

# Polymaster Group Terms & Conditions of Trade

## 1. Definitions and Interpretation

### 1.1 Definitions

**Polymaster Group** means jointly and severally: Polymaster Pty Ltd ACN 115 704 384 and Polymaster Group Pty Ltd ACN 603 853 023.

#### In these Terms of Trade:

##### Additional Charge means:

- (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated by Polymaster Group acting reasonably and in accordance with Polymaster Group's then current price lists; and
- (b) expenses incurred by Polymaster Group, at the Customer's request or reasonably required as a result of the Customer's conduct.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the State of Victoria or the place where the Goods are Delivered.

**Customer** means the person or persons buying the Goods as identified as the customer on a Quote, Order or invoice and includes the Customer's agents and permitted assigns.

**Goods** means all goods or services ordered by the Customer from the Polymaster Group.

**Insolvency Event** means the happening of any one or more of the following events:

- (a) the Customer being unable to pay its debts as and when they fall due;
- (b) a receiver, liquidator, controller, trustee in bankruptcy or other external administrator being appointed over the Customer's assets;
- (c) if the Customer is a corporation:
  - (i) an application for winding up or other process being filed and not being withdrawn within 30 days, seeking orders which, if granted, would render the Customer an externally administered body corporate; or
  - (ii) the Customer entering into or resolving to enter into a deed of company arrangement or an arrangement, composition or compromise with or assignment for the benefit of its creditor generally or any class of creditors, or proceedings being commenced to sanction such an arrangement, composition or compromise in each case, where the Customer is a corporation, other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation.

**Intellectual Property Rights** means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

**Loss** includes, but is not limited to, costs (including legal costs), expenses, lost profits, award of damages, personal injury and property damage.

**Order** means an order for Goods placed by a Customer in response to a Quote and in the form required by the Polymaster Group from time to time, as varied in writing from time to time by the parties.

#### PPS Law means:

- (a) the Personal Property Security Act 2009 (Cth) (PPS Act) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

**Quote** means a written description of the Goods to be provided, an estimate of Polymaster Group's charges for the performance of the required work to manufacture and supply such Goods and an estimate of the timeframe for the performance of such work.

Terms of Trade means these terms of trade as amended or varied by Polymaster Group from time to time.

### 1.2 Interpretation

In these Terms of Trade, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms of Trade;
- (c) a reference to a party to these Terms of Trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (d) where an expression is defined, another part of speech or grammatical form of that expression has

- a corresponding meaning;
- (e) headings are for ease of reference only and do not affect the meaning or interpretation of these Terms of Trade; and
- (f) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
  - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
  - (ii) in all other cases, must be done on the next Business Day.

## 2 General

- (a) These Terms of Trade apply to all transactions between the Customer and Polymaster Group relating to the provision of Goods. This includes all quotations, contracts and variations. These Terms of Trade take precedence over any other terms of trade between Polymaster Group and the Customer.
- (b) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.
- (c) Polymaster Group may amend any details in a Quote by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties.
- (d) The Customer is taken to have accepted and is immediately bound, jointly and severally, by these Terms of Trade upon signing these Terms of Trade.
- (e) If any provision of these Terms of Trade offends any law applicable to it and is as a consequence illegal, invalid or unenforceable, then:
  - (i) where the offending provision can be read down so as to give a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and
  - (ii) in any other case the offending provision must be severed from these Terms of Trade in which event the remaining provisions of these Terms of Trade operate as if the severed provision had not been included. The Customer warrants that all the information contained in these Terms of Trade, the Credit Terms and any other contract between the parties is true and correct, and the Customer, its directors, shareholders and related entities (collectively "Associates") indemnify Polymaster Group from and against all damages, costs, actions, claims, liabilities and demands resulting from any misrepresentation or wilful omission by the Customer and/or its Associates.
- (f) The Customer must notify Polymaster Group in writing, within 7 days, of any proposed or actual change in:
  - (i) the address of the business and/or the address at which the goods supplied by Polymaster will be located (if it differs from the Customer's business address);
  - (ii) the trading name of the Customer's business;
  - (iii) the person(s), director(s) or trustee(s) conducting the business of the Customer;
  - (iv) the ownership or proprietorship of the Customer;
  - (v) the effective control of the Customer; and
  - (vi) the address of all guarantors of the Customer under the Credit Terms (if applicable).
- (g) The Customer agrees to indemnify Polymaster Group against any damage or loss incurred by Polymaster Group as a result of the Customer's failure to notify Polymaster Group of any such changes under clause 2(g) of these Terms of Trade.

