

## TERMS & CONDITIONS

- 1.** Unless other terms and conditions are expressly accepted by Polyflor Australia Pty Ltd ABN 68 007 134 518 (Polyflor) by written amendment which refers to the terms and conditions to be amended, the contract for the sale and the purchase of goods and services (Product) is on the terms and conditions set out below (Conditions of Sale). Except for the terms and conditions contained in the Application for Credit Account, the Conditions of Sale exclude and supersede all prior discussions, representations and arrangements and any other oral or written Terms and Conditions whether or not they are endorsed on, delivered with or referred to in any purchase order, or other document delivered by the Customer to Polyflor. These Terms and Conditions shall be subject to the Competition and Consumer Act 2010 ("the Act"), which includes the Australian Consumer Law ("ACL"), and any statutory amendment or re-enactment for the time being in force. The ACL contains some non-excludable "consumer guarantees", and associated remedies, which may apply to the Products. Information about the consumer guarantees and how they work is available at [www.accc.gov.au/consumers/consumer-rights-guarantees](http://www.accc.gov.au/consumers/consumer-rights-guarantees).
- 2. Orders:**

Polyflor may accept or reject orders it receives. An order is only accepted by Polyflor when it is acknowledged by Polyflor in writing or when the Product is delivered by Polyflor. Accepted orders cannot be cancelled without Polyflor's consent which may be refused or given with conditions.
- 3. Price:**

The Customer must pay the Product price set out in Polyflor's price list current on the date the purchase order is accepted by Polyflor. Unless otherwise stated all prices are exclusive of GST and all taxes, and are subject to alteration without notice. Any pricing issue concerning invoice value must be notified directly to your Polyflor Representative within 30 days of invoice date.
- 4. Delivery:**

All Product is sold on an ex-works basis and delivery occurs when the Product is placed at the disposal of the Customer (including its nominee or agent) at Polyflor's premises. All quoted delivery or consignment dates are estimates only. Polyflor is not obliged to meet such dates and unless Customer has rights under an applicable consumer guarantee, Polyflor will not be liable to the Customer by reason of delays caused by any reason whatsoever. Polyflor will not be liable for any loss or damage, including but not limited to indirect or consequential loss or damage incurred as a result of delay or failure to make any supply of Product or to observe any of these Conditions of Sale due to an event of force majeure, being any cause or circumstance beyond Polyflor's reasonable control, including but not limited to, any lack of production capacity or raw materials, strikes, lock-outs, labour disputes, fires, floods, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any Government or any semi-Governmental authorities or embargoes. During the continuance of an event of force majeure Polyflor's obligations under these conditions will be suspended.
- 5. Returns/Warranty Claims:**
  - 5.1 Under the process set out in this section of these Conditions of Sale, Polyflor will replace any Product which in its opinion, appears to be faulty, damaged or defective or not in compliance with the terms of a contract made pursuant to these Conditions of Sale if:
    - a) the Customer advises Polyflor in writing of a fault, damage or defect in Product or a failure of Product to comply with the terms of these Conditions of Sale within 14 days of delivery;
    - b) the Customer has not used the Product; and
    - c) the Customer returns the non-complying Product to Polyflor within 14 days after authorisation by Polyflor (or its authorised representative) and the issue of a Polyflor goods return number; and
    - d) pays a restocking fee of 15% and return freight charge (provided that, if the condition of the Product breaches a consumer guarantee and the Customer cannot return the Product to Polyflor without incurring significant cost, Polyflor will collect the Product at its cost).
  - 5.2 Nothing in clause 5.1 restricts, modifies or excludes any right that the Customer may have to take action if a Product does not comply with an applicable consumer guarantee.
    - a) Name: Polyflor Australia Pty Limited
    - b) Address: 101 Prosperity Way, Dandenong South, Victoria 3175 Australia
    - c) Phone: 1800 777 425
    - d) Fax: 03 9215 4444
    - e) Email: [sales@polyflor.com.au](mailto:sales@polyflor.com.au)
  - 5.4 The Limitations set out in clause 9 apply to this clause.
- 6. Payment:**
  - 6.1 Unless Polyflor has agreed to extend credit to the Customer and subject to this clause, payment of the purchase price plus GST must be made in full by the last day of the next calendar month following the date of delivery of the Product.
  - 6.2 If the Customer does not pay money by the due date for payment the Customer must pay Polyflor on demand default interest in accordance with the rate prescribed from time to time in the Penalty Interest Rates Act 1983 (Vic) on all overdue amounts owed by the Customer to Polyflor which interest will be calculated daily and will be payable together with the overdue amount. All payments made by the Customer will be first applied to the accrued interest.
- 7. Risk:**

The risk in the Product passes to the Customer on delivery in accordance with these Conditions of Sale.

