

Sales Terms and Conditions

I. GENERAL

The following Sales Terms and Conditions (“Terms”) are applicable to all sales of thermo plastic compounds, virgin and recycled thermo plastic polymers and related plastic pellets (“Products”) sold by Polykemi Inc. (“Seller”), and the acceptance of any order is expressly conditioned upon Buyer’s consent to these Terms. No interlineations, deletions, modifications or amendments to these Terms shall be binding on Seller unless agreed to and accepted in writing by Seller.

All sales are subject to written confirmation by Seller. Receipt by Buyer of Seller’s acknowledgment of an order without prompt written objection thereto shall constitute acceptance by Buyer of these Terms.

Buyer must respond to Seller’s notice of acknowledgment or order acceptance within five (5) business days of receipt of such acknowledgment or Buyer will waive its right to cancel the order.

II. PRODUCT PRICE QUOTATIONS

The quotations or tenders are non-committal and non-binding in nature. No contract shall arise until a written acknowledgment from Seller, accepting the Buyer’s order, is sent by Seller to the Buyer. Because no contract is formed until Seller acknowledges Buyer’s order, these Terms shall supersede any and all terms of Buyer. Seller will be entitled to adjust agreed prices on the basis of the average change in the cost price of the Products to be delivered and/or activities to be performed by the Seller. The adjustment of agreed prices and rates will apply when modified by mutual written agreement of the Parties.

The weights, dimensions, capacities, performance ratings, characteristics and other data on documents, client and/or customer lists, client information, marketing and/or sales information, are mentioned only as general information. They are only approximate and shall not bind Seller. Seller is also entitled to deviate from any agreed quantity of Products with a maximum of +/- ten percent (10%) at any delivery without any consequences.

In case of changes in exchange rates, raw material prices, taxes, dues and levies, official charges or other similar duties of more than five percent (5%) occurs after the date for an offer or agreement for delivery has been made and such changes have not been taken into consideration, at delivery, Seller is entitled to adjust the prices accordingly.

III. DELIVERY

Unless otherwise specified by the parties in writing, the Products are to be delivered “DAP”, at Seller’s place of business (as “DAP” is defined in the current version of Incoterms). The method and agency of transportation and routing will be designated by the Seller. In the event the Buyer

requests alternative shipment or routing, extra packing, shipping and transportation charges will be the Buyer's responsibility. Seller is not responsible for any damage in shipment.

In the event the agreement is for successive deliveries of Products, each delivery shall be considered a separate sale. Buyer is not entitled to, at delays of part deliveries or defaults or deficiencies in part deliveries, terminate the entire agreement. In case deliveries are postponed due to reasons set out in Article XI (force majeure) below, Seller is entitled to postpone subsequent deliveries correspondingly.

IV. DELAYS IN DELIVERY

Any specific shipping date, designated in writing, signed by the Seller shall be interpreted as estimated and in no event shall dates be construed as falling within the meaning of "time is of the essence". The Seller shall not be responsible for any delays in filling orders, nor shall it be liable for any loss or damages resulting from such delays. If a specific shipping date is specified in the order or later agreed to by the Seller, then the Seller shall not be liable for any delays in filling such order caused by delays resulting from any and all conditions beyond the control of Seller, including but not limited to: (a) accidents to or malfunctions of Seller's or Seller's subcontractors' or suppliers' machinery; (b) differences with employees, strikes, or labor shortage; (c) fire, floods, hurricanes or other natural disaster; (d) supplier or subcontractor delays, including any quantity or quality defects; (e) delays caused by an instrumentality of the United States Government or any government or any agency; (f) delays in transportation; (g) restriction imposed by any governmental regulation, whether valid or invalid; or (h) other cause beyond the control of the Seller, or any condition without the sole fault or negligence of the Seller.

Under no circumstances shall Buyer or Buyer's customer be entitled to any damages for Seller's failure to ship on time, and Buyer agrees to indemnify, defend and hold Seller harmless against any costs and expenses related to any claims for lost profits or other consequential damages based on Seller's failure to deliver timely.