## 3 Quotes

- (a) Polymaster Group may provide the Customer with a Quote. Any Quote issued by Polymaster Group is valid for the period stated in the Quote or otherwise for 30 days from the date of issue.
- (b) Unless otherwise expressly stated in writing, a Quote does not include delivery or installation of the Goods.
- (c) Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to Polymaster Group.
- (d) Following provision of a Quote to the Customer,

Polymaster Group is not obliged to commence work until the Quote has been accepted by the Customer. This occurs by the Customer placing an Order and returning any information required to Polymaster Group.

- (e) Polymaster Group reserves the right to amend any Quote before an Order has been placed to take into account any rise or fall in the cost of completing the Order. Polymaster Group will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the Quote for the purposes of these Terms of Trade.
- (f) An indication in a Quote of the time frame for the provision of the Goods is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon Polymaster Group.

## 4 Orders

- (a) An Order will only be deemed to be placed by the Customer if the Order clearly identifies the Goods ordered and Polymaster Group's Quote for such Goods. Any costs incurred by Polymaster Group in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.
- (b) Orders must be signed by an authorised representative of the Customer and must specify the requested date of delivery.
- (c) Placement of an Order by the Customer signifies acceptance by the Customer of these Terms of Trade and the most recent Quote provided by Polymaster Group relating to that Order.
- (d) Polymaster Group accepts any Order placed in accordance with provisions of clauses 4(a) to (c), unless Polymaster Group notifies the Customer to the contrary within five (5) Business Days of that Order being placed.
- (e) Polymaster Group may in its absolute discretion refuse to provide Goods where:
  - (i) materials required to manufacture the Goods are unavailable for any reason whatsoever;
  - (ii) credit limits cannot be agreed upon or have been exceeded
  - (iii) an event of default has occurred in respect of these Terms of Trade, or any other contract or agreement between the Customer and Polymaster Group; or
  - (iv) payment for Goods previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of Polymaster Group, associated with the Customer under the same or another supply contract, has not been received by Polymaster Group.
- (f) An Order cannot be cancelled without the prior written consent of Polymaster Group. Such right of cancellation must be exercised by notice in writing from the Customer to Polymaster Group within 7 days prior to the estimated date of shipment by the manufacturer or Polymaster Group as the case may be. Unless otherwise agreed between the Customer and Polymaster Group, upon cancellation prior to shipment, any deposit paid by the Customer shall be forfeited to the manufacturer or Polymaster Group as the case may be. Where an Order is cancelled, the Customer indemnifies Polymaster Group against any Loss incurred by Polymaster Group as a result of the cancellation.
- (g) Polymaster Group reserves the right to:
  - (i) Suspend or discontinue the supply of an Order to the Customer without being obliged to give any reason; or
  - (ii) Make part deliveries of any Order, and each part delivery shall constitute a separate sale of Goods upon these Terms of Trade without invalidating the balance of the Order.

## 5 Variations

- (a) The Customer may request that its Order be varied by providing a request in writing to Polymaster Group. A request for a variation must be agreed to in writing by Polymaster Group in order to have effect.
- (b) If the Customer wishes to vary its requirements after a Quote has been prepared by Polymaster Group or after the placement of an Order, Polymaster Group reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work

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carried out due to the variation, acting reasonably and in accordance with its then current price lists. A revised Quote issued by Polymaster Group in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods.

- (c) Where Polymaster Group has agreed to provide the Goods by a specific date, Polymaster Group is provided with an automatic extension of time for the provision of the Goods equal to the delay caused by the variation.

