

**Poly Processing Company, LLC (PPC)**

**Terms and Conditions of Product Sale**

**May 6, 2013**

**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 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.

**2. PAYMENT: TERMS AND BUYER'S CREDIT:** Net 30 days from date of invoice. Monthly late payment charge is 1% of unpaid balance after 60 days from date of original invoice. All lien rights are reserved by PPC until full payment of invoice has been received. Buyer is responsible for all reasonable attorney and collection fees associated with past due payments. PPC reserves the right to require cash payment or other security in advance of shipments.

**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. **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.

6. **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.

7. **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.

8. **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.

9. **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.

10. **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.

11. **GOVERNING LAW:** The validity, interpretation and performance of these Terms and Conditions and the entire Sales Agreement between PPC and Buyer shall be governed by the laws of the State of Louisiana except that its conflict of laws provisions shall not apply to the extent they would require the laws of any other state to apply.

12. **SEVERABILITY:** If any provision of these Terms and Conditions of Sale is held invalid as written, the remainder of the Terms and Conditions shall not be affected and shall remain in full force and effect.

13. **POLY PROCESSING LIMITED WARRANTY:** PPC's products are sold subject to an express written warranty and limitation of liability ("The PPC Limited Warranty"). The PPC Limited Warranty imposes certain specific obligations on PPC but also limits the extent of PPC's liability for damages arising from or related to such products. The PPC Limited Warranty supersedes any contradictory language contained in any other documents relating to the sale of any of PPC's product. The PPC Limited Warranty may not be modified, nor may it be waived or superseded by competing contractual language, except by the president of Poly Processing Company, specifically consenting in writing to such modification or waiver.

*End of document*