## **8. Title:**

- 8.1 The Customer agrees that until all monies owing by the Customer to Polyflor are paid in full for the Product, legal and equitable title to the Product is retained by Polyflor. Until then, the Customer is a bailee of the Product. The Customer must hold the Product as bailee and fiduciary agent of Polyflor; and must keep it in its possession and control, in good repair and condition, excluding fair wear and tear and stored separately and marked so that the Product is clearly and easily identifiable as Polyflor's property and inform Polyflor of the location of the Product, if requested.
- 8.2 If the Customer sells the Product before payment in full to Polyflor or if the Customer uses the Product in a manufacturing or construction process of its own or some third party, it must hold such part ("such part" in this clause means an amount owing by the Customer to Polyflor at the time the Product is used in the manufacture of, or incorporated into use by other third parties or products) of the proceeds of any sale or dealing in the Product on trust for Polyflor in respect of that Product, and must keep such proceeds in a separate account as the beneficial property of Polyflor and the Customer must pay such amount to Polyflor on demand.
- 8.3 Notwithstanding any other provisions to the contrary, Polyflor reserves the following rights in relation to the Product until all amounts owed by the Customer to Polyflor in respect of the Product and all other goods and services supplied to the Customer by Polyflor at any time are fully paid:
- legal and equitable ownership of the Product;
  - to retake possession of the Product; and
  - to keep or resell any of the Product repossessed.
- 8.4 In the event of a breach of these Conditions of Sale by the Customer including, without limitation, failure by the Customer to make payment for the Product by the date specified by Polyflor to the Customer, the Customer must return the Product to Polyflor immediately on demand. If the Customer does not return the Product to Polyflor on demand, Polyflor is entitled (without further notice) to enter upon the Customer's premises at any time to do all things necessary to recover the Product.
- 8.5 The Customer hereby grants full leave and irrevocable licence to Polyflor and any person authorised by Polyflor to enter upon any premises of the Customer where the Product is stored for the purpose of retaking possession of the Product.
- 8.6 The Customer agrees that:
- it will be liable for all costs, damages, expenses or any other sums of money incurred or suffered by Polyflor (whether direct or indirect) as a result of Polyflor retaking possession of the Product or otherwise exercising its right under this clause; and
  - it will indemnify Polyflor for all fees (including legal fees on a full indemnity basis) costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against Polyflor in connection with retaking possession of the Product or the exercise by Polyflor of its rights under this clause, and the Customer must repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.

## **9. Limiting Liability:**

- 9.1 These Conditions of Sale set out the entire agreement between the parties in relation to their subject matter. The terms of the United Nations Convention on Contracts for the International Sale of Goods, 1980 (the Vienna Convention) and all other terms or conditions in relation to the subject matter of these Conditions of Sale, whether implied by use, statute or otherwise, are expressly excluded.
- 9.2 Except as expressly provided in these Conditions of Sale and except for any guarantee, condition or warranty the exclusion of which could be void or otherwise contravene the Act or any other equivalent competition or consumer law in Australia (Non Excludable Condition), Polyflor disclaims all guarantees, conditions, warranties and representations, either express or implied with respect to the Products.
- 9.3 Subject to any warranty provided by Polyflor in respect of the Product and notwithstanding where legislation implies into these Conditions of Sale a Non Excludable Condition or imposes a Non Excludable Condition on the supply of, to the fullest extent permitted by the Act or any other equivalent competition or consumer law in Australia:
- the liability of Polyflor to the Customer for a "minor failure" (as defined in the Australian Consumer Law) related to the performance of the Product under these Conditions of Sale shall be limited (at the election of Polyflor and where it is reasonable to do so) to the replacement or repair of the Product or the repayment of the amount paid or payable by the Customer in respect of the particular Product; and
  - other than in respect of clause 9.3(a) in no event will Polyflor be liable to the Customer for any:
    - claim or damage arising out of or in connect with the Product or these Conditions of Sale; or
    - indirect loss or consequential loss, loss of profits, loss of revenue, loss of goodwill, exemplary damages, punitive damages in connection with or arising out of these Conditions of Sale and the supply of the Product even if advised of the possibility of such damages or if such loss ought reasonably to have been in the contemplation of both parties at the date of these Conditions of Sale, provided that nothing in this clause 9.3(b) limits, excludes or modifies any rights, including any right to recover consequential loss, that the Customer may have where Polyflor has breached a consumer guarantee.
- 9.4 No statement or recommendation made, or advice, supervision or assistance given, by Polyflor, its employees, agents, transport contractors or representatives whether oral or written shall be construed as or constitutes a warranty or representation by Polyflor or a waiver of any clause in these Conditions of Sale. Polyflor is not liable for loss or damage arising directly or indirectly from any act or omission to act arising directly or indirectly from any such statements, recommendations, advice, supervision or assistance.

## **10. Representations:**

- 10.1 The Customer will not represent to any customer/consumer of the Customer that the customer/consumer has, or is entitled to the benefit of, the Returns/Warranty rights provided to the Customer in clause 5.
- 10.2 The Customer will only represent to any customer/consumer, that the customer/consumer has the warranties set out in Polyflor's Consumer Warranty Document.
- 10.3 The Customer warrants that it has read and understood these Conditions of Sale and Polyflor's Consumer Warranty Document.

