

# POLIMASTER® TERMS AND CONDITIONS OF SALE

(Last modified on August 22, 2022)

## PLEASE READ THE TERMS CAREFULLY BEFORE PLACING YOUR ORDER

Thank you for contacting Polimaster Inc. (“**Polimaster**”) and for your interest in purchasing Polimaster products and services. If you have any questions about our quotation or ordering process, please call our Customer Service at 1 (866) 560-7654(POLI).

Unless otherwise expressly agreed and stated in a separate valid written contract signed by you and authorized representative of Polimaster (“**Contract**”), in which case such Contract prevails, by ordering our products on websites [www.polimaster.com/us](http://www.polimaster.com/us) or [www.polimaster.us](http://www.polimaster.us), or if you receive quotation, ordering and sales documents referencing Polimaster Terms and Conditions of Sale (“**Terms**”) you agree to accept and be bound by the below stated Terms. Polimaster proposal, offer or acceptance is conditioned on your acceptance of the Terms.

Please note that the Terms are subject to change from time to time, and all transactions for products sold by Polimaster are subject to the latest revision of the Terms published at our website <https://polimaster.com/us/terms.php>.

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## 1. APPLICABLE TERMS

1.1. Agreement. These Terms, applicable Supplemental Terms (if any), our written proposal, price quotation, and written confirmation of your purchase order issued by Polimaster form the final, complete and exclusive sale agreement (“**Agreement**”) between Polimaster and you (including your end users) with respect to your purchase of equipment, components, parts, and materials, product provided by Polimaster and described in our proposal and respective price quotation (“**Product**” or “**Products**”). Polimaster’s salespeople may have made oral statements about the Product. Please note that such statements do not constitute warranties, shall not be relied on by you and are not part of the Agreement. Unless otherwise stated by Polimaster in writing, the entire Agreement is embodied in this document and any and all representations, promises, warranties or statements by our salespeople and/or agent(s) that differ in any way from the terms of the Agreement shall be given no force or effect.

1.2. Supplemental Terms. Some Products are subject to additional terms, software licenses, and other written contract terms, which are not indicated in these Terms (“**Supplementary Terms**”). Supplementary Terms, if any, can be found in Polimaster proposal, price quotation, on our website [polimaster.us](http://polimaster.us), or in operating manuals and other literature accompanying the products. Please contact our Customer Service if you have any questions about the Supplementary Terms.

1.3. Conflict of Terms. In the event of conflict between the documents indicated in the above Section 1.1, precedence shall apply in accordance with the following priority: our price quote, our written proposal, Supplementary Terms, and finally these Terms. Unless otherwise stated in writing by Polimaster, Polimaster expressly rejects any different, additional and/or conflicting terms indicated in your request for proposal, request for quote, specifications, purchase order and any other written or oral communication you provide, and if the terms and conditions in this Agreement differ from the terms in your above-mentioned documents, they are not binding on Polimaster, shall have no force or effect, shall not constitute any part of the Agreement, and this Agreement will be governing terms for your purchase. Failure by Polimaster

to object to you additional, different or conflicting terms does not operate as a waiver of any terms contained in this Agreement.

1.4. Effective Date of the Agreement. The Agreement between you and Polimaster is created when Polimaster’s authorized representative accepts your purchase order by either sending a written confirmation or by shipping the product you ordered or otherwise initiating action to provide the product you ordered.

1.5. Right to Refuse Orders. All orders are subject to Polimaster’s management approval. The right is reserved to refuse orders at the prices filed if such course seems to be advisable and to the best interest of Polimaster.

## 2. PRICING, PAYMENT, DELIVERY

2.1. Price Terms. Prices are: (i) as stated in Polimaster’s price quote; or if none are stated, (ii) Polimaster standard prices in effect when Polimaster receives your purchase order; or (iii) if neither (i) or (ii) apply, then Polimaster’s standard prices in effect when the Products ship. All standard prices are subject to change without prior notice except for accepted orders in progress. Prices quoted to you in Polimaster’s quote are valid for 30 days from the quote date, unless Polimaster indicated otherwise in writing. Additionally, the price indicated in Polimaster’s original quote is subject to adjustment on account of specifications, quantities, materials, cost of production, shipment arrangements or other terms or conditions which are not part of Polimaster’s original price quote. Increases, changes, adjustments or surcharges which may be incurred will be for your account.

