

## Standard terms and conditions of sale of Poly Sales Africa (proprietary) limited t/a Polysales (hereinafter referred to as PS)

### 1. APPLICABILITY OF THE STANDARD CONDITIONS

Unless otherwise agreed in writing and signed by PS, these Standard Conditions of Sale shall constitute the entire agreement between PS and the CUSTOMER, and all goods are sold and/or services are rendered subject to this Agreement only. Any additional or different terms or conditions contained in the CUSTOMER's order shall be null and void and of no force and effect.

### 2. DEFINITIONS

- 2.1 "CUSTOMER" means any person or persons at whose request or on whose behalf or in respect of whom PS undertakes any business.
- 2.2 "PS" means Poly Sales Africa (Proprietary) Limited t/a Polysales, Registration N<sup>o</sup> 2004/012256/07.
- 2.3 "These conditions" means these Standard Terms and Conditions of Sale.

### 3. ORDER

- 3.1 The contract between PS and the CUSTOMER shall only come into existence when a duly authorised representative of PS has accepted the CUSTOMER's order either wholly or in part.
- 3.2 All orders accepted by PS shall be binding on the CUSTOMER and may not be cancelled without obtaining PS's prior written consent.

### 4. PRICES

- 4.1 Subject to the other provisions of these conditions, the purchase prices at which the goods shall be sold will be determined by agreement between PS and the CUSTOMER from time to time.
- 4.2 The prices are based on the costs to PS, at the date on which the contract between the CUSTOMER and PS is concluded, of carrying out its obligations under such contract, which includes, inter alia: –
  - 4.2.1 the cost to PS of acquiring the raw materials and the costs of labour and freight;
  - 4.2.2 the cost of purchasing foreign currency to pay for the importation of the raw materials;
  - 4.2.3 import duties, government imposts, levies, and other charges.



- 4.3 If, after the date of conclusion of the contract between PS and the CUSTOMER, there is an unfavourable change in the relevant foreign currency exchange rate or the applicable government imposts, levies or charges or any other change to the costs of labour, raw materials or freight, resulting in an increased cost to PS in supplying the goods and/or rendering the services in question, then PS shall, on 30 (thirty) days' notice in writing to the CUSTOMER, be entitled to adjust its price by the amount of such increase.
- 4.4 Unless otherwise stipulated, all prices are exclusive of VAT.
- 4.5 If the CUSTOMER varies its order or if there are delays or changes which are not because of any act or omission of PS, PS shall be entitled to revise its prices by notice in writing.
- 4.6 In the event of a price reflected on an order or confirmation of the order being incorrect due to a clerical error, then PS shall have the right to amend such price to rectify the error.

## **5. VALUE ADDED TAX**

The CUSTOMER shall be responsible for and undertakes to pay to PS, at the same time as it is obliged to pay any sum in respect of goods supplied or to be supplied and/or services rendered or to be rendered, any tax payable thereon by PS in terms of the Value Added Tax Act N<sup>o</sup> 1991, as amended from time to time, or any replacement Act.

## **6. PAYMENT**

- 6.1 Unless otherwise specifically agreed to by PS in writing, all amounts shall be paid by the CUSTOMER to PS, without deduction, demand or set-off, within thirty days of the date of PS's statement of account.
- 6.2 Any amount not paid on due date shall, at the discretion of PS, bear interest from the due date until it is paid, at a rate not exceeding two percentage points above the published prime overdraft rate from time to time of PS' principal bankers.
- 6.3 A letter purporting to be signed by a general, branch or other manager of PS' principal bankers, setting out the published prime overdraft rate from time to time shall be proof of the rate until the contrary is proved.
- 6.4 If any amount owing by the CUSTOMER to PS is not paid on the due date, then all amounts owing by the CUSTOMER to PS from any cause whatsoever shall become immediately due and payable.

## **7. TIME NOT OF THE ESSENCE**

- 7.1 The time stated for delivery of the goods or the rendering of any service by PS is approximate only and shall not be a material term to the contract between PS and the CUSTOMER.
- 7.2 Subject to 5.1, PS will make reasonable efforts to deliver goods and render services within the times stated in the contract and late delivery



shall not render the contract invalid nor render PS liable for any claim or damages.

- 7.3 Delivery of the goods is dependent on stock availability and shall be made, subject to 7.1 and 7.2, when stocks are available.

