

**Polarity, Inc.**

## **CONDITIONS OF PURCHASE FOR GOODS AND SERVICES 1. DEFINITIONS**

In these Conditions: "Polarity" means Polarity, Inc. and any company these companies are controlled by or under common control with; "the Goods" and "Services" means respectively the goods and the services or any of them described in the Order; "the Order" means the order, including any written amendment thereto, for the delivery of Goods and/or the provision of Services as set out overleaf together with these Conditions; "the Price" means the price of the Goods and/or Services as set out in the Order; and

"The Supplier" means the person, firm or company named as such in the Order as responsible for supplying the Goods and/or Services and includes the Supplier's legal representatives, successors and permitted assigns.

## **2. ACCEPTANCE OF ORDER**

The Conditions of this Order become the exclusive binding agreement between the parties. The following constitutes acceptance of the Order by the Supplier on these Conditions: (a) execution and return by the Supplier of the acknowledgement copy of the Order, (b) the Supplier's failure to react to the Order within five (5) days after receipt thereof or (c) the execution or commencement of performance or the commencement of delivery pursuant to the Order. The acceptance of the Order is limited to and conditional upon acceptance by the Supplier of these Conditions. Additional or different terms proposed in the Supplier's acceptance of the Offer are hereby objected and rejected, and shall apply only if and insofar as these have been expressly accepted in writing by Polarity, Inc. Acceptance of products or services delivered under this Order shall not constitute acceptance of Supplier's terms and conditions. These Conditions shall also apply to any orders made by Polarity, Inc. online, over the Internet or by any other electronic means. Polarity, Inc. is not bound by the Order unless the Order has been placed on behalf of Polarity, Inc. by a duly authorized officer. 3. GOODS AND SERVICES It is a condition of the Order that: (a) the Goods meet the specifications referred to in the Order as to quantity, quality and description and other information or instructions specified or made known to the Supplier and all applicable safety standards, and (b) the Services are provided in accordance with the terms of the Order and are executed with professional care, skill and diligence by properly qualified and experienced persons. Any forecast or other information it may provide will not bind Polarity, Inc. to the Supplier, and any expenditures and commitments by the Supplier in anticipation of Polarity, Inc.'s requirements shall be at the Supplier's sole risk and expense. The Supplier shall be able to produce and supply to Polarity, Inc. the Goods ordered by Polarity, Inc. hereunder during a period of at least five (5) years after the last delivery of such Goods. If the Supplier submits any documents for approval by Polarity, Inc., Polarity, Inc.'s approval, however, shall not release the Supplier from any of its obligations under the Order.

## **4. DELIVERY OF GOODS / PROVISION OF SERVICES**

4.1 TIME IS OF THE ESSENCE UNDER THE ORDER. The time and place of delivery of the Goods are as specified in the Order. If Goods are not delivered in accordance with the Order, Polarity, Inc. reserves the right, without liability, in addition to its other rights and remedies, to cancel the entire Order or that part of the Order not delivered. The Supplier shall be responsible for additional expenses to handle and deliver the Goods in an expedited manner or in a manner requested by Polarity, Inc. Early execution of the Order or any part thereof as well as partial deliveries shall not be permitted unless approved in writing by Polarity, Inc. The terms of delivery shall be interpreted in accordance with I 4.2 NCOTERMS 2000. The delivery condition "DDP" (Delivered Duty Paid) shall apply on the delivery of the Goods unless otherwise agreed in writing by Polarity, Inc. Supplier's obligation to deliver shall not have been met until the Goods and the documentation as required per the Order, including any certificates, maintenance instructions and manuals, have been delivered. Unless expressly accepted in the Order by Polarity, Inc., the delivery of Goods and/or provision of Services shall be non-recurrent. If the Goods and/or Services are agreed to be delivered/provided in instalments then the Order is deemed not to be severable. The Supplier shall immediately notify Polarity, Inc. of any delay or potential delay in the execution of the Order, and state the events causing such delay. Upon Polarity, Inc.'s request, Polarity, Inc. shall be given reasonable assistance and access to all relevant records of the Supplier related to the progress made or to be made in the execution of the Order.