2.2. Taxes, Duties, and Fees. Unless otherwise stated in writing by Polimaster, Polimaster’s prices exclude charges for freight, unloading, storage, insurance, taxes, excises, fees, duties or other government charges related to the Products. You will pay these amounts or reimburse Polimaster the respective amounts added to your invoice. If you claim a tax or other exemption or direct payment permit, you will provide a valid exemption certificate or permit in advance before the Product is shipped by Polimaster for each respective jurisdiction and indemnify, defend and hold Polimaster

## **POLIMASTER® TERMS AND CONDITIONS OF SALE (Continued)**

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harmless from any taxes, costs and penalties arising from same.

2.3. Products for Export. You are responsible to designate the true, ultimate destination of the Products to Polimaster in your purchase order. Unless otherwise expressly stated in your purchase order, Polimaster presumes that all Products are destined for ultimate delivery in the fifty United States. In the event you purchase the Products for export without notifying Polimaster, Polimaster shall not be liable for deficiencies in packing, marking, labeling, documentations, or warranty which may result from attempts to export the Products. The Products which are destined for ultimate delivery outside the fifty United States must be purchased by placing a purchase order accompanied by a completed End User Certificate, which can be obtained from our Customer Service. You shall indemnify and hold Polimaster, its affiliates and their employees, directors, and officers harmless for any claims and damages resulting from your failure to act in compliance with the above ordering procedure and your omission to notify Polimaster about purchasing the Products for export.

2.4. Export Restrictions. You acknowledge that each Product and any related software and technology, including technical information we supply you, including those contained in Product documents (collectively “Items”), is subject to U.S. government export controls. The export controls may include, among others, those of the Export Administration Regulations of the U.S. Department of Commerce (the “EAR”), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. You must comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. You must not, directly or indirectly, without first obtaining the required license to do so from the appropriate U.S. government agency; (a) export, re-export, distribute or supply any Item to (a) any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government; (b) any person or entity who is involved in improper development or use of nuclear weapons or of chemicals/biological weapons, or missiles, or in terrorist activities. You will, if we request, provide information on the end user and end use of any Item you export or plan to export. You will cooperate fully with us in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and will indemnify and hold us harmless from, or in connection with, your or your consultants’, agents’ or employees’ violation of this Section 2.4.

2.5. Shipping, Packing, and Handling. Unless otherwise stated in writing by Polimaster, you are responsible for standard delivery and handling charges, if any. Polimaster will add such charges to your invoice. Polimaster's price include the costs of its standard packing only. Any packing deviation will be additionally charged to you. For details of our freight policy, please call our Customer Service.

2.6. Payment. Polimaster will invoice you for the Product price and all other charges due. Unless otherwise stated in Polimaster's quote, all orders are shipped prepaid, Visa or MasterCard, cashier's check or money order. Company checks are accepted after your account has been established and the application has been approved. Returned checks are

subject to a \$25.00 surcharge and company check privileges may be revoked. Net 30 terms are available to those customers who meet established credit requirements. Credit limits are based on industry experience and determined at sole discretion of Polimaster. New customers are placed on prepay status until they have a sufficient credit history to enable Polimaster to approve for other terms. A UCC security agreement and financing statement, and/or personal guarantee may be required. If your account reaches your credit limit determined by Polimaster, further shipments may be made only on a prepaid basis until payment is received. Orders placed for payment by credit card are charged the day of order or shipment. All orders are subject to credit approval by Polimaster. Polimaster may modify, suspend or withdraw the credit amount or payment terms at any time. If there is doubt as to your financial condition, Polimaster may withhold manufacturing or shipment, require cash payments, or require other satisfactory security. Polimaster may recover shipped Products from the carrier pending such assurances.

