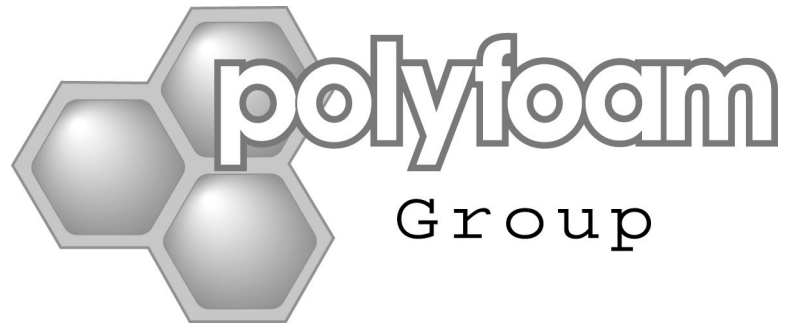


Polyfoam Australia Pty Ltd (ABN 25 007 207 678)
32 Dandenong Street, DANDENONG STH VIC 3175
PH: 03 9794 8320 FX: 03 9791 1222

Polyfoam (Sydney) Pty Ltd (ABN 64 099 061 444)
Factory 3B MFive, Industry Park
1 Moorebank Avenue, MOOREBANK NSW 2170
PH: 02 9734 8320 FX: 02 9734 9722

Polyfoam (Brisbane) Pty Ltd (ABN 64 608 233 459)
43 Proprietary Street, TINGALPA QLD 4173
PH: 07 3390 8955 FX: 07 3390 8956



TERMS & CONDITIONS OF SALE

1. INTERPRETATION

- 1.1 In these terms and conditions of sale:
- "we" or "us" or "the Company" means Polyfoam Australia Pty Ltd (ABN 25 007 207 678) and any Related Body Corporate as defined in Section 9 of the Corporations Act;
 - "you" means the Customer stated in the Application and any other person offering to contract with us on these terms and conditions or, where such person is acting in the course of employment, such person's employer;
 - "Goods" means goods supplied by us to you from time to time;
 - "Agreement" means the agreement set out in Section A for purchasing Goods on credit (and incorporates those terms and conditions as amended from time to time).

2. SUPPLY

- 2.1 You will purchase and we will supply goods to you on the following terms and conditions. However, we are not obliged to supply goods to you when requested to do so.
- 2.2 All additions and amendments to the terms and conditions must be in writing signed by us.

3. QUOTATIONS AND ORDERS

- 3.1 Any quotation or price list given by us to you does not constitute an offer to sell Goods to you. We reserve the right to alter the quote or price list without notice to you.
- 3.2 By ordering Goods, you are making a binding offer to purchase those Goods. Our manufacture of Goods or delivery of Goods pursuant to your order shall be deemed acceptance of your offer to purchase.
- 3.3 We reserve the right to modify the design of Goods, and cease to manufacture or supply Goods without notice.

4. PRICES, GST, FREIGHT AND INSURANCE

- 4.1 Unless otherwise expressly agreed in writing, the price of the Goods shall be the price specified in our invoice plus the amount which we are required to pay on account of any charges which may be levied by any government (State or Federal).
- 4.2 You are responsible for all freight costs. If you nominate a carrier this must be advised to us in writing in the absence of which we will choose a carrier.

5. PAYMENT

- 5.1 You agree that until we confirm that credit terms have been granted to you, all Goods are supplied on a cash before delivery basis.
- 5.2 Unless otherwise agreed, all amounts owing to the Company on account of Goods supplied to you on credit are due and payable by the last working day of the month following a despatch of invoices to you.
- 5.3 You may pay by Visa, Mastercard or Bankcard. However, we reserve the right to charge a credit card handling fee for effecting payment by this method at the rate advised by us from time to time.
- 5.4 You agree that if you fail to pay in accordance with this clause 5, we may:
- charge a late payment fee of two percent (2%) plus GST on all amounts paid by credit card.

