

These Terms and Conditions of Business govern all sales by H. POLESY & CO PTY LIMITED (hereinafter referred to as the "Seller") to any purchaser (hereinafter referred to as the "Buyer") who as at or after the date of publication of these Terms and Conditions of Business places an order to purchase any product from H. POLESY & CO PTY LIMITED. If you as the Buyer do not accept these Terms and Conditions of Business, you must notify and advise the Seller in writing of your refusal to do so. Acceptance will arise upon the placement by you of an order on the Seller unless your refusal to accept these Terms and Conditions of Business is received in writing by the Seller prior to the placement of any Purchase Order with the Seller.

1. BASIC OBLIGATIONS

- 1.1 The Seller shall supply the Goods to the Buyer in accordance with these Terms and Conditions of Business.
- 1.2 The Buyer shall pay the Seller the Price in accordance with the terms of payment set out in these Terms and Conditions of Business.

2. QUOTATIONS AND ORDERS

- 2.1 The Buyer shall request quotations from the Seller containing specifications, quantities, delivery schedules and prices for the Goods, as per the requirements of the Buyer.
- 2.2 The Seller shall submit to the Buyer said written quotations containing specifications, quantities, delivery schedules and prices for the Goods. These quotations shall be valid for a limited time as specified in the quotation.
- 2.3 Upon receipt of the written quotation, the Buyer shall produce a written Purchase Order confirming the specifications, quantities, delivery schedules and prices for the Goods. The written Purchase Order shall be sent to the Seller.
- 2.4 Upon receipt of the Buyer's Purchase Order, provided the Purchase Order conforms to the quotation, the Seller undertakes to supply the Goods. The Buyer shall ultimately be liable to pay for all the Goods ordered from the Seller.

3. VARIATIONS

- 3.1 The Buyer may request reasonable variations, and the Seller shall use its best endeavours to carry out such reasonable variations, but the Seller shall be under no obligation to agree to the proposed variations requested by the Buyer after the Buyer has issued a Purchase Order to the Seller.
- 3.2 The Buyer may request the Seller to price a proposed variation. The Seller shall provide to the Buyer a price for the proposed variation and shall where relevant provide details of how the proposed variation may otherwise affect its other obligations under these Terms and Conditions of Business.
- 3.3 The agreed price of any variation shall be added to or deducted from the purchase price. No variation shall be commenced until the agreed price and details of the variation have been determined and the revised price confirmed by the Buyer to the Seller in writing.
- 3.4 No variation shall make void or voidable these Terms and Conditions of Business.

4. CONTAINER DEMURRAGE

In the case of full container load (FCL) deliveries of the Goods, the Seller retains the right, at its absolute discretion, to pass on any demurrage charges incurred as a result of the Buyer's failure to make the container available for return within seven (7) calendar days of delivery either to the Buyer's premises or storage facility, or to any other agreed storage facility.

5. RETENTION OF TITLE IN THE GOODS

- 5.1 The Buyer acknowledges that the Seller will or has provided the Goods to the Buyer on credit and on the condition that the Buyer pay for the Goods in accordance with these Terms and Conditions of Business and until such time as the Buyer has fully paid for all the Goods and all after-acquired property, the Goods are and shall continue to be the Collateral of the Seller thereby securing the credit advanced by the Seller to the Buyer.
- 5.2 Further the Buyer and Seller both acknowledge that all the present Goods and all after-acquired property acquired by the Buyer from the Seller are the personal property of the Seller for the purposes of the Personal Property Securities Act 2009 (hereinafter the 'PPSA') and that these Terms and Conditions of Business constitute a Security Agreement for the purposes of s.20 of the PPSA and entitle the Seller to claim a Purchase Money Security Interest (hereinafter 'PMSI') over the Collateral supplied or to be supplied to the Buyer as Grantor pursuant to these Terms and Conditions of Business and the proceeds of any sale of the Goods.



Quality
ISO 9001

SAI GLOBAL



OHS

ISO 45001

SAI GLOBAL



Environment

ISO 14001

SAI GLOBAL

NEW SOUTH WALES

Unit 4, 1 Military Road,
Matraville, NSW 2036
Tel: (02) 9311 4191

VICTORIA

8 Diamond Drive,
Sunshine West, VIC 3020
Tel: (03) 9310 1300

QUEENSLAND

184-186 North Road,
Woodridge, QLD 4114
Tel: (07) 3451 7500

SOUTH AUSTRALIA

27 Bellchambers Road,
Edinburgh Nth, SA 5113
Tel: (08) 8251 4732

WESTERN AUSTRALIA

60 Fortitude Boulevard,
Gnangara, WA 6077
Tel: (08) 6401 6100

5.3 In consideration for the Seller supplying the present Goods to the Buyer, the Buyer grants to the Seller an irrevocable PMSI in the present Goods and all after-acquired property that shall attach to all Goods supplied by the Seller to the Buyer until such time as the Buyer has fully paid for the present Goods and all after-acquired property and create a right of registration in the Seller for the purposes of the PPSA.

