



POLARITYTE PURCHASE ORDER GENERAL TERMS AND CONDITIONS EFFECTIVE AS OF MAY 1, 2019

1. ACCEPTANCE; NO ADDITIONAL TERMS. For purposes of these PO General Conditions and all related activity, the term “**Supplier**” means the Supplier, Seller, Contractor or Vendor identified on the applicable purchase order or service order (“**PO**”), and the term “**Company**” means the Company identified on the applicable PO. The PO will be deemed accepted by Supplier upon the first of the following to occur: (a) Supplier communicating to Company its acceptance; or (b) any performance by Supplier under the PO. Company reserves the right to revoke or withdraw the PO, in whole or in part, prior to Supplier’s acceptance. By accepting the PO, Supplier agrees to comply with these PO General Conditions and any other attachments noted in the PO and to sell the goods or products (“**Goods**”) or provide the services (“**Services**”) as described herein for the prices indicated in the PO. Acceptance of the PO is expressly limited to these PO General Conditions contained herein (including attachments to the PO). No terms or conditions submitted by either party that are in addition to, different from or inconsistent with those contained herein or in the PO, including, without limitation, Supplier’s standard printed terms and conditions, and any terms and conditions contained in any Supplier quotation, invoice, order acknowledgment, confirmation, acceptance, bill of lading or other instrument, shall be binding upon either party unless specifically and expressly agreed to in a writing signed by duly authorized representatives of both parties.

2. DELIVERY; RISK OF LOSS; INSPECTION. Supplier will supply the Goods or Services to Company at the delivery point identified on the PO (“**Delivery Point**”) and by the date specified therein or, if no date is so specified, within a reasonable time after Supplier receives the PO. Time is of the essence of Supplier’s performance of the PO and more specifically time is of the essence of all delivery dates and completion dates indicated on the PO. Risk of loss of the Goods remains with Supplier, and title will not pass to Company, until the Goods are delivered to and accepted by Company at the Delivery Point. All Goods or Services shall be received subject to Company’s inspection and approval. The Supplier must pack and protect all Goods ready for dispatch so that they are in accordance with all applicable laws, comply with the Company’s policies provided in writing to the Supplier, and comply with first class international standards having regard to methods of transport to the Delivery Point and handling and to the weather conditions whilst in transit to the Delivery Point. Goods that are not in good condition, not packaged in accordance with Company’s policies (if any), damaged by delivery or rejected by Company as not conforming to the PO shall, at Company’s option, be returned to Supplier at Supplier’s risk and cost and may only be replaced by Supplier with Company’s written authorization.

3. PRICES; INVOICES; PAYMENT. Supplier shall supply the Goods and Services for the prices specified in the PO (the “**Price**”). Unless specified otherwise on the PO, Supplier will invoice Company for supplied Goods or Services within 30 days after supply of the same. Invoices should be sent via email to AP@PolarityTE.com for processing by Company. The invoice must itemize the Goods or Services purchased, the Price, and any applicable Indirect Transaction Tax and Freight Costs (if Company has agreed to reimburse Freight Costs under Clause 4). Unless otherwise specified in the PO, Company will make payment of all undisputed amounts due to Supplier within 45 days from the date which the invoice is received by Company. However, if an invoice for Goods is received by Company before delivery of the Goods, the applicable Accumulation Period will be the period in which the Goods are actually delivered to Company. Payment of an invoice (or approval for payment by Company) is not evidence or an admission that the Goods or Services meet the requirements of the PO. Subject to clause 4 below, the prices listed in the PO are inclusive of all costs (including taxes) and expenses of Supplier in providing the Goods or Services to the Delivery Point. Supplier agrees to maintain accounts and records related to its performance under this PO and agrees that Company may audit Supplier with respect to Supplier performance under the PO.

4. TAXES; FREIGHT COSTS AND CUSTOMS DUTIES. Unless otherwise specified in the PO, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Company.

