

DATED

2021

TERMS AND CONDITIONS FOR THE SUPPLY OF MAINTENANCE SERVICES

Polytec Ltd
Unit 8, The Cobalt Centre
Siskin Parkway Easy
Coventry
CV3 4PE

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF *CLAUSE 8* (LIMITATION OF LIABILITY).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 10.5.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Customer: the person or firm who purchases Services from the Supplier.

Customer Default: has the meaning set out in clause 4.3.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Machinery: the item of machinery manufactured or sold by the Supplier in respect of which the Services are supplied.

Order: the Customer's order for Services as set out in the Customer's purchase order form.

Services: the services supplied by the Supplier to the Customer as set out in the Order.

Supplier: Polytec Limited registered in England and Wales with company number 06454944 whose registered office address is Unit 8, The Cobalt Centre Siskin Parkway East, Middlemarch Business Park, Coventry, England, CV3 4PE

Supplier Materials: has the meaning set out in clause 4.1(g).

1.2 Interpretation:

- (a) A reference to legislation or a legislative provision:
 - (i) is a reference to it as amended, extended or re-enacted from time to time; and
 - (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** excludes fax and email.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 calendar days from its date of issue.

3. Supply of Services

3.1 The Supplier shall supply the Services to the Customer in accordance with the Order in all material respects.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier reserves the right to amend the Order if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event

3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's obligations

4.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Order are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) when the services are to be performed at the Customer's premises, prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and

- (h) comply with any additional obligations as set out in the Order.
- (i) arrange and pay for the carriage of any equipment to the relevant location for completion Services as advised by the Supplier or as set out in the Order.

4.2 For the avoidance of any doubt and unless agreed otherwise, the cost of the return of the equipment to the Customer will be included in the Charges.

4.3 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.3; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. Charges and payment

5.1 The Charges for the Services are on a fixed fee basis as set out on the Order but additional work shall be calculated on a time and materials basis ("Additional Charges"):

- (a) Additional Charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Order or on the Supplier's Website;
- (b) the Supplier's daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
- (c) the Supplier shall be entitled to charge an overtime rate of
 - (i) 150% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services on a Business but outside the hours referred to in clause 5.1(b); and
 - (ii) 200% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services on any day which is not a Business Day

- (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.2 The Supplier reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 5.3 Unless expressly agreed otherwise, the Supplier shall invoice the Customer on completion of the Services.
- 5.4 The Customer shall pay each invoice submitted by the Supplier:
 - (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, andtime for payment shall be of the essence of the Contract.
- 5.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 8, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. Intellectual property rights

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 6.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

7. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 7.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5 Million per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 7.2 References to liability in this clause 7 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 7.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 7.4 Nothing in this clause 7 shall limit the Customer's payment obligations under the Contract.
- 7.5 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
 - (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.6 Subject to clause 7.3 (No limitation in respect of deliberate default), and clause 7.5 (Liabilities which cannot legally be limited), the Supplier's total liability to the Customer:
 - (a) for all loss or damage shall not exceed the value of the Machinery that the Services has been ordered for.

- 7.7 The caps on the Supplier's liabilities shall be reduced by
- (a) amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 7.8 Subject clause 7.3 (No limitation in respect of deliberate default), clause 7.4 (No limitation of customer's payment obligations) and clause 7.5 (Liabilities which cannot legally be limited), this clause 7.8 sets out the types of loss that are wholly excluded:
- (a) loss of profits.
 - (b) loss of sales or business.
 - (c) loss of agreements or contracts.
 - (d) loss of anticipated savings.
 - (e) loss of use or corruption of software, data or information.
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 7.9 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.10 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 7.11 This clause 7 shall survive termination of the Contract.

8. Termination

- 8.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 1 months' written notice.
- 8.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 calendar days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of control of the Customer.

8.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
- (b) the Customer becomes subject to any of the events listed in clause 8.2(c) or clause 8.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
- (c) the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 8.2(b).

9. Consequences of termination

9.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but

for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

- (b) the Customer shall return all of the Supplier Materials which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

9.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

9.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

10. General

10.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

10.2 **Assignment and other dealings.**

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

10.3 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors,

subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.3; and

- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

10.4 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

10.5 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

10.6 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

10.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 10.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

10.8 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address; or
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.
- (c) This clause 10.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

10.9 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

10.10 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

10.11 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

11. Brexit trigger, renegotiation, and termination clause

11.1 Right to renegotiate or terminate. If a Brexit Trigger Event occurs, the Supplier may:

- (a) require the Customer to negotiate in good faith an amendment to the Contract to alleviate the Brexit Trigger Event; and
- (b) if no such amendment is made to this Contract within 30 calendar days, terminate this Contract by giving the other party not less than 14 calendar days and not more than 30 calendar days written notice. On termination under this clause, clause 8 (Termination) shall apply.

