

PURCHASE ORDER TERMS AND CONDITIONS

1. Definitions

In this document:

"Business Day" means a day other than a Saturday or Sunday or Public Holiday in VICTORIA.

"Cancellation Notice Period" means 30 days.

"Claim" means claims, demands, debts, accounts, actions, expenses, costs, liens, liabilities and proceedings of any nature whatsoever.

"Charges" means the prices stated in the Order.

"Confidential Information" means the confidential information of a party and includes information whether verbal, written or in some other form including but not limited to information about the Products, financial, business and operational information, personal information within the meaning of the *Privacy Act 1988* (Cth) and any other information which a party advises the other party is confidential.

"Insolvency Event" includes;

a) For a natural person, becoming bankrupt, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing his/her own affairs or being able to pay his/her debts when due;

b) For a corporation, failing to comply with a statutory demand, becoming subject to receivership, winding up proceedings, having a controller or analogous person appointed to its affairs, entering into a compromise or arrangement with its creditors or unable to pay its debts when due.

"Loss" means any damage, loss, action, proceeding, costs (including legal fees on a solicitor/client basis), expenses or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

"Order" means a Purchase Order placed on behalf of Polymaster.

"Product/s" means the items listed in the Purchase Order.

"Product Specifications" has the meaning given in clause 5.

"Polymaster" means Polymaster Pty Ltd ABN 40 115 704 384 and its subsidiaries operating facilities or businesses in Australia.

"Seller" means the person, firm or corporation from whom the Products have been ordered.

2. Contract

An Order bearing an order number is the only form that will be recognised by Polymaster as authority for charging Products to its account.

The Order, together with these terms and conditions, constitutes the entire agreement between the parties except where the Seller and Polymaster have a separate formal agreement in place for the supply of specific Products, in which case these terms do not apply.

No terms stated by the Seller in accepting or acknowledging this Order shall be binding upon Polymaster unless accepted in writing by an authorised representative of Polymaster. Seller may not assign an Order without Polymaster's prior written consent.

3. Cancellation

Polymaster may without penalty cancel or alter an Order by giving notice no less than the Cancellation Notice Period to the Seller.

In the event of a breach by the Seller of any of the terms of this document, including the Seller's warranties, Polymaster may at its option, and without prejudice to any of its other rights, cancel any undelivered Products.

4. Quantity

The Seller must supply the quantity of Products in the Order. Polymaster may instruct the Seller to locate and collect any excess quantities at the Seller's expense.

5. Product Specifications

The Seller must ensure that the Products comply with the Order and are:

a) New;

b) Not damaged;

c) Comply with all samples provided to Polymaster;

d) Comply with applicable Australian Standards and the manufacturer's specifications published for the relevant Products;

e) Hold all required approvals in the place to which the goods are delivered, and

f) Are fit for the purpose(s) published by the manufacturer and identified by Polymaster in the Order.

7. Delivery

The Seller must deliver the Products to the delivery address on the delivery date specified in the Order. The Seller will bear all costs of delivery unless otherwise specified in this clause 7.

Unless previously agreed, Products shall be "Free in Store" (FIS) to Polymaster for any orders above \$250, to the delivery address specified in the Order. The Seller will offer FIS delivery for replacement of Products even if the order value is under \$250.

Time is of the essence and if the Seller fails to supply the Products as specified in the Order, Polymaster may reduce or cancel the order at short notice and may contract with another supplier.

Polymaster reserves the right to reject Products which have been delivered to Polymaster by written notice to the Seller to the extent any of the following occur:

a) The incorrect Products or quantum of Products are delivered;

b) The Products are delivered after the delivery date specified in the Order;

c) The Products have sustained visual damage; or

d) The Products are not in accordance with the Product Specifications.

Polymaster's right to reject any Product which is not in accordance with the Order or the Product Specifications shall not be, or deemed to be, varied, waived or otherwise prejudiced by Polymaster's acceptance of delivery of the Products.

In the event that Polymaster notifies the Seller of its rejection of the Products, the Seller must arrange for the collection of the relevant Products, at the Seller's cost, within 30 days.

If payment has been made by Polymaster, upon return of any Products, the Seller must reimburse Polymaster for the Products in full and any costs reasonably incurred by Polymaster in the return of the Products.

8. Installation

If specified in the Order, the Seller must install the Products at the installation site on the installation date and must ensure the Products are fully operational in accordance with the Product Specifications.

The Seller must ensure that it, its employees and agents, comply with any Polymaster policies and procedures and all reasonable directions of Polymaster whilst at the installation site.

9. Warranty

The Seller warrants that the Products shall conform to its description and the Product Specifications.

The Seller agrees to promptly rectify any defects notified by Polymaster to the Seller during the Product warranty period at no charge to Polymaster.

10. Product recall

The Seller must notify Polymaster (providing reasonable details) if:

a) Any of the Products have been recalled by any government authorities or the Seller in any area of the world due to defect, fault or non-compliance with laws; and/or

b) Any of the Products has been found to have caused an injury or death to any person or damage to property.

PURCHASE ORDER TERMS AND CONDITIONS

If any Product delivered to Polymaster is recalled by the Seller or any government authority, the Seller must provide to Polymaster a credit note for any Charges paid for the Product and must make arrangements (at the Seller's cost):

- a) For the return of any Products in Polymaster's possession to the Seller;
- b) For the return of any Products supplied by Polymaster to third parties.

