



## STANDARD TERMS & CONDITIONS OF SALE

1. **ACCEPTANCE:** (a) No order for Polychem Systems Inc, division of Brentwood Industries, Inc. ("Polychem") shall be binding upon Polychem until accepted in a written acknowledgement by Polychem. All orders by Purchaser shall be subject to credit screening and approval and also subject to these Standard Terms and Conditions of Sale and Security Agreement ("Terms and Conditions"). Polychem's acceptance shall be conditioned on Purchaser's assent to these complete and unaltered Terms and Conditions. Purchaser's assent shall be deemed given unless Purchaser notifies Polychem in writing to the contrary within five (5) days after Polychem provided to Purchaser written acknowledgement of such order, and returns any goods, products, or materials (collectively the "Product") shipped by Polychem unopened, in the original packaging within five (5) days of receipt.

(b) No provision of Polychem's Terms and Conditions shall be subject to change in any manner except as agreed to in writing by a duly authorized officer of Polychem. These Terms and Conditions supersede any and all other agreements or understandings, whether written or oral, that may exist between the parties.

(c) These Terms and Conditions shall supersede all terms and conditions contained in or attached to orders submitted on Purchaser's forms, where such forms contain conflicting or inconsistent statements, clauses or conditions. Any such statements, clauses or conditions contained in any forms of the Purchaser shall not be effective or binding upon Polychem and the rights and liabilities of Polychem shall be determined solely by these Terms and Conditions. By accepting and consummating any such order, Polychem shall not be deemed to have in any way diminished its rights, remedies, liabilities or obligations as fixed by these Terms and Conditions. If any provision of these Terms and Conditions is declared invalid or unenforceable, then such provision shall be severed from and shall not affect the remainder of these Terms and Conditions.

2. **PRICING & PAYMENT:** The Product ordered shall be invoiced at the price in effect at the time of shipment, unless otherwise agreed to in writing by Polychem. The purchase price is due in full within thirty (30) days after the invoice date, unless (a) otherwise agreed in writing by Polychem or (b) Polychem's invoice contains different payment terms. Past due amounts shall bear an interest rate of one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less. Purchaser shall bear all collection costs including, without limitation, reasonable attorneys' fees and litigation costs. Any invoice disputes not raised within ten (10) days from the invoice date are waived. Clerical errors on invoices may be corrected by Polychem at any time.

3. **PURCHASE MONEY SECURITY INTEREST:** (a) To secure payment and performance of all liabilities, duties and obligations of Purchaser to Polychem including invoices issued by Polychem to Purchaser, interest, fees, charges, and any and all other amounts and obligations of Purchaser to Polychem of any nature that may be due and payable from Purchaser to Polychem from time to time (collectively, the "Obligations"), Purchaser hereby grants to creditor a purchase-money security interest (as that term is defined in Section 9-103(b) of Article 9 of the U.C.C. as enacted in Pennsylvania [the "UCC"]) in (i) all Product manufactured by or sold by



## STANDARD TERMS & CONDITIONS OF SALE

Polychem, whenever and by whomever sold or delivered, directly or indirectly, to or for the benefit of Purchaser, wherever located, now owned and hereafter acquired; (ii) all replacement and substituted Product, including repossessions and returns; (iii) all proceeds from the sale or other disposition of the foregoing; and (iv) all existing subsequently arising accounts and accounts receivable and supporting obligations, which may from time to time hereafter come into existence during the term of this Agreement (collectively the "Collateral"). Polychem's security interest attaches to all Product that Purchaser buys from Polychem upon receipt of the Product and/or invoice and to all subsequent and outstanding obligations between Polychem and Purchaser.

(b) The security interest granted hereunder shall constitute at all times a valid first priority purchase money security interest vested in Polychem in and upon all of the Collateral pursuant to Section 9-103(b) of the UCC, and shall not become subordinate or junior to the security interests, liens, encumbrances or claims of any other person, firm or corporation, including the United States or any department, agency or instrumentality thereof, or any state, county or local governmental agency. Purchaser hereby authorizes Polychem to file such UCC financing statements without Purchaser's signature and to generally take such other actions as are reasonably required to perfect Polychem's purchase money security interest in the Collateral for purposes of the UCC. Polychem may, as Purchaser's attorney in fact, execute, deliver on behalf of Purchaser and file any such financing statements or other documents or instruments as may be necessary to protect, perfect or maintain the perfection of the security interest granted herein. This appointment is coupled with an interest, and is irrevocable so long as any Obligations remain outstanding hereunder. Purchaser will maintain the Collateral, to the extent applicable, in its original condition but for ordinary wear and tear, and will insure the Collateral against all expected risks.