2.7. Late Payments. Late payments, without affecting our other rights, may lead: to suspension of delivery or termination of order (as indicated in Section 2.9.), rejection of future orders, and/or incurring a late-payment charge, from the due date at the rate of 1% per month, or, if less, the maximum amount allowed by law, which must be paid on demand. If Polimaster appoints a collection agency or an attorney to recover any unpaid amounts, you must pay all reasonable costs of collection, including all associated reasonable attorneys' fees and/or collection agency fees.

2.8. Disputed Invoice. If you dispute all or any portion of an invoice, you must first deliver written notice to Polimaster of the disputed amount and the basis for the dispute within twenty-one (21) days from the date of the invoice. Your failure to timely notify Polimaster of any dispute constitutes your waiver of your respective claim. If you only dispute a portion of the invoice, you must pay the undisputed portion in accordance with Section 2.6. Upon resolution of the dispute, you must pay the invoice or the remainder of the invoice, plus any accrued interest on the late payment.

2.9. Right to Suspend and/or Terminate an Order. Polimaster has a right to suspend performance under an order if an undisputed invoice is more than thirty (30) days past due. Polimaster may terminate this Agreement if an undisputed invoice is more than sixty (60) days past due. Unless prohibited by law, Polimaster may also terminate this Agreement immediately in the event of a material adverse change in your financial condition including, but not limited to, bankruptcy, insolvency, liquidation or similar financial condition.

### **3. DELIVERY, TITLE, AND RISK OF LOSS**

3.1. Delivery terms. Products will be shipped to the U.S. destinations you specify in your order, unless other destination agreed in writing, and delivered F.O.B. Polimaster point of shipment. You are responsible for all transportation, insurance and related expenses. The related expenses shall include any taxes, duties or documentation fees.

3.2. Transportation and Storage. When Products are ready for shipment, Polimaster will: (i) inform you, and you will then promptly give written shipping instructions to Polimaster, if

## **POLIMASTER® TERMS AND CONDITIONS OF SALE (Continued)**

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different from those indicated in your purchase order; (ii) determine the method of transportation and shipment routing; and (iii) ship the Products with freight prepaid by normal transportation. If you fail to provide timely shipping instructions, Polimaster will ship the Products by normal transportation means to you or to a storage location selected by Polimaster. You will pay or reimburse any excess transportation charges for special or expedited transportation. If Products are placed into storage, delivery occurs and risk of loss transfers to you when the Products are placed on the carrier for shipment to the storage location. If the Products are to be stored in the facility where manufactured, delivery occurs and risk of loss transfers to you when placed in the manufacturing facilities storage location. You will pay all Polimaster's storage expenses, including but not limited to, preparation for and placement into storage, handling, freight, storage, inspection, preservation, maintenance, taxes and insurance, upon receipt of an invoice(s) from Polimaster. When conditions permit and upon payment to Polimaster of all amounts due, you must arrange, at its expense, to remove the Products from storage. You bear the risk of loss, damage or destruction to Products in storage.

3.3. Partial shipment. Polimaster may, in its discretion, (i) make partial shipments and invoice each shipment separately; and/or (ii) stop delivery of Products in transit and withhold shipments in whole or in part if you do not pay us when due, or if you otherwise do not perform your obligations in this Agreement.

3.4. Shipping, Delivery and Installation Dates. Polimaster shipping, delivery and installation dates are estimated dates only, and we will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond our reasonable control. If we do delay shipment because of a cause beyond our reasonable control, we may terminate the affected order, or reschedule the shipment, and we will do so within a reasonable period of time. You may not refuse delivery or otherwise be relieved of any obligations as the result of such delay. If our delivery of a product to you is delayed due to any cause within your control, we will place the delayed products in storage at your risk and expense and for your account.

3.5. Risk of Loss. Unless otherwise indicated in Sections 3.2 and 3.4, Products are delivered to you when we load them onto the commercial carrier at Polimaster facility. At this point you become responsible for risk of loss and damage.

