SALES CONDITIONS

1. Definitions

For purposes of these Sales Conditions, the following terms shall have the meanings set forth below:

“Seller” shall mean Polibak Plastik Film Sanayi ve Ticaret Anonim Şirketi.
“Buyer” shall mean any person, entity or association that orders or buys Products pursuant to a Contract or an Order Proposal and Confirmation, and its successors and assignees.
“Conditions” shall mean these Sales Conditions.
“Contract” shall mean the entire agreement between Seller and Buyer for the sale of the Products by Seller to Buyer as reflected in the Order Proposal and Confirmation, these Conditions and any other documents entered into by Buyer and Seller or provided by Seller to Buyer in connection with the sale of Products.
“Products” shall mean any Products, materials and/or products supplied or sold by Seller to Buyer.
“Quotation” shall mean any price quotation or estimate for the sale of Products from Seller to Buyer.
“Order Proposal and Confirmation” shall mean Seller’s standard document accepting the order of Buyer and containing the order.
“Invoice” shall mean Seller’s standard invoice provided to Buyer reflecting the Products sold by Seller to Buyer at the corresponding prices and charges for such Products.
“Order” shall mean legal act by which the Buyer declares to the Seller the wish to purchase the Products and accepted by the seller by means of a signed order confirmation form.
“Parties” shall mean Buyer and Seller considered in conjunction.
“Product Specification” shall mean the information contained in the relevant document describing the technical features of the Products.

2. Amendments and Written Form

Amendments on the Order Proposal and Confirmation or supplements to these Conditions by separate agreement or to the Contracts concluded in the scope of application of these Conditions shall only be effective if made in writing and duly signed by authorized representatives of the Parties or made by email or fax (including fax sent by PC). This also applies to the abrogation of the requirement of written form. The Order Proposal and Confirmation of Seller is considered as being accepted if Buyer has not rejected such Order Proposal and Confirmations within 24 hours from receipt of such a document. The Order Proposal and Confirmation shall contain corresponding information.

3. Quotation, Acceptance of Orders and Alterations to Confirmed Orders

3.1. Seller reserves the right to withdraw any Quotation at any time prior to acceptance of such Quotation by Buyer. A Quotation shall be deemed to be withdrawn if not accepted within 10 days by Buyer, unless otherwise stated on the Quotation.
3.2. Each Order is subject to acceptance by Seller which is hereby agreed to be of no legal effect, if Seller does not accept the Order within 15 days from receipt of the Order with a Order Proposal and Confirmation Seller is not obliged to accept the Order.
3.3. Confirmed Orders may be modified subject to a written agreement of both parties.
3.4. Any addition or alteration relating to 3.3 above shall be made in writing, prepared in accordance with the Seller's written standards and sent by courier, by post, fax (including fax sent by PC). The Parties hereby expressly agree to deem as a written form in this sense the communications made via email or facsimile sent from the facsimile address or email of the contact person of either Party to the email or facsimile (fax) to either Party. Seller will send a revised Order Proposal and Confirmation to Buyer as confirmation of the alterations made to the Order.

4. Price and Transport Cost

4.1. Prices set out in any Quotation or Order Proposal and Confirmation relates only to those Products described therein. Seller shall apply the price agreed with Buyer.

4.2. Unless otherwise stated on the Quotation or Order Proposal and Confirmation, all prices quoted are strictly net and exclusive of VAT.

4.3. Unless otherwise agreed between the Parties, Buyer shall pay in addition to the quoted prices (i) delivery and freight charges, (ii) insurance and (iii) the costs occurring at Seller of carrying out any special test(s), examination(s) or inspection(s) requested by Buyer.

4.4. When prices are quoted inclusive of freight, insurance, duty paid, any increase in insurance, freight costs, import duties, internal taxes or any other charges incidental to the delivery of the Products between the date of acceptance of the Order and the date of delivery, together with all costs of any transhipment and/or deviation of voyage, shall be paid by Buyer.

5. Invoice, Payment, Terms of Payment, Notice of Discrepancy, Payment Delay and Non Payment

5.1. Seller will issue an invoice based on the price indicated in the Order Proposal and Confirmation. Payment shall be made by Buyer as per the terms stated on the Invoice or Order Proposal and Confirmation without any deductions.

5.2. Notification of discrepancy on the Invoice, if any, must be notified to Seller within 8 (eight) days from the Invoice receipt date. Otherwise the Invoice will be considered and construed as fully accepted and no other queries shall be entertained after this period or at the time of payment.

