

## POLYNOVA COMPOSITES

### TERMS AND CONDITIONS OF SALE

**GENERAL.** This quotation is subject to withdrawal or change by Polynova Composites ("Seller") upon notice to Buyer at any time prior to acceptance of an order. Quoted prices are valid until the quotation expires as specified on the face hereof. Sale of any items covered by this quotation (the "Products") is conditioned upon the terms and conditions contained herein. Any additional or different terms or conditions proposed by Buyer are objected to by Seller without need of further notice of objection and shall be of no effect nor in any circumstances binding upon Seller, unless specifically agreed to in writing by an authorized representative of Seller. Buyer shall be deemed to have assented to all terms and conditions contained herein if any Products are accepted.

**PRICES.** Contract prices are protected for the length of time specified on the face hereof. The time period commences on the date of Buyer's acceptance of this quotation or, if applicable, on the date of Seller's acceptance of Buyer's purchase order. If Buyer postpones delivery beyond that period, prices will, at Seller's option, be subject to renegotiation. If no agreement is reached within thirty (30) days after the notice of price renegotiation has been sent to Buyer, then the prices will be those in effect at the time of delivery.

**DELIVERY.** Shipping dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Seller will make reasonable efforts to deliver as requested by Buyer, but shall have no liability for later delivery. Seller shall not be liable for delays in delivery or performance or failure to manufacture due to causes beyond its reasonable control, such as acts of God, acts of Buyer, acts of civil or military authority, Governmental actions, fires, strikes or other labor actions, floods, epidemics, quarantine restrictions, war, riot, delays in transportation, or inability due to causes beyond Seller's reasonable control to obtain necessary labor, materials, components, services or manufacturing facilities, or any other commercial impracticability. In the event of any such delay, Seller, at its option, may terminate this contract without liability or may extend the date of delivery or of performance for a period equal to the time lost by reason of the delay. In the event of a Product shortage, Seller shall have the right to allocate its available Product supply among its customers in such a manner as Seller may consider equitable. If the Products are to be picked up by Buyer at Seller's facility, Buyer agrees to do so within ten (10) days after being advised that same are ready for pickup.

**PAYMENT.** Payment in full, or the first installment due, as the case may be, must be made thirty (30) days after the average delivery date, unless otherwise specified on the face hereof. If any cash payment due hereunder is more than thirty (30) days in arrears, Buyer will pay to Seller one and one half percent (1 1/2%) per month on such payment due or the highest lawful rate which can be charged Buyer, whichever is less, in addition to any other interest payments provided for herein. If Buyer delays delivery, the Products shall be held at Buyer's risk and expense. Any order for the Products by Buyer shall constitute a representation that Buyer is solvent. In addition, upon Seller's request, Buyer will furnish a written representation concerning its solvency at any time prior to delivery. If the financial condition of Buyer at any time is such as to give Seller, in its judgment, reasonable grounds for insecurity concerning Buyer's ability to perform its obligations under this contract, Seller may require full or partial payment in advance and suspend any further deliveries (or continuance of the work to be performed by Seller) until such payment has been received. Failure to furnish such payment within ten (10) days of demand by Seller shall constitute a repudiation of the contract, and in such event, or in the event that Buyer cancels the contract, Seller shall be entitled to receive reimbursement for its reasonable cancellation charges.

**TRANSPORTATION, TITLE AND RISK OF LOSS.** Delivery shall be made at, and Buyer shall assume all transportation charges from, the EXW (Ex Works) point shown on the face hereof. Title to the Products or any part thereof shall pass to the Buyer upon completion of the final assembly of such Products or part or, if final assembly is not required, upon delivery of such item or part to the EXW point. However, in the event that commencement of final assembly is delayed beyond thirty (30) days from date of delivery for any reason for which Seller is not responsible, Seller may request, and Buyer will accept, title to the Products to the extent of pro rata payments made to Seller. Risk of loss of the Products or any part thereof shall pass to Buyer upon delivery of such Products or part. Seller hereby reserves and retains, and Buyer hereby grants to Seller, a purchase money security interest under the Uniform Commercial Code (or, if the Products are located in Louisiana, a vendor's lien) in such product until time as full payment is received. Buyer will cooperate fully with Seller with respect to any documentation of the security interest and the filing thereof.