- charge interest on debts at four percent (4%) above the rate prescribed pursuant to the Penalty Interest Rates Act (Vic) from time to time;
- charge a dishonour handling fee at the rate advised by us from time to time, where we are unable to obtain payment from your credit card provider or a cheque is not paid by your bank;
- recover all collection costs and expenses incurred in collecting overdue accounts;
- withhold supply;
- sue for the money owing on the Goods.

- 5.5 Any forbearance by us in charging any of the fees set out in clause 5 does not constitute a waiver of our right to do so in the future.

6. RISK IN THE GOODS

Subject to clause 7.2, the risk of loss or damage to the Goods passes to you on the date and at the time that the Goods are removed from the Company's warehouse for the purpose of delivery to you.

7. DELIVERY

- 7.1 We reserve the right to delivery Goods by instalments. Any delivery times notified to you are estimates only.
- 7.2 If we do not receive delivery instructions sufficient to enable us to despatch the Goods within fourteen (14) days of you being notified that the Goods are ready for delivery, you shall from the fifteenth day after notification;
- be deemed to have taken delivery of the goods;
 - be liable for storage charges, payable monthly on demand;
 - assume risk in the goods.
- 7.3 Containers (includes but will not be limited to, stillages, formers and pallets) in or on which goods are delivered and for which a deposit charge is made, remain our property. On the containers return in good order the deposit will be returned to you. We reserve the right to deduct monies from your deposit to compensate us for any damage to the container(s).

8. CLAIMS AND LIABILITIES

- 8.1 Any claim by you as to breach of these terms and conditions must be made to us in writing within fourteen (14) days of delivery, for which time is of the essence.
- 8.2 You have the benefit of conditions and warranties implied by the Trade Practices Act 1974 ("the Act") and nothing in these terms and conditions is intended to exclude, restrict or modify any statutory obligation we have if that cannot lawfully be effected. References to specific provisions of and circumstances arising under the Act are intended to include reference to equivalent or similar provisions of and circumstances arising under any State or Territory enactment.
- 8.3 Should we be liable for breach of a condition or warranty implied by Division 2 of Part of the Act (not being a condition or warranty implied by Section 69 of the Act), our liability for the breach will, subject to Section 68A(2) of the Act, be limited to one of the following as determined by us:
- the replacement or repair of the Goods or the supply of equivalent Goods; or
 - the payment of the cost of replacing or repairing the Goods or of acquiring equivalent Goods.