5. WARRANTIES. Supplier represents and warrants that: (a) it has good title to the Goods and the right to transfer title to the Goods free and clear of any lien, hypothec, claim or other encumbrance of any kind; (b) the Goods will conform to any specifications, drawings, designs, samples or standards provided by Company, or by Supplier and approved by Company, and be provided in accordance with applicable laws, and will be free from defects in design, materials and workmanship, said warranty being valid for a period of 18 months from the date title passes to Company as set out in clause 2 hereof; (c) the Goods will be merchantable; (d) the Goods will be fit for their intended purpose; (e) the Services (if any) will conform to any specifications, drawings, designs, samples, or standards provided by Company, or by Supplier and approved by Company, comply with applicable law and be performed expeditiously and consistent with any applicable standards of skill and care, said warranty being valid for a period of 18 months from the date the performance of the Services is completed; and (f) the Goods and Services (if any) and their use, manufacture, sale, lease, distribution, or other commercialization do not and will not infringe, misappropriate or violate the trademarks, service marks, copyrights, patents, patent rights, trade secrets and other intellectual property rights of a third party; and (g) it will comply with all applicable local, state, provincial and federal laws and regulations. There are no warranties which extend beyond those set forth above. The warranties provided herein are given expressly and are in place of all other express or implied warranties.

6. REMEDIES. In addition to remedies otherwise available to Company, if Supplier is in breach of the warranties set out in clause 5(b), clause 5(c), clause 5(d) or clause 5(e) hereof, Supplier will, at the election of Company, and at Supplier’s sole cost (including any relevant transportation and labor costs), either replace or repair (including, if applicable, reinstall) the Good or re-perform the Services to Company’s satisfaction and, when applicable, provide certification that the Goods or Services meet their applicable specifications.

7. COMPLIANCE WITH LAWS, ETC. In supplying the Goods and Services (if any), Supplier will: (a) comply with and ensure that its employees, agents, contractors and subcontractors (“**Personnel**”) comply with all applicable laws and regulations; (b) comply with Company’s written policies, (c) to the extent that Supplier’s Personnel are required to enter onto Company’s site or property, ensure that such Personnel (i) comply with Company’s written health, safety and environmental policies and standards provided to Supplier, and (ii) agree that they enter onto Company’s site or property at their own risk; (d) represent and warrant that it has not violated and will not violate, in connection with the PO, the US Foreign Corrupt Practices Act 1977, Canada’s Corruption of Foreign Public Officials Act, the UK Bribery Act 2010 or any other similar applicable law, or engage in any conduct that would have violated the same had such conduct occurred in the jurisdiction in which such laws apply; and (e) represents and warrants that it will comply with all applicable laws concerning the import, export or re-export of Goods, Services or technology and economic or trade sanctions or restrictive measures, including such laws or measures enacted, administered, imposed or enforced the U.S. Department of the Treasury’s Office of Foreign Assets Control (“**OFAC**”), the U.S. Department of State or the United Nations Security Council.

8. WAIVER AND RELEASE OF LIENS. Upon receipt from Company of amounts invoiced pursuant to clause 3 hereof, Supplier waives and releases all rights to, and at its sole cost shall obtain the prompt removal of, any mechanics’, materialmen’s, or any similar lien, legal hypothec or claim fixed against Company or its assets, which then exist or which may thereafter arise for Goods furnished or Services performed on or before the date of the relevant invoice. All payments owed to Supplier hereunder shall be contingent upon Supplier providing proof of its compliance with this provision to Company upon request.

9. EXCLUSION OF CONSEQUENTIAL LOSS. Neither party will be liable to the other party under the PO for any special, incidental, indirect, consequential, exemplary or punitive damages or losses, loss of profits or revenues, loss of opportunities, loss of goodwill or loss of capital (collectively “**Consequential Loss**”), with the exception of Consequential Loss caused by Supplier’s breach of clause 5(f), above; a party’s criminal acts, fraud or willful misconduct; or, Consequential Loss caused by Supplier for which Supplier is required to be insured under a policy of insurance pursuant to clause 11 hereof.

10. INDEMNIFICATION. Subject to clause 9 hereof, Supplier shall, at its expense, indemnify, defend, and hold harmless Company and its parent and affiliates, and its/their officers, directors, employees and agents, from and against any claims, losses, damages or injuries of any kind or character (including, without limitation, reasonable attorneys' fees) arising out of or related to Supplier's breach of the PO. Supplier shall have no obligation to indemnify pursuant to this clause 10 if and to the extent that the relevant claim or liability is caused by an indemnified party; provided, however, this provision shall not relieve Supplier of any pro rata, proportional, contributory or other allocation of liability or fault imposed by applicable laws. Supplier shall, at its expense, indemnify, defend, and hold harmless Company and its parent and affiliates, and its/their officers, directors, employees and agents from and against any and all claims, losses, damages or injuries of any kind or character (including, without limitation, reasonable attorneys' fees) arising out of or in connection with any claim that Company's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Supplier enter into any settlement without Company's prior written consent.

