

Dated:

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Terms and conditions of sale – new goods for Polytec Limited (CRN: 06454944)

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(Ref: SJW/KAS/00073134/1)

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The customer's attention is drawn in particular to the provisions of clause 8.

1. Interpretation

1.1 Definitions:

Business Day: 9am to 5pm on a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 13.4.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

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

Delivery Location: has the meaning given in **Error! Bookmark not defined.**4.2.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control (including but not limited to, delay or lack of availability of components or raw materials).

Goods: the goods (or any part of them) set out in the Order.

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

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

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

Warranty: the terms of the warranty attached at Appendix 1 hereto

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (a) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision

includes all subordinate legislation made 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** includes fax but not email.

2. Basis of contract

- 2.1 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.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures, or websites are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 calendar days from its date of issue.

3. Goods

- 3.1 The Goods are described in the Supplier's catalogue as modified by any applicable Specification.
- 3.2 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit,

loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. Delivery

4.1 The Supplier shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 Save as otherwise agreed in writing in advance between the parties the Customer may collect the Goods from the Supplier's premises at Unit 8, The Cobalt Centre Siskin Parkway East, Middlemarch Business Park, Coventry, England, CV3 4PE or such other location as may be advised by the Supplier prior to delivery (**Delivery Location**) within three Business Days of the Supplier notifying the Customer that the Goods are ready.

4.3 Delivery is completed on the completion of loading of the Goods at the Supplier's Premises.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event, Brexit event (see clause 11), Pandemic Event (see clause 12) or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar

description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.6 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 If the Customer has ordered multiple Goods and the Supplier delivers up to and including 20% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Supplier shall make a pro rata adjustment to the invoice for the Goods.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality

- 5.1 The Supplier warrants that on delivery, and for a period of the length contained in the attached terms and conditions of warranty from the date of delivery (**warranty period**), the Goods shall:
- (a) conform in all material respects with their description and any applicable Specification;
 - (b) be free from material defects in design, material and workmanship;

- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by the Supplier subject to the calibration of the Goods being suitable for the purposes held out by the Supplier.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out separately in the terms of the Warranty referred to at clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 or the Warranty if:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until:

the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums;

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d); and
- (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.

6.4 Subject to clause 6.5, the Customer may not resell the Goods in the ordinary course of its business before the Supplier receives payment in full for the Goods.

6.5 At any time before title to the Goods passes to the Customer, the Supplier may:

- (a) by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the

Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Price and payment

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery. Unless expressly stated otherwise in the order, all prices quoted shall be in GBP or Pounds Sterling.
- 7.2 The Supplier may, by giving notice to the Customer at any time up to 20 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 The price of the Goods:
- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.5 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 calendar 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, and

time for payment shall be of the essence of the Contract.

7.6 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 9, 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 7.6 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%.

7.7 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).

8. Limitation of liability

8.1 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.

8.2 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.3 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;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987.

8.4 Subject to clause 8.3, the Supplier's total liability to the Customer shall not exceed the total cost of the Goods in the Order.

8.5 Subject to clause 8.3, the following types of loss 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.

8.6 This clause 8 shall survive termination of the Contract.

9. Termination

9.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 calendar days of that party being notified in writing to do so;
- (b) the Customer 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), obtaining a moratorium, 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 Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

9.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods 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.

9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

9.6 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. 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 a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 6 months, the party not affected may terminate the Contract by giving 30 calendar days' written notice to the affected party.

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 days, terminate this Contract by giving the other party not less than 14 and not more than 30 calendar days written notice. On termination under this clause, clause 9 (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 Goods was last agreed.
- (c) the price of the Goods 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 illnesses 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.

13. **General**

13.1 **Assignment and other dealings.**

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

13.2 **Confidentiality.**

- (a) Each party, subject to any separate confidentiality agreement entered into between the parties, undertakes that it shall not at any time during the Contract and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2(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

exercising the party's rights or carrying out its 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 13.2; 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 exercise its rights and perform its obligations under or in connection with the Contract.

13.3 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 agrees that it 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.

13.4 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.5 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.6 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 the Contract. If any provision of the Contract is deemed deleted under this clause 13.6 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.

13.7 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) 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); or
- (b) Any notice or communication 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.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- (d) A notice given under the Contract is not valid if sent by email or fax.

13.8 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.

13.9 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.

13.10 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.

Appendix

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 48 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.