

# TERMS OF SALE

## 1 Interpretation

### 1.1 In these Terms:

"Buyer" means the person whose details are set out in the Quotation;

"Contract" means the contract for the sale and purchase of the Goods and/or the Services;

"Goods" means the goods (such as the Manufactured Products and the Machines) specified in the Quotation to be provided by the Seller to the Buyer;

"Incoterms" means the International rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;

"Machines" means the machines manufactured or supplied by the Seller;

"Manufactured Products" means all products (other than the Machines) manufactured by the Seller including (without limitation) badges, transfers and tapes;

"Quotation" means the document referencing these Terms, including specifications of the Goods and/or the Services setting out the specific terms of the Contract, or to which these Terms are attached;

"Seller" means Polymark (GB) Limited (registered in England and Wales under number 03119261);

"Services" means the services specified in the Quotation to be provided by the Seller to the Buyer;

"Terms" means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between the Buyer and the Seller

"writing" and any similar expression, includes facsimile transmission and comparable means of communication, but not electronic mail.

1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

## 2 Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods and/or the Services in accordance with the Seller's Quotation (if accepted by the Buyer and upon the Seller confirming the order to the Buyer), subject to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such Quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Terms shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

2.3 In the event of any conflict between these Terms and the Quotation, the terms of the Quotation shall prevail.

2.4 The Seller's employees or agents are not authorised to make any representations concerning the Goods and/or the Services unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

2.5 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted on entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, confirmation of order, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## 3 Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of the Quotation and any order (including any applicable specification and any special requirements for packaging and insurance in the delivery of the Goods) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and/or the Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of the Goods and/or the Services and any specification for them shall be as set out in the Quotation (if accepted by the Buyer).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claims for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods and/or the Services which are required to conform with any applicable statutory or E.U. requirements or, where the Goods and/or the Services are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of such cancellation.

## 4 Price

4.1 The price of the Goods and/or the Services shall be that contained within the Quotation. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods and/or the Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and/or the Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated in the Quotation and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax, sales or use tax, which, if applicable, the Buyer shall be additionally liable to pay to the Seller.

4.5 The cost of any pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

## 5 Terms of payment

- 5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller may invoice the Buyer for the price of the Goods and/or the Services on or at any time after delivery of the Goods and/or the Services, unless the Buyer wrongfully fails to take delivery of the Goods and/or the Services, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has tendered delivery of the Goods and/or the Services.
- 5.2 The Buyer shall pay the price of the Goods (without any set off or deduction) by no later than the 20<sup>th</sup> day of the month immediately following the date of invoice.
- 5.3 The Buyer shall pay the price of the Services (together with any expenses due under the terms of the Contract) as specified in the Quotation.
- 5.4 The Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer.
- 5.5 The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only on request.
- 5.6 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:
- 5.6.1 cancel the Contract or suspend any further deliveries to the Buyer;
  - 5.6.2 appropriate any payment made by the Buyer to such of the Goods and/or the Services (or the goods or services supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
  - 5.6.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above National Westminster Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## 6 Delivery

- 6.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the Buyer's premises or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 6.2 Delivery of the Services shall be made as specified in the Quotation.
- 6.3 Any dates quoted for delivery of the Goods and/or the Services are approximate only and the Seller shall not be liable for any delay in such delivery however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.
- 6.4 Where payment of any part of the price of the Goods or Services is to be made before delivery, the Seller may withhold delivery until such payments have been received.
- 6.5 Where the Goods and/or Services are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.6 In respect of badges, transfers and tapes, the Buyer shall take delivery of such goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:-
- 6.6.1 such discrepancy in quantity shall not exceed 10%; and
  - 6.6.2 [the Price shall be adjusted pro-rata to the discrepancy].
- 6.7 If the Seller fails to deliver the Goods and/or Services (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods or services to replace those not delivered over the price of the Goods and/or Services.
- 6.8 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may:
- 6.8.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 6.8.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## 7 Risk and property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods and services agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer may resell or use the Goods in the ordinary course of its business.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

## 8 Buyer's Obligations

- 8.1 The Buyer will grant the Seller such access to the Buyer's premises, personnel, equipment and systems as may be required for the performance of the Services, as set out in the Quotation.
- 8.2 The Buyer will provide the Seller with such information and assistance as the Seller may reasonably require in order to enable or facilitate the Seller duly and punctually to comply with its obligations under the Contract.