5.4 The parties agree the Goods to be supplied under these Terms and Conditions of Business fall within the PPSA classification of "Other Goods" acquired by the Buyer pursuant to these Terms and Conditions of Business. The Supplier and the Buyer acknowledge that the Supplier as Secured Party is entitled to register its Security Interest in the Collateral supplied or to be supplied to the Buyer pursuant to these Terms and Conditions of Business on the PPS Register and the Buyer consents to the same and agrees to do all things necessary and reasonably required by the Seller to effect each registration.

5.5 The Buyer waives any right or entitlement to receive notice of the registration of any security interest(s) created by these Terms and Conditions of Business, under s.157 of the PPSA, on the PPS Register.

5.6 Registration of the collateral under the Personal Property Securities Act 2009 shall be entirely at the discretion of the Seller and the failure to register the same shall not for the purposes of these Terms and Conditions of Business or with respect to the rights of the Seller against either the Buyer or any Third Party constitute any waiver of the Seller's right to maintain and enforce its' right to title in the collateral.

5.7 The Seller shall retain title and all Goods shall remain the property of the Seller and the property in and title to all Goods shall not pass to the Buyer until such time as the Seller has: (i) been paid in full for all Goods; and (ii) received payment of all other sums that are owing by the Buyer to the Seller; and (iii) all moneys owing by the Buyer to the Seller have been collected, cleared and released to the Seller's bank account.

5.8 Upon the Buyer discharging its' obligations under Clause 5.7 the Seller warrants that the Buyer shall obtain complete and unencumbered title in the Goods and the quiet possession of the Goods.

5.9 In the event of any breach of terms of payment of these Terms and Conditions of Business on the part of the Buyer in respect of the Goods supplied, the Buyer agrees that the Seller shall have the right in accordance with s.123 of the PPSA and irrevocably authorises the Seller to enter the Buyer's premises or storage facility and /or any other storage facility where the Seller's Goods are stored to inspect and to remove any or all of the Goods to which the Seller retains title (and ownership).

5.10 Where the Buyer is unable to identify the precise Goods of the Seller in which the Seller retains title the Buyer agrees the Seller shall have the right to remove the equivalent type and quantity of the Seller's Goods for which payment has not been made.

5.11 If the Seller's Goods/Collateral (a) cannot be readily moved from a Buyers/Grantor's premises or storage facility and /or any other storage facility where the Seller's Goods are stored; or (b) adequate storage facilities are not readily available for the Seller's Goods/Collateral the Seller may seize the Sellers Goods/Collateral under s.123 of the PPSA by taking apparent possession of the Collateral within the meaning of s.126 of the PPSA.

5.12 Where the Buyer is an individual person or a partnership including an individual person, and if that person for the purposes of the Bankruptcy Act 1966 (Cwlth) commits an act of bankruptcy or where the Buyer is a corporation and for the purposes of the Corporations Act 2001 (Cwlth) is declared insolvent in accordance with Section 95A of the same Act, the Buyer agrees that the Seller shall have the right in accordance with s.123 of the PPSA and irrevocably authorises the Seller to enter the Buyer's premises or storage facility and /or any other storage facility where the Seller's Goods are stored and remove any or all the Goods to which the Seller retains title (and ownership).

5.13 The Parties agree to waive the requirements set out in ss. 95, 123(2), 129(2), 130, 132(3)(d), 132(4), 135, and 157(1) of the PPSA for the purposes of the implementation and enforcement of this Security Agreement set out herein these Terms and Conditions of Business.

5.14 If, as the result of any breach of these Terms and Conditions of Business on the part of the Buyer, the Seller takes back any Goods that have been invoiced to the Buyer for which the Seller has not received full payment, the Seller shall issue to the Buyer credit notes to the value of those Goods.

6. TESTING

6.1 Where the Buyer requests and legislation so requires the Seller shall supply to the Buyer the results of testing conducted by an accredited independent third party on the proposed Goods to be supplied. If the Buyer requires additional independent testing the Seller shall only be obliged to provide a single sample of each product proposed to be purchased by the Buyer. However, any additional independent testing shall be at the expense of the Buyer.