3.6. Title. Title to Products will pass to you (except software and intellectual property incorporated within or forming part of a Product, which we or our licensors continue to own) when we deliver the Product to the first carrier F.O.B Polimaster point of shipment, *provided however* that in the event you owe Polimaster purchase price and other related expenses for the Products, Polimaster remains the owner of the goods until such time as these and all other sums owed by you to Polimaster are paid in their entirety.

### **4. CHANGES, CANCELLATION AND RETURNS**

4.1. Changes. You may not change orders in process (upon receipt of Polimaster's written confirmation of your order), except with our written consent and agreement as to an appropriate adjustment in the purchase price for the applicable

Products. You will not receive credit for Products returned under orders changed without our prior consent.

4.2. Cancellation. Once you have placed your purchase order, you cannot cancel it, unless we consent in writing, and you pay any applicable cancellation charges required to fully reimburse expenses borne by Polimaster because of such cancellation.

4.3. Returns and Shortages. Polimaster wants you to receive the Products of good product quality and customer satisfaction, and it assures you that, at the time of shipment, the Products sold by it are free from defects in materials and workmanship and conform to the Product's written specifications, if any, that accompany the Products. You may return a Product that is damaged or defective on delivery, or correct any shortages, if you contact our Customer Service within five (5) days after receiving the Products. If you do not contact our Customer Service within this 5-day period, the Product will be deemed accepted, but you will not lose any warranty rights under this Agreement. Polimaster agrees to replace or repair any Product defective or nonconforming on delivery (provided that such nonconformity was not caused by transportation damages and/ or by misuse or negligence on the part of you and/or your end users) if Customer provides notice to Polimaster within five (5) days after receipt. Such replacement or repair, at Polimaster's sole discretion, shall be your sole and exclusive remedy for any liability of Polimaster of any kind, including but not limited to, liability based upon warranty (expressed or implied, whether contained herein or elsewhere), strict liability, contract or otherwise.

4.5. Return Authorization. Polimaster Customer Service must authorize you in writing all Products returns. No returns will be accepted without prior written consent from Polimaster. If return is authorized, Customer Service will provide you directions regarding the return process. All third party's transportation, handling, customs and related costs associated with the return, repair and/or replacement of such Products, if confirmed by Polimaster to be nonconforming and/or eligible for Warranty Service (as defined below), shall be paid by Polimaster.

4.6. Return of Custom Products. Custom products cannot be returned for any reason except for failure to meet stated specifications, with Polimaster's written consent.

### **5. PRODUCT-RELATED SERVICES**

5.1 Providing Product-Related Services. When you purchase a Product, Polimaster may install it, if applicable, and provide training, maintenance, repairs, or any other Product-related Services that you and Polimaster expressly agree on in writing ("**Product-Related Services**"). Product-Related Services are not included in the Product price and additional costs related to providing such Product-Related Services shall be specifically agreed upon by you and Polimaster in writing. Polimaster also offers extended warranties and other Product service plans. For full details of our Product service plans, please contact Customer Services.

5.2 Training. When included in the scope of Polimaster's proposal and quotation, Polimaster will provide to you, your end users and their employees ("**Trainees**") its standard training courses including all course materials in accordance

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with its current schedule. Unless otherwise stated in Polimaster's proposal and quotation, all training courses shall be conducted at Polimaster's designated facility or your facility, as the case may be. Polimaster will designate the specific equipment located at the agreed facility which will be utilized during the training course. You shall be responsible for the price of the course and all travel, lodging and living expenses of Polimaster representative and Trainees attending the training course(s). Notwithstanding such training, Polimaster does not warrant or represent that such Trainees shall be qualified, capable or competent to operate, maintain, or perform services on any Product for which such training has been provided.

### **6. POLIMASTER WARRANTY AND LIMITED LIABILITY**

6.1. Polimaster Warranty; Warranty Period. Polimaster warrants that each Product is free from material defects in material and workmanship, under normal, proper and intended use and service by properly trained personnel, for 12 months from the date Polimaster shipped the Product to you, or in case of the Product that requires installation by Polimaster's personnel, 12 month from such installation (the "**Warranty Period**"), provided, however, that the foregoing warranties are expressly contingent (and shall otherwise be void) upon use of the Product in accordance with specifications and without misuse, abuse, or abnormal use, accident, damage, alteration, or modification thereto or improper or unauthorized repairs or improper maintenance ("**Polimaster Warranty**").

