

**PURCHASE CONTRACT
FOR SUPPLY OF LIQUID EMULSION POLYMER
FROM SNF POLYDYNE**

This Purchase Contract ("Contract"), made and entered into this day of _____, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California ("CITY"), and SNF POLYDYNE, a Corporation ("VENDOR").

RECITALS:

- A. CITY desires to purchase certain liquid emulsion polymer hereinafter described.
- B. CITY desires to engage VENDOR to provide these liquid emulsion polymers by reason of its qualifications and experience and VENDOR has offered to provide the required goods on the terms and in the manner set forth herein.

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 - PURCHASE

The goods to be purchased from VENDOR under this Contract are not to exceed 200,000 pounds of Clarifloc WE-1273 and Clarifloc WE-1728 for the sum of \$379,303 inclusive 9.625% sales tax and priced at \$1.73/Lb described in Exhibit A to this Agreement, which is attached and incorporated by reference.

SECTION 2 - PRICE AND TAXES

All prices shall be as stated in this Contract and are firm and not subject to escalation. This purchase is subject to all California sales tax. Municipalities are exempt from federal excise and transportation taxes. Prices shall exclude these taxes.

SECTION 3 - PAYMENT

Unless otherwise agreed in writing, payment terms shall be net thirty (30) days from date of receipt of invoice or acceptance of goods, whichever occurs last. Invoices must cite the purchase order number to prevent delay in payment. All invoices must be mailed to City of San Mateo, Attn: Accounts Payable, 330 West 20th Avenue, San Mateo, CA 94403.

SECTION 4 - DELIVERY AND PERFORMANCE

Time is of the essence in the performance of this Contract. If delivery of goods cannot be made at the specified time, VENDOR shall promptly notify the CITY of the earliest possible date for delivery. Notwithstanding such notice, if VENDOR for any reason fails to deliver goods within the time specified or to the CITY's satisfaction the CITY may terminate this Contract or any part thereof without liability except for goods previously provided and accepted. The CITY's receipt or acceptance of all or part of a non-conforming delivery shall not constitute a waiver of any claim, right or remedy the CITY has under this Contract or applicable law.

SECTION 5 - SHIPMENT AND INSPECTION

VENDOR assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products. No charges for transportation containers, packing, etc., will be allowed the vendor unless so specified in this Contract. All shipments shall be F.O. B. 2050 Detroit Drive, San Mateo. Transportation charges shall be shown as a separate item on the invoice.

The CITY may revise shipping instructions as to any goods not as yet shipped. The CITY shall have the right to inspect any or all of the goods at VENDOR's place of business or upon receipt by the CITY. By reason of its failure to inspect the goods, the CITY shall not be deemed to have accepted any defective goods or goods which do not conform to the specifications provided or to have waived any of the CITY's rights or remedies arising by virtue of such defects or non-conformance. VENDOR shall be responsible for payment of shipping for the return of any defective goods. Shipping documents and invoices must cite the Purchase Order number.

SECTION 6 - WARRANTIES

In addition to any other expressed or implied warranties and unless otherwise agreed in writing, VENDOR warrants that all products delivered hereunder will be new, suitable for use as described, of the grade and quality specified, free from all defects in design, material and workmanship; in conformity with all samples, drawings, descriptions and specifications furnished; in compliance with all applicable federal, state and local laws and regulations, and free of any liens and encumbrances. These warranties shall not be deemed to exclude VENDOR's standard warranties or other rights or warranties which the CITY may have or obtain.

SECTION 7 - INDEMNITY

VENDOR agrees to hold harmless and indemnify CITY and the Estero Municipal District, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of VENDOR's performance of this Contract, except for those claims arising out of CITY's sole negligence or willful misconduct. VENDOR agrees to defend CITY and the Estero Municipal Improvement District, its elected and appointed officials, employees, and agents against any such claims.

SECTION 8 - INSURANCE

VENDOR shall procure and maintain for the duration of the contract the insurance specified in Exhibit B to this Agreement.

SECTION 9 - TERMINATION

This Contract may be terminated by mutual consent of both parties or by the CITY at its discretion. The CITY may cancel an order for goods at any time with written notice to VENDOR, stating the extent and effective date of termination. Upon receipt of this written notice, VENDOR shall stop performance under this Contract as directed by the CITY. If the Contract is terminated, VENDOR shall be paid in accordance with the terms of the Contract for goods delivered and accepted.