4. **DEFAULT:** (a) Any of the following shall constitute a Purchaser default hereunder: (i) failure of Purchaser to pay any Obligations which become due according to the terms of any invoices, or any other amount payable to Polychem when due; (ii) failure of Purchaser to observe or perform any of Purchaser's Obligations herein; (iii) failure of Purchaser to pay its debts as they come due; (iv) failure to pay or default by Purchaser on any bank loan; (v) Purchaser's credit or financial condition has become impaired; or (vi) any bankruptcy, insolvency, or assignment by Purchaser for the benefit of creditors. Following a default as defined hereunder, Polychem may (i) declare all Obligations due and payable, (ii) require Purchaser to assemble the Collateral and make it available to allow Polychem to take possession of the Collateral, (iii) repossess and remove any of the Collateral from Purchaser with or without notice, (iv) exercise any and all other rights and remedies of a secured party under Article 9 of the UCC, and (v) suspend any further Product deliveries until Purchaser pays its Obligations in full.

(b) If Polychem believes that the prospect of payment or performance of any obligations of Purchaser is materially impaired, Polychem may make a demand for adequate assurances of performance by Purchaser and Purchaser must provide such within five (5) days. As part of its demand for adequate assurance, Polychem may demand a credit report from one or more credit agencies. Pending such assurances, Polychem may make sales and deliveries to Purchaser on a cash-on-demand (C.O.D.) basis.



## STANDARD TERMS & CONDITIONS OF SALE

5. **TAXES:** All government charges upon the production, shipment or sale of the Product, including, without limitation, use, occupation, export and import taxes, and any other impositions by any government whatever, direct or indirect, including those required to be collected by Polychem, shall be paid by Purchaser or, in lieu thereof, Purchaser shall furnish Polychem with an exemption certificate acceptable to the taxing authority. Polychem reserves and Purchaser disclaims all rights to drawback of duties paid on materials used in the manufacture of the Product. Purchaser shall supply Polychem with proof of exportation and all other documents necessary and otherwise cooperate to obtain payment thereof.
6. **SHIPMENT & TITLE:** Unless otherwise agreed to by Polychem, Purchaser is responsible for all shipment costs and all shipments are EX WORKS. Receipt of written approval of submittal drawings is a condition precedent to purchasing and shipping of project material. Purchaser is required to take delivery of all materials in accordance with the timeline outlined in Polychem's proposal for the project at hand, unless otherwise agreed upon by Polychem in writing. Polychem will accept requests to expedite shipments but will not guarantee delivery of said project earlier than time period as per Polychem's proposal. Purchaser has the right to request to delay shipment as specified herein. At request to delay shipment, the purchaser is granted a 30 day grace period from originally scheduled ship date. After 30 day grace period, Polychem maintains the right to invoice, in whole, for all material. At time of invoicing, title shall transfer from Polychem to Purchaser. Material will be stored in an insured warehouse and a monthly storage fee of 1.5% of the purchase order value shall be invoiced, beginning at time of invoicing for materials and title transfer and accruing on the 1<sup>st</sup> of each month thereafter. Purchaser shall give Polychem two weeks notice prior to requested ship date of stored materials. Polychem is only responsible for damages and risk of loss of material up to point of title transfer, which occurs upon receipt of materials at shipping destination, except in an invoice and store situation. It is the responsibility of the purchaser to report all visual damages of materials to Polychem within 5 business days of delivery.
7. **CHANGES & CANCELLATIONS:** Any cancellation or change request to a purchase order out of convenience or otherwise must be made in writing to Polychem and is invalid unless acknowledged and approved in writing by Polychem. In result of cancellation of purchase order, in whole or in part, Purchaser shall pay Polychem for all engineering services and materials purchased, manufactured, stored and/or shipped for the project, in addition to anticipated profit and a reasonable overhead, but not to exceed the value of the purchase order.
8. **RETURNS:** Product manufactured according to design or specifications of the Purchaser (collectively the "Specifications") cannot be returned for credit. Stock items may be returned to Polychem for credit upon approval by Polychem and in compliance with Polychem's RMA procedure. Contact should be made with the Customer Service Department to access required policy on return of materials to Polychem. Conditions that must be met to return material to Polychem include, but are not limited to, the following: product must be returned in good condition and in original packaging with complete identification and supporting documentation detailing any claimed defect, shipping and freight charges are the responsibility of the Purchaser,



