

TERMS AND CONDITIONS OF SUPPLY OF GOODS

1. GENERAL

These supply terms and conditions (**Terms**) apply to all goods (**Goods**) provided by Neo Polymers Limited (**Seller**) to any customer who purchases Goods or places an order to purchase Goods (**Buyer**). Any order placed by a Buyer is deemed to be an order incorporating these Terms notwithstanding any inconsistencies which may be introduced in the Buyer's order or acceptance unless expressly agreed to by the Seller in writing.

2. DESCRIPTION

The description given of the Goods has been given by the way of identification only and the use of such description does not constitute a contract of sale by description.

3. ORDERS

- (a) All orders for Goods from the Buyer must detail the specifications of the Goods required, deadlines and, if necessary, delivery instructions. The Seller has the sole and absolute discretion to accept or reject any order or any variation or modification of an existing order placed by the Buyer. The Seller may accept an order in whole or part. The Seller may at any time at its sole discretion and for no reason whatsoever, stop supplying the Goods to the Buyer.
- (b) The Buyer may not cancel or amend, in whole or in part, any order without the Seller's written consent. Without prejudice to any other rights the Seller may have, the Buyer shall indemnify the Seller for any loss, damage or expense incurred by the Seller should the Buyer cancel any order or part of an order.
- (c) Where the Seller has agreed to procure the Goods for the Buyer and the Goods have not been taken within six months, or in the time specified at the time of the order (whichever is the earlier), the Seller reserves the right to charge the Buyer any additional costs incurred by the Seller as a result of the Buyer's failure to take the Goods within that time.

4. PRICE AND PAYMENT TERMS

- (a) The price payable to the Seller for the Goods is the price invoiced to the Buyer in respect of that order, plus any transport, delivery, storage, insurance and similar costs in respect of the supply of those Goods to the Buyer, as notified by the Seller.
- (b) Subject to the Buyer executing, and the Seller accepting, the application for credit with the Seller (**Credit Application**), the Seller agrees to supply the Goods to the Buyer via a credit sale pursuant to the terms of the Credit Application.
- (c) The Buyer must pay the price invoiced to the Seller in respect of an order within 30 days from the end of the month from the date of delivery of Goods to Buyer unless otherwise stated or agreed between the parties.
- (d) The Buyer agrees that in respect of payment under these Terms, time is of the essence.
- (e) The Seller may, in its sole and absolute discretion and at any time, vary the Buyer's credit limit, terminate the Buyer's credit facility and/or require immediate payment in full for all Goods delivered regardless of those Goods having been ordered by the Buyer by way of a credit sale.

5. DEFAULT IN PAYMENT

- (a) If the Buyer fails to pay any amount due to the Seller under these Terms, the Seller may (in addition to any other right that the Seller may have under these Terms or at law or in equity), charge interest on the overdue amount at an interest rate equivalent to 18 % per annum. Interest will accrue from the due date for payment until such



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time as the sum due (plus interest) is paid in full. This obligation to pay default interest arises without the need for a notice or demand from the Seller for such default.

- (b) If the Seller incurs any cost (including any legal costs) relating to the collection, recovery or enforcement of any amounts due to the Seller from the Buyer, including without limitation any amounts that the Seller incurs in connection with the lodgement of any encumbrance, the Buyer agrees that those monies will form part of the debt due to the Seller and payment will be made by the Buyer to the Seller on demand. The Seller may set-off any amount due to the Seller by the Buyer (whether or not the amount is due to

6. BUYER'S CREDIT

Upon the happening of any of the following events:

- (a) the Buyer failing to adhere to the Seller's terms of payment;
(b) if in the opinion of the Seller the financial circumstances of the Buyer so warrant; or
(c) if the Buyer (being a company) goes into liquidation, has a receiver appointed, is placed in statutory management pursuant to the Corporations (Investigation and Management) Act 1989, suspends payment of debts, enters into any deed scheme composition or arrangement with or for the benefit of its creditors or any class or them,