5.3. If Buyer fails to make payments in full on the due date, Buyer shall pay interest on any overdue balance at the rate indicated in the Order Proposal and Confirmation. Such right of Seller shall be in addition to any other rights Seller may have under the Contract or by law. In particular but not limited to the following. Buyer who is in arrears with payments shall compensate additional damages which Seller is able to demonstrate. Buyer shall compensate the Seller for all the expenses (including lawyers' fees) incurred for recovering of the amounts not promptly paid.

5.4. Cheques and Bills of exchanges are not considered as payment and shall be accepted on account of performance only.

6. Packing of the Products, Packing costs and Packing Equipment

6.1. Packing costs are agreed to be included in the price of the Products in accordance with the standards provided for by Seller. Any costs arising from special packing requested by Buyer, if feasible, are to be borne by Buyer, unless otherwise agreed between the Parties.

6.2. All delivery equipment, pallets and other packaging materials shall become the property of Buyer at the time of transfer of title, as per article 16.1 and shall be disposed of by Buyer properly and at their own cost. Where packing material may be reused, the Parties may agree that the
Seller can collect these from Buyer at no charge. In such a case Buyer shall be responsible for such materials, for their reasonable care and for a reasonable period of time.

7. Delivery, Refusal to take Delivery, Delivery Dates, Delay in Delivery and Partial Delivery
Seller shall deliver the Products to Buyer at the place specified in the Contract.

7.1. All deliveries shall be made in accordance with the agreed Incoterm (Incoterms 2010 I.C.C. or its up-to-date amended version) and/or such additional guidelines indicated in the Order Proposal and Confirmation.

7.2. If Buyer refuses to take delivery of the Products in accordance with the Contract, Seller shall be entitled to receive compensation and Buyer shall be obliged to compensate appropriately for the expenses incurred by Seller in salvaging or returning the Products. Other statutory rights of Seller remain unaffected hereby.

7.3. Any delivery date given by Seller to Buyer shall be, and construed as, an estimate. Seller shall make every reasonable endeavor to meet such delivery date, but it shall not be construed as a guarantee, warrant, representation or condition of purchase. Time shall not be of essence with regard to delivery or completion of the Contract by Seller. Seller shall not be liable by law, equity or otherwise for any loss or damage by reason of delay in delivery of the Products not exceeding 30 (thirty) days and 7.4.Buyer also cannot refuse to accept delivery, repudiate or cancel the contract as a result of any such delay in delivery.

7.4. Every delay in delivery shall not cause the total or partial breach of the Contract neither legitimate a termination of the Contract or compensation for damages, unless this request of compensation is anticipated by a demand letter with a request of delivery within a reasonable period of time. Delay in delivery shall not affect the obligations of Buyer to pay the full price for the Products.

7.5. In any event it remains understood that, unless otherwise agreed in the Contract between the Parties, partial deliveries shall be accepted Seller is entitled to invoice partial deliveries.

8. Intellectual Property and Infringement of Intellectual Property Rights

8.1. All information, technical standards specifications and procedures provided by Seller remain his exclusive property. In no case shall the sale of the Products to Buyer entail the granting of a trademark license or a patent license or other industrial or intellectual property rights pertaining to the specifications, the Products or the know-how provided.

8.2. All the designs, technical documents and other information relating to the Products and their production which are forwarded by Seller may be used, subject to the expressed written authorization of Seller, only for those purposes for which they were provided, such as, for example, for the use, maintenance and marketing of the Products.

8.3. Buyer assumes all responsibility and liability for use of any design trademark, trade names, or parts thereof, appearing on the Products at Buyer’s request. Buyer agrees to indemnify and hold Seller harmless from and against any and all claims, damages, demands losses, costs and liabilities asserted or arising out of or resulting from any actual or alleged infringement of any intellectual property rights and/or; litigation and/or proceedings based thereon or commenced in relation thereto.
9. Duties and Obligations of the Buyer

9.1. Buyer shall have in his possession the facilities and necessary means for the correct use of the Products. Buyer should check that its use of Seller’s Products is safe and technically suitable in its applications.

9.2. Buyer has to respect any instructions and specifications of Seller with regard to the Products, in particular but not limited to wettability and durability of the Products.

9.3. When storing and processing the Products, Buyer shall observe the applicable statutory provisions as well as the security guidelines or specific information provided by Seller. It is the responsibility of Buyer to provide his customers with proper documentation when reselling the Products. The Products may only be stored and transported in approved packaging and means of transport.

10. Warranty, Conformity with Specifications and Limitation of further Warranties

10.1. Seller warrants that the Products conform with any precise specifications contained in the Contract or explicitly agreed between the Parties in writing.

