

**Polymet Corporation ("Seller") Terms and Conditions of Sale**

1. **ACCEPTANCE / CONTRACT FORMATION** – These terms and conditions shall apply to any sale or delivery by Seller of goods or services, and any contract relating thereto, irrespective of whether any acknowledgment or invoice of Seller or any documentation accompanying these terms and conditions constitutes an offer by Seller to Buyer or an acceptance of Buyer's prior offer to Seller. Offers or acceptances by Buyer may be communicated orally, delivered in person or by telephone or in writing, delivered by regular mail, hand delivery, overnight courier, facsimile or electronic mail. Any additional or conflicting term from those in these terms and conditions in an offer or acceptance by Buyer is expressly objected to by Seller and shall not be deemed accepted by Seller or to be part of any contract with Seller unless Seller, in a duly executed writing, specifically refers to such additional or conflicting term that Seller accepts.
2. **DELIVERY / RISK OF LOSS** – Unless otherwise stated on the face hereof or otherwise agreed to in writing, all goods are delivered F.O.B. point of shipment. Risk of loss and title shall pass to Buyer upon Seller's delivery to the carrier. Transportation shall be at Buyer's sole risk and expense, and any claim for loss or damage in transit shall be against the carrier only. Shipping dates are estimated. Failure to deliver within the time estimated shall not be a breach of contract on Seller's part and in no event will Seller be responsible for, or Buyer be entitled to, any direct or indirect incidental, exemplary, or consequential damages, including, but not limited to, claims for labor or loss of profits arising out of or relating to any delay in delivery. If failure to deliver or perform by Seller is due to an act of God, war, riot, embargo, act of civil or military authority, fire, flood, quarantine, storm, strike, labor dispute, delay in transport or supply, shortage of fuel, labor or material, or other cause beyond the reasonable control of Seller, Seller may, at its option, extend the delivery time or cancel the order, in whole or in part.
3. **RETURNED GOODS** - Buyer may not return goods without the prior written consent of Seller. Seller reserves the right to specify on what terms, if any, it will accept a return. Special goods and modifications of standard goods are not returnable. Transportation charges on returned goods must be prepaid. A charge of 20% will be made for returned goods.
4. **WARRANTY** - Seller warrants that the goods provided by Seller will, at the time of delivery, conform to applicable specifications, subject to customary tolerances and variations. Buyer shall not enforce, or have any claim for breach of, any warranty while Buyer is in default of its payment terms. **THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF, AND SELLER HEREBY DISCLAIMS AND THERE SHALL BE EXCLUDED FROM THE RELATIONSHIP BETWEEN BUYER AND SELLER, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Samples supplied in connection with Buyer's order are solely for the purpose of evaluating the suitability of the goods to be provided by Seller and, as such, are not intended to serve as warranties of any type, either express or implied. Buyer shall have sole responsibility for selection and specification of the materials, goods or services appropriate for the end use of such goods or services, even if Buyer has informed Seller of the end use for such goods or services. Buyer acknowledges that it alone has determined that the goods and materials purchased or processed hereunder will suitably meet the requirements of the intended use.
5. **REPAIR OR REFUND** - If it appears within 60 days from the date of Buyer's receipt of the goods or services performed that they did not conform to the foregoing warranty at the time they were delivered and Buyer notifies Seller in writing within the applicable 60 day period and before the related goods are processed or altered in any way, Seller, at its option, shall either (a) repair or make available to Buyer a replacement of any defective goods or (b) refund to Buyer the price paid therefore. Unless otherwise agreed to in writing by Seller, Buyer shall set aside, protect, and hold such goods without further processing until Seller has an opportunity to inspect and advise of the disposition, if any, to be made of such goods. In no event shall any goods be returned, reworked, or scrapped by Buyer without the written authorization of Seller. Buyer's exclusive remedy for the failure of Seller to furnish goods conforming to the aforesaid warranty is expressly limited to the repair, replacement or repayment provided for above. Seller shall not be liable for any damages or expenses beyond the actual cost of repair or replacement of goods under warranty, or the price paid by Buyer to Seller for such goods, whichever is less, nor for any incidental, exemplary, or consequential damages.
6. **COMPLIANCE WITH LAWS** - Seller intends to comply with all laws applicable to the goods and services to be provided by it; provided, however, that any failure of Seller to so comply shall not be a defense to, or excuse Buyer from, performance by Buyer of its obligations to Seller.
7. **PRICES AND FREIGHT** – All quoted prices, extras (including applicable surcharges), and all freight or transportation rates, are subject to change, without notice, to reflect Seller's prices and extras, and applicable freight or transportation rates, in effect as of the date of shipment. Unless otherwise agreed, freight will be charged from the point of original manufacture or processing.