The Seller shall be entitled to stop Goods in transit (and in any such event the Seller reserves the right of disposal in respect of such Goods) or to suspend deliveries of Goods without being able liable for any loss or damage suffered by Buyer by reason of or in consequence of any stoppage in transit or suspension of deliveries or at Seller's option Seller shall be entitled to determine the contract immediately void, reserving to Seller all its other rights and remedies. Upon any such determination or cancellation of the sale to the Buyer for any cause Seller shall be entitled to recover payment for all deliveries already made and for the cost of labour already expended and for materials already obtained or ordered for the purpose of future deliveries (whether or not such materials have been incorporated into the goods being purchased by Buyer), including appropriate overheads.

7. DELIVERY

- (a) The Seller will make all reasonable efforts to deliver the Goods to the Buyer's premises unless otherwise stated or agreed between the parties. Unless notified by the Buyer, all Goods will be delivered to the address listed on the order.
(b) If the Buyer does not, or indicates to the Seller that it will not, take or accept delivery by the Seller of the Goods, the Goods are deemed to be delivered when the Seller was willing to deliver the Goods and the Buyer is liable for any costs and expenses incurred by the Seller to return the Goods to the Seller and store the Goods.
(c) All delivery dates quoted are estimated only and Seller shall not be liable for failure to deliver, or for delay in delivery arising from any cause whatsoever. Buyer shall not be relieved of any obligation to accept or pay for the Goods by reason of any delay in delivery or dispatch.
(d) The Seller reserves the right to deliver the Goods by instalments and each be deemed to be sold under a separate contract. Failure of the Seller to deliver an instalment shall not entitle the Buyer to rescind or repudiate the contract.
(e) The Buyer acknowledges and agrees that shipments may vary by plus or minus 10% from the quantity ordered and the Buyer must accept the delivery of the varied amount.
(f) The Buyer may not refuse to accept delivery of particular Goods because the Seller has delivered only a portion of the quantity ordered or because delivery was late. The Buyer shall be responsible for checking the delivery of Goods upon receipt and shall report any discrepancy in the quantity, quality or whatsoever in the Goods ordered by the Buyer to the Seller at the time of delivery.

8. FORCE MAJEURE

Deliveries may be suspended or cancelled by either party in the event of Act of God, war, riot, fire, explosion, accident, flood, sabotage, inability to obtain fuel, power, raw materials, labour, containers or transportation facilities, government laws, regulations, orders or action, breakage or failure of machinery or apparatus, national defence requirements or any other event beyond the reasonable control of such party, or in the event of labour trouble, strike, lockout or injunction (whether or not such labour event is within the reasonable control of such party), which event prevents the manufacturer, shipment, acceptable or consumption of a shipment of goods or of a material upon which the manufacturer of goods is dependant, if, because of any such event, Seller is unable to supply the demand for the goods, Seller may allocate its available supply of goods, without obligation to purchase similar goods from other sources, among itself and all of its customers, including those not under contract on such basis as it determines to be suitable. Deliveries suspended under this section shall be cancelled without liability, but this contract shall otherwise remain unaffected.

9. TECHNICAL ADVISE

The Buyer warrants that in requesting an order it has not relied on any recommendation, information, assistance or technical advice provided by the Seller in relation to the Goods or their intended application, use or stated benefits. The Seller assumes no liability (whether for negligence or otherwise) for any technical advice or assistance given or the results obtained therefrom, all such advice being given and accepted at the Buyer's risk.

10. WARRANTIES

- (a) Subject to the limitations of clause 12 and unless otherwise herein expressly provided, the Seller warrants title to the Goods and that all Goods sold hereunder will conform to the manufacturer's standard specifications.
- (b) Except as otherwise expressly agreed in writing by the Seller, the Seller makes no representation or warranty of any kind as to the merchantability, fitness for any particular purpose or any other matter with respect to the goods whether used alone or in conjunction with other substances. All conditions and warranties expressed or implied by law are hereby expressly excluded.

