

## **TERMS AND CONDITIONS OF SALE**

**1. General.** The terms and conditions stated herein ("Terms") apply to all offers made and orders accepted by Polar Tech. Polar Tech objects to any terms or conditions that are different from or additional to these Terms. Polar Tech's acceptance of an order is expressly conditioned on the Buyer's acceptance of these Terms. Any change in these Terms must specifically be agreed to in a writing signed by an authorized officer of Polar Tech.

**2. Prices and Payment Terms.** Product prices do not include freight, taxes or duties and are subject to correction or change without notice. Payment terms are net thirty (30) days from the date of the applicable invoice. All credit extended, and the limits of such credit, may be revoked or reduced by Polar Tech at any time and for any reason. For all overdue amounts, late fees will be charged at the rate of one and one-half percent (1.5%) for each month or part thereof that the amount remains unpaid. The Buyer shall be liable for all costs and expenses, including but not limited to attorney's fees, incurred by Polar Tech in the collection of any amount owed by the Buyer.

**3. Taxes.** The Buyer is responsible for the payment of any applicable sales, use, excise, or other applicable tax. Buyer shall indemnify, defend, and hold Polar Tech harmless from any and all claims for such taxes.

**4. Risk of Loss.** The risk of loss, theft, destruction, or damage to any product shall pass to the Buyer F.O.B. Polar Tech's plant in Genoa, Illinois and/or Elysburg, PA. If a product is damaged in transit, the Buyer's sole recourse is to file a claim with the appropriate carrier.

**5. Shipping.** The Buyer is responsible for all freight and other delivery charges. Freight and other delivery charges may be paid by Polar Tech and charged to the Buyer. Shipping and delivery dates are estimates only, and time is not of the essence.

**6. Warranty.** Polar Tech warrants that its products will be free from defects in materials and workmanship for a period of one (1) year from the date of shipment. Polar Tech's sole obligation for any defective product shall be, at Polar Tech's option, to either replace the defective product or issue credit to the Buyer for the purchase price of that product. **THE FOREGOING WARRANTY AND REMEDY ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**7. Limitation of Liability.** Polar Tech shall not be liable for any incidental, consequential, special or punitive damages. Polar Tech shall not be liable for any loss or damage arising from improper handling, use, or storage of the product. In no event shall the aggregate liability of Polar Tech exceed the purchase price of the product(s) that are the subject of the claim.

**8. Force Majeure.** Polar Tech shall not be liable for any failure to perform if such failure is caused, in whole or in part, by any force majeure event, including but not limited to acts of God, labor disruptions, war, terrorism, governmental decrees or controls, insurrections, epidemics, material shortages, fire, accident, explosion, or any other circumstance or cause beyond the reasonable control of Polar Tech.

**9. Buyer's Inspection.** Buyer shall carefully inspect all deliveries as they are received and report to Polar Tech promptly—but in any event not later than thirty (30) calendar days after receipt of shipment—any alleged error, shortage, defect or nonconformity. Buyer's failure to inspect and report

shall constitute a waiver of any claim for any error, shortage, defect, or nonconformity which could have been discovered by such an inspection.

**10. Returns.** Written authorization to return products must be obtained prior to any such return. Any returned product must be shipped to Polar Tech, freight prepaid, at the Buyer's risk.

**11. Arbitration.** Any and all controversies or claims arising out of these Terms or the transaction to which they relate shall be resolved by arbitration in Chicago, Illinois. Such arbitration shall be conducted in accordance with the then applicable rules of the American Arbitration Association. The arbitration award shall be final and binding upon the parties and judgment thereon may be entered in any court having jurisdiction. Any claim must be filed within six (6) months of the alleged breach.

**12. Waiver.** No delay or omission by Polar Tech in exercising any right under these Terms or applicable law shall operate as a waiver of that or any other right. A waiver or consent given on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion.

**13. Invalid Term.** Whenever possible, each term and condition of these Terms shall be construed so as to be valid under applicable law. In the event that any term or condition shall be held to be unenforceable, the remaining term and conditions shall be unaffected and continue in full force and effect.

**14. Entire Agreement.** These Terms state the entire agreement between the parties with regard to the Buyer's purchase of products from Polar Tech. There are no agreements, representations or warranties other than those set forth herein.

**15. Governing Law.** These Terms and the transaction to which they relate shall be governed by the laws of the State of Illinois as applied to contracts wholly performed in such State. The headings in these Terms are for convenience only and shall not be otherwise considered.