10.2. Any general information contained in Seller’s literature including without limitation drawings, recommendations, descriptions, weights dimensions price lists and advertisement shall be construed only as general information and shall not constitute a representation, warranty nor shall it form part of the Contract. It is acknowledged by Buyer that such prior information has not been relied upon in entering into the Contract. Other than the warranties expressly set forth herein or agreed in writing between the Parties, Seller makes absolutely no other warranty or guarantee of any kind expressed or implied and with respect to any of the Products provided under the Contract. Seller’s specifically disclaims all implied warranties, including without limitation, the implied warranties of merchantability and fitness for a certain purpose, except to the extent such disclaimers are expressly disallowed under applicable law.

10.3. Seller warrants that the Products are manufactured as per Seller’s Product Specifications with the exception of the Products sold as substandard products and waste.

10.4. Notwithstanding the foregoing Seller shall not be responsible or liable for any: (i) defects in the Products which are the result of (ii) misuse of the Products or negligence on the part of any person other than the Seller, or (iii) failure of Buyer or any other person to store, maintain or use the Products in accordance with the Seller’s instructions, or (iv) loss or theft of Products.

11. Duty of Inspection, Notice of Rejection, Minor Discrepancies in Quantity, Tolerance and Storage of Products with Defects

11.1. Buyer shall carefully inspect the Products immediately upon their receipt. Buyer shall not be entitled to reject Products for any reason other than the failure of the Products to conform to the applicable specification. Buyer shall be deemed to have accepted the Products unless notice of rejection on the grounds of nonconformity with specifications is given to Seller in writing within 8 (eight) days of the date of delivery of such Products. The notice of rejection shall be accompanied by written reasons stating in detail the manner in which it is alleged that the Products are not in conformity with applicable specifications and Buyer should send samples of the alleged defect within 20 (twenty) working days to Seller. The foregoing does not apply to hidden defects. Hidden defects must be reported in writing to Seller within 8 (eight) days of their discovery. The Seller will not accept claims for hidden defects after 12 months from the production date of the Products.
11.2. In the event Buyer gives notice of rejection Seller shall have the right to inspect the Products and Buyer shall provide access for this purpose upon Seller’s request. Upon Seller giving its consent in writing to the return of the Products, Buyer shall at Seller’s cost, return the Products in question to Seller in accordance with the Seller’s shipping instructions. Upon receipt of the rejected Products by Seller, Seller shall at its option either replace such Products without cost to the Buyer or refund the purchase price paid by Buyer. Under no circumstances shall Seller be obliged to refund any amount in excess of the purchase price paid by Buyer.

11.3. Minor discrepancies in the quantities of the Products are considered as being no defect. In this case, the Buyer shall pay for the actual quantities of the Products. Additionally, whilst the Seller will endeavour to supply the Products to the exact roll width ordered, a tolerance on any dimension shall be permissible without any adjustment to price. For the details on tolerances please refer to the Seller Product Specifications.

11.4. Buyer is obliged to keep the Products which he assumes to be defective in a suitable place, placing it at Seller’s disposal for any appropriate examinations, taking all necessary measures to reduce the risk of any further deterioration of the Products and increase in damage.

12. Limitation of Liability and Consequential Losses

12.1. Except in case of fraud or gross negligence of Seller, Seller’s only obligation in case of defects, lack of quality or non-conformity of the Products will be that of repairing or replacing the defective Products.

12.2. It is agreed that the above mentioned guarantee is in lieu of any other legal guarantee or liability with the exclusion of any other Seller’s liability (whether contractual or non-contractual) which may anyhow arise out of or in relation with the Products supplied. Seller shall not be liable to the Buyer for any consequential loss, except in case of fraud or gross negligence.

13. Force Majeure

13.1. Seller shall not be liable to Buyer for any loss, damage, delay or failure of performance resulting directly or indirectly from any cause beyond Seller’s reasonable control, including, but not limited to, wars, strikes lockouts, industrial disputes, government orders, riots, malicious damage, fire, storm, rain, flood, act of God, accident, non availability or shortage of material or labor, any statute, rule, order, regulation, resolution or supervening illegality made or issued by any concerned government or quasi-government department or authority. No one of the events above shall be deemed a breach of this Agreement nor create any liability of Seller.

13.2. In the event of the occurrence of any of the supervening causes, event or circumstances set out in sub paragraph 13.1 above Seller has the right at its option either (i) to suspend performance of its obligations under the Contract until cessation of such supervening cause, event or circumstance and thereafter resume performance of its obligations under the contract, and in such event Buyer shall be obliged to pay to Seller all sums due under the Contract less a reasonable allowance for such part of the Contract which has not been performed by Seller and/or; (ii) discharge itself from further performance of the contract and thereafter be under no further obligation to Buyer, in which event Buyer shall be obliged to pay to Seller all sums due under the Contract less a reasonable allowance for such part of the Contract which has not been performed by Seller.
14. Transfer of Risk
Risk of loss, damage or destruction of the Products shall pass to Buyer upon delivery as specified in the Order Proposal and Confirmation Contract.