**ASSIGNMENTS.** This quotation and any contract based thereon, or any interest therein, is not assignable by Buyer without the prior express written permission of Seller.

**TAXES.** Seller's prices do not include sale, use, excise or similar taxes. Consequently, in addition to the prices specified herein, the amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the manufacture, sale, price, delivery or use of the Products furnished hereunder, shall be paid by the Buyer as a part of said price or in lieu thereof the Buyer shall provide Seller with a tax-exemption certificate acceptable to the taxing authorities.

**EXCLUSIONS OF WARRANTIES.** While Seller endeavors to deliver the Products to comply with specifications of Buyer accepted by Seller, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE PRODUCTS, THEIR MATERIALS, DESIGN OR MANUFACTURE, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING OR USAGE IN TRADE, OR WARRANTIES THAT THE PRODUCTS, THEIR MATERIALS, DESIGN, MANUFACTURE OR USE DO NOT INFRINGE UPON THE RIGHTS OF ANY OTHER PARTY. All statements, technical information and recommendations by Seller to Buyer (whether verbal, written or by way of production evaluations) (collectively "Information") are believed to be correct, and are only for consideration and evaluation. SELLER MAKES NO REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO SUCH INFORMATION, INCLUDING BUT NOT LIMITED TO THE ACCURACY OR THE RESULTS TO BE OBTAINED FROM THE USE OF SUCH INFORMATION. No Information or statements by Seller are intended, nor should they be construed as, a recommendation to infringe any existing patent, license or other intellectual property right. No license is granted or intended under the claims of any patent, license or any other intellectual property right of Seller, and Seller retains, and Buyer recognizes and waives claims against, such rights of Seller. The conditions for and application of the Products, and Information, including but not limited to any suggested formulations and recommendations, are beyond Seller's control. Therefore, it is imperative that Buyer review, analyze and test the Products and Information to its own satisfaction in order to determine whether they are suitable for Buyer's intended uses. Buyer's application-specific analysis at least must include testing to determine suitability from a technical as well as health, safety, and environmental standpoint. Buyer shall assume all risks and liabilities in connection therewith. Buyer shall protect, indemnify, defend and hold harmless Seller from, against and with respect to any claims, damages, losses, costs or expenses (including but not limited to reasonable attorneys' fees and court costs) relating to the use by Buyer, Buyer's customers or others, of the Products or Information, or infringement or Buyer's failure to comply with any provisions of this contract, including but not limited to the modification or alteration of the Products or their incorporation into or use with other products or goods.

**LIMITATIONS.** SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED AS TO ANY ITEMS MANUFACTURED BY OTHERS. Seller will assign to Buyer any warranty it receives from the manufacturers of such items, and will endeavor to assist Buyer to recover thereon. All such items delivered hereunder or as a result hereof are sold "as is" without warranty of any kind. No warranty is made as to any Products that have been altered or modified by Buyer. All precautionary labels and notices should be read and understood by all supervisory personnel and employees before using. Buyer should consult OSHA and government regulations for additional safety and health information. Buyer is responsible for complying with all federal, state or local laws and regulations covering the use of the Products. Special attention should be given to consumer applications. Because use conditions and applicable laws may differ from one location to another and may change with time, Buyer is responsible for determining whether the Products and the Information are appropriate for Customer's use and for ensuring that Customer's workplace and disposal practices are in compliance with applicable laws and other governmental enactments.

**REMEDIES AND LIMITATIONS OF LIABILITY.** Buyer agrees that sole remedy for any claims arising out of this quotation or the performance of the Products, including but not limited to any claims based on the alleged negligence of Seller, its officers, agents, employees or dealers, shall be limited to the repair or replacement, at Seller's option, of any Products or components thereof. In no event, whether as a result of breach of contract, warranty, tort (including but not limited to negligence and strict liability) or otherwise shall Seller be liable for any special, consequential, incidental, indirect, punitive or exemplary damages, including but not limited to loss of profit or revenues or loss of use of the Products by Buyer's customers, whether or not Buyer has apprised Seller of the potential of such damages. In no event, whether as a result of breach of contract, warranty, tort (including but not limited to negligence and strict liability) or otherwise shall Seller's liability to Buyer for any loss or damage arising out of, or resulting from this contract, or from its performance or breach, or from the Products or Information, exceed the price of the specific Product which gives rise to the claim.