6.2. Limitations of Warranty. Polimaster warranty is available only to the purchaser to whom the Product was originally sold by Polimaster, and is only transferable during the Warranty Period and only to the Product's initial end user (and shall otherwise be void). This is the right of Polimaster to require that you and your end users provide proof of purchase such as original invoice, shipping contract or packing slip to establish that the Product is within the Warranty Period. Non-substantial variations of performance from the Product documentation do not establish a warranty right. Any Product that is described as being experimental, developmental, prototype, or pilot is specifically excluded from Polimaster Warranty and is provided to you "as is" with no warranties of any kind. Polimaster does not warrant or guarantee that any Product will be secure from cyber threats, hacking or similar malicious activity. Products that are networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by you and/or your end user against unauthorized access.

In addition to our exclusion for third party products as set out in Section 6.5, Polimaster Warranty does not apply to (i) normal wear and tear (including any expendable items that comprise part of the Product, such as batteries and other expendables), (ii) accident, disaster or event of force majeure, (iii) your misuse, fault or negligence, (iv) use of the Products in a manner for which they were not designed and/or for the purpose other than identified in Polimaster's catalogues, website and literature as the intended use of such Products, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Products, (vii) use of the Products in combination with equipment or software that we did not

supply, (viii) Products sold to you as 'used' products, (ix) contact with improperly used or unapproved chemicals or samples, (x) installation, removal, use, maintenance, storage, or handling in an improper, inadequate, or unapproved manner, such as, but not limited to, failure to follow our instructions or operating guidelines, or protocols, operation outside of stated environmental or use specifications, or operation with unapproved software, materials or other products, (xi) manufacture in accordance with specifications you gave us, or (xii) installation of software or interfacing, or use of the Product in combination with software or products we have not approved.

ADDITIONALLY, ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN POLIMASTER WITHOUT OUR PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS WE HAVE NOT SUPPLIED, WILL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.

EXCEPT FOR THE FOREGOING EXPRESS WARRANTIES STATED HEREIN, AND FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO YOU IN YOUR JURISDICTION, THE PRODUCT AND PRODUCT-RELATED SERVICES HEREUNDER ARE PROVIDED "AS IS AND WITH ALL FAULTS" AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, POLIMASTER DISCLAIMS ALL OTHER WARRANTIES, OF ANY KIND, EITHER EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INTEGRATION, SATISFACTORY QUALITY, NONINFRINGEMENT OR ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. YOU ASSUME ALL RISKS AND RESPONSIBILITIES FOR SELECTION OF THE PRODUCT TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE PRODUCT. POLIMASTER DOES NOT WARRANT THAT THE PRODUCTS AND SERVICES HEREUNDER WILL MEET YOUR OR YOUR END USERS' REQUIREMENTS OR WILL OPERATE IN THE COMBINATIONS WHICH MAY BE SELECTED BY YOU OR END USER OR THAT THE SERVICES HEREUNDER OR THE OPERATION OF THE PRODUCTS WILL BE SECURE, ERROR-FREE, OR UNINTERRUPTED, AND POLIMASTER HEREBY DISCLAIMS ANY AND ALL LIABILITY ON ACCOUNT THEREOF TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

6.3. EXCLUSIVE REMEDY. OTHER THAN TERMINATION OF THIS AGREEMENT DUE TO POLIMASTER'S BREACH, AS YOUR EXCLUSIVE REMEDY FOR ANY PROVED DEFECT OR NONCONFORMITY IN THE PRODUCT, YOU SHALL OBTAIN FROM POLIMASTER REPAIR OR

## **POLIMASTER® TERMS AND CONDITIONS OF SALE (Continued)**

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REPLACEMENT OF THE PRODUCT CONTAINING SUCH PROVED DEFECT OR NONCONFORMITY (THE “AFFECTED PRODUCTS”). IF POLIMASTER FAILS TO REPAIR OR REPLACE THE AFFECTED PRODUCTS WITHIN A REASONABLE TIME AFTER YOU HAVE SO RETURNED THEM TO POLIMASTER, YOU SHALL BE ENTITLED TO REPAYMENT OR CREDIT OF THE ORIGINAL PRICE OF THE AFFECTED PRODUCT AS ITS EXCLUSIVE FURTHER REMEDY.