11. WARRANTY CLAIMS

No claim by the Buyer whether for defective goods, shortage or for any other cause whatsoever need be recognised by the Seller (and all such claims shall be deemed absolutely waived by Buyer) unless notified in writing to and received by Seller within 60 days after date of delivery or within 30 days after Buyer learns of the facts giving rise to the claim whichever shall first occur. All goods alleged to be defective or otherwise subject to a claim shall be returned to the Seller at the Buyer's expense.

12. LIMITATION OF LIABILITY AND INDEMNITY

- (a) To the maximum extent permitted by law and notwithstanding any other provision of these Terms, the Seller and its officers, employees, agents, contractors and sub-contractors (**Representatives**) will not be liable to the Buyer or its Representatives for any:
 - (i) delay, loss, liability, damage, expense or cost whatsoever, damage, negligence and third party claims; or
 - (ii) loss or damage which is indirect or consequential, including but not limited to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity,incurred or suffered by the Buyer in connection with these Terms (including, without limitation, as a result of the Seller's breach of these Terms, or any negligence by the Seller of its Representatives) or the Goods.
- (b) Where the law implies any condition or warranty into these Terms which cannot be excluded by the Seller, the Seller's liability for breach of any such condition or warranty shall be limited, at the Seller's sole and absolute discretion, to any one or a combination of the following:
 - (i) resupplying the Goods again; or
 - (ii) replacing those Goods with equivalent Goods; or
 - (iii) paying or crediting the Buyer the cost of acquiring equivalent Goods.

13. BUYER'S INDEMNITY

The Buyer agrees to indemnify and keep indemnified the Seller and its Representatives from and against any losses or damages whatsoever whether in an action in contract, negligence or other tort or other actions, causes of action, suits, claims, demands, damage, damages, Loss, costs, penalties, liabilities, charges, third party claims and expenses of every description (including without limitation any loss suffered by the Seller or its Representatives as a result of adverse publicity, loss of profits and any legal costs on a full indemnity basis) that the Seller or its Representatives may incur or suffer, arising directly or indirectly from or in connection with:

- (a) any breach or threatened breach of these Terms by the Buyer or its Representatives;
- (b) any act or omission of the Buyer or its Representatives in breach of these Terms; and
- (c) any penalty imposed under any applicable law, regulation or industry code relating to the Buyer's performance of these Terms.

14. TRANSIT DAMAGE AND SHORTAGES

Any claims by the Buyer for damage contamination or shortage at time of receipt are to be advised immediately to the Seller so that insurance company inspection and assessment can be arranged.

15. INTELLECTUAL PROPERTY

The Buyer shall indemnify the Seller against any liability whatsoever to any person or body for any loss or damage consequential or otherwise however suffered or incurred by any person or body concerning the Goods including but without limitation for any infringement of Trade Mark, design, pattern, mode of construction, patent, know how, utility model or copyright rights arising from performance of the Sale and it is hereby specifically acknowledged that the sale shall not include the transfer of any such rights.

16. CONTINGENCY CHARGES

All contingency charges such as exchange rate fluctuation, sales tax, or other taxes, increases in freight or insurance costs, shipping company financial collapse, surcharges due to war, threat of war, warlike conditions, port congestion, or any other emergencies unforeseen or non-existent at the time of establishment of the sale, shall be to the Buyer's account.

