



DRIVING SURFACE PERFECTION™

TERMS AND CONDITIONS OF SALE

U-POL Australia Pty Ltd A.B.N 12 633 592 819

These terms and conditions are current for trading with the Seller at the time of issue, however the terms and conditions may vary from time to time. The most current terms and conditions are as stated on the Seller's website www.u-pol.com.au.

1. Interpretation

In these conditions, unless the contrary intention appears:

“Account Date” means the 25th day of the month immediately following the month of invoicing.

“Account Keeping Fee” means an amount as advised from time to time charged pursuant to Clause 4(c)(ii) and which for the period commencing 1 July 2018 shall be \$15.00.

“Additional Charges” includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price payable by the Buyer arising out of the sale of Goods.

“Buyer” means the person to or for whom the Goods are to be supplied by the Seller.

“Default” means if the Buyer:

- (a) fails to comply with these Terms and Conditions; or
- (b) ceases to carry on business; or
- (c) stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due; or
- (d) if any cheque or bill of exchange drawn by the Buyer payable to Seller is dishonoured.
- (e) being a natural person, other legal person, or persons commits any act of bankruptcy; or
- (f) being a corporation passes a resolution for winding up or liquidation or enters into a composition or arrangements with creditors or if a receiver or manager is appointed for any property or assets of the Buyer, or becomes liable to be wound up by reason of insolvency or petition.

“Goods” means the any item sold to the Buyer by the Seller and is as described in any invoice issued by the Seller..

“Prescribed Rate” means a rate of interest calculated as a percentage per annum which is three percentage points above the rate charged by the National Bank of Australia Limited for overdrafts of less than \$100,000.00

“Purchase Price” means the list price for the Goods as charged by the Seller at the date of delivery or such other price as may be agreed by the Seller and the Buyer prior to the delivery of the Goods.

“Seller” means U-Pol Australia Pty Ltd ACN 079 058 487.

2. Order for Goods

2.1 An order given to Seller is binding on Seller and the Buyer, if:

- (a) a written acceptance is signed for or on behalf of Seller; or
- (b) the Goods are supplied by Seller in accordance with the order.

2.2 An acceptance of the order by Seller is deemed to be an acceptance of these conditions of sale by Seller and the Buyer and these conditions of sale will override any conditions contained in the Buyer's order. Seller reserves the right to accept a part only of any order by notifying the Buyer in writing or by delivering the Goods to the Buyer. No order is binding on Seller until accepted by it.

Page 1 of 7



DRIVING SURFACE PERFECTION™

- 2.3 An order which has been accepted in whole or in part by Seller cannot be cancelled by the Buyer without obtaining the prior written approval of Seller, which it may refuse in its absolute discretion.

3. Warranties

- 3.1 The Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure. The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 3.2 In accordance with section 64A of the Australian Consumer Law, the liability of the Seller in respect of a breach of a consumer guarantee or any warranty made under these Terms and Conditions for any Goods not of a kind ordinarily acquired for personal, domestic or household use is limited, to the extent permissible by law and at the option of the Seller to:
- (a) replacing the Goods or the supply of equivalent Goods;
 - (b) the repair of the Goods;
 - (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - (d) the payment of the cost of having the Goods repaired.
- 3.3 To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions and all prior discussions and quotations are excluded and the Seller is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Buyer for:
- (a) any increased costs or expenses;
 - (b) any loss of profit, revenue, business, contracts or anticipated savings;
 - (c) any loss or expense resulting from a claim by a third party; or
 - (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Seller's failure to complete or delay in completing the Order to deliver the Goods.
- 3.4 The Buyer indemnifies the Seller and its officers, employees, contractors and agents against any costs, expenses, losses, damages and liability suffered or incurred arising from the Buyer's breach of these Terms and Conditions and any negligent or unlawful act or omission of the Buyer in connection with the Goods.
- 3.5 The Buyer is not entitled to delay or suspend any payment on the ground of any warranty claim with respect to the goods or of any alleged breach of warranty.
- 3.6 The Buyer has no entitlement or right to set off against, or make any deduction from monies owing to the Seller, any sums owed or claimed to be owed the the Buyer by the Seller nor I withhold payment of any invoice because part of that invoice is in dispute.
- 3.7 To the extent permissible by law, any claims to be made against Seller for short delivery of Goods must be lodged with Seller in writing within 7 days of the delivery date.

4. Delivery

- 4.1 The times quoted for delivery are estimates only and the Seller accepts no liability for failure or delay in the delivery of Goods. The Buyer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of the Seller.



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4.2 Risk in the Goods passes to the Buyer at the point the Goods leave the Seller's premises and the Seller accepts no liability for damage to the Goods in transit.