7. DELIVERIES, ACCEPTANCE AND REJECTION

7.1 The Seller shall deliver the Goods Free into Store to the Buyer's premises, storage facility or nominated logistics facility in each metropolitan area of each city where the Seller has a warehouse.

7.2 The Buyer shall have accepted the Goods when: (a) the Buyer has had a reasonable opportunity to examine those Goods after delivery to the Buyer's premises or storage facility. Unless otherwise agreed by the parties, a reasonable opportunity shall mean a period of five (5) working days; or (b) if before the expiration of five (5) working days the Buyer indicates to the Seller in writing that it has accepted the Goods. Written acceptance shall be constituted by the receipt by the Seller of a delivery docket signed by the Buyer.

7.3 The Seller shall be responsible for the care of the Goods up to the time of delivery of the Goods either to the premises, storage facility or nominated logistics facility of the Buyer. Risk shall pass to the Buyer at the time of delivery and not at the time of acceptance. The Buyer shall indemnify and keep indemnified the Seller for the full value of the Goods until such time as title in the Goods passes to the Buyer.

7.4 Prior to the arrival of full container load (FCL) deliveries of the Goods at the relevant port of entry into Australia, the Seller shall contact the Buyer to determine to which location the Seller is to deliver the FCL delivery. The Buyer shall advise the Seller, within five (5) working days, as to where the FCL delivery is to be made.

7.5 Where any inspection or testing reveals the Goods do not comply with the specification(s), the Seller shall, at their option, rectify or replace the defective Goods so as to ensure that the Goods comply with the specification(s) previously supplied to the Buyer.

8. PAYMENTS AND INVOICING

8.1 The payment term is thirty (30) calendar days from the end of the month in which the Goods were invoiced, unless otherwise agreed between the Seller and the Buyer. All invoices issued by the Seller, where applicable, shall quote the Buyer's Purchase Order number plus the actual quantity of the Goods delivered.

8.2 In the event that the Buyer does not make payment of amounts owing within a period of fourteen (14) calendar days from the due date for payment, the Seller may, at its absolute discretion, choose to either suspend supply of the Goods until such time as all overdue amounts are paid in full, and /or charge interest on any overdue amounts at the prevailing overdraft rate applicable to the Seller's trading account. Interest charged pursuant to this clause shall commence at the end of the fourteen (14) calendar day period.

8.3 The Seller may, at its discretion, allocate any payment received from the Buyer towards any invoice that the Supplier determines and may do so at the time of receipt of the payment or at any time thereafter. On any default of payment by the Buyer in respect of the payment term in Clause 8.1, the Seller may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Seller, payment will be deemed to be allocated in such manner as preserves the maximum value of Seller's PMSI, as defined in the PPSA, in the Goods.

8.4 If the Seller receives or recovers money in respect of a debt owed by the Buyer to the Seller, the Seller may apply the money to pay whichever debt or part of a debt owed by the Buyer to the Seller that the Seller, at its' discretion, chooses and is not compelled to apply the money as directed by the Buyer or any other person.

9. GST

The Price does not include GST, which is payable by the Buyer in addition to the Price.

10. WARRANTIES

10.1 The Buyer agrees that: (a) they have read and understood all documents relating to these Terms and Conditions of Business, including any relevant product specifications; and (b) does not enter into any agreement with the Seller in reliance on any representation, undertaking, statement or conduct made by the Seller which does not and shall not form part of any agreement between the Buyer and Seller.

10.2 The Seller warrants that the Goods are of acceptable quality as defined by s.54(2) of the Australian Consumer Law.

10.3 The Seller warrants the Goods are fit for the purpose for which they are commonly supplied in accordance with the matters set out in s.54(3) of the Australian Consumer Law given the nature, price and any other relevant circumstances relating to the supply of the Goods.

10.4 The Seller warrants that the Goods shall comply with any product description or specification previously provided in writing by the Buyer to the Seller and that have been agreed to in writing by the Seller and /or alternatively provided by the Seller to the Buyer.

10.5 The Seller warrants that the Goods shall comply with any sample previously provided by the Seller to the Buyer.

10.6 In the instance where the Seller, due to supply constraints, is unable to supply Goods previously ordered by the Buyer that comply with any sample previously provided by the Seller to the Buyer, the Buyer shall be under no obligation but may at its' discretion accept Goods of a like quality and description from the Seller provided that in so doing it has agreed to the same in writing prior to the dispatch of the proposed substituted Goods by the Seller.