If Buyer finds that he cannot take delivery of the Products on the agreed delivery date or it seems likely that delays on account of the Buyer will occur, Buyer shall without undue delay inform the Seller hereof, in writing, as soon as possible the actual time when delivery can be received. Seller is entitled to request the Buyer, in writing, take delivery of the Products within a reasonable time. If Buyer does not accept or pick up the Products at the date specified in the order or later agreed to by Seller, the delivery of the Products shall nevertheless be deemed accepted by Buyer who shall therefore pay for the Products delivered. The storage of the Products arranged by Seller will be at the risk and expense of the Buyer. Seller shall further be entitled, to the exclusion of any other remedy for the Buyer's failure to take the products, to recover any expenses properly incurred in performing the contract and not covered by payments received for the Products delivered.

V. PAYMENT

Unless otherwise stated, payment for the Products shall be received by Seller within thirty (30) days from the date of the issuance of the invoice. In the event Seller feels insecure concerning payment by Buyer, Seller reserves the right to require cash or letter of credit payment terms. The price does not include any present or future Federal, State or Local property, sales, use, excise, license, gross receipts or other taxes or assessments which may be applicable to, imposed upon or result from this transaction or any services performed in connection with these Terms and/or the Products. The Buyer agrees to pay any such taxes or reimburse payment of such taxes by Seller.

In the event payment is not received when due, interest shall be due at the rate of one and one half percent (1.1/2%), or the maximum permitted by law, on the unpaid portion of the invoice sum for each period of thirty (30) days or part thereof from the due date. Seller has the right to refuse to deliver Products if Buyer is past due on any of its debts to Seller. Furthermore, Seller shall have the right to retake all Products immediately unless other written arrangements have been made concerning payment only if Buyer is past due. Buyer agrees to make all Products available, shipping ready, for Seller, within five (5) days of receiving notice from Seller of its intention to retake the Products.

Buyer shall pay all of Seller's costs of collection of any amounts past due, including, but not limited to attorneys' fees, court costs, witness fees, travel and lodging, etc.

Seller will be entitled to apply payments made by Buyer first to pay those claims it deems appropriate, including interest, late charges, costs of collection, etc.

Buyer, or its affiliates or assignees, will not be entitled to suspend its payment obligations to Seller, claim any right to compensation and/or to offset its payment obligations with any obligations of Seller to Buyer, with such obligations being those set forth in these Terms or other purchase contract between the Buyer and Seller. Buyer will not be entitled to dissolve the contract with Seller if Buyer is in default.

If Buyer does not fulfill its payment obligations to Seller completely or within the applicable payment period, Seller will be entitled to suspend its obligations to Buyer completely and/or not to perform them.

VI. SECURITY INTEREST

In order to protect and secure payment of all debts due and owing from Buyer and until Seller has been paid in full, Buyer hereby grants to Seller a security interest in the Products, and all proceeds and all accounts receivables resulting from the sale of the Products. In connection therewith, Buyer hereby authorizes Seller to take all necessary steps to file such financing statements and exhibits with the proper authorities, including the filing of a UCC-1 Financing Statement.

Until the Buyer has paid for the Products in full, Buyer shall not pledge, mortgage, encumber, or create or suffer to exist a security interest in the Products in favor of any person other than Seller unless written approval of such other security interest is given by Seller. Additionally, Buyer agrees to keep the Products insured to their full value until payment is received by Seller. In the event Buyer sells the Products to a third party before payment in full is received by Seller, Buyer agrees to secure its security interest in the Products at the time of sale to its customer in order to protect Seller's interests to the greatest extent possible.

VII. INSPECTION; RETURNS

Unless Seller receives a written complaint with full particulars from Buyer regarding any defective Products within fourteen (14) business days from the date the Products are delivered, the Products shall be deemed to have been delivered in good condition and that the delivery is accepted.

Acceptance of the returned Products does not imply acknowledgment by the Seller of the reason for the return. Products returned by the Buyer to the Seller will remain at the Buyer's risk and the Buyer will owe the agreed amounts until the Seller has credited the Buyer for these Products. The Products accepted by the Buyer from the Seller, which the Buyer has put fully or partly into use, treated, processed or delivered to others will be considered to conform to the contract.