## **8. DELIVERY AND RISK**

- 8.1 Should goods need to be delivered to a CUSTOMER in an area deemed High risk by our third party logistics partners, then the CUSTOMER may be required to arrange transport at their own risk and be liable for all expenses or otherwise collect all goods from PS premises at their own expense.
- 8.2 Where delivery is affected by PS' transport, or by PS' transport contractor:
- 8.2.1 all risks in the goods shall remain with PS until and shall pass to the CUSTOMER on the transporting vehicle coming to a stop at the point where the goods are to be unloaded;
- 8.2.2 the responsibility for unloading rests with the CUSTOMER;
- 8.2.3 PS reserves the right to pass on to the CUSTOMER any additional charges or any other costs whatsoever, including insurance premiums, which may be incurred by PS as a result of delayed or protracted unloading of the goods by or on behalf of the CUSTOMER;
- 8.2.4 PS also reserves the right to charge the CUSTOMER with any other costs relating to the delivery of the goods to the CUSTOMER, including insurance premiums.
- 8.3 When a delivery is made by PS to the CUSTOMER through the medium of a transport carrier engaged by or on behalf of the CUSTOMER, then and in such event, all risks in and to the goods in question shall pass to the CUSTOMER on delivery of the goods by PS to the carrier.
- 8.4 Unless the CUSTOMER reports in writing an incomplete or short delivery to PS within 7 (SEVEN) days of the consignment in question having been delivered, the CUSTOMER shall be precluded from making any claim against PS in connection with such short or incomplete delivery.
- 8.5 Where the CUSTOMER requests that delivery be suspended or delayed to a date later than that originally requested, PS shall be entitled to charge the CUSTOMER a reasonable fee for the storage of such goods.
- 8.6 PS is entitled to withhold delivery of goods if the CUSTOMER has not made payment of amounts due in respect of previous orders.

## **9. OWNERSHIP**

- 9.1 Ownership of all goods delivered shall remain in PS until PS has received payment of the full purchase price notwithstanding that the goods may have been purchased for resale.
- 9.2 The CUSTOMER acknowledges PS' rights to repossess the goods if the CUSTOMER defaults with any payment, in whole or in part, and the CUSTOMER shall bear the onus of proving that it has not defaulted with any payment and that payment has been made in full to PS.



9.3 PS' rights to repossess the goods in terms of clause 7.2, includes, inter alia, PS and/or its agents having the right to enter the CUSTOMER's premises for the purpose of inspecting and/or removing the goods from the CUSTOMER's premises.

## **10. HYPOTHEC**

The CUSTOMER shall give valid notice to his landlord of the terms of these Conditions in order to prevent the landlord's hypothec from being exercised over any goods supplied by PS to the CUSTOMER.

## **11. NOTIFICATION OF DEFECTS**

- 11.1 Prior to installation, the CUSTOMER shall be required to advise PS of any defects, failing which the goods shall be deemed to be complete in all respects and without defects, and the CUSTOMER shall be precluded from making any claim against PS in connection with the defective goods.
- 11.2 If PS agrees that the goods are defective, PS' liability shall be limited to replacing such goods as against return to it of the defective goods.
- 11.3 Notwithstanding that the CUSTOMER may have a claim against PS for the goods being defective, the CUSTOMER is not entitled to withhold payment of any amount due to PS nor set off any amount against any payment due to PS.

## **12. RETURN OF GOODS**

If PS agrees to accept the return of any goods for credit, the CUSTOMER shall be liable to pay PS a handling charge of not less than 15% (fifteen percent) of the invoiced price of the goods returned.

## **13. LIMITATION OF LIABILITY AND INDEMNITY**

- 13.1 Neither PS nor any of its employees or agents shall be liable for any loss or damage whatsoever, whether direct, indirect, consequential or otherwise, including any loss of profit, to any person or property, arising from any cause in connection with the goods, services performed or advice given by PS, including inter alia, deleterious effects resulting from the application of any process or treatment to the goods after delivery, whether such loss or damage results from any breach of contract, delict, negligence of any degree or any other cause without limitation. The CUSTOMER hereby indemnifies PS and holds it harmless against all and any claims which may at any time be made against PS in respect of any such loss or damage.
- 13.2 If a CUSTOMER sells or disposes of any goods supplied to it by PS to a third party or otherwise permits a third party to use such goods, the CUSTOMER shall include in the CUSTOMER's agreement with the third party a provision in terms of which PS is afforded a similar limitation of liability to that contemplated in 14.1.
- 13.3 Subject to clauses 8.4 and 11.2, any claim which a CUSTOMER has against PS in connection with or arising out of any business shall lapse and become extinguished unless within: -



