

Poliform

Poliform USA Inc.
Miami Showroom
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Miami, FL 33137

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Main contact

[REDACTED]
Address in NYC
New York, NY 10155
Email: jenkalin@gmail.com
Phone: 612-615-1001

Trade Contact

Sales Agreement

Contract No: MI01936S0001
Date: 5/13/2013
Contract Date: 5/13/2013
Project Name: Display Sale
Your ref.:
Sales Person: Maritza Pena
Delivery:

Job Address

[REDACTED]
Showroom Pick UP
Miami, FL 33137
Email: jenkalin@gmail.com
Phone: 612-615-1001

Special Notes

This contract is subject to Poliform USA standard Terms and Conditions.

Signed by

/ /
Date

Maritza Pena
Showroom Manager

/ /
Date

Terms and Conditions

1. The Agreement: The Sales Contract and these Terms and Conditions (collectively the "Agreement") constitute a binding agreement between you (the "Purchaser") and Poliform USA, Inc. (the "Seller").

2. Signature and Payment Terms:

a. The Purchaser must sign the two (2) original documents enclosed and initial each page and where otherwise indicated. Return one

(1) Original together with a check for the amount indicated. The amount indicated in this Agreement is valid for (30) thirty days from proposal date.

b. All checks must be payable to: Poliform USA, Inc.

c. The Purchaser's order will not be processed until the Purchaser's check for the amount due on signing is received by the Seller. Manufacturing and lead time does not commence until the Seller's receipt of signed and approved final drawings and sales contract.

d. Final payment is payable only by personal check or certified check. If payment is by personal check, installation can only be scheduled after the check has cleared.

e. If the Purchaser tenders payment with a check that has insufficient funds, or stops payment for any reason, the Purchaser agrees to pay all costs associated with the Seller's collection or litigation of such claim, including without limitation extra damages, court costs and attorneys' fees.

f. If any payment is in default for a period of two (2) weeks or more, the Purchaser shall pay interest at the maximum legal rate of interest allowable by law and for reasonable attorneys' or other related fees incurred by the Seller if the claim is submitted for collection.

g. Any changes made to an order after its factory confirmation, either to the product specifications or its dimensions, will increase the lead time and may change pricing. No changes will be accepted after five (5) business days from deposit remittance and contract signature.

h. In the event that Purchaser resells the product, payment to Seller is never contingent on receipt of funds by Purchaser from end user.

3. Lead time: All standard orders have a lead time of 14-16 weeks. Stock orders will be available in 2-4 weeks.

Order placed during summer and winter holidays will have a special lead time of 20-22 weeks. All COM orders will not be put in production until fabric is received and confirmed by the factory, it is responsibility of the purchaser to send the fabric directly to the factory or the respective showroom.

4. Cancellation:

a. Order cancellations within seven (7) days from deposit remittance and contract signature will result in a twenty percent (20%) cancellation fee. After seven (7) days from deposit remittance and contract signature, the Purchaser is responsible for the full amount due.

5. Delivery:

a. Delivery charges are for curbside delivery or standard elevator service only, as selected by the Purchaser. Delivery charge may change based upon, but not limited to, inspection of site delivery access, inability to safely and/or adequately use the building elevator to lift the product(s), gasoline prices, and/or current common carrier rates. Hoisting, walkup or split delivery is not included in the Seller's price.

b. Release from factory date is estimated only and will be confirmed once the Seller receives the factory confirmation.

c. The Seller will use commercially reasonable efforts to meet the indicated delivery dates but shall not be liable for any breach of contract or held responsible for any costs or expenses incurred by the Purchaser as a result of the Seller's failure to do so.

d. FOB Point: The Seller's Warehouse.

e. Purchaser agrees to accept delivery of the product(s) upon arrival at warehouse. The risk of loss, as to damage or destruction, shall be upon the Purchaser upon delivery and receipt of the product(s). Seller shall dispose of all packing material only if items are unpacked at time of delivery. If goods remain unpacked at Purchaser's request, then it is Purchaser's responsibility to dispose of packing material and to pay any additional charges.

5. Inspection upon Delivery: The Purchaser agrees to inspect the products immediately upon delivery. By signing for acceptance of the delivery from the carrier on the bill of lading (delivery ticket), the Purchaser acknowledges that the product(s) has been delivered in good condition. If any shortages, damages or defects are discovered upon delivery, the Purchaser agrees to make a notation for damage, defect and/or shortage on the bill of lading. The Purchaser's exclusive remedy is limited, at the Seller's option, to repairing or replacing within a reasonable time any merchandise not complying with this Agreement.