VIII. LIMITED WARRANTY OF GOODS AND SERVICES; DAMAGES

Seller warrants, for twelve (12) months after delivery, unless indicated to the contrary, that the Products covered by this contract are produced according to usual practices, customs, standards, specifications and tolerances of trade prevailing in the country of origin at the time of production and shall be free from defects in design, material, workmanship and shall conform to the Seller's specifications. THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. ALL OTHER WARRANTIES, AND SPECIFICALLY THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. Products showing only minor defects, not affecting the function of the Products shall be accepted by the Buyer and shall not give rise to any claim against the Seller. All claims of damages of any kind during delivery are barred unless reported in writing by the Buyer to the Seller, with full disclosure of particulars within fourteen (14) days after delivery as defined herein.

Where a defect is discovered within twelve (12) months of delivery from the Seller, and within seven (7) days from the discovery of the defect or from when the Buyer ought to have discovered the defect, the Buyer shall be entitled, at Seller's option, to either credit or replacement of the defective product. SELLER SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, DIRECT OR INDIRECT COSTS OR LOSSES UNDER ANY CIRCUMSTANCES TO THE BUYER, ANY SUCCESSORS IN INTEREST OR ANY BENEFICIARY OR ASSIGNEE OF THESE TERMS. Seller will not replace where the defect is the result of use or handling in a manner, circumstances, or for purposes other than those that have been approved or instructed by the Seller.

Address

2800 Repi Court, Dallas
NC 28034, USA

Contact

polykemi@polykemi.com
www.polykemi.com

Tax ID

90-0961653

The maximum liability of Seller under any circumstances shall be the price actually paid by Buyer to Seller for the Products that are proven to be defective.

IX. INTELLECTUAL PROPERTY RIGHTS

All intellectual property rights to, ownership of, and interest in all Products, trademarks, trade names, logos, distinctive marks, designs, and other materials created and/or made available by the Seller hereunder or within the framework of the relationship between Buyer and Seller are vested exclusively in the Seller. The Buyer shall not reproduce, transfer, grant, assign, license or use the Products, distinctive marks, and designs and other materials created and/or made available by the Seller and/or otherwise act as maker of and/or party entitled to such rights, except in accordance with these Terms.

The Buyer shall not remove or alter indications concerning intellectual property rights and concerning the confidential nature of information from Products, services, programs, works, distinctive marks, inventions, designs, models and other materials created and/or made available by the Seller and Products delivered.

The Buyer shall not alter, or have altered, modify, or have modified, adapted or otherwise reconfigured, the Products, services, programs, works, distinctive marks, inventions, designs, models and other materials created and/or made available by the Seller.

The Seller will indemnify the Buyer against claims of third parties based on the allegation that by using the Product, the Buyer has infringed the intellectual property rights of such third parties, provided that the Seller is promptly notified in writing and given authority, information and assistance with defense of the claim(s). The Seller, at its option, shall: (1) procure the right of Buyer to continue to use the Product; (2) modify the Product so that it becomes non-infringing; (3) replace the Product with non-infringing Product; or (4) remove the Product and refund the purchase price. The foregoing shall not be construed to include any agreement by the Seller to accept any liability whatsoever with respect to Buyer's own or third party equipment, documents or materials used in combination with or related to the Product. The foregoing states the entire liability of the Seller with regard to intellectual property infringement.

Seller makes no warranty concerning the appropriateness of the Products to the purposes for which Buyer or its customer are acquiring same. Moreover, Seller makes no warranty that the Products or other intellectual property of Seller does not infringe the rights of third parties.

X. CANCELLATION PRIVILEGES

Seller may cancel any contract if Buyer is in default of the payment of any obligations pursuant to or any contract between the parties, or if in the sole judgment of Seller, Buyer's financial condition and responsibility has become materially impaired. In addition, Seller shall have the right to recover damages for nonperformance, and any unpaid installments due on account of this or any other

contract between the parties shall become immediately due and payable. If the Buyer – validly – cancels the contract, the Buyer will be obliged to compensate the Seller for any costs incurred by the Seller in connection with making the offer and entering into the contract and the damage and/or loss arising from the cancellation.

