



TERMS OF SALE

Formation of Contract of Sale

Acceptance of Purchaser's order is expressly made conditional on assent to the terms and conditions set forth herein and on any attachments hereto and they shall constitute the complete Agreement between the parties. Purchaser's acceptance of any products covered by this document shall constitute acceptance of said terms and conditions. If any of the provisions of the Purchaser's purchase order or other writings are ambiguous, in addition to or in conflict with the terms and conditions of this Agreement, they are expressly rejected and the terms and conditions hereof shall govern. If Purchaser's order includes subsequent orders for shipment of a portion of the initial quantity, all such subsequent orders shall be governed by the terms hereof. These terms and conditions may not be varied or Purchaser's order terminated in any manner, unless by a written agreement signed by an authorized representative of each party to this Agreement.

1. PRICES AND QUANTITY; OWNERSHIP OF TECHNICAL INFORMATION.

The price for products ordered for shipment during a consecutive 12 month period shall be determined by the total quantity ordered of similar product types or options as shown on the appropriate Polyonics product pricing guideline at the time of the order, or by written quotation from Polyonics. Polyonics reserves the right to ship and invoice for 10% over or under the quantities stated on the Purchaser's order. All requests for ship exact will be subject to a handling fee. All prices are quoted as United States dollars net to Polyonics. The Purchaser does not acquire any right, title or interest in any tooling, design information, process information, formulations, or invention resulting there from.

2. DELIVERY SCHEDULES AND REVISIONS. Purchaser's orders shall specify a firm shipment schedule for all products and such schedule shall be subject to acceptance by Polyonics. At any point in time, standard products scheduled for shipment in five (5) business days may be rescheduled, except for large quantities where Polyonics has manufactured and/or ordered additional supplies to complete the order. Custom products scheduled for shipment in thirty (30) business days or more may be canceled without penalty except for products purchased to satisfy outside vendor commitments and/or committed inventory for which a cancellation fee of 35 % of the invoice price may be assessed. Please be advised, all cancellation and/or changes to orders are required in writing. If, at any time, the total amount of the products ordered falls to a lower quantity price break, Polyonics will immediately invoice Purchaser and the Purchaser shall pay the difference in price for products already shipped plus interest at the rate of 1% per month as computed from the due date of the original invoice for the products; provided that in no case shall the interest charged exceed the maximum amount permitted by law. All subsequent products will be shipped and billed at the lower quantity price.

3. DELIVERY, FREIGHT AND RISK OF LOSS. All purchase prices shall be F.O.B. POINT OF SHIPMENT. Title in and the right of possession to such products passes to the purchaser upon delivery of products by Polyonics to a carrier at point of shipment. Arrangements for insurance of products are the responsibility of the Purchaser. Polyonics' standard packaging is suitable for domestic surface and air shipment. Packaging other than the standard is chargeable to Purchaser. When shipping instructions are not furnished, Polyonics will ship via the most practical route considering cost and required date of delivery. Products will be shipped prepaid and billed to the purchaser. If the purchaser specifies a carrier, the product will be shipped collect. All orders that are shipped pre-paid are subject to handling charges.

4. PAYMENT. Upon approval of credit by Polyonics, terms of payment are net thirty (30) days from date of invoice. Amounts not paid within thirty (30) days are subject to a late payment charge such charge to be at a rate of 1 1/2% per month; provided that in no case shall such charge exceed the maximum amount permitted by law. Late payment charges from previous month(s) shall be added to the balance and additional late payment charges will be calculated on the total balance.

5. INSPECTION, ACCEPTANCE AND RETURN. Purchaser shall have thirty (30) days after date of shipment of products to inspect the same and to notify Polyonics of any deficiency. If there is no such notice given within that time, then the products will be deemed accepted and thereafter are not returnable unless authorized by Polyonics. Purchaser may, during said thirty (30) days, return deficient products to Polyonics, where correction of deficiency reasonably requires return to factory. Products should be returned in the original shipping containers and related packing materials; or if not available, use suitable containers that are rigid and of adequate size. If substitute containers are used, the products should be surrounded by shock absorbing material. Damage resulting from shipping and/or inadequate packing for products returned to Polyonics is the responsibility of the Purchaser. Polyonics may authorize disposal of defective products at the purchaser's location after inspection of product samples and replacement products have been scheduled. Prior to returning products, Purchaser must have been issued a Return Materials Authorization (RMA) number. Return shipping charges shall be collect and replacement or reshipment of products shall be F.O.B. POINT OF SHIPMENT or the same as the original shipment. Standard products may be returned after approval from Polyonics up to thirty (30) days from time of shipment and will be charged a 30% re-stocking fee plus shipping. **Build-to-order products that are not determined defective by Polyonics are non-returnable.**

6. WARRANTY-LIMITATION Polyonics' products are sold with the understanding that the buyer will test them in actual use and determine for him/herself their adaptability to his/her intended uses. Polyonics warrants to the buyer that its products are free from defects in material and workmanship, but limits its obligation under this warranty to replacement of the products shown to Polyonics' satisfaction to have been defective,

provided that the Purchaser has complied with the handling, storage and shelf life requirements as specified by Polyonics in applicable materials specifications. The Purchaser shall return the products using Polyonics' return policy as stated above.