## 9 Warranties and liability

- 9.1 Subject to the following provisions, the Seller warrants that:
- 9.1.1 the Manufactured Products will correspond with their specification and will be free from material manufacturing defects or errors of workmanship at the time of delivery;
  - 9.1.2 the Machines will correspond with their specification at the time of delivery and will be free from material manufacturing defects and errors of workmanship for a period of 12 months from the date of delivery.
- 9.2 The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill and, as far as is reasonably possible, in accordance with any specification.

- 9.3 Subject to these Terms, where the Seller supplies any goods which are supplied by a third party, the Seller does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Buyer the benefit of any warranty, guarantee or indemnity given by the person supplying such goods to the Seller.
- 9.4 The above warranties are given by the Seller subject to the following conditions:
- 9.4.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 9.4.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
- 9.4.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date of payment;
- 9.4.4 the above warranties do not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacture to the Seller.
- 9.5 Subject as expressly provided in these Terms, and except where the Goods and/or the Services are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.6 A claim by the Buyer which is based on any defect in the quality or condition of the Goods and/or the Services or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller:
- 9.6.1 upon delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure in respect of Manufactured Products;
- 9.6.2 as soon as the defect or failure is discovered in respect of the Machines and the Services.
- 9.7 If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and/or the Services and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods and/or the Services had been delivered in accordance with the Contract.
- 9.8 Where a valid claim in respect of any of the Goods and/or the Services which is based on a defect in their quality or condition or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may rectify the defect free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods and/or the Services (or a proportionate part of the price), in which case the Seller shall have no further liability to the Buyer.
- 9.9 If the problem is found upon investigation not to be the Seller's responsibility under the provisions of these Terms then the Seller may charge the Buyer immediately for all reasonable costs and expenses incurred by the Seller in the course of or in consequence of such investigation.
- 9.10 The Seller will not consider any claim for compensation, indemnity or refund until liability (if any) has been established or agreed with the Seller and, where applicable, any relevant insurance company and under no circumstances shall the invoiced costs of the Goods and/or the Services be deducted or set off by the Buyer until the Seller has passed a corresponding credit note.
- 9.11 Except in respect of death or personal injury caused by the Seller's negligence, or liability for defective products under the Consumer Protection Act 1987, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses, or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or the Services (including any delay in supplying or any failure to supply the Goods and/or Services in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods and/or Services, except as expressly provided in these Terms.
- 9.12 The Seller shall not be liable to the Buyer to be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligation in relation to the Goods and/or Services, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 9.12.1 Act of God, explosion, flood, tempest, fire or accident;
- 9.12.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 9.12.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 9.12.4 import or export regulations or embargoes;
- 9.12.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 9.12.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 9.12.7 power failure or breakdown in machinery.
- 10 Indemnity**
- 10.1 The Buyer shall indemnify the Seller in respect of any damages, costs and liability incurred in the event of any claim being made against the Seller by any third party where that claim arises out of the negligence, error, omissions or wrongful acts of the Buyer, its employees or agents.
- 11 Insolvency of Buyer**
- 11.1 This clause 11 applies if:
- 11.1.1 the Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or does into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 11.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 11.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 11.1.4 the Seller reasonably apprehends that any of events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 11.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods and/or Services have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 12 Export terms**
- 12.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Terms, but if there is any conflict between the provisions of Incoterms and these Terms, the latter shall prevail.
- 12.2 Where the Goods and/or Services are supplied for export from the United Kingdom, the provisions of this clause 12 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Terms.

- 12.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods and/or Services in the country of destination and for the payment of any duties on them.
- 12.4 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered fob the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 12.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 13 General**
- 13.1 A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 13.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provisions in question shall not be affected.
- 13.4 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.