6.4. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, POLIMASTER, ITS DEALERS, SUPPLIERS OR LICENSORS ARE NOT LIABLE, WHETHER BASED IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, FOR LOSS OF USE, REVENUE, SAVINGS, PROFIT, INTEREST, GOODWILL OR OPPORTUNITY, COSTS OF CAPITAL, COSTS OF REPLACEMENT OR SUBSTITUTE USE OR PERFORMANCE, LOSS OF INFORMATION AND DATA, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF DATA, WORK STOPPAGE, HARDWARE OR SOFTWARE DISRUPTION, IMPAIRMENT OR FAILURE, REPAIR COSTS, LOSS OF POWER, VOLTAGE IRREGULARITIES OR FREQUENCY FLUCTUATION, CLAIMS ARISING FROM THIRD PARTY CONTRACTS YOU ENTERED, TIME VALUE OR OTHER PECUNIARY LOSS, OR FOR ANY TYPE OF INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES ARISING OUT OF THE SERVICES PROVIDED BY POLIMASTER AND ITS AGENTS, USE OR INABILITY TO USE THE PRODUCT, THE INFORMATION CONTAINED IN, GATHERED OR COMPILED BY THE PRODUCT, AND THE INTERACTION (OR FAILURE TO INTERACT PROPERLY) WITH ANY OTHER HARDWARE OR SOFTWARE WHETHER PROVIDED BY POLIMASTER OR A THIRD PARTY, EVEN IF POLIMASTER HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN ADDITION, OUR MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, OR ANY PRODUCT OR SERVICE, IS LIMITED TO THE AMOUNT OF ACTUAL PURCHASE PRICE RECEIVED BY POLIMASTER FOR THE AFFECTED PRODUCT OR SERVICE PURCHASED. HOWEVER, THESE PROVISIONS DO NOT LIMIT OUR LIABILITY THAT CANNOT BE LIMITED BY LAW.

6.5. Third Party Products. We do not support or make any warranties about products manufactured or supplied by third parties that you purchased through any of our sales channels. When you buy a third party product, we will let you know that this purchase is governed by the third-party’s own contract terms. You must look directly to the relevant third-party manufacturer for product support, warranties, and to make warranty claims. Polimaster agrees, however, to assign to you any warranty rights we may have from the original

manufacturer or third party supplier, to the extent the original manufacturer or third party supplier allows.

6.7. Applicability. The limitations and exclusions contained herein shall apply notwithstanding any failure of essential purpose of any limited remedy.

6.8. Warranty Service. If during the effective Warranty Period you reasonably believe that any Product contains a defect or nonconformity for which Polimaster is responsible, and, therefore, may be subject to warranty repair, you shall contact Polimaster Customer Service and inform it of the nature of such defect or nonconformity in reasonable detail by written notice supported by reasonable proof of warranty claim validity and shall request authorization from Polimaster to return the Affected Product to Polimaster for repair or replacement (“Warranty Service”). Warranty Service for the Product shall be performed only by Polimaster or by an authorized service contractor of Polimaster. If Polimaster determines that Products for which you requested Warranty Services are not covered by the warranty, you will pay or reimburse us for all costs of investigating and responding to such request at our then prevailing time and materials rates. If we provide repair services or replacement parts that are not covered by this warranty, you will pay us at our then prevailing time and materials rates.

For further information on how to get Warranty Service, please contact either Polimaster Customer Service. If the Affected Product is being returned to Polimaster for Warranty Service, it is necessary to obtain a return authorization from Polimaster prior to shipment. NO PRODUCTS SHALL BE RETURNED TO POLIMASTER UNTIL YOU RECEIVE RETURN AUTHORIZATION AND SHIPPING INSTRUCTIONS FROM POLIMASTER.

