

POLIVEIL

TERMS AND CONDITIONS OF SALE

These Standard Terms and Conditions of Sale (**Conditions of Sale**) apply from June 2020 and may be amended at any time with prior notice in writing by the Seller.

1 General

Subject to Clauses 4.1, 4.2 and 5.1 below, these Conditions of Sale shall constitute the sole and exclusive terms and conditions of sale regarding the products delivered, supplied or sold by the Seller to the relevant person or entity ("**Buyer**") pursuant to an Order (defined in Clause 2.1) (each a "**Product**", and together, "**Products**") of First Light Pty Limited trading as Poliveil ("**Seller**"), except to the extent agreed in writing to the contrary or as otherwise set out in a written supply agreement between the parties. If any of the provisions of these Conditions of Sale are inconsistent with the terms and conditions of such an agreement, the provisions of that agreement shall prevail to the extent of the inconsistency. No change to these conditions shall be valid unless made in writing and signed by the Seller.

2 Offer and Acceptance

- 2.1 A purchase order by the Buyer shall be subject to written acceptance by the Seller. If the Seller's acceptance differs in any way from the Buyer's purchase order, such acceptance constitutes a new non-binding offer of the Seller. The Buyer's purchase order duly accepted by the Seller shall be hereinafter referred to as an "**Order**".
- 2.2 Subject to Clause 2.3, Orders encompassing delivery lead time exceeding 28 days will entitle the Seller, at its sole discretion, to modify the price, quantity and terms of payment related to such Order or to cancel any such Order.
- 2.3 The Buyer is entitled to withdraw its Order by giving written notice to the Seller within five (5) days after notification of any increase in price and/or modification to the quantity or terms of payment made in accordance with Clause 2.2 above, provided that such Order has not yet been dispatched.

3 Cancellation

- 3.1 Orders may not be cancelled or varied by the Buyer without the Seller's written consent and may require, as a condition to such consent, the reimbursement to the Seller of costs incurred in performing such Order. If the Buyer purports to cancel or vary an Order without the Seller's consent or refuses to accept delivery of Products previously ordered, then, without prejudice to any other rights or remedies that the Seller may have, the Seller shall be entitled to charge the Buyer any costs and fees incurred by the Seller in respect of all Products ordered, supplied or manufactured for execution of such Order, as well as a cancellation fee equal to five percent (5%) of the market value of the Products under the Order so cancelled. In these circumstances, the Seller shall be entitled to store the Products, at the Buyer's cost, and to dispose of the Products to any third party on such terms as the Seller may see fit. All costs, expenses or fees of the type referred to in this Clause 3.1 that are incurred by the Seller shall be reimbursed by the Buyer to the Seller within 5 days of such demand being made.
- 3.2 Without derogating from any other rights or remedies available to the Seller, the Seller shall be entitled to cancel an Order and suspend all future deliveries in the event of filing by or against the Buyer of any proceedings in administration, receivership, liquidation or insolvency, or any proceedings commenced, application made or order of a court made against the Buyer for relief under the provisions of applicable law for the benefit of its creditors; or any step is taken to enter into an arrangement between the Buyer and its creditors; or any step is taken for the

appointment of a special manager, controller, provisional liquidator, liquidator, administrator, receiver, receiver and manager, trustee in bankruptcy or like person to take possession of any material assets of the Buyer or its operations or business; or the placement of attachment on any of the material assets of the Buyer which is not discharged within seven (7) days; or the proposal for or adoption of a resolution by the Buyer for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors; or the Buyer stops payment or ceases or threatens to carry on its business or to pay its debts as and when they fall due.