### 6 Invoicing and payment

- (a) The amount payable by the Customer will be the amount set out in an invoice provided by Polymaster Group to the Customer. This will be calculated as:
- (i) the amount for the Goods as set out in the Quote and any Additional Charges, or
  - (ii) where no Quote has been provided, in accordance with Polymaster Group's then current price lists for the Goods as described in the Order, or
  - (iii) as otherwise agreed in writing between Polymaster Group and the Customer.
- (b) Time for payment for the Goods, with the time for payment always being of the essence, will be payable by the Customer on Delivery of the Goods, or at Polymaster Group's sole discretion:
- (i) on the date specified on an invoice issued to the Customer for the Goods, being no less than five (5) Business days after the date of the invoice;
  - (ii) in accordance with a payment schedule agreed in writing between Polymaster Group and the Customer;
  - (iii) on the Credit Terms established between the Customer and Polymaster Group, being within 30 days following the end of the month during which the Goods were supplied or provided; or
  - (iv) on any other date, on the basis that the Customer agrees to the Polymaster Group Credit Terms (available upon request).
- (c) At Polymaster Group's sole discretion, the Customer may be required to pay a deposit for the Goods and Polymaster Group may withhold the provision of such Goods until the deposit is paid.
- (d) The Customer must pay the amount payable within the time determined pursuant to clause 6(b).
- (e) Payment may be made by bank cheque, electronic/online banking, or by any other method as agreed between the Customer and Polymaster Group.
- (f) If any invoice is due but unpaid, Polymaster Group may withhold the provision of any further Goods until overdue amounts are paid in full.
- (g) Polymaster Group may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to Polymaster Group.
- (h) The Customer is not entitled to retain any money owing to Polymaster Group notwithstanding any default or alleged default by Polymaster Group of these Terms of Trade, deduction, set-off, withholding or counterclaim, including (but not limited to) the supply of allegedly faulty or defective Goods, Goods of an inadequate standard or a delay in the provision of Goods. Nothing in this paragraph affects the Customer's rights under the Australian Consumer Law.
- (i) If the Customer fails to make payment in accordance with this clause, all amounts owing by the Customer to Polymaster Group shall immediately become due and payable. Each outstanding amount shall bear interest at the rate of 2.5% per calendar month on all overdue amounts owed by the Customer to Polymaster Group, calculated daily compounding monthly, from the day it falls due until the day it is paid.
- (j) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of Polymaster Group, are to be paid by the Customer as a debt due and payable under these Terms of Trade.
- (k) Unless otherwise stated the amount payable does not include GST. In addition to the amount payable the Customer must pay to Polymaster Group an amount equal to any GST Polymaster Group must pay for any supply by Polymaster Group under this or any other agreement for the sale of the Goods.

- (l) The Customer and Polymaster Group agree to comply with their obligations in relation to the Goods and Services Tax (GST) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.
- (m) The Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 7 Additional Charges

- (a) Polymaster Group may require the Customer to pay Additional Charges in respect of Costs incurred by Polymaster Group as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by Polymaster Group in order for it to provide the Goods within the specified time frame (if any).
- (b) The imposition of Additional Charges may also occur as a result of:
- (i) cancellation by the Customer of an Order where cancellation results in Loss to Polymaster Group;
  - (ii) reasonable storage costs for Goods not able to be delivered in accordance with clause 8(b). Where the storage relates to the storage of tanks, such costs are to be the rate specified in the Polymaster Tank Storage Fees document as amended from time to time (a copy of which is available from Polymaster Group upon request).
  - (iii) photocopying, courier, packing or handling charges not included in the Quote;
  - (iv) Government or council taxes or charges not included in the Quote; or
  - (v) additional work required by the Customer or any other occurrence which causes Polymaster Group to incur costs in respect of the Customer's Order additional to the quoted cost.