6. Storage/Storage Fees:

a. In the event of any delivery delay caused by the Purchaser, Seller is willing to store and handle all product(s) ordered and will invoice the Purchaser for the purchase price plus storage, insurance, and handling charges incurred after thirty (30) days but only for a maximum of 6 months from the date on which the product(s) arrived in the warehouse.

b. At the end of the maximum six months storage period, Purchaser will have to arrange with Seller to move the goods to an alternative storage location of his choice. It is the Purchaser's responsibility to inspect the product at the time of transfer. Seller is not responsible for any damages to the goods due to such additional handling and storage.

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c. Periodically, merchandise can be discontinued by the factory. Purchaser acknowledges that a lengthy storage period can adversely affect the availability of replacement parts.

7. Installation:

a. Installation price is for the above material only. Installation for electrical fixtures or plumbing is not included. Installation charge (quote/contract price) is subject to change if, among other things, installation is delayed by the Purchaser or if there are any changes to the installation scope.

b. It is expressly understood by both parties herein that Seller shall not be responsible for any conditions created by uneven or unlevel floors or surfaces, or walls out of square or plumb, or for variations of size, design or shape of existing or new appliances or by any other situation not covered in this Agreement.

c. If plumbing fixtures are included in this contract, then the sole responsibility of Poliform is the furnishing of said fixtures. Poliform is not responsible for any plumbing hook-ups or other plumbing work associated with the overall job.

d. The Seller shall be responsible only for such plumbing fixtures, piping and fittings provided by it; and it shall not be responsible for any condition or damage whatsoever which may result to any of the pipes or drains, or their function in the building resulting from the installation of said plumbing fixtures, piping and fittings, or to any damage which may be caused to any of the property therein.

e. When the Seller, in the performance of this Agreement, is required to match any material existing on the job as to color, size or pattern, the Seller shall, at its discretion, match existing materials as closely as possible. Such provision shall also apply if the Seller is called to render service after completion of the job. If any materials inside or outside of the subject property which the Seller is required to match under the terms of the Agreement are obsolete and no longer in production, the Seller, at its discretion, shall match existing materials as closely as possible.

f. Installation requires experienced, competent tradesmen. The Seller is not responsible for inferior or incorrect installation performed by others hired by the purchaser.

g. The Purchaser is responsible to prepare walls and ceiling with the appropriate wood blocking for support and correct installation (where necessary), floor and ceiling to be built accurately; to be plumb, level, aligned, square and braced. All tolerances required are indicated in the drawings.

h. All appliances must be at site prior to commencement of installation. Purchaser will be responsible for any charges relating to appliances not being at site at time of installation, whether due to late delivery or any other reason.

8. The Purchaser's Responsibilities:

a. If no provision is made in this Agreement for furnishing facilities for increased electric power, any underwriter, municipal, county, state or federal violation which may result will be the responsibility of the Purchaser.

b. The Purchaser warrants that performance of this Agreement by the Seller and its subcontractors will not violate any existing easements or other rights of third parties in the property to be improved.

c. The Purchaser is obligated and responsible to apply for, obtain and pay for all necessary building permits as well as all local, municipal and/or state approvals, unless otherwise specified in this Agreement.

d. The Seller is not responsible for any violations of building, electric, plumbing, zoning or other codes, ordinances or regulations which may presently exist in the building. Corrections of such violations, should they exist, are not included in the Agreement price and shall be the responsibility of the Purchaser unless specifically provided herein.

9. Taxes: The amount of any sales, excise, or other taxes, if any, applicable to the product(s), shall be added to the purchase price (calculated at the published rate at time of delivery) and shall be paid by the Purchaser unless the Purchaser provides the Seller with an exemption certificate acceptable to the taxing authorities. Any taxes which the Seller may be required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the product(s), including taxes upon or measured by the receipts from the sale thereof, shall be for the account of the Purchaser, who shall promptly pay the amount thereof to the Seller upon demand.