4 Prices and Payment Terms

- 4.1 Prices and payment terms, including any 'Incoterms', are as set out in an invoice raised by the Seller and issued to the Buyer, or by other written communication from the Seller to the Buyer (including for example any price list issued by the Seller to the Buyer).
- 4.2 Unless otherwise agreed in writing by the Seller and the Buyer, payment shall be due in full no later than 14 days after the invoice date, in the currency stated on the invoice. Time of payment is of the essence.
- 4.3 The Buyer acknowledges and agrees that the Seller is not obliged to arrange for the dispatch of any Goods to the Buyer (or its nominee), whether the subject of an Order or otherwise, unless and until payment is made in full in accordance with the terms and conditions of this Clause 4 or any invoice raised by the Seller.
- 4.4 The Seller reserves the right to decline arranging for the dispatch and delivery of Products or to accept payment, except if payment is made by electronic transfer in immediately available funds to Seller's designated bank account, or by way of bank cheque from an Australian trading bank, or against irrevocable confirmed letter of credit, provided that in the event of payment by letter of credit, confirmation by an Australian clearing bank is required.
- 4.5 Without limiting, and subject to, clauses 4.2, 4.3 and 4.4, the Buyer undertakes to settle its payment obligations to the Seller by their due date in accordance with the terms and conditions of this Clause 4. Failure to pay the price by the due date shall constitute a material breach of the Buyer's contractual obligations. In the event of a default in payment and unless otherwise agreed in writing by the parties, the Seller is entitled to charge default interest on all amounts due and outstanding from the Buyer, commencing from their due date and until actually paid at an annual rate of interest of five percent (5%) per annum accruing daily. If payment is to be made by the Buyer in Australian dollars, then all amounts due and outstanding from the Buyer and the interest accrued thereon shall increase in proportion to any increase in the official exchange rate as between the Australian and US dollar published by [the Reserve Bank of Australia] from the last rate published on the due date to the last rate published on the date of payment.

5 Delivery, Shipping Dates, Packaging

- 5.1 Delivery shall be effected as determined by the Seller in its written acceptance of the Buyer's purchase order or as otherwise agreed in writing by the Buyer and the Seller.—International shipping trade terms (such as 'CIF' and 'FOB') shall be specified on the invoice issued to Buyer, and these terms shall be interpreted in accordance with the 'Incoterms' in force on the date the Order is concluded, except to the extent inconsistent with any provision of these conditions of Sale. If 'Incoterms' trade terms are not stated to apply in accordance with this Clause 5.1, Ex-works ('EXW') shall regulate the relevant delivery and transportation obligations, rights and risks associated with the Order except to the extent that any EXW provisions are inconsistent with any provision of these Conditions of Sale.

- 5.2 The Seller shall not be obligated to arrange for the dispatch of any Products ordered by the Buyer, unless the Buyer has obtained all licenses, authorizations and other approvals required by law. The Buyer is solely responsible to obtain all licenses, authorizations and other approvals as are required in accordance with the relevant regulations of the country to which the Products will be delivered pursuant to the Order or supply agreement. The Seller must be instructed in writing by the Buyer if any documents are required to be issued by the Seller for the purpose of the Buyer obtaining any of the licenses, authorizations or other approvals referred to above.
- 5.3 The Buyer acknowledges and agrees that the Seller makes no representation or provides any warranty to the Buyer (or any third party) regarding the matter of legal and/or regulatory compliance of any Product. The Seller must rely on its own investigations in this regard. Further, it is acknowledged and agreed that the Seller will provide no warranty or give any assurance (express or implied) regarding the accuracy, validity or authenticity of any representation, certification, statement etc made by any third party with respect to any Product, including for example, any certificate issued by any compliance expert with respect to the Product – even if such certificate is provided by the Seller to the Buyer. The Buyer must undertake its own inquiries with respect to such matters.
- 5.4 Unless specifically agreed otherwise, delivery times are best estimates only and shall not be of the essence. The Seller will use its reasonable endeavours to arrange for the delivery of the Products ordered by the estimated delivery time. The Seller reserves the right to change delivery dates for Products in accordance with available delivery options. Any delays that are expected or directly known by the Seller in shipments will be notified to the Buyer, but the Seller shall not be liable for any delays – whether expected, known, notified or otherwise.
- 5.5 In the event of bulk delivery, the Seller shall use its reasonable endeavours to arrange for the delivery to the Buyer of the correct amount of Products ordered. Notwithstanding the above, and subject to any agreement in writing by the parties to the contrary, the Buyer shall be obligated to accept the delivery of an amount of Products varying by not more than five percent (2%) from the amount under the applicable Order, and the invoice amount for such Order shall be adjusted accordingly, except where such adjustment may be impracticable in the event of an Order for the delivery of Product outside of Australia, in which case the price stated on the issued invoice will apply.
- 5.6 The Buyer shall solely bear all responsibility for proper unloading of Products from containers or delivery trucks or any other means of transportation used for the delivery of Products, in order to avoid damage to Products upon delivery.