## **11. PPSA:**

- 11.1 In this clause "PPSA" means the Personal Property Securities Act 2009; "PMSI" means a purchase money security interest as defined in the PPSA; "PPSR" means the Personal Property Securities Register; "security interest", "security agreement", "financing statement", "financing change statement", "verification statement", "attached", "attachment", "perfected" and all related terms have the meanings given them by the PPSA.
- 11.2 If Polyflor determines that an agreement entered into containing the Conditions of Sale (or a transaction in connection with it) is or contains a security interest or transitional security interest for the purposes of the PPSA, then the conditions in this clause will apply to this Agreement.
- 11.3 The Customer acknowledges that the Conditions of Sale constitutes a security agreement which creates a security interest in favour of Polyflor in the Product (including all goods previously supplied by Polyflor to the Customer (if any) and all after acquired goods supplied by Polyflor to the Customer, or for the Customer's account).
- 11.4 The Customer agrees to grant a PMSI in the Product and all future goods supplied to the Customer by Polyflor.
- 11.5 The Customer agrees that the PMSI has attached to all Product now or in the future supplied to the Customer by Polyflor.
- 11.6 The Customer agrees, until title in the Product passes to it, to keep all Product free of any charge, lien or security interest except as created under this Agreement and not otherwise deal with the goods in a way that will or may prejudice the rights of Polyflor under these Conditions of Sale or the PPSA.
- 11.7 The Customer undertakes to sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and current) which Polyflor may reasonably require to enable registration of a financing statement or financing change statement on the PPSR or to ensure that the security interest is otherwise enforceable, perfected and effective.
- 11.8 The Customer undertakes to indemnify, and upon demand, reimburse Polyflor for all expenses incurred in registering a financing statement or financing change statement on the PPSR.
- 11.9 The Customer undertakes to give to Polyflor not less than 14 days prior written notice of any proposed change in the Customers details, including, but not limited to, changes of address, company or business name and/or contact details.
- 11.10 Unless otherwise agreed to by Polyflor in writing, Polyflor and the Customer shall not disclose to any third party any information of the kind referred to in Section 275(1) of the PPSA.
- 11.11 Unless otherwise agreed to by Polyflor in writing, Polyflor and the Customer shall not disclose to any third party any information of the kind referred to in Section 275(1) of the PPSA.
- 11.12 Polyflor is not obliged to give the Customer any notice or provide copies of any documents under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded and the Customer consents to the waiver of the requirement for notice or copies of any documents under this clause.
- 11.13 Polyflor and the Customer agree that the following provisions of the PPSA do not apply to or in relation to the security interest to the extent that the PPSA permits the parties to contract out of or waive such provisions: section 95 (notice of removal of accession) to the extent that it requires Polyflor as secured party to give a notice to the Customer as grantor; section 96 (when person may retain an accession); section 117 (obligations secured by land and personal property); section 118 (enforcing securities in accordance with land law); section 120 (enforcement of liquid assets); section 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); section 130 (notice of disposal), to the extent that it requires Polyflor as secured party to give a notice to the Customer as grantor; section 132(3)(d) (secured party to give statement of account); section 132(4) (statement of account if no disposal); section 134(1) (retention of collateral); section 135 (notice of retention of collateral); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

## **12. Termination:**

Polyflor may by written notice to the Customer immediately end its agreement to sell and purchase the Product if the Customer fails to perform any of its obligations under its agreement with Polyflor or Polyflor considers that the Customer is or will become unable to pay debts as they fall due.

## **13. GST**

In this clause a word or expression defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the meaning given to it in the legislation. If a party makes a taxable supply made pursuant to these Conditions of Sale, the consideration taxable supply (if the agreement does expressly state that it includes GST). The supplier of the taxable supply will be entitled to recover from the recipient of the taxable supply any GST payable as an additional amount, provided the recipient receives a tax invoice for the taxable supply from the supplier.

## **14. Notices:**

Any notice to be given to a party under these Conditions of Sale must be in writing and must be sent by post, facsimile or email to the address of that party shown in the quotation, purchase order or order acknowledgement. Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if otherwise given at the time it was actually received.

## **15. Miscellaneous:**

- 15.1 Nothing in these Conditions of Sale is intended to exclude, restrict or modify rights which the Customer may have under the Act or any other equivalent competition or consumer law in Australia which may not be excluded, restricted or modified by agreement.
- 15.2 A party waives a right under these Conditions of Sale only if it does so in writing.
- 15.3 Polyflor may assign or otherwise deal with the benefit of any contract made pursuant to these Conditions of Sale without the consent of the Customer.
- 15.4 These Conditions of Sale are governed by and must be interpreted in accordance with the laws of the place in which the Product is delivered. The parties irrevocably submit to the non exclusive jurisdiction of the courts of Victoria.