

Poly Processing Company, LLC (PPC) Terms and Conditions of Product Sale

NOTE: Buyer, as used herein, shall refer to the party placing the purchase order(s), whether that party may consider itself a contractor, subcontractor, consultant, owner, distributor, end user, original equipment manufacturer, or otherwise. Any individual placing a purchase order on behalf of Buyer expressly represents and warrants that he or she is authorized on behalf of Buyer to place each such purchase order.

1. SALES AGREEMENT

a. These Terms and Conditions contain the exclusive terms and conditions of the sale by PPC of its products to Buyer. These Terms and Conditions along with the specific product(s) order and any related product drawings constitute the Sales Agreement between PPC and Buyer. Notwithstanding anything contained in any order or other document, to the extent of any variance between the terms and conditions of these Terms and Conditions and those in any such other document, the terms and conditions of these Terms and Conditions shall control.

b. Buyer agrees to these Terms and Conditions either by its express acknowledgment or by completing the purchase of the products. Unless specifically accepted by PPC, any terms and conditions at variance with these Terms and Conditions which may be proposed by Buyer are declined and are hereby rejected, regardless of the timing of any such proposed variance.

c. Notwithstanding any provision of the UCC and particularly § 2:207 and Louisiana Civil Code article 2601, the acceptance by Buyer of PPC's products shall constitute assent to and acceptance of all terms and conditions stated herein, without reservation of rights or qualification. This Agreement is a final, complete and exclusive statement of the terms and conditions of the purchase by Buyer of PPC's products as confirmed by Buyer's purchase and acceptance of those products. As this Sales Agreement is the entire agreement and contract between the Buyer and PPC, then it shall not be modified by any course of prior dealings between Buyer and PPC, nor by any usage in the trade, nor shall the terms of this Sales Agreement be modified in any respect by any prior or other acceptance or acquiescence in a course of performance. PPC reserves the right to rescind any sale in which Buyer does not adhere to these Terms and Conditions.

d. Should Buyer submit a purchase order or other proposal containing terms and conditions at variance with those contained in herein, by completing the purchase of PPC's products or by its express acknowledgment, Buyer nevertheless agrees that these Terms and Conditions along with the specific product(s) order and any related product drawings shall constitute the entire agreement by which PPC sells its products and its products are purchased by Buyer.

e. Orders for PPC products are built in accordance with drawings as approved by Buyer. Buyer accepts ultimate responsibility for material selection, design approval, and product fitness-for-use. Buyer and PPC acknowledge that Buyer approved drawings are the ultimate design directive from Buyer to PPC and supersede any other directive, specification or other design documents that may exist.

f. After acceptance of Buyer's purchase order by PPC, neither this Agreement nor any orders hereunder shall be subject to cancellation by Buyer except with PPC's consent and being subject to fee assessment and upon terms that will indemnify PPC against all direct, incidental, and consequential loss or damage.

g. Where any product is manufactured from patterns, plans, drawings, or specifications furnished by Buyer, Buyer shall indemnify PPC against and shall hold PPC harmless from all loss, damage, and

expense arising out of any product liability suit or claim against PPC and/or for any suit or claim against PPC for infringement of any patent, trademark, or copyright because of the use or sale of such product by any person.

h. Once PPC receives a purchase order, if there is no reasonable and meaningful progress toward the product being released to manufacturing ("RTM") within 180 days from the date of the purchase order, PPC reserves the right to cancel the purchase order. Under such circumstance, Buyer acknowledges and agrees Buyer will be responsible for a cancellation fee of 35% of the purchase order price.

2. PAYMENT: TERMS AND BUYER'S CREDIT: PPC will invoice Buyer within 30 days after the agreed upon ship date for each purchase order. Buyer agrees that full payment of the invoice is due within 30 days of PPC's issuance of each such invoice. Buyer agrees Buyer will be responsible to PPC for a late payment charge of 1.5% of any unpaid balance after 30 days from the original invoice date, whether the product has been shipped or remains on PPC's yard at the request of Buyer or because Buyer cannot accept shipment. Buyer acknowledges that PPC reserves its right to enforce any and all lien or other security rights until full payment of the invoice has been received. Buyer acknowledges that if Buyer has failed to pay the full invoice price within 120 days of being invoiced, PPC will pursue all of its legal rights for collection. Buyer further agrees if the full invoice price has not been paid within 120 days of being invoiced, Buyer shall be responsible for all reasonable attorney's fees and other collection expenses associated with the outstanding balance.