15. Retention of Title

15.1. Title in the Products shall not pass to Buyer until the entire purchase price for the Products has been received by Seller. Any risk relating to the Products shall be for Buyer up to the complete payment of the Products.

15.2. If the Products in which Seller has retained title are processed, inseparably assembled or mixed Seller shall acquire title in the new Products, the processing shall be free of charge for Seller’s benefit as manufacturer. If the Products in which Seller has retained title shall be inseparably assembled or mixed with Products that are third party property, then Seller shall acquire co-title in the new Products or the mixed stock. The proportion of title shall follow from the proportion of the invoice value of the Products delivered by the Seller under retention of title and the invoice value of the other Products.

15.3. Products in which Seller shall acquire sole or co-title in accordance with sub-paragraph 16.2 above shall, the same as with regard to the Products delivered under retention of title according to sub-paragraph 15.1 above, be regarded as Products delivered under retention of title for the purposes of the following paragraphs.

15.4. Buyer hereby assigns to the Seller all receivables arising from the resale of the Products delivered under retention of title.

15.5. Where Seller’s claims shall be undoubtedly be secured through the assignment and retention by more than 115%, any surplus of receivables and/or Products delivered under retention of title shall, upon demand of Buyer, be released in accordance with Seller’s choice.

15.6. Buyer shall be authorized to collect any receivables arising from the resale of Products. Such authority shall cease to exist in the event that there shall no longer be an ordinary course of business. Moreover, Seller may withdraw Buyer’s authority to collect, if it shall be in breach of any obligation owed to Seller and shall in particular be in payment default or if Seller shall become aware of other incidents that give rise to doubts about its creditworthiness. If the above authority shall cease to exist or be withdrawn by Seller, then Buyer shall upon Seller’s demand immediately specify to Seller its debtors in the claims assigned and provide Seller with all information and documentation necessary for collection.

15.7. In the event of any third party action against Products delivered under retention of title or any receivables assigned to Seller, Buyer shall notify such party of Seller’s property/or right and immediately inform Seller about such action.

16. Assignment of Rights, Right of Offset and Right of Retention

16.1. Buyer shall not assign or transfer any rights, obligations or interest under the Contract without the prior written consent of Seller. Any purported assignment or transfer without the prior written consent of Seller shall be void and shall constitute a breach of the contract on the part of Buyer.

16.2. Buyer may only offset Seller’s claims or assert right of retention in this respect if the counter claim is undisputed or recognized by declaratory judgment.
17. Non-Exclusivity

The Seller has not given to the Buyer any exclusivity on a territory or customer with this Conditions. This Agreement shall not create a partnership, joint venture, employer/employee, agent/distributor or similar relationship between the Parties.

18. Waiver

Any waiver by either party of any breach or any term or condition hereof shall be effective only if in writing and such writing shall not be deemed to be a waiver of any subsequent breach or other breach, term or condition of these Conditions or the Contract.

19. Caption and Headings

Captions and headings are inserted in these Conditions for convenience only, and shall in no event be deemed to define, limit or describe the scope or intent of these Conditions, or of any provision hereof, nor in any way affect the interpretation of these Conditions.

20. Governing Law and Jurisdiction

Any disputes arising between the Parties in connection with this Agreement will be subject to the Turkish Law and jurisdiction of competent Izmir (Turkey) Courts and Enforcement Offices.

21. Severability

If any provision or provisions of these Conditions or the Contracts shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of these Conditions and/or of the Contracts concluded shall not in any way be affected or impaired thereby. As far as individual provisions of such Contract should be ineffective or contain a loophole, Buyer and Seller shall be obliged to create an effective provision, closest to the economic intention of the Parties, in place of an ineffective provision or loophole.

22. Modifications

Notwithstanding Seller’s right to amend these Conditions from time to time in its discretion which such amendments can be reviewed on Seller’s website), the Contract can only be modified by a written agreement duly signed by authorized representatives of Buyer and Seller sent by email or by fax (including fax sent by PC), and variances from or addition to the terms and conditions of the Contract in any order or other writing from Buyer will be of no effect.

23. Scope of Application
These Conditions shall apply to and form part of all Contracts between Seller and Buyer. They also govern all future business relationships even if not expressly agreed upon again.
24. Buyers information
Company Name:
Full Address:
Name of contact person:
*Attach a letter from the Company or the Signatory Circular of the Company as Proof of authorized signatory

Buyer hereby expressly accepts every provision of this Seller’s Sales Conditions for the Products between Seller and Buyer.

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