SECTION 10 - REMEDIES

In the event of VENDOR's breach of this Contract, City may take any or all of the following actions, without prejudice to any other rights or remedies available to the City by law: (a) require Vendor to repair or replace such goods, and upon VENDOR's failure or refusal to do so, repair or replace the same at VENDOR's expense; (b) reject any shipment or delivery containing defective or nonconforming goods and return for credit or replacement at VENDOR's option, said return to be made at VENDOR's cost and risk; (c) cancel any outstanding deliveries and treat such breach by VENDOR as VENDOR's repudiation of this contract. In the event of the CITY's breach hereunder, VENDOR's exclusive remedy shall be VENDOR's recovery of the goods or the purchase price payable for goods shipped prior to such breach.

SECTION 11 - COMPLIANCE WITH LAW

VENDOR warrants that it will comply with all federal, state, and local laws, ordinances, rules and regulations applicable to its performance under this Contract. VENDOR shall obtain and maintain throughout the life of the Contract all permits or licenses required in connection with the manufacture, sale, and shipment of the products ordered under this Contract.

SECTION 12 - ASSIGNMENT

VENDOR shall not delegate or subcontract any duties and services or assign any rights or claims under this Contract without the CITY's prior written consent.

SECTION 13 - ARTWORK, DESIGNS, PATENTS, COPYRIGHTS AND TRADEMARKS

VENDOR hereby agrees that the sale, use or incorporation into manufactured products of all machines, software, hardware, materials and other devices furnished under this Contract are free and clear of infringement of any valid patent, copyright, or trademark. VENDOR shall hold the CITY harmless from any and all costs and expenses, including attorney fees, liability, and loss of any kind growing out of claims, suits or actions alleging such infringement, and VENDOR agrees to defend such claims, suits or actions.

SECTION 14 - GOVERNING LAW

This Purchase Order and the contract between the parties evidenced hereby or attached thereto shall be deemed to be made in the State of California and shall in all respects be construed and governed by the laws of that state.

SECTION 15 - VENUE

In the event of litigation, venue will be in the County of San Mateo.

SECTION 16 - WAIVER

The waiver of any term, condition or provision hereof shall not be construed to be a waiver of any other such term, condition or provision, nor shall such waiver be deemed a waiver of a subsequent breach of the same term, condition or provision.

SECTION 17 - COSTS AND ATTORNEY FEES

Attorney fees in an amount not exceeding \$85 per hour per attorney, and in total amount not exceeding \$5000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Contract. The above \$5000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this provision that neither party shall have to pay the other more than \$5000 for attorney fees arising out of an action, or actions to enforce the provisions of this Contract.

SECTION 18 - MEDIATION

Should any dispute arise out of this Contract, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a "blindfolded" process.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

SECTION 19 - NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

To CITY: Michael Sutter, WWTP Operations
Superintendent
City of San Mateo
2050 Detroit Drive
San Mateo, CA 94404

To VENDOR: SNF Polydyne
Attn: Rawlin Castro
1 Chemical Plant Road
Riceboro, GA 31323

SECTION 20 - AGREEMENT CONTAINS ALL UNDERSTANDINGS; AMENDMENT

This document represents the entire and integrated agreement between CITY and VENDOR and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both CITY and VENDOR.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, CITY OF SAN MATEO and SNF Polydyne have executed this Agreement the day and year first above written.

CITY OF SAN MATEO

VENDOR

Azalea Mitch
Public Works Director

Date

SNF Polydyne	Date
Boyd Stanley,	
Sr. Vice President	

APPROVED AS TO FORM

Linh Nguyen,
Assistant City Attorney

Marc Schlag, Date
Assistant - Secretary

Exhibit A: Rates

Exhibit B: Insurance Requirements



Emailed to: msutter@cityofsanmateo.org

March 21, 2022

Mike Sutter
WWTP Operations Superintendent / Public Works
City of San Mateo
City of San Mateo WWTP
2050 Detroit Drive
San Mateo, CA 94404

Subject: Polydyne CLARIFLOC Emulsion Price Increase Proposal

Dear Mr. Sutter,

Polydyne Inc. would like to thank you for your continued business and partnership. While we are sincerely appreciative for the opportunity to continue to supply our CLARIFLOC WE-1273 and CLARIFLOC WE-1728, we must respectfully request relief in the form of a price adjustment due largely to significant cost increases for raw materials, freight services, as well as the ongoing COVID19 pandemic.

Continued high demand for finished polymers, coupled with a tight global supply of raw materials has driven the cost of these same raw materials to record high costs. Attached for your reference, please find the BLS Producer Price Index (PPI) for Chemicals and Allied Products (Series ID: WPU066) showing an increase of 27.6%, and Plastic Material and Resins mfg (Series ID: PCU325211325211) showing an increase of 24.2%.

Regarding transportation costs, the current demand for trucking services exceeds available supply. As a result, we are experiencing substantial trucking base-rate increases. These rising trucking rates significantly impact both the costs for raw materials delivered to our manufacturing facilities, and the cost to ship finished polymers to our valued customers. Please find attached graph for Long-Distance Trucking, which reflects an increase of 29.7% over the last year. While these indices do not fully encompass the totality of all the increases we have experienced, they are illustrative of the volatile market conditions for chemical manufacturing and trucking services.

