



## **Polarity Inc. (Seller) - STANDARD TERMS AND CONDITIONS OF SALE**

### **1. ACCEPTANCE OF ORDERS / TERMS**

All orders are subject to acceptance by Seller. Acceptance of orders is expressly made conditional on Buyer's assent to these Terms and Conditions. Any terms and conditions of the order or other similar instrument ("Purchase Order"), which are in addition to or inconsistent with Seller's Terms and Conditions, shall not be binding, unless specifically agreed to in writing by Seller. By placing an order relative to a Seller proposal, Buyer assents to all of these Terms and Conditions. This acceptance sets forth the entire understanding between the Parties with reference to the subject matter hereof.

### **2. QUOTATION**

This quotation is firm for forty-five (45) days from the date of the quotation unless otherwise stated in the proposal. Clerical errors are subject to correction. Acceptance of the offer represented by this quotation is expressly limited to the provisions hereof. No additional or different terms in Buyer's purchase order or other communication shall constitute a part of the quotation unless expressly agreed to in writing by Seller.

### **3. DELIVERY**

Seller's delivery date represents its best estimate on the basis of current schedules and supply chain's ability to meet material demands.

### **4. TERMS OF PAYMENT**

Payment terms are net thirty (30) days from date of invoice. The unpaid portion of any amount not paid within thirty (30) days shall bear interest at the legal rate. Seller may at any time suspend performance of any order, or require payment in cash, security, or other adequate assurance satisfactory to Seller when, in Seller's opinion, the financial condition of Buyer or other grounds for insecurity warrant such action.

### **5. PRICES AND TAXES**

The price of the goods and services purchased hereunder is exclusive of shipping charges as well as all taxes, import duties, fees, excises, and/or charges, which are now or may thereafter be imposed (whether by foreign, federal, state, municipal or other public authority), with respect to the sale of the goods and services or this Order itself. If Seller is required to pay any such taxes, duties or fees, Buyer shall reimburse Seller immediately upon receipt of Seller's invoice therefore.

### **6. CHANGES**

The Parties may at any time request changes to the Purchase Order within the general scope of work called for. If such changes cause an increase or decrease in the price of the items and/or an extension of the delivery schedule, Buyer shall be notified to this effect and Seller shall not be obligated to proceed with such changes until it receives a written change order and agrees in writing to accept such change.

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## **7. FORCE MAJEURE**

Neither Party shall be liable to the other Party for any loss or damage hereunder incurred by the other Party due to unforeseen circumstances or to causes beyond the Party's reasonable control, including without limitation, strikes, lockouts, riots, wars, acts of God, fires, floods, natural disasters, pandemics, inability to obtain labor, unforeseen delays caused by suppliers, subcontractors or by other third parties, delays associated with licensing and/or exporting requirements or compliance with governmental laws, regulations, or orders. Prompt notice of any delay due to unforeseen circumstances or to causes beyond the Party's control shall be given to the other Party. Any such cause shall extend delivery dates to the extent of the delay so incurred.

## **8. SHIPMENT / RISK OF LOSS**

All prices/shipments are F.C.A. Factory, INCOTERMS 2020. Risk of loss and title shall pass to Buyer upon delivery to the carrier. Buyer may select the manner of shipment and the carrier by providing Seller with written shipping instructions at the time of placing the Purchase Order. In the absence of specific instructions, Seller reserves the right to make alternative arrangements if necessary, and Seller will ship by the method it deems most appropriate. When Seller obtains and is the applicant on licenses required by the U.S. Government, Seller's broker/freight forwarder will be used.

## **9. INSPECTION AND ACCEPTANCE**

Buyer shall inspect and reject the goods or services as soon as possible after receipt. Unless Seller receives notification or rejection of the goods or services within five (5) days of receipt, the Buyer shall be deemed to have accepted the goods or services. Buyer's exclusive remedy shall be as described under Paragraph 14, Warranty.

## **10. EXPORT REQUIREMENTS**

This Order is subject to all applicable US laws and regulations relating to the export of goods and any associated technical data furnished under this Order. Buyer shall not ship, transfer, export or use the goods and data in violation of applicable export laws, regulations or restrictions. Buyer acknowledges that export includes access or transfer to a foreign person as that term is defined by applicable US export laws and regulations.

