

**POLLYFIELDS**  
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# **TRADE TERMS AND CONDITIONS**

## **1 Definitions**

- 1.1 'Buyer' means the person who buys or agrees to buy the Goods and or Services from the Seller.
- 1.2 'Conditions' means the terms and conditions of sale set out in this document or any special terms and conditions agreed in writing by a director of the Seller's company.
- 1.3 'Delivery Date' means the date or dates specified by the Seller when the Goods and or Services are to be delivered and or installed.
- 1.4 'Goods and or Services' means the articles, which the Buyer agrees to buy from the Seller in accordance with these Terms & Conditions and as detailed in the Seller's quotations only.
- 1.5 'Seller' means Pollyfields, PO BOX 34, Torrington, EX38 9AB, United Kingdom.
- 1.6 All quotations and completed signed order forms provided by the Seller state "in accordance with our standard terms and condition a copy of which are available upon request" It is deemed the responsibility of the Buyer to have requested such terms and conditions prior to ordering any Goods and or Services from the Seller.

## **2 Conditions Applicable**

- 2.1 These Conditions shall apply to all orders for the sale of Goods and or Services by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document, unless expressly agreed in writing by the Principal or authorised Representative of the Seller.
- 2.2 All orders for Goods and or Services shall be deemed to be an offer by the Buyer to purchase Goods and or Services pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods and or Services shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions

- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Principle or Authorised Representative of the Seller

### **3 Price**

- 3.1 The Price shall be the Seller's quoted price. The price is exclusive of VAT  
Which shall be due at the rate ruling on the date of the Seller's VAT invoice.

### **4 Payment**

- 4.1 Payment of the Price and VAT shall be due no later than 28 days from the date of the invoice for approved trade accounts and Pro-forma for all other transactions.
- 4.2 Deposit payments may be payable upon order or prior to delivery.
- 4.3 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of **8%** above Nat West PLC'S base rate from time to time in force. This shall accrue at such a rate after as well as before any Judgement.
- 4.4 Credit accounts may be arranged under separate agreements. Any such agreements are at the discretion of the Seller and may be withdrawn at any time.[4.1]

### **5 Goods**

- 5.1 The Seller may from time to time make changes in the specification of the Goods and or Services, which are required to comply with any applicable seasonal or statutory requirements or which do not materially affect the quality or design for purpose of the Goods or Services.

### **6 Warranty**

- 6.1 The Seller warrants that the Goods and or Services will at time of delivery correspond to the description given by the Seller at the point of sale. All other warranties, conditions or terms relating to fitness for purpose, merchantability or condition of the Goods and or Services and whether implied by statute or common law otherwise, are excluded.
- 6.2 The Warranty specified in clause 6.1 will apply as follows: Goods and or Services, where applicable, are sold with original manufacture's warranty, the original manufacture's warranty will apply.

### **7 Shortages and / or Defective Goods / Services**

- 7.1. The Buyer must notify the Seller immediately and within 24 hours of delivery, details of any damage or shortage in the quantity of Goods

- and or Services delivered, and keep for the Seller's inspection all packaging materials.
- 7.2. The Buyer must notify the Seller immediately upon discovery of any defective Goods and or Services – in any event, within 7 days of delivery.
  - 7.3. Upon receiving such notification the Seller will either issue Returns Authorisation Forms or replace the goods. Full details of returns procedure are as specified on the Returns Authorisation form. A copy is available from the Seller upon request.
  - 7.4. The Conditions expressed in the Returns Authorisation Form shall be incorporated into these Conditions.
  - 7.5. Goods returned to the Seller will be examined. Examined Goods be replaced, repaired, returned without repair, or price refunded, at the Seller's discretion. Where Goods are returned as DOA and no fault is found a charge may be made for the time spent inspecting such Goods and for the cost of carriage and insurance and any other costs reasonably incurred by the Seller. If the Seller in it's absolute discretion agrees to accept the return of non – faulty goods not required by the Buyer a **40% restocking charge** will apply together with any other charges reasonably incurred by the seller.
  - 7.6. Advance replacement facility may be available in appropriate cases and subject to availability of replacement goods and or services.[7.3]
  - 7.7. Authorised Returns must be returned to the Seller within 14 days of the returns receipt of the returns documentation. In the event that the Goods are not returned within this period the Seller will cancel the Authorised Returns and full payment for the Goods will become due.
  - 7.8. The Seller reserves the right to charge the Buyer the cost of any time and disbursements spent in the investigation of goods reported damaged and then proven otherwise.