17. PERSONAL PROPERTY SECURITIES ACT

- (a) The Buyer acknowledges and agrees that:
- (i) these Terms constitute a security agreement for the purposes of the *Personal Property Securities Act 1999* (PPSA);
 - (ii) the Goods shall remain the property of the Seller until all invoices are paid in full, as detailed in section 4 of these Terms; and
 - (iii) the Buyer grants a security interest to the Seller in the Goods as security for payment, for any other amounts owing by the Buyer to the Seller, and for the performance by the Buyer of all the Buyer's other obligations to the Seller from time to time.
- (b) The Buyer consents to the Seller effecting a registration, at its discretion, on the PPSA register (in any manner the Seller deems appropriate) in relation to any security interest arising under or in connection with or contemplated by these terms.
- (c) The Buyer agrees not to disclose any information of the kind contemplated by section 177 of the PPSA.
- (d) The Buyer waives its right to receive notice of a verification statement in relation to any registration by the Seller on the PPSA register.
- (e) The Customer agrees to promptly execute any documents, provide all relevant information, fully cooperate with the Company and do any other act or thing that the Company requires to ensure that the Company has a perfected security interest in, and has priority over any other security interests in the Good supplied or otherwise.
- (f) To the extent permissible by law, the Buyer and the Seller agree that:
- (i) for the purposes of sections 107 of the PPSA, the Seller need not comply with sections 116, 120(2), 121, 125, 126, 127, 129 or 131 of the PPSA; and
 - (ii) the parties agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this document, or the security under this document.
- (g) In this clause, terms used which are defined in the PPSA have the meaning given to those terms in the PPSA.

18. TITLE AND RISK

- (a) It is expressly agreed that until full payment (cash or cleared funds) has been made for all Goods, and any other sums in any way outstanding from the Buyer to the Seller from time to time:
- (i) the legal and beneficial ownership of the Goods remain with the Seller and will not pass to the Buyer;
 - (ii) the Buyer holds the Goods as bailee for the Seller (and will return such goods to the Seller on request) and must separately store the Goods in such a way that makes it clear that the Goods are the property of the Seller; and
 - (iii) the Buyer is only authorised to sell the Goods (or any portion of them) to third parties as the fiduciary agent of the Seller (provided that there will be no right to bind the Seller to any liability to such third party by contract or otherwise).
- (b) If the Buyer defaults under these Terms (including any default on the payment of any monies due to the Seller), the Seller reserves the right to:
- (i) (without giving notice to the Buyer) retake possession of the Goods supplied to the Buyer by the Seller and the Buyer hereby authorises and allows the Seller or its representative, servant, agent or employee

to enter the premises upon which the Goods are kept or stored for the purposes of retaking possession of the Goods and the Seller is not liable for any costs, losses, damages, expenses or any other monies or losses suffered by the Buyer as a result of the Seller retaking possession of the Goods; and

- (ii) sue the Buyer as a liquidated sum for monies outstanding.
- (c) If the Buyer sell the goods to a third party, then the Buyer is accountable to the Seller for all the proceeds derived from such sale, and shall hold such proceeds (either as received or in a separate bank account opened expressly for the purpose) on trust for the Seller. If the Buyer manufactures, intermingles, or deals with the goods in any such manner that they become an integral part of any other object, then the Buyer shall be deemed to do so as agent of the Seller, and ownership of the Goods will remain with the Seller as principal.

19. TERMINATION

The Seller is entitled to terminate any order prior to the delivery of the order to the Buyer, by notice to the Buyer.

20. GOVERNING LAW

These Terms and the transactions contemplated by these Terms (including any orders for Goods) are governed by the law in force in New Zealand. The parties hereby irrevocably submit to the exclusive jurisdiction of the courts of New Zealand) in respect of any dispute or matter arising out of, or in connection with, these Terms.

21. GST

All amounts contemplated by these Terms are exclusive of GST unless expressly stated otherwise. A party must pay GST on a taxable supply made to it pursuant to these Terms, in addition to any consideration (excluding GST) that is payable for that taxable supply. It must do so at the same time and in the same way as it is required to pay the consideration for the taxable supply. The Seller will issue a tax invoice as appropriate for any taxable supply and the Buyer must pay the GST amount on the terms as set out in the tax invoice.

22. WAIVER

Waiver by the Seller of a breach of these terms and conditions or of any right or power arising on a breach of these terms and conditions must be in writing and signed by the Seller. A right or power created or arising on a breach of these terms and conditions is not waived by any failure to exercise or delay in exercising, or a partial exercise of, that or any other right or power.

23. VARIATION AND ASSIGNMENT

These terms and conditions may be varied by agreement between the parties in writing only. The Buyer may not assign its rights under these terms and conditions without the Seller's prior written consent.

24. SEVERANCE

If any provision of these terms and conditions or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall, so far as possible, be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of these terms.