

Polyformes Limited

Terms and Conditions for the Supply of Goods and Services

1 Interpretation

1.1 In these Conditions:

- “**Customer**” means the party whose Order for Goods or Services is accepted by Polyformes.
- “**Conditions**” means these terms and (unless otherwise specified) includes any special terms and conditions agreed in Writing between the Customer and Polyformes.
- “**Contract**” means the contract for the purchase and supply of the Goods and/or Services (including the Conditions)
- “**Goods**” means the whole or any part of goods and materials which Polyformes is to supply to the Customer
- “**Polyformes**” means Polyformes Limited (registered number 1296564)
- “**Intellectual Property Rights**” means any patent, trademark, service mark, registered or unregistered design, copyright, know-how, confidential information or process of any nature
- “**Order**” means any Written order by the Customer to Polyformes
- “**Services**” means the whole or any part of Services which Polyformes is to perform for the Customer
- “**Writing**” includes facsimile transmission, electronic mail and comparable means of communication

1.2 References herein to any statute shall include reference to that statute as amended

1.3 The headings in these Conditions shall not affect interpretation of the Conditions themselves

2 The Contract

2.1 A Contract is formed only upon Written acceptance by Polyformes of an Order. Each Contract between Polyformes and the Customer shall be subject to these Conditions. Polyformes shall not be bound by conflicting terms sought to be imposed by the Customer or by any variation unless expressly agreed in Writing by Polyformes. In the case of conflict these Conditions shall prevail.

2.2 Unless nominated by the Customer and agreed by Polyformes in Writing, Polyformes shall have no obligation to retain any information or materials relating to any Contract in anticipation of providing further Goods or Services to the Customer in the future

3 Orders and Specifications

3.1 No order shall be deemed accepted by Polyformes until confirmed in Writing by Polyforme’s authorised representative

3.2 The Customer shall ensure the accuracy of the Order terms (including any specification), and for giving Polyformes any necessary information relating to the Goods within sufficient time to enable Polyformes to perform the Contract

3.3 The quantity, quality and description of and any specification for Goods shall be those set out in Polyforme’s quotation (if accepted by the Customer) or the Order (if accepted by Polyformes in Writing)

3.4 The Customer acknowledges that the specified dimensions of Goods are subject to Polyforme’s General Manufacturing Tolerances and that Goods may at Polyformes sole discretion include laminations

3.5 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity stated in the Contract provided that such discrepancy in quantity shall not exceed 10% and the Price shall be adjusted pro rata to the discrepancy

3.6 Polyformes reserves the right to make any changes to the specification of Goods as required to conform with any applicable laws

3.7 No Order accepted by Polyformes may be cancelled by the Customer except with the agreement in Writing of Polyformes and on terms that the Customer shall indemnify Polyformes in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Polyformes as a result of cancellation

4 Price

4.1 The Price shall be as confirmed by Polyformes in Writing. Unless otherwise agreed in Writing the Price is exclusive of any applicable value added tax and delivery charges (if delivery is otherwise than at Polyforme’s premises) which the Customer shall be additionally liable to pay to Polyformes

4.2 Polyformes reserves the right, by giving notice to the Customer at any time before delivery, to increase the Price to reflect any increase in the cost to Polyformes which is due to any factor beyond the control of Polyformes (including, without limitation, increase in material costs) or any change in delivery dates, quantities or specifications for the Goods requested by the Customer, or any delay or inadequacy in Customer instructions

5 Payment

5.1 Polyformes shall be entitled to invoice the Customer for the Price (or any outstanding balance of the Price taking account of any advance payment required by the Contract) at any time after either the Goods are notified as ready for collection or upon delivery of the Goods or upon the performances of the Services

5.2 The Customer shall pay any invoiced part of the Price within 30 days of the date of invoice. The time of payment of the Price shall be of the essence of the Contract. Receipts for payment will be issued only upon request

5.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Polyformes, Polyformes shall be entitled to:

5.3.1 cancel the Contract or suspend any further deliveries to the Customer

5.3.2 appropriate any payment made by the Customer to such of the Goods or Services (or the goods or services supplied under any other contract between the Customer and Polyformes) as Polyformes may think fit (notwithstanding any purported appropriation by the Customer); and