### 8 Delivery of Goods

- (a) Polymaster Group will, in all cases, be entitled to choose the method of transport of the Goods and may, at its discretion, subcontract delivery.
- (b) Delivery of the Goods is taken to occur when:
- (i) the Customer or the Customer's nominated carrier takes possession of the Goods at Polymaster Group's address;
  - (ii) Polymaster Group (or its nominated carrier) delivering the Goods to the Customer's nominated address even if the Customer is not present at the address; or
  - (iii) If the Customer requests Polymaster Group to leave Goods outside Polymaster Group's premises for collection then at the time such Goods are left unattended,
- (Delivery).
- (c) Polymaster Group may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these Terms of Trade.
- (d) The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for delivery.
- (e) Any time or date given by Polymaster Group for Delivery of the Goods to the Customer is an estimate only and the Customer must still accept Delivery of the Goods after this estimated date.

### 9 Acceptance of Goods and Returns

#### 9.1 Acceptance

- (a) If the Customer fails to advise Polymaster Group in writing of any fault in the Goods or failure of Goods to accord with the Customer's Order within 48 hours of Delivery, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty, accord with the Customer's Order, and, subject to the Australian Consumer Law:
- (i) have been delivered to and accepted by the Customer;
  - (ii) are of acceptable quality;
  - (iii) are fit for the Customer's disclosed purpose (if any); and
  - (iv) are in a form which corresponds with Polymaster Group's description.
- (b) Upon such notification of fault, the Customer must allow Polymaster Group to inspect the Goods.
- (c) Any advice, recommendation, information, assistance, representation or service provided by

Polymaster Group in relation to the Goods is provided in good faith, is not to be relied upon by the Customer, and it shall be the responsibility of the Customer to confirm the suitability of the Goods for the use to which the Customer makes or intends to make of the Goods.

- (d) Except as expressly set out in these Terms of Trade, Polymaster Group makes no warranties or other representations under these Terms of Trade including but not limited to the quality or suitability of the Goods and Polymaster Group's liability in respect of these warranties is limited to the fullest extent permitted by law.

#### 9.2 Returns

- (a) Returns will only be provided if:
- (i) the Customer has complied with the provisions of clause 9.1(a); and
  - (ii) Polymaster Group has agreed that the Goods are defective; and
  - (iii) the Goods are returned within a reasonable time at the Customer's cost; and
  - (iv) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- (b) Polymaster Group will not agree to any returns and will not be liable for any defect or damage caused or partly caused by or arise as a result of:
- (i) the Customer failing to properly maintain or store the Goods;
  - (ii) the Customer using the Goods for any purpose other than that for which they were designed;
  - (iii) the Customer continuing to use the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (iv) the Customer failing to follow any instructions or guidelines provided by Polymaster Group; or
  - (v) fair wear and tear, any accident, or uncontrollable event.

#### 9.3 Australian Consumer Law

- (a) Nothing in this clause 9 is intended to affect or affect the Customer's rights under the Australian Consumer Law

### 10 Title and risk

- (a) Risk in Goods passes to the Customer immediately upon Delivery, once the Goods are in the Customer's custody, or at the Customer's direction (whichever happens first).
- (b) Property and title in Goods supplied to the Customer under these Terms of Trade does not pass to the Customer until after both Delivery and all money (including money owing in respect of other transactions between Polymaster Group and the Customer) due and payable to Polymaster Group by Customer have been fully paid.
- (c) Where Goods are supplied by Polymaster Group to the Customer without payment in full, the Customer:
- (i) is a bailee of the Goods until property in them passes to the Customer;
  - (ii) must store the Goods in a manner which shows clearly that they are the property of Polymaster Group;
  - (iii) irrevocably appoints Polymaster Group to be its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of Polymaster Group with respect to the Goods under applicable law;
  - (iv) must be able upon demand by Polymaster Group to separate and identify as belonging to Polymaster Group Goods supplied by Polymaster Group from other goods which are held by the Customer;
  - (v) must not allow any person to have or acquire any security interest in the Goods, unless otherwise agreed by Polymaster Group in writing;
  - (vi) must not dispose of the Goods except with Polymaster Group's prior written consent or in the ordinary course of the Customer's business;
  - (vii) cannot claim any lien over the Goods;
  - (viii) will not create any absolute or defeasible interest in the Goods in relation to any third party, except with Polymaster Group's prior written consent;
  - (ix) agrees that Polymaster Group may repossess the Goods if payment is not made within five (5) Business Days (or such time as Polymaster Group may, in its complete discretion, approve in writing) of the date for payment in accordance with 6(b); and