3. INSPECTION: It is the Buyer's responsibility to inspect the product promptly upon its receipt from PPC. Written notice of any claimed defect or other objection to the delivery must be given to PPC within five (5) days following receipt of the product. Unless written notice of any claimed defect or other objection to the delivery is given to PPC within this five (5) day period following the receipt of the product, it shall be conclusively presumed that the product has been inspected by Buyer and is in good condition and in full compliance with the Order. Upon receipt of timely written notice specifying any claimed defect, PPC will promptly respond and cure a defect, if any, within sixty (60) days of receipt of notice. Thereupon the product shall be considered in full compliance with the terms of the sale.

4. PRICE

a. The Buyer shall pay any sales, use, excise or similar tax in addition to the price stated in the sales acknowledgment, or shall provide a valid and applicable Tax Exemption Certificate effectively relieving Buyer from such taxes. The price shall be that in effect at the time of shipment except when PPC shall have committed in writing to an agreed price.

b. Prices are based on quality levels commensurate with normal processing. If a difference quality level is required, Buyer must specify his requirements and pay any additional costs that may be applicable.

5. FEES

REVISION FEE

PPC acknowledges normal industry practice involves an original and perhaps a few revision drawings of a particular product. If, however, after the original drawing and three revision drawings are performed by PPC before a purchase order is received by PPC, Buyer agrees a \$100.00 fee will be assessed by PPC and paid by Buyer for each revision item thereafter. Each revision item after the original and three revision drawings will require a separate purchase order. Once an order has been placed in production by PPC, any subsequent revision requests by Buyer will be charged a fee of 25% of the original purchase order price, and Buyer agrees to pay such additional fee under such circumstances.

CANCELLATION FEE

Purchase orders placed to PPC but not released to production within a reasonable amount of time will be assessed a cancellation fee of 35% of the original purchase order price. Once a purchase order has been released to production, Buyer agrees the full purchase order price will be owed to PPC.

EXPEDITED FEE

In the event Buyer requests that PPC expedite a purchase order, and if PPC agrees to expedite, then PPC shall mark the purchase order in such a manner. Any expedited request shall be charged, and Buyer agrees to pay, an additional \$1,500.00 fee per unit.

CUSTOMER-ROUTED SHIPPING

In the event Buyer arranges the logistics for shipment of the items ordered and the expenses related thereto, Buyer agrees to pay PPC a handling fee of \$250.00 per truck in connection with the items shipped pursuant to the purchase order.

CREDIT CARD FEES

If the Buyer elects to use a credit card for payment of an invoice, the credit card use fee charged by the card issuer will be added to amount of the invoice.

6. **DAMAGES:** PPC shall not be liable for any loss, damage, cost or repair, incidental or consequential damages of any kind, whether based upon warranty, contract or negligence, or in any manner, in connection with the sale, use or repair of its products. PPC's liability, if any, shall never exceed the contract price of products alleged to be defective or to have caused damage of any kind.

7. **SHIPMENT, RISK OF LOSS, AND CLAIMS FOR LOSS:** Unless specifically stated, product price does not include transportation costs. Shipments will be by carrier selected by PPC unless specific instructions regarding shipment are provided by Buyer. Title to and risk of loss for the products pass to the Buyer when delivered to common carrier at PPC's factory. Claim for damages or loss must be filed with carrier by Buyer.

8. **RETURN PRODUCT AUTHORIZATION:** Return product authorization must be obtained for any products Buyer wishes to return to PPC. Returned product is subject to handling and restocking fees. Return of products and authorization therefore shall be within the total uncontrolled discretion of PPC.

9. **INSTALLATION MANUAL AND PRODUCT LABELING:** PPC publishes and provides a tank installation manual with its storage tank products. It is Buyer's obligation to obtain and read a copy of this manual, to understand it before installation or use of the PPC's products and to follow the instructions provided. PPC products are sold with various warning labels attached. Buyer is responsible for understanding and heeding these warning labels.

10. **DELAYS:** PPC will not be liable for any delay in the performance of orders or contracts, or in the delivery or shipment of goods or for any damages suffered by Buyer by reason of such delay. If such delay is directly or indirectly caused by, or in any manner arises from, fires, floods, accidents, riots, acts of God, war, governmental interference or embargoes, strikes, labor difficulties, shortages of labor, fuel, power, materials, or supplies, transportation delays, or any other cause or causes (whether or not similar in nature to any of listed) beyond its control, the delivery date shall automatically be extended by such delay. All orders or contracts are accepted with the understanding that they are subject to PPC's ability to obtain the necessary raw materials and all orders or contracts as well as shipments applicable thereto are subject to PPC's current plant schedules, governmental regulations, orders, directives and restrictions that may be in effect from time to time.

11. **FAIR LABOR STANDARDS ACT:** PPC certifies that products furnished hereunder have been or will be produced in compliance with the Fair Labor Standards Act as amended, and regulations and orders of the United States Department of Labor issued thereunder. PPC agrees that this statement may be considered as the written assurance contemplated by the October 26, 1949 amendment to said Act.