4.3 All Additional Charges are payable by the Buyer in addition to the Purchase Price for the Goods.

5. Spare Parts

5.1 Spare parts for Goods, including spare parts for U-POL's second hand goods, will be made available for one (1) year after the purchase of the Goods by a Buyer.

6. Price and Payment

6.1 The Buyer must pay the Purchase Price and Additional Charges to the Seller.

6.2 If the Buyer is in Default, the Seller may, at its absolute discretion, withhold further deliveries or cancel a contract without prejudice to any of its existing rights.

6.3 All payments are due prior to delivery of the goods, except:

- (a) where the customer is an account customer, in which case payment is due within 30 days after the end of the month in which the invoice is issued; or
- (b) where there is an agreement for a different due date.

6.4 Interest is charged at the rate of 1.5% per month or part of a month from the expiry of that period until the date payment is received by the Seller.

7. Retention of Title and Personal Property Securities Act ("PPSA")

7.1 Ownership, title and property of the Goods remains with Seller until payment in full for the Goods and all sums due and owing by the Buyer to Seller on any account has been made. Until the date of payment:

- (a) the Buyer has the right to sell the Goods in the ordinary course of business;
- (b) until the Goods have been sold by the Buyer in the ordinary course of the Buyer's business, the Buyer holds the Goods as bailee for Seller;
- (c) the Goods are always at the risk of the Buyer.

7.2 The Customer acknowledges and agrees that:

- (a) this agreement constitutes a security agreement for the purposes of the PPSA and creates a registrable security interest under the PPSA in the Goods that are supplied or will be supplied by the Seller to the Buyer;
- (b) the Seller has the right to register a financing statement under the PPSA with respect to the security interest created by this agreement;
- (c) if the Seller registers a security interest under the PPSA, the Seller may exercise any or all remedies afforded to it as a secured party, without prejudice to any other rights or remedies arising out of a breach by the Buyer of any agreement with the Seller; and
- (d) the materials supplied or will be supplied by the Seller to the Buyer are collateral for the purposes of the PPSA.

7.3 The Buyer waives any right the Buyer has under the PPSA to receive notice in relation to registration events.



DRIVING SURFACE PERFECTION™

- 7.4 The Seller may elect, at its absolute discretion and at any time that any section of the PPSA specified in Section 115 will not apply to the extent permitted by Section 115.
- 7.5 In the event of a Default by the Buyer, then without prejudice to any other rights which Seller may have at law or under this contract:
- (a) Seller or its agents may without notice to the Buyer enter the Buyer's premises or any premises under the control of the Buyer for the purposes of recovering the Goods;
 - (b) Seller may recover and resell the Goods;
 - (c) if the Goods cannot be distinguished from similar Goods which the Buyer has or claims to have paid for in full, the Seller may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of Seller and the Buyer may be ascertained. Seller must promptly return to the Buyer any goods the property of the Buyer and Seller is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Buyer's business howsoever arising from the seizure of the Goods; and
 - (d) In the event that the Buyer uses the Goods in some manufacturing or construction process of its own or some third party, then the Buyer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for Seller. Such part will be an amount equal in dollar terms to the amount owing by the Buyer to the Seller at the time of the receipt of such proceeds. The Buyer will pay Seller such funds held in trust upon the demand of Seller.
- 7.6 The Seller may, in addition to exercising all or any of its rights against the Buyer, suspend any further deliveries and immediately recover possession of any products not paid for in accordance with the Terms and Conditions if the Buyer commits an act of Default.
- 7.7 The Seller will not be liable for any loss or damage the Buyer suffers as a result of the Seller exercising its rights under this Clause.
- 7.8 The Buyer hereby indemnifies the Seller for all costs incurred in exercising its rights under this Clause.
- 7.9 This clause shall survive the termination of the Contract.

8. Goods and Services Tax

- 8.1 Goods and Services Tax (GST) will be shown separately in the tax invoice for the sale of the Goods.
- 8.2 The amount of GST payable in respect of the supply of the Goods is payable by the Buyer.
- 8.3 The Buyer must indemnify Seller in respect of GST paid and payable by Seller for the supply of the Goods.

9. Privacy Act 1988

- 9.1 The Buyer hereby acknowledges that:
- (a) the Seller collects personal information such as contact details, bank account details, insurance details and credit card details and holds such information for seven (7) years. The purpose of the collection of personal information is only for internal use.
 - (b) they have been informed by the Seller that personal information about them may be disclosed to or acquired from or to a credit reporting agency.
 - (c) if they require further information regarding the Seller's Privacy Policy they may obtain same by providing notice to the Seller.