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- (x) the Customer grants an irrevocable licence to Polymaster Group or its agent to enter the Customer's premises in order to inspect the Goods, or if the Customer has breached these Terms of Trade, recover possession of Goods pursuant to this clause (and for this purpose, the Customer shall provide Polymaster Group all reasonable assistance). The Customer indemnifies Polymaster Group for any damage to property or personal injury which occurs as a result of Polymaster Group entering the Customer's premises.
- (d) Where Goods are supplied by Polymaster Group to the Customer without payment in full of all moneys payable in respect of the Goods, the Customer acknowledges that Polymaster Group has a right to register and perfect a personal property security interest.
- 11 Personal Property Securities Act 2009 (Cth)**
- (a) This agreement is a security agreement.
- (b) The interest of Polymaster Group in the Goods and all proceeds from the sale of the Goods by the Customer to a third party is a security interest.
- (c) The Customer consents to Polymaster Group registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonably required by Polymaster Group to facilitate registration.
- (d) Until title in the Goods has passed to the Customer as contemplated by clause 10, the Customer agrees not to in any way assign, charge, lease or otherwise deal with the Goods in such a manner as to create a security interest over the Goods in favour of the Customer or any third party. The parties agree that this clause will not prohibit the Customer from selling the Goods in the ordinary course of business.
- (e) The Customer waives its rights to receive any notice under the PPS Act (including notice of verification statement) unless the notice is required by the PPS Act and cannot be excluded.
- (f) Polymaster Group and the Customer agree that this agreement and all related information and document(s) are confidential (Confidential Information) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this agreement or required by law. Polymaster Group and the Customer agree that Polymaster Group will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPS Act.
- (g) Unless the Goods are used predominantly for personal, domestic or household purposes, Polymaster Group and the Customer agree each of the following requirements or rights under the PPS Act do not apply to the enforcement of Polymaster Group's security interest in the Goods or of this agreement:
- (i) any requirement for Polymaster Group to give the Customer a notice of removal of accession;
  - (ii) any requirement for Polymaster Group to give the Customer a notice of Polymaster Group's proposed disposal of the Goods;
  - (iii) any requirement for Polymaster Group to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
  - (iv) any requirement for Polymaster Group to give the Customer a statement of account if Polymaster Group does not dispose of the Goods;
  - (v) any right the Customer has to redeem the Goods before Polymaster Group exercises a right of disposal; and
  - (vi) any right the Customer has to reinstate this agreement before Polymaster Group exercises a right of disposal of the Goods.
- (h) Expressions defined in the PPS Act have the same meaning when used in this agreement.
- 12 Intellectual Property Rights**
- (a) Where Polymaster Group has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Polymaster Group.
- (b) Unless specifically agreed in writing between Polymaster Group and the Customer, all Intellectual Property Rights in any works created by Polymaster Group on behalf of the Customer vest in and remain the property of Polymaster Group.
- (c) Subject to payment of all invoices due in respect of the Goods, Polymaster Group grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by Polymaster Group in connection with the provision of Goods under these Terms of Trade for the purposes contemplated by an Order.
- (d) The Customer warrants that it owns all Intellectual Property Rights pertaining to all designs, specifications or instructions given to Polymaster Group or has a licence to authorise Polymaster Group to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to Polymaster Group for the purposes of the Order. Further, the Customer indemnifies and agrees to keep indemnified Polymaster Group against all Loss incurred by Polymaster Group in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer.
- (e) The Customer agrees that Polymaster Group may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Polymaster Group has created for the Customer.
- 13 Agency and assignment**
- (a) The Customer agrees that Polymaster Group may at any time appoint or engage an agent to perform an obligation of Polymaster Group arising out of or pursuant to these Terms of Trade.
- (b) Polymaster Group has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these Terms of Trade provided that the assignee agrees to assume any duties and obligations of Polymaster Group owed to the Customer under these Terms of Trade.