## 8 Delivery

- 8.1 Delivery will only take place after the Seller in possession of a signed Order Form or Verified Purchase Order. Buyers terms and conditions on any such Purchase Order will under **NO** circumstance supersede the Sellers terms and conditions unless agreed in all or part in writing by the Principle or Authorised Representative of the Sellers company.
- 8.2 The Seller will normally arrange delivery unless other arrangements are agreed and specified on the Purchase Order.
- 8.3 Where the Seller is arranging the delivery of Goods and or Services the Seller will, where agreed, arranged for packaging, carriage insurance of the Goods and or Services and will not make any additional charge for these services. With the exception of any extra costs detail in any quotation.
- 8.4 The Seller will specify delivery date to be in line with the Buyers requirements when and where possible.

- 8.5 The Seller shall not be liable for any loss or damage whatever, due to failure by the Seller to delivery the Goods and or Services (or any of them) promptly or at all.
- 8.6 Notwithstanding that the Seller may have delayed or failed to deliver the Goods and or Services or any part of them promptly, the Buyer shall be bound to accept delivery and to pay for the Goods / Services in full provided that delivery shall be tendered at any time within four weeks of the required Delivery Date.
- 8.7 The Seller may deliver the Goods and or Services by separate instalments in accordance with an agreed delivery schedule. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these Conditions unless otherwise agreed in writing and signed by the Principle or Authorised Representative of the Seller's Company. The failure of the Buyer to pay for any of the Goods and or Services on due dates shall entitle the Seller without notice to suspend further deliveries of the Goods and or Services pending payment by the Buyer.

## **9 Export**

- 9.1 The Buyer shall promptly obtain all necessary import licences, duty deferment facility, clearances and other consents necessary for the purchase of the Goods and or Services. The Seller shall promptly upon request supply all information and documents reasonably required by the Buyer for this purpose.
- The price as defined in Condition 3 above will normally be expressed in pounds sterling. Where the price is quoted in a currency other than pounds sterling, payment shall be made in that currency in accordance with the provisions of Condition 4 above. Where the price is quoted in currency other than pounds sterling and the Seller agrees in writing to receive payment in pounds sterling then the sterling equivalent of the price shall be determined according to the closing exchange rate for selling that currency at Nat West Bank Plc on the date of the Seller's agreement to the sale.

## **10 Acceptance**

- 10.1 The Buyer shall be deemed to have accepted the Goods and or Services upon any part delivery to the Buyer.
- 10.2 After acceptance the Buyer shall not be entitled to reject Goods and or Services except under the provisions of Condition 6 and Condition 7 above.

## **11 Title and Risk**

- 11.1 The Goods and or Services shall be at the Buyer's risk as from delivery, or collection by the Buyer or the Buyer's agents.

- 11.2 In spite of delivery having been made title in the goods shall not pass from  
The Seller until: -  
a) The Buyer shall have paid the Price plus VAT in full; and  
b) No other sums what ever shall be due from the Buyer to the Seller.
- 11.3 Until title in the Goods / Services passes to the Buyer in accordance with clause 11.2 the Buyer shall hold the Goods and each of them on fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 11.4 Notwithstanding that the Goods and or Services (or any part of them) remain the property of the Seller the Buyer may sell or use the Goods and or Services in the ordinary course of the Buyer's business at full market value for the account of the Seller only. Any such sale or dealing shall be a sale or use of the Seller' property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods and or Services passes from the Seller then entire proceeds of sale or otherwise of the Goods and or Services shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at material times identified as the Seller's money.
- 11.5 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods and or Services has not passed from the Seller.
- 11.6 Until such time as property in the Goods and or Services passes from the Seller the Buyer shall upon request deliver up such Goods and or Services as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned, occupied, controlled or forming any other form of contract outside the control of the Seller by the Buyer where the Goods and or Services are situated and repossess the Goods and or Services either fixed or free standing. On the making of such request the rights of the Buyer under clause 11.4 shall cease. In the advent of such action deemed to be necessary the Seller shall not be responsible for any such remedial works required as a result of there removal of the Sellers titled goods.
- 11.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods and or Services. Which is the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 11.8 The Buyer shall insure and keep insured the Goods and or Services to the full Price against 'all risks' to the reasonable Satisfaction of the Seller until the date that property in the Goods and or Services passes from the Seller, and shall whenever requested by the Seller

produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

- 11.9 The Buyer shall promptly deliver the prescribed particulars of this contract to the Registrar in accordance with the Companies Act 1985 Part XII as amended. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