## STANDARD TERMS & CONDITIONS OF SALE

returned item(s) are subject to a restocking fee at the discretion of Polychem, and items must be appropriately and securely packed and adequately insured to reasonably protect items from damage in transit back to Polychem's warehouse. If any deviations are made from the prescribed procedure for return of items, Polychem reserves the right to reject items that have been returned from the Purchaser and the Purchaser will bear all resulting charges of freight, demurrage and the like, unless an exception has been made in writing by Polychem. Polychem is not liable for crediting parts that are lost during transit or do not meet requirements to be reused and restocked and Purchaser has no further recourse in recovery of invoiced amount for these items, in this instance.

9. **INSPECTION & CLAIMS:** Immediately upon receipt of the Product, Purchaser must inspect the Product. All claims, including claims for an allegedly defective Product, must be made to Polychem in writing within the sooner of thirty (30) days after delivery or fifteen (15) days after Purchaser learns of facts upon which such claim is based. All claims not made in writing and received within the time period specified above shall be deemed waived. Purchaser expressly hereby assumes all liability for all damages and injury occurring before and after said time period if notice is not made within the required time frame. Any lawsuit or legal action whatsoever by Purchaser against Polychem relating to any Product purchased hereunder must be filed within one (1) year following the date of delivery of such Product, notwithstanding any statute of limitations or similar law.

10. **WARRANTY:** Polychem warrants that all equipment & materials provided by Polychem on this project to be free of defects in workmanship and materials for a period of eighteen (18) months from shipment date or twelve (12) months from certification by an authorized Polychem representative, whichever shall occur first.

This warranty is based on operation and maintenance of the materials in accordance with good industry standards as well as correct installation, use, and operating practices consistent with the design criteria and in accordance with Polychem approved Submittal.

Polychem shall not be responsible for damage caused by: 1. Abuse or neglect; 2. Acts of God; or 3. Abnormal contaminants which are determined to be detrimental to the material.

The terms of this warranty are the sole and exclusive obligations of Polychem, and all other warranties, express or implied, are hereby disclaimed. Polychem shall not be liable for any incidental, consequential or other special damages, or any loss, cost or expense other than that stated specifically herein.

11. **LIMITATION ON LIABILITY:** regardless of the form of action, Polychem's liability relating to the product or the manufacture, shipping, sale or use of the product shall not exceed the price paid by purchaser for the specific product giving rise to the cause of action. Polychem, its affiliates, and their officers, directors, employees and agents shall not be liable for any indirect, special, incidental, exemplary, punitive or consequential damages, including, without



## STANDARD TERMS & CONDITIONS OF SALE

limitation, loss of profits, loss of use, downtime, failure to detect any flaw in any subject matter of any test, loss of goodwill, business interruption, delay in performance, or lost opportunities, regardless of the form of action, whether in contract, tort (including negligence), strict product liability or otherwise in connection with the supply or subsequent use or handling of the product, even if Polychem has been advised of the possibility of such damages. Polychem, its affiliates, and their officers, directors, employees or agents shall not be liable for property damage and/or third party claims covered by insurance provided to purchaser, its assigns, and each successor in interest to the product.

12. **INSURANCE AND INDEMNIFICATION:** Purchaser shall at all times maintain a comprehensive program of risk management and adequate broad form liability insurance in connection with Purchaser's business, operations and activities. Purchaser shall at all times indemnify, defend and hold harmless Polychem, its officers, directors, employees, agents, servants and representatives from and against any and all damages, liabilities, losses, claims, suits, penalties, fines, costs and expenses, including attorneys' fees, (collectively "Claims") arising directly or indirectly out of or in connection with any (a) infringement of any patent, trademark or other intellectual property right arising from compliance by Polychem with Purchaser's Specifications; (b) use, operation or possession of the Polychem Product, unless the Claim arises solely from the gross negligence or willful misconduct of Polychem; or (c) breach by Purchaser of any provision of any agreement with or obligation to Polychem.

13. **FORCE MAJEURE:** Polychem shall not be liable for any failures or delays due to acts beyond Polychem's control including, without limitation, acts of God, war (declared or undeclared), embargoes, labor disputes, strikes, fires, floods, earthquakes, accidents, terrorist acts, government mandates, restrictions, or other actions, equipment failure, shortages or inability to obtain components or subcontracted work or raw materials, damage by the elements, transportation difficulties, production delays or unusually severe weather conditions.