- (c) The Customer is not to assign, or purport to assign, any of its obligations or rights under these Terms of Trade without the prior written consent of Polymaster Group.
- 14 Consignment**
- (a) This clause 14 only applies if the Goods are to be sold on consignment and applies only to those Goods which are sold on consignment.
- (b) In consideration of delivery of the Goods by Polymaster Group to the Customer, the Customer agrees to use its best endeavours to sell the Goods.
- (c) Risk in the Goods passes to the Customer upon Delivery and the Customer will be responsible for insuring the Goods.
- (d) Polymaster Group retains the right to require re-delivery of the Goods, such re-delivery to be at the Customer's cost.
- (e) If any loss or damage to the Goods occurs after Delivery and prior to return of the Goods to Polymaster Group, this will be considered a sale of the Goods to the Customer entitling Polymaster Group to payment.
- (f) The Customer shall notify Polymaster Group on a weekly basis of all consignment Goods sold during the previous week's end period and shall within five (5) Business Days of that weekly advice pay Polymaster Group for the Goods sold.
- (g) The price for the Goods will be determined by the price lists provided by Polymaster Group to the Customer from time to time.
- (h) Polymaster Group reserves the right to issue from time to time a consignment reconciliation statement (Statement) to the Customer for completion and return within five (5) Business Days indicating whether the stock as listed is still on hand. If Goods have been sold, a covering order must be returned with the Statement.
- (i) In the event that the Goods cannot be accounted for in accordance with the Statement, then it is assumed that the Goods have been sold and the Customer will be responsible for payment and an invoice will be issued accordingly to the Customer.
- 15 Default by Customer**
- (a) Each of the following occurrences constitutes an event of default:
- (i) the Customer breaching these Terms of Trade for any reason (including, but not limited to, defaulting on any payment due under these Terms of Trade) and fails to remedy that breach within ten (10) Business Days of being given notice by Polymaster Group to do so;
  - (ii) the Customer, being a natural person, commits an act of bankruptcy; dies; or in the reasonable opinion of Polymaster Group, becomes mentally or physically incapable of managing their affairs;
  - (iii) the Customer, being a corporation, is subject to:
    - (A) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
    - (B) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertaking;
    - (C) the entering of a scheme of arrangement (other than for the purpose of restructuring);
    - (D) an Insolvency Event; and
    - (E) any assignment for the benefit of creditors;
  - (iv) the Customer purports to assign its rights under these Terms of Trade without Polymaster Group's prior written consent; or
  - (v) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, except where payment in full has been received by Polymaster Group, Polymaster Group may:
- (i) terminate these Terms of Trade;
  - (ii) terminate any or all Orders and credit arrangements (if any) with the Customer;
  - (iii) suspend or terminate any other contract or agreement between the Customer and Polymaster Group;
  - (iv) require that all money owing by the Customer, regardless of the due date, be due and payable;
  - (v) sue the Customer for breach of contract;
  - (vi) refuse to deliver or provide further Goods;
  - (vii) pursuant to clause 10(c), repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; and/or
  - (viii) retain (where applicable) all money paid by the Customer on account of Goods.
- (c) In addition to any action permitted to be taken by Polymaster Group under clause 15(b), on the occurrence of an event of default all invoices will become immediately due and payable.
- (d) The Customer expressly agrees that use of the Goods is at the Customer's risk. To the full extent allowed by law, Polymaster Group's liability for breach of any term implied into these Terms of Trade by any law is excluded.
- (e) All information, specifications and samples provided by Polymaster Group in relation to the Goods are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.
- (f) Polymaster Group gives no warranty in relation to the Goods, except to the extent of any written warranty that accompanies the Goods at the time of supply. Under no circumstances is Polymaster Group or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods. This includes their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
- (i) any Goods supplied to the Customer;
  - (ii) any delay in supply of the Goods; or
  - (iii) any failure to supply the Goods.
- (g) Any advice, recommendation, information, assistance or service given by Polymaster Group in relation to Goods or both, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. Polymaster Group does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (h) To the fullest extent permissible at law, Polymaster Group is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any