10.7 The Seller only warrants that the Goods are fit for the Buyer's intended purpose where the Buyer has disclosed to the Seller in writing prior to the placement of a Purchase Order by the Buyer on the Seller the intended purpose for which the Buyer is acquiring the Goods from the Seller.

10.8 The benefits conferred by this warranty on the Buyer are in addition to and shall not exclude or limit any other rights and remedies available to the Buyer in statute or at common law.

11. CLAIMS

11.1 The Seller, at its absolute discretion, shall only honour claims where it can be proven that the Goods were at fault and where sufficient quality control procedures were in place so as to ensure that the quantity of Goods the subject of the claim has been kept to an absolute minimum.

11.2 Where any inspection or examination upon or after receipt reveals an apparent defect in the Goods such that the Goods are not of acceptable quality, are not fit for purpose or that the Goods do not conform with the relevant product description, specification or sample, the Seller shall, at their option, either repair the defective Goods, replace the defective Goods or shall use their best endeavours to supply other Goods in lieu of the defective Goods which have the equivalent form and function of the required Goods provided the Buyer notifies the Seller in writing of the apparent defect within ninety (90) calendar days of the date of receipt of the Goods.

11.3 Where after a period of ninety (90) calendar days a latent defect in the Goods becomes apparent such that the Goods are no longer of acceptable quality or fit for purpose the Seller shall, at their option, either repair the defective Goods, replace the defective Goods or shall use their best endeavours to supply Goods in lieu of the defective Goods which have the equivalent form and function of the required Goods provided the Buyer notifies the Seller in writing of the apparent defect within one hundred and eighty (180) calendar days of the date of receipt of the Goods.

11.4 In the event that the Buyer notifies the Seller of a claim relating to the Goods, in accordance with either clause 11.2 or 11.3 above, the Buyer shall forward to the Seller, at the Seller's expense, either photographic evidence or a sample of the defective or non-conforming Goods as soon as reasonably practical but, in any event, within ten (10) working days of notifying the Seller to enable the Seller to ascertain the degree and nature of the defect or fault. The Seller shall only be obliged to honour claims where it is apparent that the Goods were at fault and where sufficient quality control procedures have been adopted by the Buyer such that the defect or fault has not been occasioned by the acts or omissions of the Buyer, its' employees, sub-contractors or its' agents.

11.5 In the event that both the Buyer and the Seller agree that the Goods supplied are defective or faulty any claim shall be limited to either the cost of repairing or replacing the Goods or, where relevant, upon agreement with the Buyer the difference between the original price of the Goods and the value of the Goods after they have been assessed by the Seller and downgraded for a use by the Buyer other than for their original purpose.

11.6 Where the Seller has requested the Buyer to return Goods which it is agreed are either defective or faulty the Seller shall be responsible for bearing the cost of the return of the Goods and shall have the right to specify both the manner of return and /or the carrier to be used.

12. LIMITATION OF LIABILITY

12.1 The Seller shall not be liable in either contract or tort for any loss, injury, damage or costs, either direct or indirect, as a result of any claim in respect of loss, injury or damages made against the Buyer by third parties and any costs and expenses arising in connection with the said claim which results from the Seller's failure to comply with the requirements of any Purchase Order of the Buyer issued in relation to these Terms and Conditions of Business.

12.2 The Seller shall not be liable in either contract or tort for any loss, injury, damage or costs, either direct or indirect, howsoever incurred by either the Buyer or any third party as a result of the failure of the Buyer or the third party to use the Goods in accordance with the labelling and /or instructions and /or specifications supplied by the Seller or the misuse and abuse of the Goods.

12.3 The Buyer agrees and warrants that they shall not remove any labelling attached to the Goods and further shall supply to any third parties purchasing the Goods from the Buyer any instructions and /or specifications supplied by the Seller.

12.4 The Seller shall not be liable for any claims or damages including, but not limited to, claims for faulty design, negligent or misleading advice, damages arising from loss, defect, error in or use of the Goods, and any indirect, special, or consequential damages or injury to any person, corporation, or other entity.

12.5 The Seller shall not be liable to the Buyer in contract or in tort arising out of, or in connection with, or relating to the performance of the Goods or any breach of these Terms and Conditions of Business; or any error (whether negligent or in breach of contract or not) in information supplied to the Buyer or any third party user before or after the date of the Buyer's or third party user's use of the Goods.