14. **CONFIDENTIAL INFORMATION:** (a) All information and proprietary materials provided or developed in whole or in part by Polychem are confidential ("Confidential Information"), whether or not identified as such. Purchaser shall hold all Confidential Information in confidence and shall disclose it only to its employees who have a need to know, and shall not use it to the detriment of Polychem. Purchaser shall not, and shall not attempt to, analyze, disassemble, or reverse engineer any Polychem Product. "Confidential Information" does not include information which: (i) is or becomes available to the public generally (other than as a result of a disclosure by the Purchaser in violation of these Terms and Conditions); (ii) is subject to public disclosure under any federal, state, or local law, ordinance or regulation; (iii) becomes available to Purchaser on a non-confidential basis from a source other than Polychem, its affiliates, and their officers and directors, employees, agents, or representative, or any other person bound by a confidentiality agreement with or has contractual, legal or fiduciary obligation of confidentiality to Polychem, its affiliates, their officers and directors, employees, agents or representatives; (iv) was known by or was available to Purchaser prior to or at the time Polychem disclosed it.



## STANDARD TERMS & CONDITIONS OF SALE

(b) Nothing in these Terms and Conditions shall be deemed to grant a license directly or by implication, estoppel, or otherwise under any patent, patent application or other intellectual property related to any Confidential Information disclosed or developed pursuant to these Terms and Conditions. These Terms and Conditions shall not be construed as a teaming, joint venture, partnership, or other such arrangement; rather, the parties hereto expressly agree that these Terms and Conditions are for the purposes of protecting Polychem's Confidential Information and intellectual property and defining the ownership of, and use rights in, intellectual property and technical information.

15. GOVERNING LAW & JURISDICTION: These Terms and Conditions shall be construed under the laws of the Commonwealth of Pennsylvania without reference to conflicts of law principles. The parties hereby agree that disputes hereunder shall be subject to the exclusive jurisdiction and venue of the courts of Berks County, Pennsylvania, in either the Pennsylvania Court of Common Pleas or the United States District Court for the Eastern District of Pennsylvania. The parties hereby waive any right to jury trial.

16. EXPORT CONTROL: Purchaser will not use, distribute, transfer or transmit any Product, components or technical information (even if incorporated into other products) provided in connection with this transaction except in compliance with U.S. export laws and regulations (the "Export Laws"). Purchaser will not, directly or indirectly, export or re-export the following items to any country which is in the then current list of prohibited countries specified in any applicable Export Laws: (a) the Product, components or technical data disclosed or provided to Purchaser by Polychem; or (b) any improvements or variations of such Product, components or technical data. Purchaser agrees to promptly inform Polychem in writing of any written authorization issued by the U.S. Department of Commerce office of export licensing to export or re-export any such items referenced in (a) or (b). The obligations stated above in this clause will survive the expiration, cancellation or termination of this transaction or any other related agreement.

17. TRANSLATION: This document may be translated into one or more languages; however, the English translation shall be the official version and shall prevail over all other translations. All dollar amounts are United States currency unless specified otherwise. Purchaser shall abide by the United States Foreign Corrupt Practices Act of 1997, as amended.

18. ASSIGNMENT: Purchaser shall not assign or delegate its obligations hereunder without Polychem's written consent, and any attempted assignment or delegation without such written consent shall be void. These Terms and Conditions are binding on both parties, their successors and permitted assigns.

19. WAIVER: The failure of Polychem to insist in any one or more instances, upon the performance of any the Terms or Conditions as set forth herein or the failure of Polychem to exercise any of its rights hereunder shall not be construed as a waiver or relinquishment of any such terms, conditions or rights thereunder and shall not effect Polychem's right to insist on strict



## STANDARD TERMS & CONDITIONS OF SALE

performance and compliance with regard to any future performance of these Terms and Conditions.

20. **SEVERABILITY**: If any provision of these Terms and Conditions or any order subject to these Terms and Conditions are found by a court of competent jurisdiction to be prohibited or unenforceable, it shall be ineffective only to the extent of such provision is prohibited or unenforceable and shall not invalidate the balance of such provision or the other provisions of these Terms and Conditions or any order subject to these Terms and Conditions.

21. **AUTHORITY**: The individual assenting to or executing any documents or orders, whether as a hard copy or online, on behalf of Purchaser acknowledges, represents and warrants that he or she has read and understands these Terms and Conditions and has been duly authorized by the Purchaser to execute such on behalf of the Purchaser and bind the Purchaser to these Terms and Conditions.