## **5. RESCHEDULING, CHANGES AND CANCELLATIONS**

5.1 Polarity, Inc. reserves the right at any time to suspend any delivery or deliveries or any acceptance of delivery covered by these Conditions without any charge and to the extent and for such period as considered necessary by Polarity, Inc. In addition, Polarity, Inc. may make other changes (including in designs and specifications) with respect

to the Order, in whole or in part, by notice to the Supplier. 5.2 Polarity, Inc. may terminate the Order in whole or in part. If Polarity, Inc. so cancels the Order at least thirty (30) days prior to the delivery date (the " Modification Date"), Polarity, Inc. will have no liability to Supplier with respect to the cancellation. If the Order is terminated after the Modification Date, the same will not constitute a default by Polarity, Inc. Polarity, Inc.'s sole liability with respect to the same will be: (a) for standard products, a restocking charge equal to two and a half percent of the purchase price for the good or service cancelled, and (b) for nonstandard product, Polarity, Inc. shall be responsible for the actual, reasonable and substantiated costs incurred for raw materials and work in process plus a reasonable profit on work completed on the terminated portion but no anticipatory profit or cover of fixed costs on the work terminated shall be allowed. No settlement agreed upon may exceed the total Order price as reduced by (1) the amount previously paid, and (2) the Order price of work not terminated. 5.3 Polarity, Inc. shall be liable only for payment if the Supplier strictly complies with the following: a) after receipt of a Notice of Termination, the Supplier shall comply with the instructions by Polarity, Inc. in the Notice of Termination and any subsequent written instructions. b) After termination, the Supplier shall submit a final termination settlement proposal within sixty days of the Notice of Termination. Such settlement proposal shall be in the form and with the certifications prescribed by Polarity, Inc. c) If the Supplier fails to submit the termination settlement proposal within the time provided in paragraph (b) above, the determination of an equitable adjustment by Polarity, Inc. shall be conclusive.

**Page 2 of 3**

## **6. ACCEPTANCE OF GOODS AND SERVICES**

The Goods are subject to inspection and testing by Polarity, Inc. In any case where the Goods (whether or not inspected or tested by Polarity, Inc.) do not comply with the requirements of the Order, Polarity, Inc. has the right to repair such Goods at the expense of the Supplier or to reject such Goods. When rejecting Goods, Polarity, Inc. shall give notice of rejection to the Supplier specifying the reasons for the rejection and shall return the rejected Goods to the Supplier at the Supplier's risk and expense. In that case the Supplier shall, without being granted an extension of the delivery period, replace the rejected Goods with Goods which are in all respects in accordance with the Order. The Services are subject to inspection and evaluation by Polarity, Inc. In any case where the Services (whether or not inspected or evaluated by Polarity, Inc.) do not comply with the requirements of the Order, Polarity, Inc. has the right to reject such Services. If Polarity, Inc. rejects the provision of one or more Services, Polarity, Inc. shall give notice of rejection to the Supplier specifying the reasons for the rejection. In that case the Supplier shall, within a reasonable time, provide Services which are in all respects in accordance with the Order. If the Supplier fails to replace any rejected Goods and/or Services with Goods and/or Services which are in accordance with the Order within a reasonable time as specified by Polarity, Inc., Polarity, Inc. has the right to purchase replacement goods and/or services from another source. Any money paid by Polarity, Inc. to the Supplier in respect of the rejected Goods and/or Services together with any additional expenditure over and above the price reasonably incurred by Polarity, Inc. in obtaining replacement goods or services shall be paid by the Supplier to Polarity, Inc. within thirty (30) days after receipt of the relevant invoice.