## Polymaster Group Terms & Conditions of Trade

damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods, or otherwise arising out of the provision of Goods, whether based on Terms of Trade, negligence, strict liability or otherwise, even if Polymaster Group has been advised of the possibility of damages.

- (i) The Australian Consumer Law may give to the Customer certain warranties or guarantees. Where liability for breach of any such warranty or guarantee can be limited, Polymaster Group's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to services to the supply of services again or cost of re-supplying the services again.
- (j) Nothing in this clause 15 is intended to affect or affect the Customer's rights under the Australian Consumer Law.

### 16 Indemnity

- (a) The Customer indemnifies and keeps indemnified Polymaster Group, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against Polymaster Group or, for which Polymaster Group is liable, in connection with any Loss arising from or incidental to the provision of Goods, any Order or the subject matter of these Terms of Trade.
- (b) The indemnity in clause 16(a) includes, but is not limited to, any legal costs incurred by Polymaster Group in relation to meeting any claim or demand or any legal costs for which Polymaster Group is liable in connection with any such claim or demand.
- (c) This provision remains in force after the termination of these Terms of Trade.

### 17 Uncontrollable Events

- (a) If circumstances beyond Polymaster Group's control prevent or hinder its provision of the Goods, Polymaster Group is free from any obligation to provide the Goods while those circumstances continue. Polymaster Group may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond Polymaster Group's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, Government decrees, proclamations or orders, pandemics, transport difficulties and failures or malfunctions of computers or other information technology systems

### 18 Privacy Policy

- (a) Polymaster Group collects personal information about the Customer (if a sole trader, individual trustee or partnership of individuals) for the purposes set out in its Privacy Policy. This policy may be located at [www.polymaster.com.au](http://www.polymaster.com.au). A hardcopy of this policy can also be provided to the Customer upon request.
- (b) The Privacy Policy sets out:
  - (i) the personal information Polymaster Group collects;
  - (ii) how Polymaster Group collects it and uses this information;
  - (iii) how the Customer may access or correct it; and
  - (iv) how the Customer may make a complaint in respect of Polymaster Group's management of the information.
- (c) By the Customer providing instructions to Polymaster Group for the supply of Goods, the Customer is consenting to Polymaster Group collecting, handling, using, disclosing and otherwise dealing with the Customer's personal information (including credit related personal information) in accordance with terms of Polymaster Group's Privacy Policy and in accordance with Australia's privacy laws.

### 19 Dispute resolution

- (a) If a dispute arises between the Customer and Polymaster Group, the following procedure applies:
  - (i) A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.
  - (ii) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in

respect of a dispute unless the dispute has been referred for resolution in accordance with this clause.

- (iii) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.
- (b) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 20 Business Days (or other period as agreed).
- (c) Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives, the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Disputes Centre (ADC) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ADC Guidelines for Commercial Mediation which operate at the time the matter is referred to ADC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these Terms of Trade. This paragraph survives termination of these Terms of Trade.
- (d) Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these Terms of Trade.
- (e) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

### 20 Miscellaneous

- (a) These Terms of Trade are governed by the laws of the State of Victoria and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.
- (b) These Terms of Trade and any written variations agreed to in writing by Polymaster Group represent the whole agreement between the parties relating to the subject matter of these terms.
- (c) These Terms of Trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) In entering into these Terms of Trade, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by Polymaster Group or any of its employees or agents relating to or in connection with the subject matter of these Terms of Trade.
- (e) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (f) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote and/or the address as per the Schedule of these Terms of Trade; or sent by email to the email address of the addressee specified in the relevant Quote or as previously advised with acknowledgement of delivery.
- (g) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by email, when the sender's information system from which the email was sent generates a confirmation of delivery report which indicates that the email has entered the delivery system of the recipient.
- (h) A party may only change its postal or email address for service by giving notice of that change in writing to the other party.
- (i) Notwithstanding clause 20(h), the Customer must

give not less than ten (10) Business Days' notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice).

- (j) The parties agree that they will not disparage or denigrate the other, to bring the other party into disrepute, ridicule or adversely affect that party's reputation.