

Terms and Conditions of Sale for Supplies and Services to Business Customers (B2B)

("Terms and Conditions of Sale")

February 2011 Edition

1. Validity

- 1.1 The present Terms and Conditions of Sale shall apply to supplies and services (hereinafter "Delivery(ies)") which PolyIC GmbH & Co. KG ("PolyIC") makes on the basis of a contract ("Contract") concluded between PolyIC and a business customer ("Customer").
- 1.2 Any terms and conditions diverging from these Terms and Conditions of Sale shall not apply unless PolyIC has expressly provided for such in an offer.

2. Offers

- 2.1 The description of PolyIC's Deliveries is exclusively and conclusively defined in the respective technical specification ("Technical Specification") which forms an integral part of PolyIC's offer.
- 2.2 PolyIC reserves all ownership and intellectual property rights in illustrations, drawings, plans and construction or engineering documents, etc. relating to the offer.
- 2.3 PolyIC's offers are binding and firm for 30 calendar days from the date of the offer.

3. Terms of Delivery, Transfer of Risk

- 3.1 Prices shall be Ex Works PolyIC according to Incoterms® 2010 ("Place of Delivery") plus packaging.
- 3.2 Prices are net prices in EUR, plus the current sales tax in force at the time of Delivery without further deductions.
- 3.3 Partial Deliveries shall be permissible where they can reasonably be expected of the Customer.
- 3.4 The risk shall transfer to the Customer at the Place of Delivery. This shall apply to free Deliveries as well if a Delivery by PolyIC is despatched or collected.

4. PolyIC's Right to make its own Deliveries

In the event that the contractually agreed Delivery is not available because PolyIC has not received deliveries from its own suppliers or its delivery stock is depleted, PolyIC is entitled to make a Delivery which is equivalent in quality and price to the contractually agreed Delivery. If this is not possible, PolyIC can withdraw from the Contract.

5. Terms of Payment

The Customer may only set off those claims which are undisputed or have been finally determined in a legally binding manner.

6. Delivery Dates

- 6.1 Observance of the stipulated time for Delivery is conditional on the timely receipt of all documents, necessary materials, permits and approvals, especially of plans or specifications to be provided by the Customer as well as fulfilment of the agreed terms of payment and other obligations by the Customer. Unless these conditions are fulfilled on time, the time for Delivery shall be extended accordingly; this shall not apply if PolyIC is responsible for the delay.
- 6.2 If non-observance of the time for Delivery is due to force majeure such as mobilization, war, riot or similar events e.g. strike or lock-out, the time limits shall be extended appropriately.
- 6.3 In the event that PolyIC is responsible for a delay of the Deliveries and provided that the Customer can establish credibly that it has suffered a loss for such delay, the Customer may claim agreed damages of 0.5% for every completed calendar week of delay but in no event shall the aggregate of such damages exceed a total of 5% of the net price for that part of the Deliveries which because of the delay could not be put to the intended use by the Customer.
- 6.4 Claims by the Customer for damages due to a delay of Delivery as well as claims for damages for non-performance which exceed the limits specified in 6.3 shall be excluded in all cases of delayed Delivery even after expiry of the time limit for Delivery fixed by the Customer. This exclusion shall not apply in cases of PolyIC's wilful misconduct or gross negligence or bodily injury where liability is mandatory.
- 6.5 The Customer shall only be entitled to withdraw from the Contract to the extent that

PolyIC is solely liable for the delay in Delivery and the Customer has set PolyIC a time limit within which to perform the Delivery and states that it will cease to accept the Delivery after expiry of the time limit and such time limit has expired. This shall not imply a change in the burden of proof to the detriment of the Customer.

6.6 The Customer shall upon request within a reasonable time limit state whether it shall withdraw from the Contract due to the Delivery being delayed or insist upon a Delivery.

7. Retention of Title

7.1 The Deliveries shall remain PolyIC's property until each and every claim against the Customer to which PolyIC is entitled under this business relationship has been duly satisfied. If the value of all PolyIC's security interests against the Customer exceeds the value of all PolyIC's secured claims by more than 20%, PolyIC shall release a corresponding part of the security rights at the Customer's request.

7.2 For the duration of the retention of title, the Customer is prohibited from giving the Deliveries in pledge or as security. In case of a seizure of the Deliveries or other acts or interventions by third parties relating to the Deliveries, PolyIC shall be immediately informed thereof in writing by the Customer.

7.3 The re-sale of the Deliveries by the Customer in the ordinary course of business shall only be permissible to re-sellers on condition that the Customer receives payment from the re-seller or retains title so that the property in the Deliveries is transferred to the re-seller only after fulfilment of the re-seller's fulfilment of his obligation to pay.