8. **TAXES** – Seller's prices do not include any federal taxes, duties or levies, or any state or local sales, use, excise or similar taxes. Consequently, in addition to the price specified herein, the amount of any present or future sales, use, excise or other similar tax applicable to sale of goods or services hereunder, or to the use of such goods or services by Seller or by Buyer, shall be paid by Buyer upon request, or in lieu thereof Buyer shall provide Seller with a tax exemption certificate acceptable to the tax authorities.
9. **CANCELLATION / CHANGE ORDER REQUESTS** – An order cannot be modified or cancelled by Buyer without the written consent of Seller and in no event shall any order be modified or cancelled for any portion thereof already processed, manufactured, or in process of manufacture, processing or performance, at the time the request for modification or cancellation is received by Seller, except upon terms, satisfactory to Seller, which protect and indemnify Seller against all losses, including, without limitation, all lost profits.
10. **QUANTITY** – Seller reserves the right to deliver commercially reasonable overages or underages of weight, length, size and/or quantity, and any reasonable variation shall constitute compliance with Buyer's order, and the unit price will continue to apply. If the order is for Buyer's requirements, Buyer shall, upon Seller's request, provide information sufficient to confirm Buyer's actual requirements and the timing for delivery of such requirements, all of which must be acceptable to Seller.
11. **PAYMENT TERMS** - Unless otherwise agreed to in writing, payment terms are net 30 days from date of invoice, such payment to be in U.S. dollars. Restrictive endorsements on Buyer's checks will not reduce or limit Buyer's obligations to Seller. Past due amounts shall incur a service charge of 1.5% per month, or the maximum legal rate if less. Buyer's failure to pay on this or any other contract between the parties in a timely fashion will entitle Seller to hold shipment of accepted and/or completed orders until appropriate payment is made. It is understood and agreed that if the sales order/invoice is placed in the hands of an attorney or a collection agency due to non-payment, Buyer agrees to pay all collection expenses, including court costs, legal and administrative expenses and attorney's and other fees paid or incurred by Seller. Payment terms are subject to ongoing satisfactory credit approval. Seller may, at any time or times, suspend performance of any order or require payment in cash, delivery of security and collateral 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.
12. **ASSIGNMENT** – Buyer shall not assign any order or any interest therein without the prior written consent of Seller. Any such actual or attempted assignment without Seller's prior written consent shall be invalid and ineffective and shall entitle Seller to cancel such order upon notice to Buyer.
13. **INTELLECTUAL PROPERTY** - If the goods sold hereunder are to be prepared for manufacture, manufactured or packaged according to Buyer's specification or instruction, Buyer shall indemnify, hold harmless and defend Seller against any claim or liability for patent, trade secret, copyright, design, trademark, or other intellectual property infringement or violation on account of such preparation, manufacture, or packaging.
14. **GOVERNMENT CONTRACT TERMS / MANDATORY FLOW DOWNS** – If Buyer's order is for a U.S. government contract, and goods or services ordered from Seller are to be used in the performance of said contract, only those mandatory flow down clauses of applicable U.S. government procurement regulations required by federal statute to be included in U.S. government subcontracts shall be incorporated herein by reference.
15. **ENTIRE AGREEMENT / MODIFICATION OF TERMS / SEVERABILITY** – These terms and conditions and related sales documents constitute the entire contract between Seller and Buyer. To the extent that any terms in the sales documents and these terms and conditions conflict, the terms on the front of Seller's sales documents, and thereafter these terms and conditions, shall have priority and shall control and prevail. These terms and conditions will not be amended, modified or rescinded except by written agreement signed by an authorized representative of each party expressly referring hereto. If any provision of these terms and conditions shall be held by a court of competent jurisdiction to be contrary to any law, the remaining provisions shall remain in full force and effect with such contrary or unenforceable provision limited or excluded to the minimum extent required under applicable law.
16. **GOVERNING LAW / JURISDICTION** – These terms and conditions and related sales documents shall be governed by, and construed in accordance with, the laws of the State of Ohio, without application of the conflict of law principles thereof.
17. **NON-WAIVER** – Any failure by Seller to exercise any of its rights shall not constitute or be deemed a waiver or forfeiture of such rights or any other rights.
18. **STATUTE OF LIMITATIONS** - Any cause of action arising from the arrangement between Seller and Buyer or any breach of Seller's obligations to Buyer must be commenced within one year after the event giving rise to the cause of action has occurred or it shall be deemed irrevocably waived and time-barred.