The Seller will be entitled to terminate the contract unilaterally, with immediate effect, fully or in part, and/or to suspend performance of its obligations under the contract with immediate effect if:

- a. the Buyer has failed to fulfill one or more of its obligations under this or any other contract or sales terms;
- b. Buyer has suspended payments or has sought the protection of the Bankruptcy Courts;
- c. a petition for the involuntary bankruptcy of the Buyer has been filed;
- d. the Buyer's property on Seller's premises has been attached in execution;
- e. a resolution for the dissolution and/or winding up of the Buyer has been adopted; or
- f. the enterprise operated by the Buyer has been fully or partly transferred to a third party without consent of Seller. The Seller will never be liable with respect to the Buyer for any damages arising from termination of the contract or from the suspension of obligations under the contract for the aforementioned reasons. If the contract is terminated, performance of the contract already received by the Buyer and the payment obligations of the Buyer in connection with it will remain. The amounts invoiced by the Seller for performance prior to or upon termination of the contract will be immediately due and payable after termination. Buyer agrees to pay any of Seller's costs, damages, attorneys' fees and other expenses associated with Seller's termination of any contract with Buyer pursuant to the terms of this section.

XI. FORCE MAJEURE

If Seller is temporarily unable to perform this Agreement because of Force Majeure, it will be entitled to suspend performance of the contract for as long as the Force Majeure lasts. If Seller is permanently unable to perform any of its obligations to Buyer because of Force Majeure, it will be entitled to cancel the specific order with immediate effect and without any damages whatsoever. Buyer agrees to indemnify, defend and hold Seller harmless against any claims made by third parties based on whole or in part on Seller's inability to perform because of Force Majeure.

XII. GOVERNING LAW

A. These Terms and the transactions contemplated herein, any claim, dispute, or controversy (whether in contract, tort or otherwise, whether preexisting, present or future, and including statutory, common law and equitable claims) between the Buyer and the Seller arising from or relating to these Terms, their interpretation, or the breach or validity thereof, shall, except to the extent that the Seller is expressly prohibited by applicable law, be governed by the laws of the State

of Illinois in the United States, without reference to conflict of laws principles. The Buyer hereby consents to the jurisdiction of the state and Federal courts in the city of Chicago in connection with any dispute, controversy, action or other matter relating to or arising out of the Terms. Compliance with any local governmental laws or regulations relating to the location, use or operation of the Products, or its use in connection with other equipment, shall be the sole responsibility of the Buyer.

The United Nations Convention on Contracts for the International Sale of Goods is hereby excluded from application to these Terms.

B. For sales in the United States, where permitted, in the event that the Buyer fails to make payment of the amounts as set forth in Section V above or any balance of the Buyer or corresponding cash value not yet delivered, the Buyer hereby irrevocably authorizes and empowers any attorney-at-law of any court of record in the jurisdiction of the state court located in the city of Chicago to enter the Seller's appearance in such court, to waive process and service of process and to confess judgment against Buyer for such amounts as may be due the Seller as evidenced by an affidavit signed by an officer of the Seller setting forth the amount then due, together with all costs and attorneys' fees, and interest from the date the confession of judgment is entered at the rate of twelve percent (12%) per annum, or the maximum permitted by law. The Buyer agrees to waive and release all errors and waive all rights of appeal from any judgment entered and further agrees that execution on any judgment entered may be received without delay.

XIII. ENTIRE AGREEMENT

These Terms constitute the sole terms and conditions of the contract between the Buyer and Seller. No other terms, conditions, or understanding, whether oral or written, shall be binding upon the Seller, unless hereafter made, in writing, and signed by Seller's authorized representative and, in the case of printed matter, also initialed by such representative next to such printed term or condition.

XIV. SEVERABILITY

Should any provision of this Agreement be judicially declared unenforceable, that provision shall be deemed stricken and the remainder shall continue in full force and effect insofar as it remains a workable instrument for effectuating the intents and purposes of the parties. The Parties further agree to renegotiate any so severed provision to bring the same within applicable legal requirements to the greatest extent possible.

XV. ASSIGNMENT

The Buyer shall not assign or transfer these Terms or any related contract or purchase order without the prior written consent of the Seller. The Seller shall expressly be permitted to assign or transfer, without the prior written consent of the Buyer, the Seller's right to receive any or all of the payment due from the Buyer under these Terms.