

EOP-WTS-003-F15

### **Polar Brand Limited Warranty and Limitations on Liability**

- (a) Manufacturer warrants to End User for a period of two years after delivery to End User that the Equipment will be free from defects in workmanship and material when properly maintained and used in Normal Service. "Normal Service" means usage in the manner and for the purpose for which the Equipment was designed. This warranty shall be void if the Equipment is subject to weight loads or pressures or is used to carry or is cleaned with materials having corrosive, temperature, or other characteristics, for which the Equipment was not designed.
- (b) This warranty is limited to repair or replacement, at Manufacturer's option, of any part of the Equipment that Manufacturer determines is defective and that is not excluded by subparagraph (c) below. Manufacturer will not be bound by any statements or promises by its dealers, service outlets, or any other third party. All warranty work will be performed at a Manufacturer designated facility. End User must give Manufacturer written notice of a claimed defect within 15 days after its discovery by End User. In the event that Manufacturer determines that warranty work will be performed, End User shall deliver the Equipment at its expense to the repair facility designated by Manufacturer within 15 days after receipt of Manufacturer's written instructions. The warranty work will be performed within a reasonable period of time. The provisions of this subparagraph are Seller's and Manufacturer's sole obligations and End User's sole and exclusive remedy for any breach of the limited warranty set forth herein.
- (c) Manufacturer makes no warranty whatsoever with respect to any defect arising from, by way of example: (i) any substitution of parts not approved by Manufacturer, any alteration or repair by Purchaser, End User or others, a failure to maintain the Equipment properly, use of the Equipment outside of Normal Service or an accident involving the Equipment; (ii) parts which are reasonably expected to wear out and have to be replaced, including tires, lights, brake linings, gaskets, paint, adhesives, electrical components, suspension components, and other similar items; (iii) parts, components, and accessories that were not manufactured by Manufacturer, provided that Manufacturer shall pass through to End User any warranty recovery Manufacturer receives from its supplier in respect of the defective component supplied by such supplier; (iv) the performance, or damages, or failure, or losses of any nature whatsoever of any tank lining installed by Manufacturer or any third party; (v) the lack of interior cleanliness of any tank Equipment, it being the responsibility of Purchaser and End User to inspect same prior to use and to clean or otherwise prepare the interior of the tank for its intended use; (vi) any truck chassis; (vii) any corrosion or pitting of the interior of the tank vessel due to the nature of the payload and/or operating conditions under which such payload is carried; or (viii) any design specifications that are provided by Purchaser or End User.
- (d) Under no circumstances shall Manufacturer or its affiliates be liable to End User, Purchaser or to any third party for loss of cargo, lost profits, loss of use of the Equipment, rental expense, transportation expense, harm to business reputation, loss of anticipated savings, personal injury, punitive or exemplary damages, special damages, or any incidental or consequential damage of any kind, whether or not foreseeable, and whether arising in contract (including warranty), tort (including active, passive or imputed negligence), strict liability or any other nature whatsoever.
- (e) This warranty is the sole warranty made by Manufacturer and its affiliates with respect to the Equipment and is available to End User only; it is not transferrable to any third party, including any subsequent purchaser or user.
- (f) **THE FOREGOING WARRANTY IS IN LIEU OF ANY OTHER WARRANTIES AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW, STATUTE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR HIDDEN DEFECTS, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW. THE LIMITED WARRANTY SET FORTH ABOVE IS IN LIEU OF ANY AND ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S OR MANUFACTURER'S PART.**
- (g) **NOTWITHSTANDING ANYTHING ELSE IN THIS ORDER AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN, MANUFACTURER'S AND ITS AFFILIATES' TOTAL LIABILITY IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE ARISING IN CONNECTION WITH THIS ORDER OR PURCHASER'S OR END USER'S PURCHASE OR USE OF THE EQUIPMENT SHALL BE LIMITED TO TWO THOUSAND DOLLARS U.S. (\$2,000) WITH RESPECT TO EACH UNIT COMPRISING THE EQUIPMENT.**