10. Ownership:

a. It is specifically understood and agreed that title, right of possession to, and ownership of all goods and merchandise furnished under this Agreement and any extra material which may be ordered by the Purchaser shall remain the property of the Seller, its assigns or successors, until all payments required to be made by the Purchaser under this Agreement have been paid in full.

b. All surplus and unused materials shall remain the property of the Seller, and the Seller shall have the right to enter into and upon the premises to remove the same within a reasonable period of time after completion of the job.

11. Insurance: The Seller represents that it carries worker's compensation and public liability insurance.

12. Photography: The Seller and Poliform USA, LLC have permission to photograph the installation of the product(s) the Purchaser has purchased, and to use the photographs for both internal purposes (such as showing examples of the Seller's work to prospective customers and others) and external purposes (such as advertising and publicity). The Purchaser's name, address and personal information will not be used for any such purpose, without prior consent.

13. Manufacturer Warranty: This Agreement is subject to Manufacturer standard terms and conditions (copy is available at the Purchaser's request). For factory made equipment, the Manufacturer's specifications for quality, design, dimensions, function and

installation shall in any case take precedence over any others.

14. Appliance Warranties: Appliance warranties shall be limited only to the Manufacturer's specifications for quality, design, dimensions, function and installation and the Purchaser's sole remedy and recourse is limited to claims only against the Manufacturer. Service and repairs on all appliances supplied by the Seller shall be handled directly by the Purchaser with the Manufacturer or its agents and the Seller is not responsible therefore.

15. Limited Warranty:

a. Materials will be warranted subject to the limitations of paragraph 18 of this Agreement against defects for a period of one (1) year after date of installation, normal wear and tear excepted. This limited warranty shall only apply to actual materials supplied as required by this Agreement. The Seller does not waive or extend this one (1) year limited warranty limitation if any services are performed after the one (1) year period of time has expired. This limited warranty shall not cover any contents of the building, nor any painting and decorating. This limited warranty is not transferable. This limited warranty does not cover damage due to suchthings as accident, cleaning, misuse, abuse, mishandling, neglect, acts of God, fires, earthquakes, floods, high winds, government, war, riot or labor trouble, strikes, lockouts, delay of carrier, unauthorized repair, or any other cause beyond the control of the Seller, whether similar or dissimilar to the foregoing.

b. Except as expressly provided herein, the Seller makes no representation or warranty of any kind, express or implied with respect to any products, parts or services provided by the Seller including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. The sole and exclusive remedy for breach of any warranty is limited to the remedies provided in this Agreement. Except as expressly set forth in this Agreement, all products and or services provided by the Seller are provided "as is", "where is", and "with all faults".

c. This limited warranty gives the Purchaser specific legal rights, and the Purchaser may also have other rights which vary from state to state.

16. Defects:

a. Any claim pertaining to the quality of the installation must be made in writing to the Seller within ten (10) days after installation.
b. It is agreed that if the Purchaser installs any merchandise, or if the Purchaser or his agent or contractor performs any work or labor and should any repair or replacement be required, the Purchaser agrees to remove and replace without cost to the Seller all fixtures attached to the surface to be repaired and to put the premises in such condition that the Seller may replace defective material or make necessary repairs without delay.

17. Wooden Products:

a. Wooden units change their colors owing to light and natural wood aging. Some color differences are possible; they will tone down after some time.
b. Wood is one of nature's most valuable gifts and it is understood that if wood products of any kind are required to be used on the job including cabinets and paneling, the Seller shall not be responsible for varied and different grains, textures, densities, shades, designs, characteristics, color tones and patterns, nor does the Seller guarantee the colorfastness of wood or against peeling, chipping, cracking or scratching.

18. Approximate Measurements: All measurements, sizes and dimensions as set forth in this Agreement are approximate.

19. Limitation on Liability The Purchaser's Remedies:

a. In no event shall the Seller's liability for any claim whatsoever exceed the cost of the product(s) and/or services giving rise to the claim, whether based in contract, warranty, indemnity or tort (including, without limitation, negligence and strict liability) or otherwise. In no event shall the Seller be liable for any special, incidental, consequential or other indirect damages (including, without limitation, loss of revenues, profits or opportunity), however caused, on any theory of liability, whether or not the Seller has been advised of the possibility of such damages.

b. The Seller agrees that it will perform this Agreement in conformity with customary industry practices. The Purchaser agrees that any claim for adjustment shall not be reason or cause for failure to make payment of the purchase price in full.

c. The Purchaser shall not be entitled to set-off any amounts due to the Purchaser against any amount due to the Seller in connection with this transaction.