11. Risk and Title

Risk in the Products will pass to Polymaster upon delivery pursuant to the terms of this document.

Title in the Products will not pass to Polymaster until the Seller has been paid in full by Polymaster.

If the Seller wishes to recover Products that have been delivered to Polymaster but to which Title has not yet passed, the Seller must provide Polymaster with 30 days' prior notice in writing.

In the event that the Products have been used by Polymaster prior to receiving the Seller's notice in writing, then Polymaster must notify the Seller of the use and advise that the notice is therefore ineffective. Title in the Products will pass to Polymaster on payment in full.

12. Compliance

The Seller must ensure that the Products, and any pricing quoted, comply with all relevant laws.

The Seller must, at its costs, obtain and maintain all appropriate licences and approvals to supply and/or install the Products. The Seller must provide Polymaster evidence of such licences and approvals on request.

Each party must comply with all relevant laws and standards which in any way affect the performance of this document.

13. Charges

In consideration of the Seller providing the Products to Polymaster pursuant to this document, Polymaster must pay to the Seller the Charges stated in the Order.

Polymaster will not accept any price escalation unless it has been specifically negotiated or previously agreed.

Any price increases must be received in writing by way of a formal notification 90 days before effect. Escalation which occurs after the due delivery date or any agreed extension will not be accepted.

No charges are allowed for boxing, crating, packing, handling or small orders unless previously agreed.

14. Terms of payment

Unless otherwise specified in the Order, Polymaster will pay the Seller Sixty (60) days EOM:

Suppliers have a 30 days payment option: and agree to a 5% settlement Discount for this preference.

- a) Receipt of a properly constituted invoice from the Seller;
- b) The claim for payment being in accordance with this document; and
- c) The Products being received and accepted by the Polymaster.

15. GST

If the Seller is or becomes liable to pay GST in relation to the Order, the Seller must issue an invoice to Polymaster for the amount of the GST which is compliant with GST law. On receipt of a proper invoice, Polymaster will pay to the Seller the GST on the terms of this document.

16. Insurance

The Seller must hold insurance with a reputable insurer which is registered to provide insurance in Australia.

The Seller's insurance must include public and product liability insurance of not less than \$20 million for any one occurrence (unless otherwise agreed), and any other insurance which a business in the same position as the Seller would consider necessary to protect its interests.

17. Liability and Indemnity

The Seller irrevocably and unconditionally indemnifies and agrees to keep indemnified Polymaster, its related bodies corporate and each of its directors, officers, employees, agents, representatives and consultants against any Claim, Loss or expense (including out of a personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for to the extent caused or contributed to by:

- a) Any negligent, unlawful willful or reckless act or omission by the Seller or its employees, agents or subcontractors;
- b) Any defect of the Product;
- c) Any loss, damage or injury caused by or contributed by the Products;
- d) The recall of the Product; and
- e) Any breach by the Seller of this document.

The Seller provides the Products at its sole risk. Polymaster's sole liability to the Seller or any other person under this document will be limited to the payment of the Charges. Polymaster will not be liable for any consequential or indirect losses.

18. Confidentiality and Privacy

Except for purposes directly relevant to the Order or this document, neither party make public or disclose to any third party any Confidential Information, except with the other party's consent or where required by law or a government agency.

19. Representations and Warranties

Polymaster relies on the representations and warranties provided by the Seller in placing the Order.

20. Intellectual Property

Polymaster acknowledges that all Intellectual Property Rights in the Products are owned by the Seller. The Seller grants Polymaster a perpetual, non-exclusive licence to use the Products for their intended purpose.

21. Force Majeure

If Polymaster or the Seller is affected, or likely to be affected by a Force Majeure Event ("Event") (an event beyond the reasonable control of that party including forces of nature, industrial action, terrorism, action or inaction of a government agency), that party must immediately give the other party notice of that fact. The obligations under this document of the party giving notice are suspended to the extent to which they are affected by the Event as long as the Event continues. If the Event continues for more than one month, either party may terminate the relevant Order(s) by giving 5 Business Days' notice to the other party.

22. Default and Termination

Any one or more of the following is a Default:

- a) Either party breaches any of its obligations under this document and fails to remedy the breach within 28 Business Days of written notice being given by the other party requiring the breach to be remedied; or
- b) A party suffers an Insolvency Event;
- c) The Seller is convicted of an offence which in the opinion of Polymaster may have a substantial adverse effect on the ability of the Seller to provide the Products.

Each party must notify the other party upon becoming aware of the occurrence of any Default.

Either party may immediately terminate this agreement and any undelivered Order by notice in writing to the other party if a Default occurs by the other party. Any termination will be without prejudice to any other right a party not in Default may have arising out of this document.

23. Governing Law

This document is governed by the law in force in Victoria. Each party submits to the jurisdiction of VIC.

24. Variation and Waiver

Any variation or waiver to any term or provision of this document shall be valid only if in writing and signed by Polymaster.

25. Entire agreement

This document and the Order constitute the entire agreement of the parties and supersedes all previous agreements or understanding on that subject matter.

26. Survival

The rights and obligations of the parties set out in clauses 9, 10, 17 and 18 survive the expiry or early termination of this document.