## **7. OWNERSHIP, TITLE AND RISK**

The title to and risk pertaining to the Goods passes to Polarity, Inc. on acceptance of the Goods by Polarity, Inc. on delivery of the Goods in accordance with the Order, without prejudice to any right of rejection which may accrue to Polarity, Inc. under these Conditions or otherwise. The Supplier shall transfer to Polarity, Inc. the ownership of all items such as models, dies, moulds, jigs, gauges, tools and drawings specifically acquired or manufactured by the Supplier for the execution of an Order immediately upon such items having been supplied to the Supplier or when the manufacture of such items has been completed by the Supplier. All items including all material and components that have been transferred to the Supplier for the execution of an Order shall remain property of Polarity, Inc. The Supplier shall store such materials and components separately and shall clearly mark these items as the property of Polarity, Inc. Polarity, Inc. is at all times entitled to regain possession of such items. The Supplier shall not use such items on behalf of third parties nor will the Supplier allow third parties to use such items in connection with any purpose other than the execution of an Order. Upon receipt of any of the items referred to above, the Supplier shall check those for damage, defects and fitness for the purpose for which they have been supplied and report its findings to Polarity, Inc. Any damages and defects not reported to Polarity, Inc. immediately after receipt of the item shall be for the Supplier's account.

## **8. INTELLECTUAL PROPERTY**

If the Supplier manufactures Goods and/or provides Services pursuant to specific instructions of Polarity, Inc., the Supplier shall hereby assign and transfer to Polarity, Inc., as a work-for-hire, all rights, title and interest in and to any and all intellectual property rights related to such Goods and/or Services or any other item (software, inventions, drawings, designs, other copyrightable materials, feasibility studies, improvements, developments and discoveries etc.) (collectively, the "Ideas") made, conceived, reduced to practice, or originated as a result of Polarity, Inc. ordering any Goods and/or Services. The Ideas will be the sole property of Polarity, Inc., and the Supplier shall co-operate in the execution of any formalities necessary to effectuate the transfer of the ownership of such intellectual property rights and to enable Polarity, Inc. to obtain, perfect, defend and enforce its rights in and to all such Ideas. If pursuant to the Order any Goods which are protected by one or more intellectual property rights owned by Polarity, Inc. are provided by Polarity, Inc. to the Supplier, the Supplier shall be licensed to use these intellectual property rights for the execution of the concerned Order only and the Supplier shall not in any way by implication or otherwise claim any title or other rights to such intellectual property rights.

## **9. LIMITATION OF LIABILITY**

IN NO EVENT SHALL Polarity, Inc. BE LIABLE FOR ANTICIPATED OR LOST PROFITS OR FOR SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. Polarity, Inc.'s TOTAL LIABILITY ON ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM THIS ORDER OR FROM THE PERFORMANCE OR BREACH THEREOF SHALL IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE GOODS OR THE SERVICES OR UNIT THEREOF WHICH GIVES RISE TO THE CLAIM. Polarity, Inc. EXPLICITLY REJECTS, AND SHALL NOT BE LIABLE FOR ANY CANCELLATION CHARGES, LATE FEES, PENALTIES, OR LIQUIDATED DAMAGES.