Page 4 of 7



DRIVING SURFACE PERFECTION™

9.2 The Buyer hereby agrees:

- (a) that the Seller may contact any trade references or other credit references at any time whether now or in the future for the purpose of assessing credit worthiness;
- (b) to the Seller receiving from any other credit provider or providing to any credit provider any information whether by way of report record or otherwise relating to credit worthiness for the purposes of exchanging information, assessing credit worthiness and notification of default at any time whether now or in the future;
- (c) to the Seller obtaining from a credit reporting agency a credit report on the Buyer for the purposes of assessing any credit application and the Buyer further consents to the Seller obtaining such reports from time to time for the purposes of assessing credit worthiness during the continuance of credit provision;
- (d) to the Seller obtaining from a business which provides credit information a report or information in relation to the Buyer's commercial credit worthiness or commercial dealings and using such information for the purpose of assessing the Buyer's application for credit; and
- (e) That, in the event of default of payment of any of their debts, the Seller may disclose all information relating to the Buyer's account to its collection agency for the purpose of receiving any or all amounts outstanding.

1. Payment and provision of credit

1.1 All Goods shall be paid for upon dispatch unless the Seller has agreed to provide credit.

1.2 The Seller shall only provide credit to Persons who:

- (a) are accepted by the Seller, at its absolute discretion, as being creditworthy;
- (b) have completed a credit application form to the satisfaction of the Seller; or
- (c) have at the request of the Seller provided guarantees from any Person nominated by the Seller.

1.3 If credit is provided by the Seller the following shall apply:

- (a) payment for each and every invoice shall be made to the Seller on or before the Account Date;
- (b) any invoice which remains unpaid on the Account Date shall attract the following additional charges:
 - (i) interest calculated at the Prescribed Rate from the date of invoice until the date of actual payments;
 - (ii) the Account Keeping Fee; and
 - (iii) costs charged by the Seller's solicitors on a solicitor and own client base for recovery of any amount due and payable.

1.4 If payment is tendered by cheque and the cheque is dishonoured by the drawers bank, the Seller shall be entitled to charge the following additional charges:

- (a) interest calculated at the Prescribed Rate from the date of invoice until the date of actual payment;
- (b) the Account Keeping Fee;
- (c) any charges raised by the Seller's bank occasioned as a result of the dishonour; and
- (d) costs charged by the Seller's solicitors on a solicitor and own client base for recovery of the amount due and payable.

and which shall be:

- (i) deemed to be liquidated damages; and



DRIVING SURFACE PERFECTION™

(ii) entitled to be recovered as such in any court of competent jurisdiction;

in addition to any other money due by the Customer to the Seller at the date of dishonour.

1.5 Any statement of account issued by the Seller to any Customer shall be conclusive evidence of the amount due and owing to the Seller by that Customer.

1.6 the Seller shall be entitled to issue proceedings for the recovery of any money due by a Customer seven (7) Business Days after the issue of any notice requiring payment.

2. Goods returned for refund or credit

Any Goods returned for credit will only be accepted by the Seller on the following conditions:

2.1 the Goods are returned at least three days prior to the Account Date;

2.2 the Goods have not been used in any way;

2.3 the Goods are in the same condition as at the day of dispatch;

2.4 credit shall be allowed for the value of the Goods only and any freight charges shall remain payable by or chargeable to the Customer;

2.5 any Goods returned later than three days prior to the Account Date and which are accepted by the Seller shall incur a restocking charge calculated at 15% of the value of those Goods.

10. Notices

2.6 Any notice or other document in writing required to be given to the Customer shall be in writing and signed by the Seller or their solicitors and is deemed to have been made given or made if served on the Customer by:

(a) posting it to the Customer at its registered office;

(b) handing it to one of the directors of the Customer if it is a corporation;

(c) posting it to the Customer at its address as is notified from time to time;

(d) sending it by facsimile to the facsimile number of the Customer as is notified from time to time; or

(e) sending it by Email to the Email address of the Customer as is notified from time to time:

2.7 A notice is deemed to have been served:

(a) upon receipt in the event of personal service;

(b) at the expiry of two Business Days after the date of posting;

(c) at 12 noon on the next Business Day after facsimile transmission;

(d) at 12 noon on the next Business Day after Email transmission.

11. General

11.1 These terms and conditions are to be construed in accordance with the laws from time to time in the State of New South Wales and the Buyer agrees to submit to the non-exclusive jurisdiction of the Courts therein.

11.2 These standard trading conditions contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.

11.3 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.



DRIVING SURFACE PERFECTION™

- 11.4 No waiver of any of these terms and conditions or failure to exercise a right or remedy by Seller will be considered to imply or constitute a further waiver by Seller of the same or any other term, condition, right or remedy.
- 11.5 Should the Buyer not understand anything stated in these Terms and Conditions, or wishes to request any amendments, please contact the Seller. If the Buyer places an order with the Seller, same is taken to be acceptance of the Terms and Conditions disclosed herein.