12.6 The Buyer undertakes to maintain strict quality control procedures so as to minimise potential loss or damage resulting from their use of the Goods supplied. Where in accordance with clause 11.2 it is established that the Goods were faulty any and all liability of the Seller as a result of such a fault shall be strictly limited to the cost of the replacement of the Goods.

13. FORCE MAJEURE

13.1 Where either Party is unable, wholly or in part, by reason of "force majeure", to carry out any obligation under these Terms and Conditions of Business and that Party: (a) gives to the other Party notice of that "force majeure" with full particulars thereof and insofar as known, the probable extent to which it shall be unable to perform or be delayed in performing within seven (7) calendar days of becoming aware of its' inability to perform its' obligations under the terms of these Terms and Conditions of Business; and (b) uses all possible diligence to remove that "force majeure" as quickly as possible – that obligation is suspended so far as it is affected by "force majeure" during the continuance thereof.

13.2 The requirement that any "force majeure" shall be removed with all possible diligence shall not require the settlement of strikes, lockouts, or other labour disputes, or claims or demand by any government on terms contrary to the wishes of the Party affected.

13.3 In the event of a "force majeure", the Buyer shall be entitled to obtain elsewhere for the duration of such "force majeure" the supply of Goods covered by these Terms and Conditions of Business, and to reduce pro tanto and without any obligation to the Seller the quantity of the Goods ordered from the Seller under any prevailing Buyer's Purchase Order.

13.4 In these Terms and Conditions of Business "force majeure" means an Act of God, pandemic or biological disturbance, strike, lockout, or other interference with work, war declared and undeclared, act of terrorism, blockade, disturbance, explosion, governmental or quasi-governmental restraint, expropriation, prohibition, intervention, direction or embargo, unavailability, or delay in obtaining governmental or quasi-governmental approvals consents permits licences authorities or allocations, weather and any other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the Party affected.

14. WAIVER

Any waiver by the Seller of any right, breach or non-observance of any term of these Terms and Conditions of Business by the Buyer shall not be deemed to be a waiver of any on-going right of the Seller or the waiver of any cause of action related to any subsequent breach or subsequent non-observance of any term of these Terms and Conditions of Business by the Buyer. In this regard, the fact that the Seller fails to do, chooses not to enforce or delays in doing something the Seller is entitled to do under these Terms and Conditions of Business does not amount to a waiver of any right of the Seller and shall not be taken as an implied waiver of any other right, term or cause of action or as an implied waiver of that right, term or cause of action in relation to any other future breach occasioned by the Buyer.

15. SEVERANCE

Every clause of these Terms and Conditions of Business shall be deemed to be severable and if any clause of these Terms and Conditions of Business shall be void or illegal or unenforceable for any reason then the same shall be deemed to be severed and omitted here from and these Terms and Conditions of Business with such provision thus severed and omitted shall otherwise remain in full force and effect.

16. ENTIRE AGREEMENT

These Terms and Conditions of Business constitute the entire, final, and concluded agreement between the Parties in respect of the present and future supply of the Goods. These Terms and Conditions of Business supersede all previous arrangements, correspondence, representations on the part of either Party, terms and conditions of sale and /or purchase, proposals, understandings, and communication whether implied, oral or in writing in respect of the supply of the Goods. In the event of any conflict between the Buyer's Purchase Order and these Terms and Conditions of Business, these Terms and Conditions of Business shall always prevail.

17. GOVERNING LAW

It is agreed that the governing law of these Terms and Conditions of Business shall be that as applicable to the State of New South Wales, Australia, and the parties hereby submit themselves to the jurisdiction of the courts of the State of New South Wales, Australia.

POLESY

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18. NOTICES

The address of each Party as referred to in the Polesy Credit Application Form shall be the address of that Party for service of notices or other communications hereunder which may be effected by personal delivery or by post, where the date of service shall be deemed to be five (5) working days after the day of posting. Service of any notice or document under or relating to these Terms and Conditions of Business may also be effected by facsimile transmission and /or email and such notice shall be deemed to have been received when the said facsimile transmission and /or email has been sent without error.

19. DEFINITIONS

(i) The terms Goods or Seller's Goods or Collateral as used herein includes all goods and /or other tangible property sold, leased, hired, rented, bailed, supplied on consignment and provided subject to these Terms and Conditions of Business (including Retention of Title) or otherwise made available by the Seller, being the secured party, both now and in the future to the Buyer, being the grantor, including but not limited to commercial textiles, bedding, industrial textiles and packaging products.

(ii) The term secured party as used herein means the Seller and /or H. Polesy & Co Pty Limited.

(ii) The term grantor as used herein means the Buyer.