## **10. INDEMNITIES**

10.1 The Supplier shall defend, indemnify and hold harmless Polarity, Inc., its agents, employees, officers, subsidiaries, customers, associated companies and assigns from and against any and all claims, demands, damages, losses, liabilities and costs (including settlement costs and attorneys' fees) arising from or with respect to: (a) any violation or alleged violation of any laws, (b) any infringement or alleged infringement of a patent, registered design, copyright, trade mark or other proprietary or intellectual property rights, in connection with the Goods or the Services, (c) any actual or alleged loss, damage to or destruction of property and/or death, illness or injury to any person arising out of any defects or hazards, or the Supplier's performance of, or failure to perform, any of the Supplier's obligations, (d) any other third party claims resulting from the execution of the Order, (e) any damage to or loss of Polarity, Inc.'s property in the Supplier's possession or (f) any act or omission in the performance of or in connection with the obligations undertaken by the Supplier pursuant to the Order. The foregoing obligation will apply regardless of whether the loss in question arises in part from any negligent act or omission of Polarity, Inc., from strict liability of Polarity, Inc., or otherwise. 10.2 The Supplier shall defend the claim utilizing counsel approved by Polarity, Inc. Polarity, Inc. may participate in the defense without relieving the Supplier of its obligations, and the Supplier will at all times consult with and update Polarity, Inc. regarding any claims. The Supplier will not settle any claim without the written consent of Polarity, Inc. In the event of an infringement claim, the Supplier, at its own expense, shall: (a) immediately obtain the right for Polarity, Inc. to continue to sell, use and distribute the Goods or the Services, or (b) modify the Goods or the Services so as to relieve the purported infringement while still complying with all the requirements of the Order.

## **11. INSURANCE**

The Supplier and any subcontractor engaged by the Supplier shall at all times insure and keep himself insured with a reputable insurance company against all insurable liability under the Order and in respect of the Goods and/or the Services including, without limitation, against all the Supplier's liabilities under Condition 10 (Indemnities). Such insurance policy shall name Polarity, Inc. as an additional insured. In the event of Polarity, Inc. sustaining damage as a result of an event insured by the Supplier, Polarity, Inc. shall exclusively be entitled to receive the insurance money for the total amount of the damage suffered. Polarity, Inc. is authorized to inform the insurer on Supplier's behalf that payment must be made to Polarity, Inc. in order to be released from its payment obligation. If Polarity, Inc. considers such to be necessary, the Supplier shall conduct any additional act necessary to assign its right to the insurance money to Polarity, Inc.

## **12. PACKAGING**

The Vendor shall package and label the Goods in a manner suitable for transit and storage at the Vendor's expense in accordance with the Order. All packaging other than returnable packing shall become Polarity, Inc.'s property unless Polarity, Inc. indicates otherwise, in which case the Vendor shall be obliged to dispose of the packaging at its own risk and expense. Consignments which do not meet the requirements of the Order may be refused by Polarity, Inc.

## **13. PRICE**

The Price shall include all royalties, license fees, taxes, excise, duties and costs, both direct and indirect, of supplying the Goods and/or Services except that where the Goods and/or Services are subject to Value Added Tax the amount legally due shall be specified as a separate item of account. If the Order is placed on a "price to be agreed" basis, the Vendor shall obtain Polarity, Inc.'s confirmation of the price to be paid before the Vendor invoices Polarity, Inc. for the Goods and/or Services.

## **14. TERMINATION**

14.1 Notwithstanding anything else to the contrary herein, Polarity, Inc. may terminate the whole or part of the Order at no liability or obligation to the Vendor at any time by written notice to the Vendor if the Vendor: (a) fails to comply with any of the terms and conditions of the Order, (b) passes a resolution for its winding up or a court of competent jurisdiction makes an order for the Vendor's winding up or dissolution or an administration order is made in relation to the Vendor or a receiver is appointed over or an encumbrancer takes possession of or sells an asset of the Vendor or the Vendor makes an arrangement or composition with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally or (c) is acquired by or merged with any third party. For the purpose of sub clauses (a) up to and including (c), "the Vendor" shall include the Vendors, subcontractors and suppliers. If any of the events described in sub clauses (a) up to and including (c) occurs or is about to occur, the Vendor shall notify Polarity, Inc. immediately. If any of these events occur, Polarity, Inc. may, at its discretion and in addition to any of its other rights, return at the Vendor's risk and expense any Goods delivered which are no longer usable and claim a refund of the payments made for these Goods, or, after a written notification to the Vendor, complete the Order itself or engage a third party to do so.