6 Product Quality and Inspection of Products

- 6.1 Unless otherwise agreed, the quality of the Products is determined by the Seller's Product specifications, which can be found on the Seller's website at www.poliveil.com, or as otherwise disclosed by the Seller in writing.
- 6.2 The Buyer undertakes to examine Products for defects and shortages upon receipt. Claims regarding received Products must be made in writing before Products are used and must be received by the Seller within ten (10) days of receipt of Products by the Buyer. Such notification must describe the nature and extent of the alleged defects in detail. The Seller must be given reasonable opportunity to investigate such claims. Any defect of Products which would have been observable on reasonable inspection by the Buyer and which was not notified to the Seller in writing within ten (10) days of receipt of the relevant Products is hereby waived, and the Buyer shall have no right to bring any claims or suits against the Seller with regard to such claims, nor shall the Buyer be entitled to terminate its agreement with the Seller or revoke its Order or acceptance regarding the Products based on such defect.

7 Suitability, Compliance with Legal Requirements and Warranties

- 7.1 The Buyer shall be solely responsible for determining and ensuring the suitability and fitness of the Products for the purposes for which the Buyer (or its customers) requires them and the circumstances in which they will be used. Any advice or information rendered by the Seller (including any third party compliance certificates) with respect to suitability and applications of the Products shall not relieve the Buyer from undertaking its own investigations and/or tests.
- 7.2 Subject to Clause 7.8 below, if at any time following delivery of Products, the Buyer claims that a Product is defective, and provided that such defect did not trigger the notification obligation set out in Clause 6.2, the Buyer must give written notice of such alleged defect (including reasonable details) within ten (10) days following its discovery. Failure of the Buyer to provide such notice, or to pay the entire purchase price when due, shall constitute a waiver by the Buyer of all rights with regard to such claims, including the right to terminate its agreement with the Seller or revoke its Order.
- 7.3 Unless agreed in writing to the contrary, the Buyer is responsible for compliance with all laws and regulations regarding import, transport, storage and use of the Products.
- 7.4 Without limiting the effect of clause 7.8, the Seller accepts no liability for any misuse or unreasonable use of the Products, or the Buyer's failure to carry out its statutory or contractual obligations in relation to the delivery, importation, transportation, receipt, storage, use or on-sale of the Product. The Seller shall not be responsible for any defect or failure of a Product, or any damages whatsoever caused by a Product, which has been modified by any person, or which are improperly used.
- 7.5 If any Products are defective and notification of such defect has been duly made, the Seller's only obligation shall be, at its sole discretion, to either supply the Buyer with non-defective replacement Product, or to issue a credit with regard to such Product. Products returned to the Seller and replaced shall become the property of the Seller.
- 7.6 Except as expressly provided in Clause 7.5, the Seller shall have no further liability to the Buyer in contract, tort or otherwise arising out of the supply of the Products. The Seller's maximum potential liability is limited to the purchase price of the Product which gives rise to the claim. Under no circumstances shall the Seller be liable (whether in contract, tort or otherwise) for any loss of profit (whether direct or indirect) or for any indirect, contingent, special or consequential loss, damage or injury to the Buyer.
- 7.7 Notwithstanding the provisions of Clause 7.2, no suit or legal proceeding arising under these Conditions of Sale shall be maintainable against the Seller unless commenced or made by the Buyer within one (1) year of the date on which the alleged act or omission giving rise to the alleged breach of these Conditions of Sale by the Seller occurred.
- 7.8 The Seller shall not be liable to the Buyer in relation to any third party claims brought against the Buyer in connection with or related to (either directly or indirectly) any Products supplied to the Buyer, and the Buyer hereby confirms and agrees that it shall not bring any claim against the Seller with respect to the subject matter of any such third party claim (or any matter that is directly or indirectly related to such subject matter). The Buyer hereby further undertakes to indemnify the Seller against any claim brought by a third party (including but not limited to any customer of the Buyer) against the Seller relating to the Products.

8 Set off

The Buyer may not set-off any obligation owed to it by the Seller against any obligation it owes to the Seller under these Conditions of Sale. The Seller may set-off any obligation owed to it by

the Buyer under these Conditions of Sale against any obligation (whether or not due and payable) owed by the Seller to the Buyer, regardless of the place of payment or currency of either obligation, upon giving the Buyer a written notice to this effect.

9 Security

- 9.1 Without derogating from any other remedies that may be available to it, the Seller shall be entitled to arrange for the suspension or withholding of the shipment of any Products to the Buyer under a contract for future shipments (including these Conditions of Sale) in the event that as of the proposed shipment date, the Buyer has any due and unpaid obligations to the Seller.
- 9.2 Without derogating from the foregoing, if in the Seller's reasonable judgment the Buyer's credit becomes impaired, the Seller may, at its sole option, revoke credit periods, suspend future deliveries, make further deliveries dependent on advance payment and/or request the Buyer to provide it with reasonable guarantees and/or security.