11. INSURANCE. Without limiting Supplier's obligations or liabilities hereunder, Supplier shall, at its sole expense and for the duration of the PO and all applicable warranty periods, purchase and maintain the following insurance: (a) commercial general liability insurance covering all liabilities for personal injury and property damage arising from the Services/Goods, with limits of liability of \$3,000,000 for each occurrence and in the aggregate; (b) workers' compensation insurance in compliance with the applicable laws of each jurisdiction affected by the Goods/Services; (c) if Supplier will use or provide for use motor vehicles in providing the Goods or performing the Services, automobile (motor vehicle) insurance covering all liabilities for personal injury and property damage arising from the use of such vehicles, with limits of liability of \$2,000,000 for each occurrence and in the aggregate; and (d) if Supplier will provide professional advice or services, professional liability insurance, with limits of liability of \$2,000,000 for each claim and in the aggregate. Supplier shall provide coverage endorsements for each category of required insurance, including, except in the case of workers' compensation insurance and professional liability insurance: (i) an endorsement including Company and its directors, officers, employees, agents and representatives as additional insureds; (ii), an endorsement including a cross liability clause, noting that each of the parties comprising the insured shall be considered as a separate entity, the insurance applies as if a separate policy has been issued to each party, and no "insured-versus-insured" exclusion exists in the policy; and (iii) an endorsement waiving all express or implied rights of subrogation against Company. Supplier shall on request provide to Company or its designee certificates of insurance and endorsements as evidence of the insurance required under the PO. To the extent Supplier uses a subcontractor for any portion of the Goods or Services under this PO, Supplier ensures that such subcontractor will be subject to the same insurance requirements contained in this Clause 11.

12. CONFIDENTIAL INFORMATION. In the course of performing the PO, Supplier or Company may obtain certain information, oral or written (in whatever form), of a confidential nature (or which a party could reasonably conclude should be treated as confidential) of the other party in relation to the business, operations, affairs or activities of the disclosing party or its affiliates ("**Confidential Information**"). The parties agree, unless required by a lawful court order, subpoena, or similar legal request, not to make each other's Confidential Information available in any form to any third party (excluding Company's personnel and affiliates) or to use each other's Confidential Information for any purpose other than the implementation of the PO. In that regard, Supplier expressly acknowledges that, by providing any Confidential Information to Company, or by including any Confidential Information in any Goods supplied to Company, Supplier is expressly authorizing Company to use such Confidential Information for all purposes incident to the transaction covered by the PO, including but not limited to future use, repair, or replacement of any Goods provided under the PO. Each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its personnel in violation of the terms of this PO. If the receiving party is required to disclose the disclosing party's Confidential Information by a lawful court order, subpoena, or similar legal request, the receiving party shall promptly notify the disclosing party in writing of such requirement so that the disclosing party may seek an appropriate protective order. Each party acknowledges that failure to comply with this clause may irreparably harm the business of the other party, and that a breach of one party's obligations under this clause shall entitle the other party to seek immediate injunctive relief, in addition to any other remedies that it may have. Each Supplier entering Company's Site or as otherwise agreed shall be required to sign a separate confidentiality

agreement ("CA") and such signed CA is expressly incorporated herein. In the event of any discrepancy between this PO and the CA, the CA shall control.

13. INTELLECTUAL PROPERTY. If, in performing the PO, Supplier provides to Company any intellectual property, trade secrets, work product, work of authorship, technical materials, drawings, specifications, documentation, reports, recommendations or other writings, information or material embodied in a tangible medium and created or developed for purposes of providing the Goods or Services under the PO ("**Deliverables**"), such Deliverables shall be deemed to be owned by Company, unless Company expressly agrees in writing otherwise. Company shall be deemed the "inventor," "author," and "owner" of all Deliverables under applicable law, and Supplier agrees to assign, and hereby assigns, to Company any and all intellectual property rights in and to such Deliverables. To the extent intellectual property is provided by Supplier under the PO that is not a Deliverable, Supplier grants to Company and its Personnel a perpetual, non-exclusive, transferable, worldwide license to use the intellectual property rights in any Goods for the purposes of Company's business.