14.3 The rights or remedies of Polarity, Inc. hereunder are not exclusive, and Polarity, Inc. shall be entitled alternatively or cumulatively, subject to the other provisions of this Order, to damages for breach, to an order requiring specific performance or to any other remedy available at law or in equity. Termination of the Order will not affect the rights and obligations that are intended by the parties to survive the termination.

## **15. GOVERNMENT CONTRACTS**

If the Goods and/or the Services are to be used by Polarity, Inc. in the performance of a government contract or subcontract, those clauses of the applicable governmental procurement regulations that are required by federal law to be included in government contracts or subcontracts will be deemed to apply to this Order and will be incorporated by reference.

## **16. WARRANTY**

16.1 The Vendor represents, warrants, and covenants that: (a) the Goods and Services shall be new and free from defects in workmanship, material, manufacture, and design and shall be free and clear of any liens, claims, encumbrances and other restrictions; (b) the Goods and Services shall conform to specifications and other

requirements; (c) the Goods and Services shall be merchantable, fit for a particular purpose and sufficient for the use intended by Polarity, Inc.; (d) the Goods and Services shall comply in all respects with any statutes, laws, rules or regulations and (e) the purchase, sale, use, and license of the Goods and Services shall in no way constitute an infringement or other violation of any copyright, trade secret, trademark, patent or other proprietary right of any third party. The foregoing warranties are in addition to all other warranties, expressed or implied, and shall survive any delivery, inspection, acceptance and payment by Polarity, Inc.. Polarity, Inc.'s approval of the Vendor's material or design shall not relieve the Vendor of the warranties set forth herein. The Vendor's warranty shall be effective for a period of two (2) years from the date of Polarity, Inc.'s final acceptance of the Goods or Services. This warranty shall run to Polarity, Inc.'s customers and users of its products. The warranty period shall be extended by the time the Goods cannot be used due to a defect covered by this warranty. 16.2 If any Good or Service does not conform to the foregoing warranty or the other requirements of this Order (the "non-complying Product"), Polarity, Inc. may, at its sole discretion, (i) require the Vendor to deliver a replacement or repair the Good or provide a conforming Service to Polarity, Inc. no later than ten (10) days after Polarity, Inc.'s notice of non-compliance, (ii) repair or replace the non-complying Product and recover from the Vendor Polarity, Inc.'s reasonable expenses of same or (iii) return such non-complying Product, at the Vendor's expense to the Vendor, and recover from the Vendor the price thereof. The foregoing remedies are in addition to all other remedies at law or in equity or under this Order, for damages or otherwise, and shall not be deemed to be exclusive.

**Page 3 of 3**

**17. ASSIGNMENT AND SUB-CONTRACTING**

The Supplier may not assign or transfer or purport to assign or transfer a right or obligation under the Order without the prior written consent of Polarity, Inc. The Vendor may not subcontract the performance of the whole or any part of the Order without the prior written consent of Polarity, Inc. Such consent shall not release the Vendor from any obligation or liability arising from an Order. The Vendor shall impose these Conditions and the relevant part of the Order upon each third party engaged in the performance of the Order. If a contract between the Vendor and a third party is terminated on the grounds identified in Condition 14.1, the Vendor's rights under such contract shall pass to Polarity, Inc. on Polarity, Inc.'s specific written demand.

**18. PAYMENT**

Polarity, Inc. shall pay only for the Goods and/or Services specified in the Order. Polarity, Inc. may deduct any monies due or becoming due to the Vendor, or any monies due from the Vendor to Polarity, Inc. If the Goods and/or Services have been accepted by Polarity, Inc. in accordance with the Order, Polarity, Inc. shall, unless otherwise shown on the Order, pay the invoiced amount within 60 days from the end of the month during which the invoice relating to the Order is received by Polarity, Inc.. The Vendor shall ensure that the invoice relating to the Order is received by Polarity, Inc. within seven (7) working days from the date of delivery of the Goods and/or provision of the Services and shall state the Order number, and the address to which Goods were delivered and/or Services provided. Any invoice which bears a date which precedes the delivery date or is otherwise incorrect or incomplete shall not be paid.