10 Title, Insurance and Indemnity

- 10.1 Title and property in the Products shall remain vested in the Seller and will not pass to the Buyer until the purchase price for such Products has been paid in full in accordance with Clause 4. Until such time, the Buyer must: (a) hold any Products that have been delivered to the Buyer as fiduciary agent and bailee of the Seller; and (b) keep all Products supplied and delivered by the Seller separate from the Buyer's and others' property, and in a manner to enable the Products to be readily identified. The parties hereto agree that in any event of breach of the payment obligations or an insolvency event of the type referred to in Clause 3.2 above, the Seller will be entitled to access to the location where the Products are situated and reclaim possession of any such Products and all without needing the Buyer's acceptance and/or judicial authorization of any kind. Without derogating from the above, the acceptance of these Conditions by the Buyer shall be regarded as a specific authorization of the Buyer for this purpose.
- 10.2 At any time before title and property has passed to the Buyer, the Seller may reclaim the Products, regardless of whether or not the underlying contract (including the contract formed pursuant to these Conditions of Sale) has been terminated. Furthermore until the purchase price for any supplied or delivered Products has been paid in full in accordance with Clause 4: (a) the Buyer is prohibited from using, modifying, selling or otherwise disposing of such Products, and if the Products are sold to any third party or incorporated or transformed into any other product due to services rendered by the Buyer to any third party or otherwise disposed of used by the Buyer, the Seller will be entitled to claim any pending or existing payment in relation to said delivered Products; (b) the Buyer must hold all monies resulting from such use, sale or other disposal on trust for Seller and such monies shall be payable to the Seller on demand. Without derogating from the above, the acceptance of these Conditions of Sale by the Buyer shall be considered as a specific authorization of the Buyer for this purpose.
- 10.3 The Seller is not responsible for arranging any insurance coverage in relation to the Product, Order or otherwise for the benefit of the Buyer.
- 10.4 The Buyer indemnifies the Seller from and against (and the Buyer must pay on demand to the Seller) all loss, damage, costs and expenses (including legal costs) which the Seller may suffer or incur in exercising its rights under the underlying contract (including the contract formed pursuant to these Conditions of Sale).

11 Personal Property Securities Act 2009 ("PPSA")

- 11.1 Capitalised expressions where used in this clause have the same meaning as given to them in the PPSA, unless otherwise defined in these Conditions of Sale.

- 11.2 The Buyer and the Seller acknowledge that the underlying contract between the Buyer and the Seller for the sale, delivery and/or supply of Products (including the contract formed pursuant to these Conditions of Sale) ("**Contract**") constitutes a Security Agreement for the purposes of the PPSA and gives rise to one or more Security Interests in favour of the Seller over the Products supplied or to be supplied to the Buyer pursuant to the Contract.
- 11.3 The Buyer and the Seller acknowledge that the Seller, as Secured Party, is entitled to register in any manner it considers appropriate its interest in the Products supplied or to be supplied to the Buyer under the Contract on the Personal Property Securities Register.
- 11.4 The Buyer must promptly do anything required by the Seller to: (a) ensure that any Security Interest granted to the Seller is a valid, enforceable and perfected Security Interest and has priority over all other Security Interests in the Products; and (b) enable the Seller to exercise any rights in connection with the Security Interest.
- 11.5 To the extent permissible at law, the Buyer waives its right to receive any notice under the PPSA (including notice of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Buyer, as Grantor, to the Seller);
- 11.6 To the extent permissible at law:
- (a) for the purposes of sections 115(1) and 115(7) of the PPSA: (i) the Seller need not comply with section 95 (notice of removal of accession); section 121(4) (enforcement of security interests in liquid assets); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); and (ii) section 142 (redemption of collateral); and section 143 (reinstatement of security agreement) are excluded;
 - (b) for the purposes of section 115(7) of the PPSA: (i) the Seller need not comply with section 129(2) and 129(3) (disposal by purchase) and section 132 (secured party to give statement of account); and (ii) section 136(3), (4) and (5) (extinguishment of obligations owed to the secured party) and section 137 (persons entitled to notice may object to proposal) are excluded.
- 11.7 The Buyer agrees to give the Seller at least 10 days prior written notice before changing any Buyer details, such as its name, ABN or ACN, or any other details recorded on the Personal Property Securities Register.
- 11.8 The Buyer agrees to unconditionally ratify any actions taken by the Seller under this Clause 11.
- 11.9 For the purposes of s275(6) of the PPSA, the Buyer and the Seller agree that neither party will, or is entitled to, disclose information of the kind specified in s 275(1) of the PPSA.
- 11.10 For the purposes of section 20(2) of the PPSA, the collateral is the Products and includes any Products or other items described in the Order.