11.2 **Brexit Trigger Event** means any of the following events occurring at any time after the Contract coming into existence in accordance with clause 2.3 above:

- (a) an adverse impact on the Supplier's ability to perform the agreement in accordance with its terms and the law;
- (b) an increase in the costs incurred by the Supplier in performing the Contract of at least 10% since the price for the Services was last agreed.
- (c) the price of the Services under this agreement is at least 10% lower than the market value for similar products or services (an impact on the Supplier);
- (d) delays in obtaining components or service from the EU whether as a result of border or customs delays or otherwise.

11.3 **Overlap with other rights and obligations.** Save as expressly provided in this clause 11, a Brexit Trigger Event shall not terminate or alter (or give any party a right to terminate or alter) this contract, or invalidate any of its terms or discharge or excuse performance under it. If there is an inconsistency between the provisions of this clause and any other provision of this agreement, the provisions of this clause shall prevail.

12. **Pandemic Event**

12.1 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances, causes or policies enacted by governments both local and national as part of measures to protect the general public from the illness such as "Covid19" which are also beyond its reasonable control but not the parties contemplation. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this agreement by giving 7 days' written notice to the affected party.

Schedule one – Warranty

Terms and conditions of Product warranty

The Buyer's attention is drawn to clause 15 regarding limitation of liability

1. Polytec Limited. (hereafter referred as "Polytec") warrants its new equipment, to be free of defects in material or workmanship for a period of 12 months from the earlier of the date the equipment is delivered in accordance with Polytec's terms and conditions or the equipment first being placed into service, whether such equipment is sold, rented or leased; provided that the Buyer or the end-user sends Polytec written notice of the defect within sixty (60) days of its discovery and establishes to Polytec's satisfaction that:
 - i. the Equipment has been maintained and operated within the limits of rated and normal usage, and that there have been no alterations to it; and
 - ii. the defect did not result in any manner from the intentional or negligent action or inaction by Buyer or the end-user or any of their respective agents or employees or any person using it.
2. If requested by Polytec, the Buyer must return the defective equipment to Polytec's manufacturing facility, or other location designated by Polytec, for inspection, and if the Buyer cannot establish that conditions (1) (i) and (1) (ii) above have been met, then this warranty shall not cover the alleged defect.
3. Polytec's obligation and liability under this warranty is expressly limited to, at Polytec's sole option, repairing or replacing, with new or remanufactured parts or components, any part, which appears to Polytec upon inspection to have been defective in material or workmanship.
4. Such parts shall be provided at no cost to the Buyer. If requested by Polytec, components or parts for which a warranty claim is made shall be returned to Polytec at

a location designated by Polytec. All components and parts replaced under this limited product warranty become the property of Polytec.

5. This warranty shall be null and void if parts (including wear parts) other than genuine Polytec parts are used in the equipment by the Buyer.
6. Accessories, assemblies and components included in the Polytec equipment, which are not manufactured by Polytec or a Polytec group company, are subject to the warranty of their respective manufacturers.
7. Normal maintenance, adjustments, or maintenance/wear parts are not covered by this warranty and are the sole maintenance responsibility of the Buyer. The Buyer may, at its option, enter into an agreement for Polytec to provide Maintenance and Calibration services, which are provided through and governed by a separate agreement.
8. Polytec makes no other warranty, express or implied, and makes no warranty of merchantability or fitness for any particular purpose.
9. Polytec's obligation under this warranty shall not include:-
 - (1) duty, taxes, environmental fees, including without limitation, disposal or handling of tires, batteries, petrochemical items, or any other charges whatsoever; or
 - (2) any liability for direct, indirect, incidental, or consequential damages; or
 - (3) improper maintenance, improper use, abuse, improper storage, operation beyond rated capacity, operation after discovery of defective or worn parts, accident, sabotage or alteration; and/or
 - (4) repair of the equipment by persons not authorised by Polytec shall render this warranty null and void.
10. Polytec reserves the right to inspect the installation of the equipment and review maintenance procedures to determine if the failure was due to improper maintenance, improper use, abuse, improper storage, operation beyond rated capacity, operation after discovery of defective or worn parts, or alteration or repair of the equipment by persons not authorised by Polytec.
11. **PART WARRANTY:**

Polytec warrants the parts ordered from the Polytec's parts department to be free of defect in material or workmanship for either (1) a period of 12 months after date of shipment from the factory or (2) the balance of the remaining new equipment warranty, whichever occurs first.