5.3.3 charge the Customer interest (both before and after any judgement) on the amount unpaid, at a rate of 4 percent per annum above Lloyds Bank Plc base rate from time to time, until payment in full is made

6 Samples

6.1 Polyformes may require the Customer’s approval of samples of Goods prior to production and/or delivery. Within 5 working days of receipt of a sample the Customer shall either:

6.1.1 approve the sample in Writing, or

6.1.2 reject the sample and confirm shortcomings in Writing

6.2 Upon final approval of samples, Polyformes shall produce and prepare Goods for delivery in accordance with Condition 7

7 Delivery

7.1 Delivery of the Goods shall be made either by the Customer collecting the Goods at Polyforme’s premises at any time after Polyformes has notified the Customer that the Goods are ready for collection or, if some other place for delivery is specified in the Contract, by Polyformes procuring the delivery of the Goods to such place by a delivery method agreed in Writing. Where Polyformes agrees to deliver the Goods otherwise than at Polyforme’s premises, Polyformes shall be under no obligation under section 32(2) of the Sale of Goods Act 1979

7.2 Any dates quoted for supply are approximate only and Polyformes shall not be liable for any delay in the performance or delivery however caused. Time for delivery shall not be the essence of the Contract unless otherwise agreed by Polyformes in Writing. The Goods may be delivered by Polyformes in advance of the quoted delivery date upon giving reasonable notice in Writing to the Customer

7.3 Where Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by Polyformes to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated

7.4 If Polyformes fails to deliver Goods for any reason within its reasonable control and in the absence of Customer fault (which, without limitation, includes delay on the part of the Customer in returning samples to Polyformes), Polyforme’s liability shall be limited to the excess (if any) over the Price of the cost to the Customer (in the cheapest available market) of obtaining similar replacement goods

7.5 If the Customer fails to take delivery of the Goods or fails to give Polyformes adequate instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer’s reasonable control or by reason of Polyformes’ fault) then, without prejudice to any other right or remedy available to Polyformes, Polyformes may:

7.5.1 store the Goods until actual delivery and charge the Customer for the costs of storage at the rate of 10% of the Price for each calendar month or part thereof; or

7.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the Price under the Contract or charge the Customer for any shortfall below the Price of the Contract

8 Risk and Property

8.1 Risk of damage to or loss of the Goods shall pass to the Customer:

8.1.1 in the case of Goods to be collected from Polyforme’s premises, at the time when Polyformes notifies the Customer that the Goods are available for collection; or

8.1.2 in the case of Goods to be delivered otherwise than at Polyforme’s premises, at the time of delivery to the carrier or, if the Customer wrongfully fails to take delivery of the Goods, the time when Polyformes has tendered delivery of the Goods

8.2 Notwithstanding delivery and the passing of risk in the Goods the property in the Goods (subject to Condition 10 below) shall not pass to the Customer until Polyformes has received in cash or cleared funds payment in full of the Price of the Goods and all other goods agreed to be sold by Polyformes to the Customer for which payment is then due

8.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as Polyforme’s fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as Polyforme’s property

8.4 Until such time as the property in the Goods passes to the Customer, Polyformes shall be entitled at any time to require the Customer to deliver up the Goods to Polyformes and, if the Customer fails to do so, forthwith to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods

9 Warranties and Liability

9.1 Polyformes shall be under no liability in respect of any defect in the Goods or Services arising from any short coming in any drawing, design or specification supplied by the Customer

9.2 Polyformes shall be under no liability if the total price for the Goods or Services has not been paid by the due date for payment

9.3 Subject as expressly provided in these Conditions, and except where the Goods and Services are sold and supplied to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Acts 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law

9.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Conditions

9.5 Any claim by the Customer in relation to non-receipt of any Goods shall be notified to Polyformes in Writing within 7 calendar days of invoice

9.6 Any claim by the Customer which is based on any shortcoming in Goods or Services shall be notified to Polyformes within 7 working days of the date of delivery or (where the shortcoming was not apparent on reasonable inspection) within a reasonable time after discovery of the shortcoming and the Customer shall afford Polyformes an opportunity to inspect the Goods. If Goods are received packaged but damaged, this must be noted on the carrier’s paperwork otherwise no claim will be accepted. If delivery is not refused, and the Customer does not notify Polyformes accordingly, the Customer shall not be entitled to reject the Goods or Services and Polyformes shall have no liability for such shortcoming and the Customer shall be bound to pay the Price as if the Goods or Services had been delivered in accordance with the Contract