### **7. INDEMNIFICATION**

7.1. Polimaster’s General Indemnity. Polimaster will defend and indemnify you against third-party claims for injury to persons, including death, or damage to tangible property occurring while our employees are on your premises performing Product-Related Services, to the extent the claims are caused by our employees’ negligent acts or negligent omissions, except to the extent caused by your negligent acts or negligent omissions.

7.2. Polimaster’s Infringement Indemnity. Polimaster will defend and indemnify you against infringement damages finally awarded in any legal action brought by a third party against you to the extent that the action is based on a claim that our manufacture and sale of a Product infringes any patent, copyright, trademark or other intellectual property right of such third party if we had actual knowledge of such intellectual property right and the actual infringement at the time of delivery of the product to you. This infringement indemnity does not apply to claims that arose based on (i) your failure to comply with the Agreement, (ii) your failure to acquire any applicable additional intellectual property rights and licenses from third party providers, (iii) Products were made, assembled or labelled in reliance upon your instructions, specifications, or other directions and compliance therewith has caused Polimaster to deviate from its normal course of performance, (iv) your use or resale of Products, (v) modifications made by you, your end users, your

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contractors or any third party; (vi) products originating from third parties; (vii) combinations of the Products made by you, your end users, your contractors or any third parties with devices, methods, systems or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against you or Polimaster.

Additionally, our infringement related indemnity obligations will be extinguished if we, at our option and expense, either: (i) secure for you the right to continue using the Product; (ii) substitute the Product with another suitable product with similar functionality; (iii) modify the Product so it is non-infringing; or (iv) in the event (i) through (iii) are not practical, refund to you the amortized amounts you paid for the infringing product, based on a 5-year amortization schedule.

THIS SECTION 7.2 IS AN EXCLUSIVE STATEMENT OF POLIMASTER'S DUTIES AND YOUR REMEDIES RELATING TO PATENTS, TRADE SECRETS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF. THIS INDEMNITY IS OUR ONLY LIABILITY TO YOU FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS BY OR INCONNECTION WITH ANY PRODUCT.

7.3. Conditions to Polimaster's Indemnity. As a condition to any of our indemnification obligations you must (i) notify us in writing, as soon as you become aware of any claim; (ii) not admit any liability or take any other action in connection with the claim that could affect the defence; (iii) allow us to solely control the defence or settlement of the claim; and (iv) give us your reasonable information, co-operation and assistance.

7.4 Your Indemnity. You will indemnify, defend with competent and experienced counsel and hold us, including our parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, harmless from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) suffered by any of the foregoing entities or individuals to the extent arising from or in connection with (i) your or your agents', employees', end users', representatives' or contractors' negligence or willful misconduct; (ii) use of a Product we supplied to you in combination with equipment or software we did not supply you, where the product itself would not be infringing; (iii) our compliance with designs, specifications or instructions you gave us; (iv) use of a product in an application or environment for which it was not designed; (v) Product modifications and/or combinations we did not make or approve in writing; (vi) your failure to acquire any applicable intellectual property rights and licenses from third party providers; and (vii) breach by you and/or your end users of the terms and conditions stated in this Agreement.

### **8. MISCELLANEOUS**

8.1. Nature of Sale. As between you and us, Polimaster and its affiliates exclusively own all intellectual property rights relating to our Products and related services. To the extent that the Products contain non-tangible proprietary items of

Polimaster, including without limitation, any Polimaster's software, confidential information, intellectual property rights ("Technology") Polimaster grants to you or your end users only a limited, royalty-free, non-exclusive, non-transferable license (without power to sublicense) to use such Technology solely as part of the Products provided hereunder, solely for your individual or internal business purpose and pursuant to the terms of this Agreement. This Agreement does not transfer any right, title or interest to any such Technology to you or your end users, expressly or by implication, estoppel or otherwise, under any intellectual property rights owned by Polimaster and/or its affiliates, including without limitation, the right to produce, modify or enhance the Products or any right of use of such Technology apart from the Products. Use of the terms "sell," "license," "purchase," and "license fees" shall be interpreted in accordance with this Section. The use of Technology in accordance with the terms of this Agreement is provided license-free and royalty-free subject to your and your end user's strict compliance with all of the terms and conditions of this Agreement.