20. The Seller's Remedies:

a. a. The Seller retains the right upon breach of this Agreement by the Purchaser to sell those items in the Seller's possession. In effecting any resale on breach of this Agreement by the Purchaser, the Seller shall be deemed to act in the capacity of agent for the Purchaser. The Purchaser shall be liable for any net deficiency on resale.

b. The Purchaser's failure to comply with any term, condition or provision in this Agreement including failing to make a payment when due shall constitute a breach of contract. The Purchaser shall be liable to the Seller for damages for any such breach of this contract, in addition to any other remedies and damages permitted by a Court of law. The Purchaser shall be liable to the Seller for all profits the Seller would have earned, the reasonable value of the work and all materials furnished or procured, any and all expenses incurred, and reasonable attorneys' fees incurred by the Seller to collect the monies due or incurred in any lawsuit for damages or claims between the parties.

c. It is also agreed that in addition to the remedies provided herein, in the event the Purchaser prevents the Seller from commencing performance of the work or having commenced said work, the Purchaser refuses to permit the Seller to complete the

same, then and in such event, the Seller shall receive from the Purchaser the reasonable value of labor and materials, in no event below the costs and the profit which the Seller would normally have earned if the transaction had been fully completed and paid for in accordance with this Agreement.

21. **Force Majeure:** The Seller shall not be responsible for damage, delays or inability to complete contract resulting from acts of God, strikes, fires, accidents, storms, defaults or carriers, inability to obtain materials, terrorism, or other causes beyond its control.

22. **Arbitration:** Any dispute arising out of this Agreement shall be submitted to the American Arbitration Association under its rules then in force. The Arbitration hearing will be held before one arbitrator in New York, NY. Both Parties shall be bound by the arbitration decision, which shall be final and not subject to appeal. Judgment upon such decision may be entered in any federal or state court of competent jurisdiction.

23. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of NY, without regards to its principles of conflicts of law.

24. **Entire Agreement:** This Agreement sets forth the entire transaction between the parties. Therefore, any and all prior agreements, warranties and representations made by either party are superseded by this Agreement. Except as expressly provided herein, no warranties or changes or modifications to, or waiver of, any of this Agreement shall be valid or binding on either party unless in writing

and signed by an authorized representative of each party. No agent of the Seller, unless authorized by the Seller, has any authority to waive, alter or enlarge this Agreement, or to make any new or substituted or different agreements, warranties or representations. All documents relating to this job are invalid unless signed by both the Purchaser and the Seller. There shall be no exceptions.

25. **No Waiver:** No condoning, excusing or waiver by the Seller of any default, breach or nonobservance by the Purchaser of at any time with respect to any terms of this Agreement shall operate as a waiver of the Seller's rights with respect to any continuing or subsequent default, breach or nonobservance, and no waiver shall be inferred from or implied by any failure to exercise any such rights.

26. **Severability:** If any provision of this Agreement is declared invalid or unenforceable by any court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected in any way.

27. **Assignment:** Neither party may sell, assign or transfer its rights, duties or obligations under this Agreement without the prior written consent of the other party; provided, however, that the Seller may (i) assign its rights, duties and obligations hereunder to any parent company, subsidiary company or company under common control therewith, or to any successor in interest to all or substantially all of the business or assets of the Seller and (ii) subcontract the manufacture of products, without the Purchaser's consent. To the extent that assignment is permitted, this Agreement shall inure to the benefit of and be binding upon each party and its permitted successors and assigns.

28. **Headings:** The headings in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of this Agreement.

29. **Effective Signature:** A signature of a party to this Agreement sent by facsimile or other electronic transmission will be deemed to constitute an original and fully effective signature of such party.

30. **Sub-frame information** (Applicable only to purchases of doors):

a. For hinged doors standard installation, Lualdi will provide metal sub-frames and **pre-drilled jambs**, as indicated in the Lualdi drawings.

b. If the Purchaser elects to install the Lualdi doors without using the manufacturer's sub-frames, then the Purchaser must provide any wood or other sub-frame. An **additional up-charge** is applied by Lualdi for custom "**non pre-drilled**" **jambs**. Such jambs are to be drilled at the site by the Purchaser.

c. For hinged door installation, no metal sub-frame is provided by Lualdi. The Purchaser is responsible entirely for preparing the appropriate wall structure to allow the installation of the **jambs**.