The above warranties extend solely to Purchaser and all warranty claims must be made by Purchaser. Rework or Replacement shall neither extend nor decrease the original warranty period. The term of all warranty periods shall not exceed thirty (30) days from the date of the original shipment.

THE ABOVE WARRANTIES ARE EXCLUSIVE OF AND IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, STATUTORY OF OTHERWISE. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY. POLYONICS SHALL NOT BE LIABLE EITHER IN TORT OR IN CONTRACT FOR ANY LOSS OR DAMAGE, DIRECT, INCIDENTAL OR CONSEQUENTIAL, ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCT, OR FROM DELAY IN THE REPLACEMENT OR REPAIR OF PRODUCTS UNDER THE ABOVE WARRANTY.

7. DELAY, PERFORMANCE AND REMEDIES Delay to Polyonics shipment of products arising from Government order or other requirements, war, civil insurrection, riot, labor or transportation strikes, flood, fire, earthquake, volcanic eruption or deemed Acts of God, shortages of materials or energy or any other causes out of reasonable control of Polyonics shall not be deemed a breach of the contract of sale, and shipment dates shall be extended for the length of such delay.

8. PATENT INFRINGEMENT Polyonics will defend at its expense any action brought against the Purchaser to the extent that it is based on a claim that products manufactured or developed and supplied by Polyonics to the Purchaser hereunder constitute direct infringement of any duly issued United States patent in the United States. Polyonics will pay all damages and costs finally awarded against the Purchaser in such action which are attributable to such claim, provided that Polyonics is promptly informed in writing by certified mail, return receipt requested, and furnished a copy of each communication, notice or other action relating to the alleged infringement and is given authority, information and assistance necessary to defend or settle such claim. Purchaser shall have the right, at its expense, to participate in any such claim or action. Polyonics will not be obligated to defend or be liable for costs and damages if infringement arises out of compliance with the Purchaser's specification(s) or from a combination with or an addition to products not manufactured or developed by Polyonics, or a modification of the products after delivery by Polyonics or the use of such products beyond that established by Polyonics or approved in writing by Polyonics. Should the products delivered by Polyonics hereunder become, or in Polyonics' opinion be likely to become, the subject of a claim of infringement of any United State patent in the United States then Polyonics may at its option: (I) procure for the Purchaser the right to use products free of any liability for infringement, (II) replace such products with non infringing substitutes or modify such products to be non infringing, or (III) refund the Purchaser's purchase price less a reasonable charge for use and accept the return of such products.

9. THIRD PARTY LIABILITY Polyonics shall not be liable for and Purchaser shall hold Polyonics harmless from any liability for indirect, incidental or consequential damages sustained by Purchaser including those damages arising from or measured by lost profits under its contracts with third parties even if Polyonics has been advised of the possibility of such damages.

10. COST AND ATTORNEY'S FEES In the event of default by either party to this Agreement, the prevailing party shall be entitled to reimbursement for all costs and expenses, including reasonable attorney's fees, incurred by the prevailing party in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions hereof.

11. TAXES To the extent attributable to the products or services furnished, there shall be added to the charges provided herein, amounts equal to any taxes, however designated, which are paid or payable by Polyonics and based on the charges made or value of products or services furnished or gross revenues generated, exclusive, however, of taxes based on net income.

12. INSOLVENCY Polyonics shall have the right to suspend or cancel this Agreement at any time upon Purchaser making an assignment for the benefit of creditors or becoming bankrupt or insolvent, or upon a petition being filed in court of competent jurisdiction proposing the appointment of a receiver or that Purchaser be adjudicated bankrupt or insolvent or reorganized under the provisions of any applicable bankruptcy or insolvency act.

13. SELLER'S REMEDIES In addition to the rights and remedies reserved herein, Polyonics shall have all rights and remedies conferred by law and shall not be required to proceed with performance of the Agreement arising herein if Purchaser is in default to Polyonics under this or any other contract.

14. GOVERNING LAW This Agreement and any question concerning its validity, construction or performance shall be governed by the laws of the State of New Hampshire. In event of a suit or legal action, the venue for such action shall be New Hampshire. In all events, English shall be the governing language.