7.4 PolyIC's ownership in the Deliveries shall not be revoked during the processing and production of the product at the Customer's premises for which the Deliveries are being used ("End Product"). PolyIC's ownership in the Deliveries shall continue in the End Product; PolyIC shall acquire joint ownership in the End Product in the same share as the value of the Deliveries in proportion to the value of the End Product.

7.5 Upon conclusion of the Contract, PolyIC's Customer shall assign the claims owed to him from the re-sale or processing of Deliveries against his re-sellers in the same amount as PolyIC's claim against the Customer for the Delivery. PolyIC's duty to release under 7.1 shall remain unaffected.

7.6 In the event that the Customer is in breach of an obligation, in particular, a default of payment, the following shall apply:

7.6.1 Following the expiry of a reasonable time limit within which the Customer must rectify

the breach, PolyIC is entitled to withdraw from the Contract and to take back the Deliveries; the Customer is obliged to return the Deliveries to PolyIC. The legal rules which dispense of the requirement to set a deadline shall remain unaffected.

7.6.2 The enforcement of a retention of title and the taking back of the Deliveries associated therewith does not necessitate a withdrawal from this Contract by PolyIC; the afore-mentioned actions or seizure of the Deliveries shall not constitute a withdrawal from the Contract by PolyIC.

8. Material Defects

PolyIC's liability for material defects is conclusively defined in the following provisions:

8.1 The description of the Deliveries is defined conclusively in the respective Technical Specification. PolyIC shall not be liable for material defects relating to qualities not specifically mentioned in the Technical Specification. It is the sole liability of the Customer to examine the suitability of the Deliveries for the intended use.

8.2 In the case of Deliveries which do not contain the quality listed in the respective Technical Specification ("Material Defect") at the time of transfer of risk PolyIC shall, at its option, either repair or re-deliver at no charge ("Subsequent Performance").

8.3 No new limitation period (8.4) shall commence as a result of Subsequent Performance.

8.4 Claims for material defects shall expire twelve months after the date of transfer of risk. This shall not apply to the extent that the law in §§ 438 para. 1 No. 2, 479 para. 1 and 634a para. 1 No. 2 of the German Civil Code prescribes longer time periods or in the case of bodily injury, wilful misconduct, a grossly negligent breach of duty by PolyIC and fraudulent concealment of a defect. The legal rules relating to suspension of expiration of prescription, suspension or recommencement of the time limits shall remain unaffected.

8.5 The Customer shall give PolyIC notice of a defect in writing without undue delay. The notice of defect shall include details of the sealed tape system relating to Delivery (batch number, bar code).

8.6 If the Customer does not give PolyIC adequate time and opportunity to carry out Subsequent Performance, PolyIC shall have no liability for the material defect.

8.7 In the event that Subsequent Performance fails, the Customer can – without prejudice to other claims for damages (12.) – withdraw from the Contract or reduce the remuneration.