13.3.1 90 days of such claim arising, the CUSTOMER gives written notice thereof to PS and at the same time discloses to PS in writing the material facts on which the claim is based; and

13.3.2 12 months of such claim arising, the CUSTOMER institutes legal proceedings against PS in respect of the claim by issuing summons out of a court of competent jurisdiction and having such summons served on

#### **14. FORCE MAJEURE**

If PS is prevented or restricted directly or indirectly from carrying out all or any of its obligations under a contract with the CUSTOMER by reason of strike, lock-out, fire, explosion, floods, storms, riot, war, sabotage, accident, an act of God, embargo, legislation, shortage of or a breakdown in transportation facilities, negligence of the carriers, inability to obtain raw materials, civil commotion, unrest or disturbances, cessation of labour, government interference or control, or any other cause or contingency beyond the control of PS, PS shall be relieved of its obligations in terms of the contract with the CUSTOMER during the period that such event and its consequences continue and shall not be liable for any delay or failure in the fulfilment of any obligations thereunder or loss or damages either general, special or consequential, which the CUSTOMER may suffer due to or resulting from such delay or failure in performance. If PS invokes force majeure, it shall upon termination of such event giving rise thereto, forthwith give written notice thereof to the CUSTOMER. Should such force majeure continue for a period of more than 10 (ten) days then PS shall be entitled forthwith to cancel the contract with the CUSTOMER in respect of any obligation still to be performed thereunder.

#### **15. CANCELLATION**

Notwithstanding the acceptance of the cancellation of a contract by PS, PS shall be entitled to recover all damages incurred by it arising from or in connection with such cancellation, including but not being limited to all costs, expenses and loss of profit arising out of or in connection with such cancellation.

#### **16. NOTICES AND DOMICILIA**

16.1 All notices to be given in terms of the contract shall be in writing and shall be delivered by hand, PS, 8B Buwbes Road, Sebenza, 1610 or sent by prepaid registered post to PS at P O Box 3967, Edenvale, 1609, Gauteng, Republic of South Africa and to the CUSTOMER at any one of the physical business addresses set out in its credit application, quotation giving rise to the contract or the invoice in respect of the goods, which physical addresses the parties select as their domicilium citandi et executandi.

16.2 Each party shall be entitled at any time to change its domicilium to any other physical address within the Republic of South Africa, provided that such change shall take effect only upon delivery or deemed delivery of notice thereof to the other party.



## 17. GENERAL

- 17.1 No agent or employee of PS, other than a director of PS, has PS' authority to alter or vary these conditions.
- 17.2 The CUSTOMER may not rely on a representation which it claims persuaded it to enter the contract.
- 17.3 No agreement varying, adding to, deleting from, or cancelling any of these conditions, and no waiver of any of these conditions, shall be effective unless reduced to writing and, signed by a director of PS.
- 17.4 No indulgence granted by PS shall constitute a waiver of any of PS' rights.
- 17.5 If PS refers any claim or dispute against the CUSTOMER to its attorneys, and whether or not PS institutes or defends any legal or arbitration proceedings to enforce or protect its rights, PS shall be entitled to recover from the CUSTOMER all legal costs (on an attorney and own client basis), tracing charges and collection commission incurred by PS in that regard.
- 17.6 In the event of PS deciding to institute legal proceedings for the enforcement of any of its rights against the CUSTOMER, PS shall be entitled to do so in the Magistrate's Court which would, but for the amount involved, have jurisdiction.
- 17.7 A certificate signed by a director of PS reflecting particulars of the amount owing by the CUSTOMER together with details of all deliveries made to the CUSTOMER and the invoices pertaining to such deliveries shall be prima facie proof thereof and of the CUSTOMER's indebtedness to PS.
- 17.8 The CUSTOMER may not cede any of its rights or delegate any of its obligations in terms of the contract unless a director of PS gives prior written consent to the CUSTOMER to do so.
- 17.9 Credit facilities allowed by PS are in PS' discretion and PS is entitled, at any time, without notice to the CUSTOMER to, vary, curtail, or terminate such facilities.
- 17.10 Unless it conflicts with the context of these conditions, words signifying one gender will include the other genders, words signifying the singular will include the plural and vice versa, and words signifying natural persons will include artificial persons and vice versa.
- 17.11 Headings of clauses are inserted for the purpose of convenience only and shall be ignored in the interpretation of these conditions.
- 17.12 If any part of these conditions is or becomes unenforceable, it will be severable from the rest of these conditions which will continue to be binding.
- 17.13 This agreement shall be interpreted and implemented in accordance with the law of the Republic of South Africa.