12 GST

- 12.1 For the purposes of this clause 12, "consideration", "GST", "input tax credit", "taxable supply" and "tax invoice" have the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 12.2 Except where express provision is made to the contrary, the consideration payable by a party for a taxable supply made by the other party pursuant to these Conditions of Sale is expressed exclusive of any GST.
- 12.3 Notwithstanding any other provision of this Conditions of Sale, if a party makes a taxable supply in connection with this Conditions of Sale (the "supplier"), then the party liable to pay for the taxable supply (the "recipient") must also pay, at the same time and in the same manner as the GST exclusive consideration is otherwise payable, an additional amount equal to the amount of any GST payable in respect of the taxable supply.
- 12.4 The supplier in respect of any taxable supply, if registered or required to be registered for GST, shall upon request by the recipient of the taxable supply, provide to the recipient a tax invoice in respect of the amount constituting any such taxable supply.

13 Privacy

The Buyer agrees to and hereby authorises and unconditionally grants its consent to the Seller obtaining from a credit reporting agency or other person or company (including but not limited to any other credit provider) information and/or reports concerning the Buyer from time to time during the continuance of the credit arrangements set out in the Contract for the purpose of the Seller assessing whether or not to provide credit to, or to continue to provide credit to, the Buyer or for the purpose of collecting overdue payments in respect of commercial credit sought by or provided to the Buyer. The Buyer also agrees and hereby authorises and consents to the Seller obtaining and disclosing information about the Buyer's creditworthiness to the maximum extent permitted by law to and from credit reporting agencies and credit providers (including identity particulars and details or overdue payments) for the purpose of assessing the Buyer's creditworthiness or an application for credit, notifying or reporting defaults by the Buyer or exchanging information with other credit providers where the Buyer is in default with other credit providers. For the purpose of this clause, "report" and "information" include any credit report originating from any credit reporting agency, any trade or credit reference or any other report, record or information (including any personal information) that has bearing on the Buyer's creditworthiness, credit standing, credit history or credit capacity.

14 Force Majeure

In no event shall the Seller be responsible or liable for any loss caused by (but not limited to) explosions, fires, riots, sabotage, war, expropriation or nationalization, acts of God, storm, disasters, laws and regulations of country of the Buyer and/or the Seller, strikes of port workers or vessel crew members, or any other cause beyond the Seller's control ("**Force Majeure**"). The Seller will inform the Buyer of the occurrence of a Force Majeure event as soon as reasonably possible after becoming aware it, specifying the period for which such Force Majeure event is expected to continue. In such event, the Seller shall be entitled to defer the shipment date, or, if the Force Majeure is reasonably expected by the Seller to (or does in fact) subsist for more than twenty (20) days from the date on which the Seller became aware of it, then the Seller will be entitled to cancel the Buyer's Order; provided that the Seller will use its reasonable endeavours to remove, overcome or minimise the effect of such Force Majeure on its obligations under these Conditions of Sale as quickly as possible.

15 Intellectual Property Rights

No license or right under any patent, copyright, trademark, trade-name, logo or any other intellectual property right, is either granted or implied to the Buyer under these Conditions of Sale.

16 Separate Provisions

Each of these conditions is to be construed as a separate provision surviving and applying even if one or more of the others is held void and unenforceable.

17 Waiver

Any waiver by the Seller of any breach or default by the Buyer of any of the Buyer's obligations under these Conditions of Sale, shall not be construed as a waiver of any other breach or default by the Buyer or of the Seller's right to enforce its rights in any other circumstances.

18 Communication

All notices, demands, claims, and other communications from the Buyer to the Seller must be in writing and sent to the following email address: peter@firstlight.com.au

19 Third parties

These Conditions of Sale or any contract to which they apply shall in no event be construed to confer any rights to third parties.

20 Governing law and jurisdiction

These Conditions of Sale any ancillary documents (including any related purchase order, invoice or delivery note), will be governed by and construed in accordance with the laws in force in the State of New South Wales, Australia and the Buyer and the Seller submit to the non-exclusive jurisdiction of the Courts of that State.