Propylene is a derivative from crude oil. All the polymers currently used by the City of San Mateo are oil-based products. Polymer finished pricing have historically tracked with raw crude oil pricing. The now ongoing Russian-Ukraine conflict has driven the price of raw crude oil to > than \$100/bbl. This is an increase not seen in over a decade. The forecast for crude oil pricing for the next few months is to continue to escalate, and remain record-high. This significant increase in crude oil pricing will continue to significantly increase the costs for both manufacture and freight of polymer. We are seeing this increase now, and expect to see the high costs continue.

In March 2021, oil was \$58 per barrel, and in Jan 2022, it had increased to \$76 per barrel. This was a 30% increase. As of today, oil is over \$110 per barrel. That is an increase over the last 12 months of

90%, and an increase in the last 2 months of 45%. The price of oil is directly related to the price of the base chemicals used to make the raw materials needed to produce your polymers.

The cost to do business during the COVID19 pandemic has been significant. While there is no standard government index to measure the cost impact to our business, the pandemic has definitely impacted nearly every aspect of our business costs, ie. raw materials, freight, labor, energy, personnel, and administrative. Barring no reversal to the pandemic recovery, these cost impacts to our business and industry are expected to continue for the remainder of 2022, and into 2023.

Polydyne has always made every attempt in the past to shield our customers from the volatility of “normal” market conditions. However, these last 24 months have been unprecedented in terms of escalating costs, and have been anything but “normal”.

Effective April 1, 2022 we propose to supply CLARIFLOC WE-1273 and CLARICLOC WE-1728 in totes at an adjusted unit price of \$1.73/Lb. (not including tax).

SNF is the largest producer of water-soluble polymers in the US. Our highest priority to the City of San Mateo and is to reliably supply your plant with the highest quality polymer you require to meet your operational demands. Please be assured that we are closely monitoring all aspects of our business, and are working tirelessly to remain the low-cost supplier. We greatly appreciate your understanding of our position and the market factors that have necessitated this request. Please respond via email to bids@polydyneinc.com if this offer is acceptable.

We greatly appreciate your business and look forward to continuing our valued partnership. Should you have any questions, please feel free to contact myself at (415) 218-6089.

Best regards,

RAWLIN CASTRO
West Region Sales Manager
Polydyne Inc.

Data extracted on: March 9, 2022 (9:02:37 AM)

PPI Industry Data

Series Id: PCU325211325211
Series Title: PPI industry data for Plastics material and resins mfg, not seasonally adjusted
Industry: Plastics material and resins mfg
Product: Plastics material and resins mfg
Base Date: 198012

Download:  [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2012	275.9	279.6(P)	283.4	283.9	283.1	280.3	277.0	277.5	274.0	276.9	276.9	276.3
2013	283.1	287.7	290.9	289.4	287.1	288.1	287.1	288.2	288.8	289.2	291.3	291.5
2014	294.7	297.8	300.0	301.1	300.5	298.2	300.2	302.8	305.0	307.1	303.2	295.7
2015	285.4	280.8	274.0	273.2	274.1	275.6	273.8	270.7	264.5	261.4	260.2	261.2
2016	256.7	255.4	254.3	254.0	257.2	260.1	259.9	259.5	260.7	263.3	262.2	258.1
2017	260.1	265.1	269.2	273.8	274.1	272.9	270.3	269.9	272.6	277.2	278.8	280.3
2018	275.1	278.0	282.7	280.7	285.1	288.0	289.0	292.6	290.4	291.4	286.8	282.2
2019	276.5	275.8	273.9	273.9	275.7	273.2	272.7	273.1	273.3	273.8	271.2	266.1
2020	265.7	269.6	268.6	255.8	249.0	251.1	254.5	261.2	262.3	272.2	273.6	279.1
2021	287.5	300.4	326.7	342.8	350.3	362.9	371.402	376.960	377.061	379.449(P)	375.376(P)	367.710(P)
2022	357.181(P)											

P : Preliminary. All indexes are subject to monthly revisions up to four months after original publication.