- 8.8 Claims for defects shall not exist in the event of an insignificant deviation from the agreed quality, insignificant interference with use, natural wear and tear or damages which arose after transfer of risk as a result of faulty or negligent handling, excessive strain, unsuitable production facilities or operating resources, or particular external influences which are not assumed under the Contract.
- 8.9 The Customer shall only have a right of recourse against PolyIC if the Customer has not entered into a contract with its re-seller which extends beyond the legal claims for defects. The scope of a claim for recourse by the Customer against PolyIC pursuant to § 478 para. 2 of the German Civil Code, 8.8 shall apply accordingly.
- 8.10 Claims by the Customer against PolyIC for a material defect which are more extensive or different to those claims set out in 8. are excluded. 12. shall apply to all other claims for damages.
- 9. Intellectual Property Rights, other Defects of Title**
- 9.1 Deliveries made by PolyIC in the Federal Republic of Germany shall be free from intellectual property rights and copyright of third parties ("Intellectual Property Rights"). If a third party asserts legitimate claims against the Customer due to an infringement of an Intellectual Property Right by the Deliveries furnished by PolyIC and used in conformity with the Contract, PolyIC shall be liable to its Customer within the stipulated time limit in 8.4 as follows:
- 9.1.1 At its own option and expense, PolyIC shall either obtain a right to use the Deliveries, modify the Deliveries so as not to infringe Intellectual Property Rights or replace the Deliveries. If this is not possible for PolyIC on acceptable terms, the Customer shall have a right to withdraw from the Contract or reduce the price. The provisions in 8.6 and 8.10 shall apply accordingly.
- 9.1.2 The fulfilment of the aforesaid obligations shall be subject to the condition that the Customer immediately notifies PolyIC in writing of the claims asserted by the third party, that it does not acknowledge an infringement and that all countermeasures and settlement negotiations are reserved to PolyIC. If the Customer stops using the Deliveries to reduce the damage or for other important reasons, it shall make it clear to the third party that the suspended use does not mean acknowledgment of an infringement of Intellectual Property Rights.
- 9.2 Claims of the Customer shall be excluded if it is liable for the breach of the Intellectual Property Right.
- 9.3 Claims of the Customer shall also be excluded if the infringement of Intellectual Property Rights was caused by specific demands of the Customer, by a use of the Deliveries not foreseeable by PolyIC or by the Deliveries being altered by the Customer or being used together with products not provided by PolyIC.
- 9.4 The provisions in 8. shall apply to any other defects of title.
- 9.5 Claims by the Customer against PolyIC due to a defect of title which is more extensive or different to those set out in 9. are excluded. 12. shall apply accordingly to claims for damages.
- 10. Obligations of the Customer**
- The Customer shall incur liability for the use and transfer of provisions supplied by Customer to PolyIC – irrespective of the data carrier - which infringe the Intellectual Property Rights of third parties. The Customer shall hold PolyIC harmless from all corresponding claims of third parties.
- 11. Impossibility, Adjustment of the Contract**
- 11.1 If it is impossible to make the Delivery, the Customer shall be entitled to claim damages unless PolyIC is not responsible for the impossibility. The Customer's claim for damages, however, shall be limited to 10 % of the value of that part of the Delivery which owing to the impossibility cannot be put to the intended use by the Customer owing to the impossibility. This shall not apply where in cases of wilful misconduct, gross negligence or initial impossibility or due to bodily injury, there is a legally binding liability; this shall not imply a change in the burden of proof to the detriment of the Customer. The Customer's right to terminate the Contract shall remain unaffected.
- 11.2 Where unforeseeable events of force majeure (6.2) substantially change the economic importance or the content of the Deliveries or have a considerable effect on PolyIC's business, the Contract shall be adapted accordingly with due regard to the principle of good faith. Where this is not economically reasonable, PolyIC has the right to withdraw from the Contract. If PolyIC makes use of this right of termination PolyIC shall notify the Customer immediately after becoming aware of the significance of the event even where at first an extension of the Delivery time had been agreed with the Customer.
- 12. Other Claims for Damages**
- 12.1 Any claims for damages and claims regarding applicability of the Customer shall be excluded regardless of whether they are

based on duties arising under the obligatory relationship and tort.

- 12.2 PolyIC provides application guidelines and advice in good faith and without any liability to Customer. The Customer shall not be released from his obligation to examine the intended use of the Delivery at its sole responsibility. This shall apply even if PolyIC is aware of the Customer's application of use.
- 12.3 The provisions in 12.1 and 12.2 above shall not apply where e.g. under the Product Liability Act or in cases of wilful misconduct, gross negligence, bodily injury or a breach of substantial contractual obligations, there is a legally binding liability.
- 12.4 PolyIC's liability for damages arising from the fundamental non-performance of contractual obligations of the Contract shall be limited to foreseeable damage normally covered by the Contract except in cases of wilful misconduct, gross negligence or bodily injury.
- 12.5 Insofar as PolyIC's liability according to 12. is excluded or restricted, this shall also apply to the personal liability of PolyIC's employees, personnel, staff and other agents, not, however, to PolyIC's legally authorized representatives and senior management.
- 12.6 To the extent that the Customer is entitled to claim for damages according to 12. these shall elapse with expiry of the applicable time limit pursuant to 8.4 for material defects. In the event of claims for wilful misconduct and damages under the Product Liability Act, the legal time limits shall apply.
- 12.7 The burden of proof shall remain unaffected by the provisions in 12.

13. Confidentiality

- 13.1 PolyIC and the Customer ("the Parties") shall not without the written consent of the other Party pass to third parties documents, knowledge and information, tools, moulds, samples, models and other technical documentation received from the other Party – irrespective of the data medium – including but not limited to pictures, drawings, plans and construction data given by PolyIC to the Customer, for instance in relation to an offer ("Information"), or use such Information for purposes other than for the purposes of the Contract. The Information shall be secured against unauthorized inspection or use. Subject to further rights, a Party may request return of Information in the event that the other Party violates these obligations. This shall not apply to Information which at the time of receipt was generally known or was already known by the receiving Party without being obliged to maintain the duty of confidentiality, was rightfully transferred by a

third party or was developed by the receiving Party without using the other Party's Information.

- 13.2 The obligations in 13.1 shall begin at the time of first receipt of the Information and shall end 60 months after the termination of the Contract.
- 13.3 Information shall be returned to the other Party without delay upon request. A right of retention of Information by the Customer is excluded.

14. Jurisdiction

The exclusive place of jurisdiction – also for cheques and bills receivable – is Nuremberg, Germany.

15. Applicable Law

German substantive law shall apply exclusively. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall be excluded.