

## Polycontrols Standard Terms and Conditions of Sale

The following Standard Conditions of Sale will apply to any order accepted by Polycontrols Technologies Inc. ("Polycontrols"). The term Purchaser designates the person or entity making the order. **By placing an order for products or services, Purchaser agrees that these standard terms and conditions of sales will apply to such order unless different terms are expressly accepted in writing through a document executed by an authorized representative of Polycontrols.** No other terms or conditions, including terms and conditions attached to a purchase order or similar document will apply unless expressly accepted in writing by an authorized representative of Polycontrols.

### 1. WARRANTY

- 1.1 Polycontrols warrants to Purchaser that (a) for a period of 1 year from the date of delivery, products furnished by Polycontrols and manufactured by Polycontrols will be free from defects in material and workmanship and will conform to their specifications published at the time of sale to Purchaser and (b) for a period of 3 months from the completion of the services, services provided by Polycontrols will be free from defects in workmanship and conform the specifications agreed upon between Polycontrols and Purchaser. Notwithstanding the foregoing, Polycontrols does not warrant that the operation of the products will be uninterrupted or error-free.
- 1.2 **Notice:** These warranties are conditional upon Purchaser's giving written notice to Polycontrols no more than thirty (30) days after the failure.
- 1.3 **Remedies:** If any products or services fail to meet the foregoing warranties, Polycontrols will correct the failure, at its option, by repairing any defective or damaged products or parts, making necessary repaired or replacement parts available at Polycontrols' place of repair or manufacture or by reperforming the non-conforming portion of the services. Purchaser shall be responsible, at Purchaser's expense, to return the non-conforming product or part thereof to a service location designated by Polycontrols. Any repaired or replacement product or part, will be warranted for the remainder of the warranty period of the product or part in which it is installed. Services performed in execution of the warranties set forth herein will be warranted for the remainder of the warranty period applicable to the original services. If a failure covered by this warranty cannot be corrected by Polycontrols' reasonable efforts, the parties will negotiate an equitable adjustment in price.
- 1.4 **Warranty disclaimers:** Polycontrols' warranty obligations will not apply to any products or parts which (i) have been modified or otherwise altered other than pursuant to Polycontrols' written instructions or written approval or, (ii) have a normal life inherently shorter than the specified warranty periods, or (iv) have not been properly stored, installed, used, maintained or repaired, or (v) have been subjected to any other kind of misuse or detrimental exposure, or (vi) have been involved in an accident, or (vii) have been damaged due to their use with products not approved by Polycontrols.
- 1.5 **Sole remedies:** The preceding paragraphs set forth the exclusive remedies for claims based upon defects in or nonconformity of the products, whether the claim is in contract, warranty, tort (including negligence), strict liability or otherwise, and however instituted. Upon the expiration of the warranty period, all such liability will terminate. These warranties are exclusive and in lieu of all

other warranties and conditions, whether oral, written, expressed, implied or statutory. No implied or statutory warranties or conditions of merchantability or fitness for particular purpose will apply.

## 2. PATENTS

- 2.1 Patent Warranty: Polycontrols warrants that its products will be delivered free of a rightful claim of any third party for infringement of any Canadian patent. If notified promptly in writing and given authority, information and assistance, Polycontrols at its expense will defend, or may settle, any suit or proceeding against Purchaser so far as it is based on a claimed infringement which breaches this warranty. If any such products are held by a court of competent jurisdiction to constitute such an infringement and the use of the products is enjoined, Polycontrols will, at its expense and option, either (i) procure for Purchaser the right to continue using the products, (ii) replace them with non-infringing products, (iii) modify them so they become non-infringing, or (iv) remove them and refund the purchase price (less reasonable depreciation for use and any transportation costs separately paid by Purchaser). The foregoing states the entire liability of Polycontrols for patent infringement by the products.
- 2.2 Disclaimer: The patent warranty in the preceding paragraph will not apply to any products or parts manufactured to Purchaser's design, or to the use of any products or parts furnished in conjunction with any other products in a combination not furnished by Polycontrols as a part of this transaction. As to any such products, parts, use or combination, Polycontrols assumes no liability whatsoever for patent infringement.

## 3. LIMITATIONS OF LIABILITY

- 3.1 Limit: The total liability of Polycontrols arising out of, in connection with or resulting from the performance or non-performance of any agreement, or from the manufacture, sale, delivery, resale, repair, replacement or use of any product, will not exceed the price allocable to the product which gives rise to the claim. Except as to title, any such liability will terminate upon the expiration of the applicable warranty period specified in the Article entitled "Warranty".
- 3.2 Consequential damages: In no event will Polycontrols be liable for any special, consequential, incidental, indirect or exemplary damages, including, but not limited to, loss of profit or revenue, loss of use of the product or any associated equipment, cost of capital, cost of substitute goods, facilities, downtime costs, loss of business or claims of Purchaser's customers for such damages.
- 3.3 Applicable to all claims: These limitations of liability will apply (i) to all claims, whether in contract, warranty, tort, (including negligence), patent infringement, strict liability or otherwise and (ii) to the benefit of Polycontrols, its subcontractors and suppliers. If Purchaser transfers title to, or leases the products or permits their use by, third parties, Purchaser will first obtain from such third party a provision affording Polycontrols and its subcontractors and suppliers the protection of these limitations of liability.