14. TERMINATION. Company or Supplier may terminate the PO by written notice to the other party in the event of a breach by the other party that is not cured within 20 days after written notice thereof has been given. Any termination hereunder shall be without prejudice to any claims for damages or other rights of the parties. Company may suspend or terminate the PO, or any portion thereof, upon written notice to Supplier.

15. ESTIMATES AND FORECASTS. If and to the extent that the PO includes any estimates, forecasts, approximations or requirements of or by Company for its purchases of Goods or Services, Company and Supplier agree any such estimates, forecasts, approximations or requirements: (a) are estimates only; (b) are not guaranteed; and (c) do not constitute or create a commitment to purchase any volume or quantity of Goods or Services by Company from Supplier.

16. GOVERNING LAW AND FORUM. The PO is governed by the laws of the state of Utah, excluding its choice or conflict of law rules. Company and Supplier expressly disclaim, and exclude, application to the PO of (a) the United Nations Convention on Contracts for International Sale of Goods, (b) the International Sale of Goods Act, and (c) the International Sale of Goods Contracts Convention Act. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the federal or state, provincial or territorial courts in the state of Utah, County of Salt Lake City and the courts of appeal from them for determining any dispute concerning the PO.

17. MISCELLANEOUS. Supplier shall not assign, delegate or subcontract the PO or any interest herein, including any performance or any amount that may be due hereunder, without Company's prior written consent. Supplier shall remain responsible and liable for all Processing of Personal Data by any assignees, delegates or subcontractors. Any assignment, delegation or subcontract of any obligation of Supplier under this PO, shall not waive any obligation, responsibility or liability of Supplier with respect to the provision of the Goods or Services. The PO, including these PO General Conditions and any attachments noted in the PO, constitutes the entire agreement relating to the subject matter hereof and supersedes all prior and contemporaneous understandings or statements unless expressly contained herein. If there is any conflict between these PO General Conditions and a provision elsewhere in the PO (including attachments to the PO), these PO General Conditions will prevail. No modification or alteration of the terms hereof shall be binding unless such modification or alteration is in writing and signed by both Company and Supplier. Either party's waiver of any breach, or failure to enforce any of the PO General Conditions, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance with every term and condition hereof. If the date for payment of any monies under the PO falls on either a weekend or public holiday, the payment will be due on the following business day. Supplier and Company have agreed that these PO General Conditions be drafted in English. For legal notices only, a copy of all documentation should be sent to Legal@PolarityTE.com.

18. PRIVACY. For the purpose of this clause 18, (a) *Personal Data* means all information relating to any identifiable individual; (b) *Company Personal Data* means Personal Data disclosed to Supplier by Company, or collected by Supplier for the purposes of this PO; (c) *Processing* includes collecting, using, disclosing, storing, transferring, viewing, accessing and all other Personal Data processing; and (d) *Data Privacy Laws* mean laws regulating the Processing of Personal Data. Company and Supplier each warrant that it will comply with its obligations under applicable Data Privacy Laws. Supplier accepts that in relation to all Company Personal Data, it must (a) only Process it for the purposes of supplying Goods or Services under the PO, and as directed by Company; (b) not disclose Company Personal Data to any other person without Company's prior written

consent, unless the disclosure is required by applicable law (and Supplier immediately notifies Company, unless such notification is prohibited by that law) or is to an approved subcontractor; (c) promptly notify Company as soon as it has received a complaint from any individual regarding the way his or her Personal Data has been Processed and cooperate when Company is investigating any claim related to individual complaints; and (d) make available to Company any information necessary to demonstrate compliance with the obligations in this clause. Supplier must put into place and maintain appropriate technical and organisational measures to secure Company Personal Data, having regard to the risk of accidental or unauthorised access, loss, destruction, misuse, modification, disclosure or damage to Personal Data. If Supplier has knowledge of any (i) accidental loss or destruction of, or unauthorised disclosure of or access to Company Personal Data; or (ii) data security breach on any of the systems used in the supply of the Goods or Services, Supplier must (iii) within five days report such incident to Company; (iv) mitigate, to the extent practicable, any harmful effect of such disclosure or access; (v) cooperate with Company in providing any notices to individuals regarding the incident, as directed by Company; and (vi) cooperate with any regulatory investigation into the incident, in consultation with Company. Supplier shall indemnify, defend and hold harmless Company, its respective directors, officers, and employees from and against any and all losses, claims, demands, suits, actions and other liabilities of every kind and character, arising from Supplier's breach of this clause 18.