## **12 Insolvency or Other Default of Buyer**

- 12.1 Without prejudice to any other rights or remedies the Seller might have against the Buyer, the Seller may Terminate a Contract or suspend the performance of its obligations under Contract forthwith by notice in writing to the Buyer if: -
- a) The Buyer defaults in making payment for any of the Products or Services supplied by the Seller within seven days of its due date; or
  - b) The Buyer defaults in any of its obligations under these terms or a Contract;
- or
- c) Any steps are taken or negotiations commenced by the Buyer or any of its creditors with a view to any kind of voluntary arrangement, compromise, or other arrangement between the Buyer and its creditors; or
  - d) The Buyer is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or any steps are taken to wind up the Buyer, or an administrator,
  - e) Administrative receiver or receiver is appointed over the Buyer's business or any part of its assets.
- 12.2 Upon termination of a Contract under clause 12.1, the Seller shall have the right, without prejudice to any other right or remedy available, to enter the Buyer's premises owned, occupied, controlled or forming any other form of contract outside the control of the Seller and repossess the Product or any of them and shall have the right to dismantle any sales display, product, item or area into which the Product or any of them have been incorporate and the Buyer shall be responsible for the Seller's costs and expenses in connection with so doing.
- 12.3 Those clauses capable of surviving termination shall do so.
- 12.4 The Seller may in its absolute discretion and without prejudice to any other rights which it may have: -
- a) Suspend all future deliveries of Goods and or Services to the Buyer and/or terminate the contract without liability upon its part: and/or:
  - b) Exercise any of its rights pursuant to Condition 11.

- 12.5 The Seller reserves all right detailed or inferred within these terms and conditions, to avoid any such insolvency claims as and when the Buyer enters into a third party agreement with another Buyer in so far as the terms and conditions stated within this document form a binding contract between the Seller and the Buyer only and that no third parties contract can or will effect this contract.

### **13 Set-Off and Counterclaim: Seller's Clause**

- 13.1 The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right set-off or counterclaim, which the Buyer may have or allege to have, or for any reason whatever.

### **14 Liability of Seller**

- 14.1 The Seller shall be under no liability what ever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these Conditions.
- 14.2 In the event of any breach of these Conditions by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods and or Services. The Seller will under no circumstances be held responsible for any costs incurred by the Buyer, their agents or any third party contract entered into by the Buyer

### **15 Mediation**

- 15.1 These conditions are subject to the law of England and Wales.
- 15.2 If any dispute or difference shall arise between the parties as to the meaning of these Conditions or any other matter or thing arising out of or connected with these Conditions then it shall first be referred to the determination of Mediation.

### **16 Notices**

- 16.1 Any notice required to be served pursuant to these Conditions shall be in writing and served by first class post or by hand on the Seller at the Seller's address aforementioned or such other address as the Seller may from time to time notify to the Buyer and on the Buyer at the Buyer's registered office or Principal place of business.

### **17 Headings**

- 17.1 All headings are for ease of reference only and shall not affect the construction of these Conditions.

### **18 Severance**

- 18.1 Any provision of these Conditions, which is or may be void or unenforceable, shall to the extent of such Invalidity or enforceability be deemed severable and shall not affect any other provisions of these Conditions.

## **19 Waiver**

- 19.1 No waiver or forbearance by the Seller (whether express or implied) in enforcing any of its rights under these Conditions shall prejudice its right to do so in the future.

## **20 Sub-contracting**

- 20.1 Neither party may license, assign or sub-contract all or any part of its rights and obligations under these Conditions without the other's prior written consent. Written consent must and will only be accepted if signed jointly by a Principle or Director of both the Seller and Buyer.

## **21 Force Majeure**

- 21.1 Neither party shall be liable for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, drought tempest or other event beyond the reasonable control of either party.

## **22 Cancellation Clause**

- 22.1 The Seller may cancel these Conditions at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.