

TERMS AND CONDITIONS OF SALE

1. Terms and Prices:

- a. Terms of payment on all orders are subject to approval of Seller's credit department and, unless otherwise stated, are NET 30 days from the date of invoice without regard to the delivery of Products. Seller reserves the right to charge a late payment fee of 1-1/2% per month for all amounts not paid in full within 30 days from the date of the invoice. Any check that is returned as uncollectible for any reason will result in an additional charge to the Buyer of \$25.00.
- b. Prices and deliveries are F.O.B. Seller's plant unless otherwise stated and risk of loss shall pass to the Buyer upon delivery to the Carrier. Orders that ship "Prepay and Add" will be billed at PolySpec's discounted freight rate plus 20% for handling.
- c. Buyer shall pay directly to the appropriate government authority all sales, use or any other local state or federal taxes that arise from the sale or delivery of the Products or the execution of any contract of sale and will reimburse Seller for any such payments made by Seller.
- d. Air shipments will incur special packaging charges and minimum one-day delay in shipment. Buyer assumes responsibility on all airfreight deliveries. Polyspec will make no guarantees of delivery times of air shipments.
- e. International shipments may incur special packaging charges and longer lead times. Buyer assumes responsibility for selection of freight forwarder and delivery times.
- f. Notwithstanding any other provisions herein, the prices of any Products are subject to increase by Seller to reflect increased cost of labor, raw materials, components parts, overhead and other expenses.
- g. Upon failure of Buyer to pay amount when due, Seller may, at its option and without prejudice to any other remedies or rights it may have, suspend further shipments and deliveries to Buyer. Seller shall be entitled to reasonable counsel fees, costs and expenses relative to enforcing the terms of the Agreement of defending its rights hereunder.

2. Shipping Data and Delivery:

- a. Buyer's receipt of any Products delivered by Seller shall be an unqualified acceptance of any waiver by Buyer of any and all claims with respect to such Products on the earliest to occur of. i.) Payment for the Products of ii.) Failure of Seller to receive notice of shortages or defects in the products within 15 business days of their delivery to the Buyer.
- b. The shipping date and delivery estimated are subject to adjustment due to any priorities or allocations necessitated by government orders or regulators and the time and manner of delivery is subject to adjustment due to any delay on the part of the Buyer in supplying necessary date, or any changes therein at Buyer's insistence, and to delays caused by any cause beyond Seller's reasonable control. Delay in delivery for any of the aforementioned causes shall extend the terms of delivery hereunder by a period equal to the length of such delay. Seller shall be compensated for any and all extra costs and expenses occasioned by delays attributed to Buyer.
- c. EVERY EFFORT WILL BE MADE TO FILL ORDERS WITHIN THE TIME STATED, BUT UNDER NO CIRCUMSTANCES WILL SELLER BE RESPONSIBLE FOR UNDO CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR OWING TO ANY DELAYS IN DELIVERY WHATSOEVER.

3. Cancellations, Changes or Alterations:

- a. Orders placed cannot be canceled or altered nor can deliveries of Products completed or in process be extended beyond original specified delivery dates except with Seller's consent and upon terms that will indemnify Seller against loss.
- b. Products returned without permission will not be accepted for credit and will be returned to Buyer at buyer's expense. No collect shipments will be accepted.
- c. The delivery schedule of an order cannot normally be extended more than six months beyond the date of the first scheduled delivery. If Buyer requests an extension of the delivery schedule beyond the date of the first scheduled delivery, Seller reserves the right to increase the price of ordered products or to substitute other products in place of the Products.
- d. Any claim based on the receipt of damaged Products must be filed with the carrier that delivered the Products. Seller will not allow credit for the return of damaged Products.
- e. Seller will not accept the return of any Products unless Buyer obtains Seller's prior written authorization. Seller may, at its option, accept other returned standard stocking Products subject to a 10-50% charge for inspection and repackaging.

4. Disclaimer, Warranties and/or Limitations:

- a. Seller warrants the Products herein described comply with the written specifications supplied by Buyer on its purchase order as acknowledged by Seller. This warranty is void in case of damage in transit, negligence, abuse, abnormal usage, misuse, accidents or improper maintenance. There are no representations as to the capacity or performance of the Products sold hereunder except as set forth in the written specifications, if any, and such representations are expressly conditioned upon the correctness of the data furnished by Buyer and upon the Products being properly installed and maintained.

Buyer acknowledges that all performance specifications concerning Seller's Products are fully and completely set forth in written documentation previously supplied by Buyer. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY OTHER INFORMATION OTHER THAN SAID WRITTEN DOCUMENTS IN PURCHASING SELLER'S PRODUCTS. BUYER HAS PERFORMED ITS OWN DUE DILIGENCE RELATIVE TO THE PRODUCT'S INTENDED USE. AS SUCH, BUYER SPECIFICALLY DISCLAIMS ALL WARRANTIES OF ANY NATURE, WHETHER EXPRESS OR IMPLIED, SPECIFIED UNDER THE UNIFORM COMMERCIAL CODE INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

I.) WARRANTY OF MERCHANTABILITY

II.) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

SELLER'S WARRANTIES DO NOT EXTEND BEYOND THOSE SET FORTH IN WRITING BY SELLER.

- b. Seller's sole obligation under this warranty shall be, upon prompt notice to Buyer of any defects and inspection, if required, by Seller to replace FOB Seller's plant or, at Seller's option, allow credit for any defective Products expressly warranted herein against defects by Seller. IT IS EXPRESSLY AGREED THAT THIS REMEDY, REPLACEMENT OR CREDIT, AT SELLER'S OPTION, IS BUYER'S EXCLUSIVE REMEDY UNDER THIS WARRANTY. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL DAMAGES.
- c. On materials furnished by Seller, manufactured by others, the written warranty of the manufacturer, if any, will be assigned to Buyer. SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, RESULTING, OR CONSEQUENTIAL DAMAGES (WHETHER CAUSED BY OR RESULTING FROM SELLER'S NEGLIGENCE OR BREACH) DIRECTLY OR INDIRECTLY ARISING FROM THE USE, INABILITY TO USE, ATTEMPTED USE, FAILURE TO DELIVER OR DELAY IN DELIVERY OF, OR FROM ANY DEFECT IN, OR ANY BREACH BY OR FAILURE TO CONFORM OF THE PRODUCTS, OR ANY REPLACEMENT THEREOF, ORDERED FROM SELLER FOR USE IN CONJUNCTION THERE WITH, OR FROM ANY CAUSE WHATSOEVER.
- d. Seller, in its manufacturing and sale of these Products, will assume no liability as to possible infringement of patents by virtue of the use of said Products in combination with the other elements or structures.

5. Compliance with the Laws:

- a. Seller certifies that the Products will be produced in accordance with the Fair Labor Standards Act of 1938, as amended.
- b. Buyer will not directly or indirectly export, re-export, sell or transfer any Product to any country for which an export license or other governmental approval is required without first obtaining all licenses and other approvals.

6. Entire Agreement:

The parties agree that there are no understandings, agreements, or representations, express or implied, not specified herein or in Seller's quotation, and that these instruments contain the entire agreement between the Seller and Buyer, and that, consequently no course of prior dealings and no usage of the trade shall be relevant to supplement or explain any of the terms used in this Acknowledgement.

7. Governing Laws:

This contract will be construed according to the laws of the State of Texas. This agreement constitutes a valid and binding contract construed under the laws of the State of Texas. Buyer hereby submits to the exclusive jurisdiction of the courts of the State of Texas in resolving any dispute or claims by or against each party hereto.