With respect to parts ordered from the Polytec's parts department for equipment that is no longer covered under this limited product warranty due to lapse of time, Polytec warrants such parts to be free of defect in material or workmanship for a period of 12 months after date of shipment from the factory.

12. NO TRANSFERABILITY OF WARRANTY:

This warranty is limited to the original purchaser and is not assignable or otherwise transferable without the written agreement of Polytec.

13. ITEMS NOT COVERED BY POLYTEC WARRANTY

The following items are NOT covered under the Polytec Warranty (the following list is not exhaustive):

- (1) Items sold by any individual, corporation, partnership or any other organisation or legal entity that is not an authorised Polytec distributor;
- (2) Components which are not manufactured by Polytec are not covered by Polytec's warranty. Such components are covered only by the warranty that is provided by the manufacturer of such components;
- (3) Replacement of assemblies: Polytec has the option to repair or replace any defective part or assembly. It is Polytec's policy to refuse claims for the replacement of a complete assembly that is field repairable by the replacement or repair of defective part(s) within the assembly;
- (4) Normal Operational Maintenance Services and Wear Parts: Maintenance services, wear parts and consumables are excluded from warranty claims;
- (5) Transportation cost and/ or damage: Any damage caused by carrier handling is a transportation claim and should be filed immediately with the respective carrier;
- (6) Deterioration: Repairs, work required or parts exposed as the result of age, storage, weathering, lack of use, demonstration use, or use for transportation of corrosive chemicals;
- (7) Secondary Failures: if the equipment is used or operated after it has been noted that a failure has occurred, Polytec will not be responsible under the warranty for resultant damage to other parts due to that continued operation;
- (8) Workmanship of Others: Polytec does not accept responsibility for improper installation or labour costs or costs of any kind from personnel other than authorised Polytec personnel;
- (9) Polytec neither assumes nor authorises any other person to assume for Polytec any other liability in connection with the sale of Polytec's equipment; and
- (10) This warranty shall not apply to any of Polytec's equipment or any part thereof which has been subject to misuse, alteration, abuse, negligence, accident, acts of God or sabotage. No action by any party shall operate to extend or revive this limited warranty without the prior written consent of Polytec. In the event that any

provision of this warranty is held unenforceable for any reason, the remaining provisions shall remain in full force and effect.

14. Nothing in this Warranty limits any liability which cannot legally be limited, including liability for:
 - (1) Death or personal injury caused by negligence;
 - (2) Fraud or fraudulent misrepresentation; and
 - (3) Breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
15. Subject to Clause 14 (Liabilities which cannot legally be limited) above, Polytec's total liability to the Buyer for all loss or damage shall not exceed the total cost of the individual machine affected by a defect.
16. Subject to clause 14 (Liabilities which cannot legally be limited), this clause 16 sets out the types of loss that are wholly excluded:
 - (1) loss of profits;
 - (2) loss of sales or business;
 - (3) loss of agreements or contracts;
 - (4) loss of anticipated savings;
 - (5) loss of use or corruption of software, data or information;
 - (6) loss of or damage to goodwill; and
 - (7) indirect or consequential loss.
17. **Force majeure.** Neither party shall be in breach of nor liable for delay in performing, or failure to perform, any of its obligations under this Warranty if such delay or failure result from events, circumstances or causes beyond its reasonable control.
18. **Assignment and other dealings.**
 - (1) Polytec may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Warranty.
 - (2) The Buyer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Warranty without the prior written consent of the Polytec.
19. **Entire agreement.**
 - (1) This Warranty constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances,

warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- (2) Each party acknowledges that in entering into this Warranty it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Warranty. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Warranty.
 - (3) Nothing in this clause shall limit or exclude any liability for fraud.
20. **Variation.** Except as set out in these Conditions, no variation of this Warranty shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
21. **Waiver.** A waiver of any right or remedy under this Warranty or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under this Warranty or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Warranty or by law shall prevent or restrict the further exercise of that or any other right or remedy.
22. **Severance.** If any provision or part-provision of this Warranty is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 22 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
23. **Notices.**
 - (1) Any notice given to a party under or in connection with this Warranty shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
 - (2) Any notice shall be deemed to have been received:
 - i. if delivered by hand, at the time the notice is left at the proper address;
 - ii. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
 - (3) This clause 23 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
24. **Third party rights.**

- (1) Unless it expressly states otherwise, this Warranty does not give rise to any rights under the (Rights of Third Parties) Act 1999 to enforce any term of this Warranty.
 - (2) The rights of the parties to rescind or vary this Warranty are not subject to the consent of any other person.
25. **Governing law.** This Warranty, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
26. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Warranty or its subject matter or formation.