**DISCLOSURE OF INFORMATION.** Any information, suggestions or ideas transmitted by Buyer to Seller in connection with performance hereunder are not to be regarded as secret or submitted in confidence except as may be otherwise provided in a writing signed by a duly authorized representative of Seller.

**GOVERNING LAW.** This contract has been made in and its validity, interpretation, construction and performance shall be governed by and be in accordance with the laws of the State of Massachusetts, without reference to its laws governing conflicts of law. Buyer hereby irrevocably agrees that any legal action or proceedings against with respect to this contract may be brought in the courts of the State of Massachusetts, or in any United States District Court of Massachusetts. By its execution and delivery of this contract, Buyer hereby irrevocably submits to each such jurisdiction and hereby irrevocably waives any and all objections that it may have as to venue in any of the above courts. Buyer further consents and agrees that any process or notice of motion or other application to either of said Courts or any judge thereof, or any notice in connection with any proceedings hereunder, may be served inside or outside the State of Massachusetts or the District of Massachusetts by registered or certified mail, return receipt requested, postage prepaid, and be effective as of the receipt thereof, or in such other manner as may be permissible under the rules of said Courts. BUYER HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS CONTRACT.

**REIMBURSEMENT OF COSTS.** Should Seller be required to enforce or defend its rights under this contract, Seller shall be entitled to be reimbursed by Buyer for all reasonable costs and expenses of such enforcement, including but not limited to reasonable attorneys' fees and disbursements.

**EXCLUSIVITY OF REMEDIES.** Seller's rights and remedies specifically provided for herein are intended to be cumulative and shall not be deemed to exclude any other right or remedy that Seller may have at law or in equity.

**NOTICES.** Any communication required or permitted to be given hereunder shall be given in writing and shall be delivered by the U.S. mail, postage prepaid, and addressed to the addresses on the face hereof, or to such other address as either party shall designate by written notice as provided in this Section. Any such communication shall be deemed delivered and given on the fifth (5th) business day after deposit thereof in the U.S. mails.

**STATUTE OF LIMITATIONS.** No action, regardless of form or basis, arising hereunder may be brought by Buyer against Seller more than one (1) year from the date hereof.

**SUCCESSORS AND ASSIGNS.** This contract shall be binding upon and inure to the benefit of the heirs, legal representatives, successors and assigns of each party hereto.

**SEVERABILITY.** If any term or provision of this contract, or the application thereof to any person or in any circumstance, shall to any extent be invalid or unenforceable, the remainder of this contract, or the application of such terms to the persons or in circumstances other than those as to which it is invalid or unenforceable, shall be considered severable and shall not be affected thereby, and each term of this contract shall be valid and enforceable to the fullest permitted bylaw. The invalid or unenforceable provisions shall, to the extent permitted by law, be deemed amended and given such interpretation as to achieve the economic intent of this contract.

**WAIVER.** The failure of Seller to insist in any one instance or more upon strict performance of any of the terms and conditions hereof, or to exercise any right or privilege herein conferred, shall not be construed as a waiver of such terms, conditions, rights or privileges, but same shall continue to remain in full force and effect. Any waiver by Seller of any violation of, breach of or default under any provision of this contract by Buyer shall not be construed as, or constitute, a continuing waiver of such provision, or waiver of any other violation of, breach of or default under any other provision of this contract.

**HEADINGS.** The section headings herein are inserted for convenience and shall not control or affect the meanings or construction of any provision of this contract.

**ENTIRE AGREEMENT.** This contract constitutes the entire and only agreement between the parties respecting the subject matter hereof, and any prior agreements, representations, affirmations of fact, courses of prior dealings, promises or conditions in connection therewith or usages of the trade not incorporated herein shall not be binding on either party. No waiver, alteration, modification or amendment of any of the provisions hereof shall be binding upon Seller, unless in writing and signed on its behalf by one of its executive officers or its Sales Manager.