## **11. CANCELLATIONS**

Orders cannot be cancelled or modified by Buyer without the written consent of Seller. In the event of cancellation, Buyer will be advised of and will be responsible for prompt payment of applicable cancellation charges, which may include but are not limited to charges for raw materials, work in process, finished goods and applicable overhead and profit.

## **12. LIMITATION OF LIABILITY**

**SELLER'S AGGREGATE LIABILITY ON ANY CLAIM OF ANY KIND, OR LOSS OR DAMAGES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS PURCHASE ORDER OR FROM THE PERFORMANCE OR BREACH HEREOF, WHETHER SOUNDING IN NEGLIGENCE, TORT OR CONTRACT INCLUDING BUT NOT LIMITED TO ANY DEFAULT TERMINATION OR FROM THE MANUFACTURE, SALE, DELIVERY, REPAIR, USE OR RESALE OF ANY PRODUCT(S) AND/OR SERVICES(S) COVERED BY OR FURNISHED UNDER THIS**

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**PURCHASE ORDER SHALL IN NO CASE EXCEED THE PAYMENT RECEIVED FOR THE PRODUCT, SERVICE OR PART, WHICH GIVES RISE TO THE CLAIM. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WITH RESPECT TO ANY SUCH CLAIM, ANY PRODUCT(S), SOLD OR ANY SERVICE(S) RENDERED. BUYER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER AGAINST THIRD PARTY CLAIMS ATTRIBUTABLE IN ANY WAY TO BUYER'S USE, DISTRIBUTION, OR SALE OF THE GOODS OR SERVICES.**

## **13. ASSIGNMENT**

Buyer shall not assign this Purchase Order in whole or in part without the prior written consent of Seller which consent shall not be unreasonably withheld. A change of corporate name by a Party, merger or other corporate reorganization (provided that the Party remains the surviving entity) or the sale by a Party of all or substantially all of its assets shall not be deemed an assignment or transfer hereunder.

## **14. WARRANTY**

Seller warrants the products provided pursuant to this Purchase Order against defects in workmanship and materials for a period of 6 months, under normal use and service, from date of shipment and to no further extent. Seller's obligation under this warranty is limited to replacing or repairing or giving credit at the Seller's sole option for any of said products which shall, within fifteen (15) days after failure, be returned to Seller's place of origin, transportation charges prepaid, and which are, after examination, determined by Seller to be defective. This warranty shall not apply to any product which shall have been repaired or altered, except by Seller, or which shall have not been maintained in accordance with any handling or operating instructions supplied by Seller, or which shall have been subjected to extensive physical or electrical stress, misuse, abuse, negligence, improper installation, or accidents. The aforementioned provisions do not extend the original warranty period of any product, which has either been repaired or replaced by Seller. Buyer shall contact Seller for an authorized Return Material Authorization number and notification that Seller has obtained the appropriate import license, if a license is applicable.

**SELLER SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE TO BUYER FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES FOR LOSS OF WHATEVER NATURE ARISING OUT OF OR CONNECTED WITH OR RESULTING FROM THE SALE BY SELLER OR THE RESALE OR USE BY BUYER OF ANY PRODUCT(S) AND/OR SERVICE(S) DELIVERED HEREUNDER.**

**THIS WARRANTY IS STATED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, OR OTHERWISE MADE INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON SELLER'S PART IN CONNECTION WITH THE SALE OF SAID PRODUCTS, AND SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR SELLER ANY OTHER OBLIGATION OR LIABILITIES IN CONNECTION WITH THE SALE OF THE PRODUCTS OR SERVICES.**