- 8.4 Subject to any legislation to the contrary;
- (a) to the full extent permitted by law, all express and implied terms, other than the ones set out in these terms and conditions are excluded;
 - (b) to the full extent permitted by law, we are not liable for any injury to or death of any person or loss (including loss of profits or consequential loss) or damage to property arising from any act or omission of you, us or any other person (including any loss or damage arising from our negligence);
 - (c) you indemnify us against:
 - (i) any claims made against us by any third party in respect of any loss, damage, death or injury as is set out in 8.4 (b); and
 - (ii) all losses and expenses which we may suffer or incur due to your failure to observe fully your obligations under the Agreement incorporating the terms of the application; and
 - (iii) we make no representation, warranty or undertaking about the compliance of the Goods with any statutory requirements relating to the marketing of Goods. You acknowledge that you alone are responsible for compliance of the Goods with this legislation.
- 8.5 We will not be responsible for non-delivery or delay in delivery of any goods due to any cause beyond our reasonable control, notwithstanding that the cause may be operative at the time of entering the contract of sale. Where such non-delivery or delay occurs, we may deliver the goods not delivered or delayed at any subsequent time and you must accept and pay for them.
- 8.6 Where we give a date of intended delivery, this will be subject to the Goods ordered being available and our being able to make the delivery on that date.
- 9. RETURNED GOODS**
- 9.1 CREDIT
All claims for credit must be supported by:
- (a) carriers consignment note or similar receipt of delivery; and
 - (b) our relevant invoice number.
- 9.2 UNACCEPTABLE RETURNS
Without in any way limiting our discretion to refuse to accept the return of any goods, the following goods will not be returnable:
- (a) any goods that have been held by you for more than fourteen (14) days; or
 - (b) any goods which are not in original condition; or
 - (c) any goods that are manufactured as made to order (mto) items unless faulty – any manufacturing surcharge is non refundable.
- 9.3 FAULTY GOODS
We will recognise claims for faulty goods that are lodged within seven (7) days of you receiving the goods.
- 9.4 CARRIER
Goods must be returned by the carrier specified by us.
- 10. RETENTION OF TITLE**
- 10.1 In relation to goods supplied to you:
- (a) property in those goods shall remain with us until the later of:
 - (i) payment in full for the goods; and
 - (ii) payment in full of all other moneys owing or unpaid by you to us including moneys in respect of goods previously or subsequently supplied to you by us;
 - (b) the relationship between you and us shall be fiduciary;
 - (c) you will hold those goods as bailee for us;
 - (d) where you sell those goods, you have no power to commit us to any contract or liability, but as between you and us you will sell as fiduciary agent;
 - (e) we will be given full ownership of any new goods or objects formed if you transform our goods into other products or affix those goods to other objects.
- 10.2 You agree that our employees or agents may enter upon any of your premises (doing all that is necessary to gain access) where it is reasonably thought goods supplied under this agreement might be stored for the purpose of examining or recovering the goods.
- 11. SET OFF**
You agree that:
- 11.1 we may set-off any credit amount that we owe to you against any debit due by you to us;
 - 11.2 you are not entitled to withhold payment of any money in respect of any set off or claim you might have against us.
- 12. ACTS OF DEFAULT**
If you:
- 12.1 fail to pay for any Goods on the due date; or
 - 12.2 otherwise breach this Agreement and fail to rectify such breach within seven (7) days notice; or
 - 12.3 you cancel delivery of the Goods; or
 - 12.4 commit an act of bankruptcy; or
 - 12.5 allow a trustee in bankruptcy or receiver and manager to be appointed to you or any of your property; or
 - 12.6 allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against your property; or
 - 12.7 are a company and;
 - (a) proceedings are commenced to wind you up or any of your subsidiaries; or
 - (b) a controller, receiver, administrator, liquidator or similar officer is appointed to you or in respect of any part of your property, then we and our agents may enter upon your premises (doing all that is necessary to gain access) where Goods supplied under this contract are situated at anytime and retake possession of any or all of the Goods we have supplied to you; and:
 - 12.8 we reserve the right to resell the Goods concerned; and
 - 12.9 terminate the agreement.
- 13. IF WE CONDUCT A RE-SALE PURSUANT TO CLAUSE 12:**
- 13.1 we may do so at any premises or place; and
 - 13.2 the re-sale may, at our discretion, be by public or private sale; and
 - 13.3 we may recover from you as liquidated damages for our loss of bargain, the difference between the re-sale price and the unpaid price (together with any incidental damages, such as holding expenses and charges but less expenses saved as a result of your breach)). (If applicable Goods cannot be sold within three (3) months of the first attempted sale, those Goods will be deemed to have a re-sale price of nil).
- 14. GOVERNING LAW**
This contract is governed by the laws of Victoria. You and the company irrevocably submit to the exclusive jurisdiction of the Victorian courts and federal court sitting in Victoria.
- 15. WHOLE AGREEMENT**
These terms and conditions (which form part of the Application for Credit) embody the whole agreement between the parties and, subject to the express terms contained in any written order or written acceptance thereof, all previous dealings, representations and arrangements are hereby excluded and cancelled.
- 16. CESSATION OF SUPPLY**
Our agreement to continue to deliver or sell goods to you is always conditional upon our being satisfied of your ability to pay and comply with these terms and conditions. If we ceased to be so satisfied we may suspend and/or terminate deliveries and shall not be liable in any way for any claim, damage, expense or cost suffered by you.
- 17. SEVERANCE**
Should any part of these terms and conditions be held to be void or unlawful, these terms and conditions will be read and enforced as if the void or unlawful provisions have been deleted.