, nor any right to reject, any Goods and/or Bespoke Goods supplied by the Seller, provided that the Goods and/or Bespoke Goods in question are of the same description, quality and fitness for purpose as the sample approved by the Purchaser.

16. RECOMMENDATIONS

Whilst all written recommendations made by Seller in relation to the Goods are made in good faith and in the belief that they are correct, Seller shall have no responsibility whatsoever for any damage liability cost claim or expense suffered by the Purchaser or any third party as a result of such recommendations.

17. SPECIFICATION

- 17.1 The quantity, quality, description and/or specification for the Goods shall be that set out in the Purchaser's Order (if agreed by the Seller), unless otherwise agreed in writing by the parties.
- 17.2 The Purchaser is responsible for checking that any specification and/or information and the Order given is accurate and adequate.
- 17.3 The Seller shall have no liability for errors in any specifications, drawings, or details supplied by the Purchaser for the Bespoke Goods and the Purchaser is solely responsible for their accuracy and for compliance of the Bespoke Goods with any legislative and/or regulatory requirements.
- 17.4 The Purchaser agrees to indemnify and keep the Seller indemnified against any and all claims, losses, expenses, proceedings, actions, awards, liabilities, costs (including legal costs on a full indemnity basis and increased administration costs), expenses, damages and any other losses and/or liabilities arising out of the Seller's use of the specifications, information, details and/or drawings supplied by the Purchaser for the Bespoke Goods.
- 17.5 Except in relation to Bespoke Goods, the Seller reserves the right to alter the specification of any goods without prior reference to the Purchaser, provided that the goods comply in all other known respects with the Purchaser's requirements.
- 17.6 The Purchaser is responsible for satisfying itself that the Goods purchased from Polyflon and/or the Bespoke goods manufactured by Polyflon for the Purchaser in accordance with the Purchaser's specification, meet the requirements of the Purchaser and that they are fit for purpose. Polyflon accepts no liability for any error in any specification provided by the Purchaser and the Purchaser is solely responsible for their accuracy. Polyflon shall have no liability for any consequential loss, loss of profits, loss of business, contracts or opportunity or any direct or indirect losses suffered by the Purchaser as a result of the Purchaser's failure to comply with Polyflon's standard conditions of sale.

18. QUANTITY VARIATIONS

Seller reserves the right to deliver an excess or deficiency of up to 10% weight, area or volume of Goods ordered.

19. SUB STANDARD SURPLUS STOCK

Any good sold as sub-standard or surplus stock shall be accepted by the Purchaser in their actual state and condition and no conditions or warranty whether express or implied will apply thereto.

20. TRADE-MARKS/PATENTS

The supply of goods by Seller shall not confer any right upon the Purchaser to use any Seller's trade-mark without prior written consent of Seller and at all times such trade-mark shall remain the property of Seller. Neither does it imply any right to use any Seller's patent or any indemnity against infringement of third party patents.

21. ASSIGNMENT

The Purchaser shall not without Seller's prior written consent, assign or transfer or purport to assign or transfer the contract to which these conditions relate or the benefit thereof to any other person whomsoever.

22. INDULGENCE

No indulgence or forbearance extended to the Purchaser shall limit or prejudice any right or claim available to Seller.

23. TERMINATION

- 23.1 If the Purchaser becomes subject to any of the events listed in clause 23.2, the Seller may terminate the Contract with immediate effect by giving written notice to the Purchaser.
- 23.2 For the purposes of clause 23.1, the relevant events are:
- 23.2.1 the Purchaser suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 23.2.2 the Purchaser commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where the Purchaser is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Purchaser with one or more other companies or the solvent reconstruction of the Purchaser;
- 23.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Purchaser, other than for the sole purpose of a scheme for a solvent amalgamation of the Purchaser with one or more other companies or the solvent reconstruction of the Purchaser;
- 23.2.4 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Purchaser;
- 23.2.5 (being a company) the holder of a qualifying floating charge over the Purchaser's assets has become entitled to appoint or has appointed an administrative receiver;
- 23.2.6 a person becomes entitled to appoint a receiver over the Purchaser's assets or a receiver is appointed over the Purchaser's assets;
- 23.2.7 (being an individual) the Purchaser is the subject of a bankruptcy petition or order;
- 23.2.8 a creditor or encumbrancer of the Purchaser attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 23.2.9 any event occurs, or proceeding is taken, with respect to the Purchaser in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 23.2.1 to clause 23.2.8 (inclusive);
- 23.2.10 the Purchaser suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 23.2.11 the Purchaser's financial position deteriorates to such an extent that in the Seller's opinion the Purchaser's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 23.2.12 (being an individual) the Purchaser dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 23.3 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Purchaser and the Seller if the Purchaser becomes subject to any of the events listed in clause 23.2.1 to clause 23.2.12, or the Seller reasonably believes that the Purchaser is about to become subject to any of them, or if the Purchaser fails to pay any amount due under this Contract on the due date for payment.
- 23.4 On termination of the Contract for any reason the Purchaser shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.
- 23.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 23.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

24. BUSINESS CONTINUITY

The Seller reserves the right to use subcontracted services to meet any requirements of the Order without prior reference to the Purchaser

25. OPERATION OF LAW

These conditions shall be construed and the rights of the parties hereto shall be regulated by the law of England and Wales and each party irrevocably submits to the exclusive jurisdiction of the Courts of England and Wales.