#### **4. EXCUSABLE DELAYS**

Polycontrols will not be liable for delays in delivery or for failure to manufacture or deliver due to (i) causes beyond its reasonable control, or (ii) acts of God, acts of Purchaser, acts of civil or military authority, governmental priorities, strikes or other labour disturbances, floods, epidemics, war, riot, delays in transportation or component shortages, or (iii) inability on account of causes beyond the reasonable control of Polycontrols or its suppliers to obtain necessary materials, components, services or facilities. In the event of any such delay, the date of delivery will be extended for a period equal to the time lost by reason of the delay.

#### **5. DELIVERY**

Shipping dates are approximate and are based upon prompt receipt of all necessary information. Unless otherwise agreed in writing between Polycontrols and Purchaser, delivery will be made EXW Incoterms 2010 at Polycontrols' facility (in Boucherville, Québec, Canada or Brossard, Québec, Canada). Title to the products is retained by Polycontrols until the purchase price for the products is paid in full. Upon payment of the purchase price in full, Polycontrols warrants that it will convey to Purchaser good title to all goods furnished hereunder.

#### **6. TERMS**

Unless otherwise stated by Polycontrols, products will be billed and payable as specified in quotation. Installation or implementation services, if any, will be billed upon the earlier of (a) completion of the services, or (b) 60 days after delivery of the products. If manufacture or shipment is delayed by Purchaser, payment, based on the contract price and the percentage of completion, will become immediately due. Products held for Purchaser will be at its risk and expense. Interest at the rate of eighteen percent (18%) per year, compounded monthly, will accrue on amounts unpaid more than one (1) month after they become due. If, after default, this contract is placed with an attorney for collection, Purchaser will pay Polycontrols' reasonable attorney's fees.

#### **7. TAXES**

In addition to the price quoted by Polycontrols (or agreed in writing), Purchaser will pay any present or future sales, goods and services, excise, value-added, or other similar taxes resulting from Polycontrols' supply of any products or services, unless Purchaser furnishes Polycontrols with a tax-exemption certificate acceptable to the taxing authorities.

#### **8. CONFIDENTIALITY**

The contents of this Purchase Order and Terms and Conditions, as well as the existence of the Purchase Order itself, and all related commercial and technical information of either party shall be kept secret and confidential by both parties and will not be disclosed to any third party or utilized in any way otherwise than in connection with this Purchase Order.

## 9. EXPORT LAW

If the products to be purchased by Purchaser include any goods that are subject to controlled or restricted status under Canadian or U.S. law, Purchaser declares that it is authorized, under all applicable legislation, to examine, possess or transfer such goods.

Purchaser shall not use, distribute, transfer or transmit any products, software or technical information (even if incorporated into other products) provided under this Agreement except in compliance with U.S. and Canadian laws and regulations, including laws and regulations regarding the possession, use and exportation of controlled goods or merchandises (the “**Export Laws**”). Purchaser shall not, directly or indirectly, export or re-export the products to any country which is in the then current list of prohibited countries specified in the applicable Export Laws and shall not allow any person not authorized under applicable Export Laws to examine, possess or transfer the products. The obligations stated above in this clause will survive the expiration or earlier termination of this Agreement.

## 10. GENERAL

- 10.1 Assignment: Any delegation or assignment by Purchaser of its duties or rights must have Polycontrols' prior written consent.
- 10.2 Severability: The invalidity, in whole or in part, of any Article or paragraph will not affect the validity of the remainder of such Article or paragraph.
- 10.3 Headings: Headings are for convenience only and shall have no interpretative value.
- 10.4 Governing Law: Any and all matters of dispute between the parties to this Agreement, whether arising from the Agreement itself or from alleged extra-contractual dealings, interactions, or facts prior to or subsequent to the formation of the Agreement, including, without limitation, fraud, misrepresentation, negligence, or any other alleged tort or violation of the contract, shall be governed by, construed, and enforced in accordance with the laws of the Province of Quebec, regardless of the legal theory upon which such matter is asserted. The parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
- 10.5 Sole Agreement: These standard terms and conditions of sale and any attachments will be the sole terms and conditions applicable to any supply by Polycontrols to Purchaser. Unless expressly accepted in writing by an executive officer of Polycontrols, Polycontrols will not be bound by (i) conditions in any document emanating from Purchaser, (ii) representations, understandings, or trade usage not expressly set forth in writing by Polycontrols, or (iii) amendments, waivers or other changes in the parties respective obligations.
- 10.6 Language: The parties confirm that they have required that these standard terms and conditions and related documents be drafted in English. Les parties confirment qu'elles ont exigé que ces conditions de vente et les documents qui s'y rattachent soient rédigés en anglais.