8.2. Hazardous materials. You acknowledge that the materials covered by this Agreement may be, or become, considered as hazardous materials under various laws and regulations. You agree to familiarize yourself (without reliance on Polimaster except as to the accuracy of specific safety information actually furnished by Polimaster) with any hazard of such materials and their applications and the containers in which such materials are shipped. You agree to inform and train your end users, employees and representatives as to such hazards. You agree to hold Polimaster harmless against any claims by you, your end users, employees and representatives based on allegations relating to any such hazards, except where such claims are based on failure to meet written specifications or the inaccuracy of specific safety information actually furnished by Polimaster.

8.3. Anti-Corruption Laws. You represent and warrant that neither you nor any of your affiliates, subsidiaries or, to your knowledge, any director, officer, agent, employee or affiliate of your company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and you, your company, your affiliates, subsidiaries and you're your knowledge, your affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

8.4. No Assignment. You may not delegate any duties nor assign any rights or claims hereunder without our prior written consent, and any such attempted delegation or assignment will be void.

**POLIMASTER® TERMS AND CONDITIONS OF SALE (Continued)**

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8.5. Governing Law and Jurisdiction. The Agreement and performance under it will be governed by Virginia law, without reference to its choice of law provisions. BOTH POLIMASTER AND YOU KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ALL RIGHTS TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATED IN ANY WAY TO THIS AGREEMENT. Each party agrees that claims and disputes arising out of this Agreement must be decided exclusively in a federal or state court of competent jurisdiction located in a state in which Polimaster maintains its principal place of business. Each party submits to the personal jurisdiction of such courts for the purpose of litigating any claims or disputes. Any action arising under this Agreement must be brought within 1 year from the date that the cause of action arose. The U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

8.6. Uncontrollable Circumstances. We will not be responsible or liable for failing to perform our obligations under the Agreement to the extent caused by circumstances beyond our reasonable control (including without limitation fires, strikes, disputes with workmen, war, civil commission, epidemics, floods, accidents, delays in transportation, shortage of cars, shortage of fuel or other Products, shortage of labor, mill conditions, acts, demands or requirements of the Government of the United States, or of any other State or Government, or to any cause beyond the reasonable control of Polimaster. In certain situations, we may use our reasonable judgment and apportion products then available for delivery fairly among our customers.

8.7. No Waiver; Invalidity. Polimaster’s failure to exercise any rights under the Agreement is not a waiver of our rights to damages for your breach of contract and is not a waiver of any subsequent breach. If any provision or part of the Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or

unenforceability will not affect the other provisions of the Agreement. A court may modify the invalid, illegal or unenforceable provision to reflect, as closely as possible, the parties’ original intent. No person other than you or us will have any rights under the Agreement.

8.8. Confidentiality. You agree to keep confidential any non-public technical information, commercial information (including prices, without limitation) or instructions (including without limitation any specifications, code, algorithms, calibration instructions, protocols) received from us as a result of discussions, negotiations and other communications between us in relation to our Products or services.

8.9. Notices. Any notice or communication required or permitted under the Agreement must be in writing and will be deemed received when personally delivered, or 3 business days after being sent by certified mail, postage prepaid, to a party’s specified address.

8.10. Requirement to Reduce to Writing. No waiver, consent, modification, amendment or changes to the terms of this Agreement will be binding unless in writing and signed by both of us. Our failure to object to terms contained in any subsequent communication from you will not be a waiver or modification of our Agreement.

8.11. Survival. The sections and subsections titled “Indemnification,” “Polimaster Warranty and Limited Liability,” “Training,” “Confidentiality,” “Delivery; Title; Risk of Loss,” “Export Restrictions,” “Anti-Corruption Laws,” “Governing Law and Jurisdiction,” and “Nature of Sale” survive termination, expiration or cancellation of this Agreement.

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