+24.2%

Data extracted on: March 9, 2022 (9:03:32 AM)

PPI Commodity Data

Series Id: WPU066

Not Seasonally Adjusted

Series Title: PPI Commodity data for Chemicals and allied products-Plastic resins and materials, not seasonally adjusted

Group: Chemicals and allied products

Item: Plastic resins and materials

Base Date: 198200

Download: [xls](#) [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2012	232.0	234.9(P)	238.0	239.6	238.7	236.3	233.8	234.8	231.8	234.4	234.2	233.9
2013	239.7	244.1	247.1	245.9	244.6	245.4	244.4	245.1	245.5	245.8	247.9	247.7
2014	250.6	253.8	256.6	257.5	257.3	255.2	257.1	259.4	261.7	263.0	259.7	252.4
2015	243.2	237.3	230.2	229.4	230.3	231.5	230.5	227.7	221.3	218.9	217.7	218.1
2016	215.0	216.3	213.5	213.7	216.7	219.5	219.3	220.1	221.0	225.6	223.1	218.4
2017	220.5	225.2	232.3	235.8	234.3	232.8	230.4	230.3	232.9	237.7	239.7	240.2
2018	235.1	236.4	240.3	238.3	241.9	243.8	248.5	252.3	250.2	251.2	246.7	242.4
2019	235.9	230.8	226.6	225.0	227.4	223.9	223.9	224.7	224.2	224.6	222.0	217.3
2020	216.8	220.9	220.1	207.9	201.5	202.4	206.3	212.1	214.1	223.7	224.7	229.7
2021	237.7	249.9	274.0	289.7	298.5	311.4	320.153	326.872	325.790	326.733(P)	323.212(P)	313.697(P)
2022	303.199(P)											

P : Preliminary. All indexes are subject to monthly revisions up to four months after original publication.

+27.6%

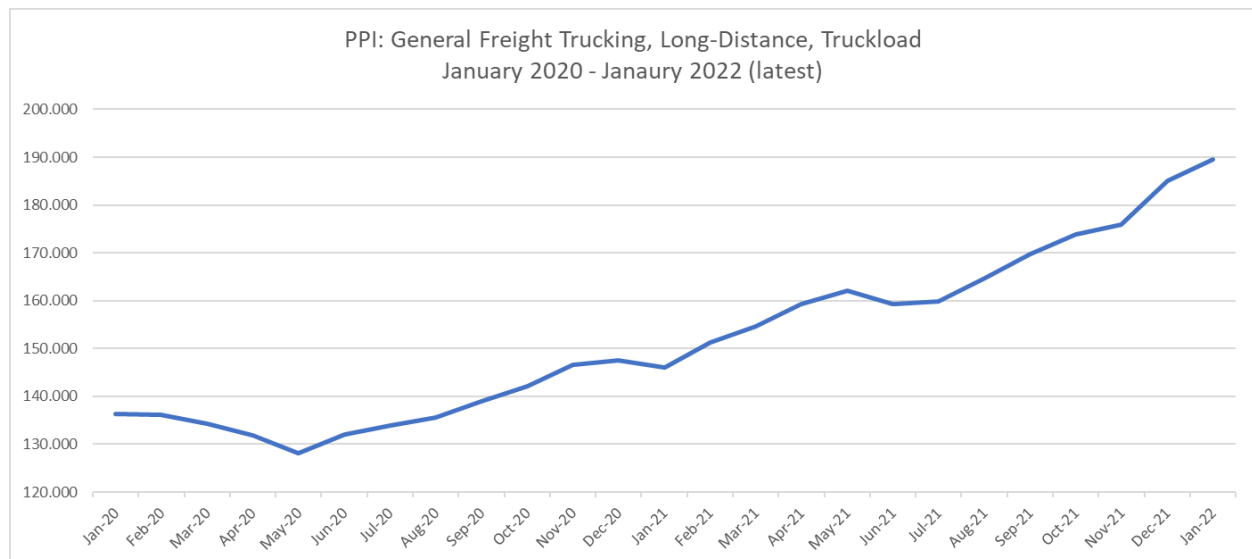


EXHIBIT B

INSURANCE REQUIREMENTS

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if SUPPLIER has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions** applicable to the work being performed, with a limit no less than \$2,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year.

If the SUPPLIER maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by the SUPPLIER.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of San Mateo and the Estero Municipal Improvement District, their elected and appointed officials, employees, and agents are to be covered as insureds on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the SUPPLIER; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the SUPPLIER including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the SUPPLIER's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **SUPPLIER's insurance coverage shall be primary** insurance as respects the City of San Mateo and the Estero Municipal Improvement District, their elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City of

San Mateo and the Estero Municipal Improvement District, their elected and appointed officials, employees, or agents shall be excess of the SUPPLIER's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that **coverage shall not be canceled, except after thirty (30) days' prior written notice** (10 days for non-payment) has been given to the City.

Waiver of Subrogation

SUPPLIER hereby grants to the City of San Mateo and the Estero Municipal Improvement District a waiver of any right to subrogation which any insurer of said SUPPLIER may acquire against the City by virtue of the payment of any loss under such insurance. SUPPLIER agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the SUPPLIER to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

SUPPLIER shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the SUPPLIER's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time