**19. USE OF DATA AND INFORMATION, CONFIDENTIALITY AND ADVERTISEMENT**

The existence and terms of the Order, any data, specification, drawing, technology or other information or material that are provided by or paid for by Polarity, Inc. with respect to this Order or that is related to the business, technology, prospects, financial condition or concerns other proprietary or confidential information of Polarity, Inc. which the Vendor may obtain from Polarity, Inc. or otherwise discover, or all Vendor information derived from or incorporating any of the foregoing, shall be maintained by the Vendor as confidential using the same degree of care that the Vendor uses to protect its own confidential information (but not less than reasonable care) and shall not be disclosed to third parties or used or copied other than to satisfy the requirements of the Order. The Vendor shall promptly return, when requested by Polarity, Inc., all foregoing items. The Vendor shall not, without the prior written consent of Polarity, Inc., advertise or publish in any way whatsoever the fact that the Vendor has contracted to supply the Goods and/or Services to Polarity, Inc.

**20. APPLICABLE LAWS**

The Vendor shall at all times comply with all federal, state, local and governmental agency laws, ordinances, rules and regulations, including any export control laws and regulations (collectively, the "laws"), relevant or applicable to

the Goods and/or Services to be supplied by the Vendor to Polarity, Inc.. While the Vendor is on Polarity, Inc.'s premises, the Vendor shall comply with Polarity, Inc.'s site policies, procedures and programs relevant to the Vendor's provision of goods and/or services.

## **21. GENERAL**

These Conditions do not derogate from Polarity, Inc.'s statutory and common law rights and are in addition to those rights, and not in substitution for them. A reference to a statutory provision includes a reference to the statutory provision as modified or re-enacted or both from time to time and any subordinate legislation made under the statutory provision. A failure by Polarity, Inc. to exercise or a delay in exercising a right or remedy provided by these Conditions or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by these Conditions or by law by Polarity, Inc. prevents further exercise of the right or remedy or the exercise of another right or remedy. The Vendor and Polarity, Inc. are independent contractors; neither is an agent or employee of the other or has any authority to assume or create any obligation or liability of any kind on behalf of the other. Any provision of the Order that is invalid or unenforceable under applicable laws with respect to a particular party or circumstance will be severed from this Order with respect to such party or circumstances without invalidating the remainder of this Order or the application of such provision to other persons or circumstances.

## **22. GOVERNING LAW AND JURISDICTION**

This Order is governed by and construed in accordance with the laws of the State of California, USA, including the California Commercial Code. To the extent this Order involves the performance of services, such services shall be deemed to be "goods" within the meaning of the California Commercial Code. The provisions of the UN Convention on International Sale of Goods shall be excluded without regard to principles of conflicts of law. Polarity, Inc. and the Vendor irrevocably consent to the exclusive jurisdiction of the courts of the State of California and the federal courts situated in the State of California, in connection with any action brought by either party to enforce the provisions of this Order, to recover damage or other relief for breach or default under this Order, or otherwise arising under or by reason of this Order. The Order constitutes the entire integrated agreement between the Vendor and Polarity, Inc. for the Goods and/or Services purchased hereunder and supersedes all prior written or oral understandings or agreements relating to the same. In the event of conflict between these Conditions and the terms on the face hereof, the terms on the face hereof shall govern. No modification of this Order will be binding on Polarity, Inc. unless set forth in an agreement specifically referencing this Order and signed by an authorized agent of Polarity, Inc.

## **23. COMPLIANCE WITH USA EQUAL OPPORTUNITY LAWS**

By completion of this purchase order, the vendor certifies that it complies with the Equal Opportunity clause required under Executive Order 11246 found at 41 CFR 60-1.4(a); for covered veterans found at 41 CFR 60-300.5 and 41 CFR 60-250.5; and for individuals with disabilities found at 41 CFR 60-741.5.