9.7 Polyformes may charge the Customer a reasonable sum for the costs incurred by Polyformes in inspecting Goods following any claim made under Condition 9.6 which proves invalid

9.8 Where and valid claim in respect of Goods or Services which is based on any defect in the quality or condition of the Goods or Services or failure to correspond with samples is notified to Polyformes in accordance with these Conditions, Polyformes shall be entitled to perform again some or all of the Services and to replace Goods (or the part in question) free of charge or, at Polyforme’s sole discretion, refund the Price to the Customer (or a proportionate part of the Price), but Polyformes shall have no further liability to the Customer

9.9 If Polyformes agrees to replace any Goods the subject of a claim made in accordance with Condition 9.6 but prior to inspecting those Goods, Polyformes shall be entitled to invoice the Customer for the price of the replacement Goods

9.10 Except in respect of death or personal injury caused by Polyforme’s negligence, Polyformes shall not be liable to the Customer by reason of any representation, (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Polyformes, its employees or agents or otherwise) which arise out of or in connection with the supply of Goods and Services or their use by the Customer, and the entire liability of Polyformes under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions

9.11 Polyformes shall not be liable to the Customer or deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform any of Polyforme’s obligations in relation to the Goods and Services, if the delay or failure was due to any cause beyond Polyforme’s reasonable control

10 Intellectual Property Rights

10.1 In the absence of contrary agreement in Writing, the title to and ownership of all Intellectual Property Rights embodied in or relating to Goods and Services are acknowledged by the Customer to be the property of Polyformes or such other party as may be specified in connection therewith

10.2 Polyformes shall be permitted to use or dispose of any of the Intellectual Property Rights embodied in or relating to Goods and Services for any purpose including, without limitation, the supply of goods and services to any third party and no exclusivity in favour of the Customer attaches to designs or techniques used in respect of Goods or Services

10.3 If any claim is made against Polyformes that the Goods and Services infringe or that their use infringes the Intellectual Property Rights of any other person, then if the claim arises from the use of any drawing, design or specification supplied by the Customer, the Customer shall indemnify Polyformes against all loss, damages, costs and expenses awarded against or incurred by Polyformes in connection with the claim, or paid or agreed to be paid by Polyformes in settlement of the claim, provided that the Customer is given full control of any proceedings or negotiations in connection with any such claim and Polyformes shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Customer (which shall not be unreasonably withheld)

10.4 Polyformes Ltd. reserves the right to dispose of tooling that has not been used for 2 years without further notice to the Customer and without liability

11 Termination

11.1 This Condition 11 applies if:

11.1.1 The Customer makes a voluntary arrangement with its creditors or (being an individual firm) becomes bankrupt or (being a Company) becomes subject to an administration order or goes into liquidation (otherwise than for purposes of amalgamation or reconstruction); or

11.1.2 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

11.1.3 The Customer ceases, or threatens to cease, to carry on business; or

11.1.4 Polyformes reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly

11.2 If this Condition 11 applies then, without prejudice to any other right or remedy available to Polyformes, Polyformes shall be entitled to cancel the Contract or suspend any further performance under the Contract without any liability to the Customer, and if the Services have been performed and/or the Goods have been delivered but not paid for, the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary

12 General

12.1 Polyformes may perform any of its obligations or exercise any of its rights hereunder by itself or through any sub-contractor or agent

12.2 Any notice to be served in respect of a Contract shall be made in Writing and either delivered personally or sent by first class recorded delivery post to the other party at its current principal trading address or such other address as the other party may specify by notice in Writing for that purpose from time to time. In the absence of contrary evidence any notice shall be deemed to have been duly served if delivered personally when left at the aforementioned address and if delivered by first class recorded delivery post at the recorded time of postal delivery

12.3 No waiver by Polyformes of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision

12.4 If any provision of these Conditions is held by and competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected

12.5 The Contract shall be governed by the laws of England, and the parties agrees to submit to the exclusive jurisdiction of the English courts.

A larger typeface copy of these Terms is available upon written request.