## **15. PATENT INDEMNITY**

Buyer shall indemnify, defend and hold harmless Seller and its officers, directors, employees, agents, shareholders or members (collectively, "Representatives"), successors and assigns, affiliates, and their respective Representatives, successors and assigns and affiliates, against any and all claims, actions, suits, liabilities, losses, damages, fines, penalties, fees, costs and expenses, including, without limitation, reasonable attorney's fees and costs and other litigation fees, costs and expenses (collectively, "Losses"), resulting from or in connection with any claim, whether valid or not, of infringement of any patent or any other intellectual property right in connection with the processing of any goods for Buyer pursuant to instructions, designs, drawings or specifications given to Seller by Buyer for the production of goods for Buyer; including defective materials or products supplied by Buyer to Seller and incorporated by Seller into goods produced for Buyer, or the improper incorporation, assembly, use, processing, storage or handling of goods by Buyer or its customers. Buyer hereby agrees to indemnify Seller against any liability whatsoever for patent, trademark or trade name infringement, in any way, arising out of Buyer's design or goods manufactured in accordance with Buyer's specification.

## **16. PROPRIETARY/CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY**

All of the information, know-how, drawings, designs, specifications, and other documents prepared by Seller and particularly within Seller's knowledge, and which are designated or otherwise identified by Seller as proprietary and which are furnished by Seller to Buyer in connection with performance of this Purchase Order ("Proprietary Information"), shall not be used for any purpose other than the construction, operation, or maintenance of the products provided by Seller to Buyer pursuant to this Purchase Order, without the prior written authorization of Seller. Proprietary Information which is also designated or otherwise identified by Seller as confidential, and which is disclosed to Buyer in connection with performance of this Purchase Order ("Proprietary and Confidential Information"), shall not be disclosed by Buyer to any third party.

All rights and interests in the inventions, information, technical data or drawings, copyrights, patents, trademarks, know-how, trade secrets, or other intellectual property relating to Seller's products or disclosed by Seller to Buyer in connection this Purchase Order ("Intellectual Property") are the exclusive property of Seller. No ownership or license rights in the Intellectual Property are granted or conveyed to Buyer under this Purchase Order except the limited license right to construct, operate, or maintain the products provided pursuant to this Purchase Order, and which are necessary for performance of this Purchase Order.

Buyer agrees that (a) Seller's Proprietary Information (including Proprietary and Confidential Information), shall be used only for the purpose of and in connection with the products provided by Seller to Buyer pursuant to this Purchase Order; (b) Buyer shall not reverse engineer any Proprietary Information (including Proprietary and Confidential Information) or items that contain or include any such information, including products provided by Seller to Buyer pursuant to this Purchase Order, and shall not authorize or permit any such reverse engineering by any third party (including any third party entity or individual associated or affiliated with Buyer in

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any way); (c) Buyer shall not permit any employee who receives Proprietary and Confidential Information to work on any similar development project without the prior written consent of Seller; and (d) Buyer will not employ or solicit the employment of any present or former employees of Seller for a period of 10 (ten) years from the effective date of this Purchase Order.

## **17. APPLICABLE LAW**

This Purchase Order and the performance hereunder shall be construed and enforced in accordance with the laws of the State of California. The rights and obligations of the parties under these Terms and Conditions shall be governed by the substantive laws of the State of California without reference to its conflict of law provisions.

## **18. DISPUTES**

The Parties agree to expend reasonable and diligent efforts to promptly resolve any disputes that may arise. The parties hereby irrevocably agree that venue as to any dispute and personal jurisdiction of the parties to such dispute shall be solely and exclusively in the State of California, Courts of the County of Sacramento, or if applicable, in the Federal District Court for the Northern District of California, located in San Francisco County, California. For international sales, the Parties expressly agree that the UN Convention of Contracts for the International Sales of Goods will not apply.

## **19. WAIVER**

The provisions of this Agreement are severable and the invalidity, illegality or unenforceability of any one or more of its provisions shall not affect any other provisions. A waiver of any of the terms or conditions hereof shall not be deemed a continuing waiver, but shall apply solely to the instance to which the waiver is directed.

## **20. ENTIRE AGREEMENT**

The Terms and Conditions as set forth herein, together with any other document incorporated by reference in this Purchase Order, constitute the entire agreement between Buyer and Seller with respect to the Purchase Order. No modification hereof, shall be of any force and effect unless in writing and duly signed by authorized representatives of each Party.