



GENERAL TERMS AND CONDITIONS OF SALE

FoamPartner Group

1. General

These terms and conditions apply to all sales of goods or products (the “Products”) by FoamPartner Americas, Inc. (“Seller”) to a purchaser of the Products (a “Buyer”) regardless of whether Buyer purchases the Products through a written sales agreement or purchase order, whether electronic, verbal or written (collectively or individually, an “Order”). Seller’s acceptance of any Order is expressly subject to Buyer’s assent to each and all of the terms and conditions set forth herein. Buyer’s assent to these terms and conditions shall be conclusively presumed from Buyer’s failure to submit written objection thereto, or from Buyer’s acceptance of all or any part of any Products ordered. No terms or conditions that are in addition to or inconsistent with any terms or conditions herein shall be binding upon Seller, and Seller hereby expressly objects to the inclusion of the same absent Seller’s express written acceptance of such term or condition. Seller reserves the right to change or revoke any agreement at any time prior to acceptance by Buyer.

2. Change Orders

Buyer may at any time, by written instructions and/or drawings issued to Seller, request changes to the Products (each a “Change Order Request”). Following receipt thereof, Seller shall promptly submit to Buyer a proposal for implementing the Change Order Request, including any changes to the price and delivery schedule necessitated thereby. If Buyer accepts such proposal, such proposal shall be deemed a “Change Order” and Seller shall proceed with the Order as modified by the Change Order. If Buyer rejects the proposal, then Seller will proceed with the Order without modification.

3. Payment Methods

(a) Form of Payment

Buyer may pay for any Order by wire transfer, check, and/or ACH transfer prior to shipment. All payments must be made in US funds.

(b) Credit terms

Buyer may apply for credit terms of Net 30, after successfully completing a Credit Application, at which time a credit limit shall be established. Credit limits shall be recalculated yearly and Buyer shall be notified of any changes. No Order shall be processed until the Credit Application is received and reviewed. Seller may at any time refuse to make shipment or delivery if Buyer fails to fulfill the terms and conditions of payment or fails to provide security in compliance with Seller’s credit policies. Seller policies or practices may be changed at any time. Seller may require payment in full or other security in advance. Without limiting the generality of the foregoing, if Buyer becomes the subject of a bankruptcy or other insolvency proceeding, or fails to pay Seller’s invoices as they become due, Seller reserves the right to: (a) cancel all or any part of an Order; (b) modify the terms of payment

prior to shipment; (c) require “Cash in Advance” terms; or (d) delay or cancel any shipment of Products. In the event of a default by Buyer in the payment of any amount owed hereunder, which default is not cured within ten (10) days of the due date, Seller may without further notice declare the entire outstanding balance to be immediately due and payable. Interest on past due amounts owed by Buyer shall accrue at a rate per month equal to the lesser of 1.5% and the maximum interest rate permitted by law. In the addition, Seller shall have the following non-exclusive rights and remedies: (i) demand and repossess the Products; (ii) postpone shipments; (iii) alter payment terms; (iv) terminate shipments; and (v) recover from Buyer all reasonable attorney’s fees and expenses incurred by Seller in enforcing its remedies hereunder, up to fifteen percent (15%) of the outstanding balance due and owing. Seller shall have resort to all remedies provided by or allowed by law. Time is of the essence with regard to making payments by Buyer.

(c) Sales Tax

Any tax which Seller may be required to pay or collect through assessment or otherwise under any existing or future law upon or with respect to the sale, purchase, delivery, transportation, storage, processing, use or consumption of any Products, including, without limitation, taxes upon or measured by receipts from sales, shall be for the account of Buyer and may be added to the price of such Products. Buyer shall promptly pay the amount thereof to Seller upon demand but may, in lieu of such payment, furnish tax exemption certificates acceptable to the appropriate taxing authorities to Seller.

(d) Shipping

Lead-times are dependent on type and amount of Products. All items shipped are FOB Seller’s manufacturing facility by UPS or freight truck. Buyer shall be responsible for insuring the Products in an amount equal to the full purchase price and shall cause Seller to be named as loss payee. A complete physical address must be provided by Buyer.

(e) Purchase Money Security Interest

In the event the Products are delivered to Buyer prior to Seller’s receipt of payment in full for the Products, as collateral security for the payment of the purchase price of the Products and performance in full of all the obligations of the Buyer under the Order, Buyer hereby pledges and grants to Seller a lien on and security interest in and to all of the right, title, and interest of the Buyer in, to, and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Michigan Uniform Commercial Code. Buyer hereby authorizes Seller to file with the appropriate filing offices such UCC-1 financing statements and other

instruments and documents as Seller deems necessary to evidence and perfect the above-described security interest, and Buyer agrees to execute appropriate documents to permit Seller to perfect its purchase money security interest.

4. Prices

The price for the Products shall be Seller's quoted price. Our prices are FOB Seller's manufacturing facility, with charges added to the invoice, unless other arrangements are confirmed prior to delivery. Prices are subject to change without notice. In the event Buyer's purchase order is inconsistent with Seller's quoted price, Seller's quote or acknowledgment will control with respect to the price term.

5. Quantities

Quantities set forth in any Order are approximate and Seller reserves the right to ship quantities that are up to 10% more or less than the quantity of Products set forth in the applicable Order. Buyer shall be responsible for payment with respect to the actual quantity received. Seller shall have no liability with respect to any variation in the quantities actually delivered that fall within the parameters set forth above.

6. Setoff; Deductions

In no event is Buyer authorized to setoff, deduct, recoup or withhold any amount from the amounts owed or payable to Seller, unless specifically authorized in writing by Seller.

7. Defects

Notice of defective Products must be made within five (5) business days of delivery. Absence of such notice constitutes a waiver by Buyer on all claims or defects. If Seller receives timely notice of defective Products as set forth above and Seller determines that the Products are in breach of the express limited warranty set forth below, then Seller shall, at its sole discretion, either (i) repair or replace the nonconforming portion of the Products or (ii) refund the portion of the price applicable to the nonconforming portion of Products. **SUCH REPLACEMENT OR REFUND IS THE SOLE LIABILITY OF SELLER AND THE EXCLUSIVE REMEDY OF BUYER FOR ANY BREACH OF THE EXPRESS LIMITED WARRANTY.** In no event shall any Products be returned, reworked or scrapped by Buyer without the express written authorization of Seller.

8. Lost Shipments

As soon as Buyer realizes that a shipment has been lost, Buyer shall contact the carrier company to help locate and track the shipment.

9. Damages in Shipment

All Products are shipped FOB Seller's manufacturing facility. Buyer shall inspect the shipped Products upon delivery, and if damage has occurred during shipment, Buyer shall not accept any Products until the person making the delivery has endorsed the bill of lading with a statement for the extent of any such damage. Buyer is responsible for filing a claim for any damaged Products.

10. Warranty

Seller warrants that the Products shall be delivered free of material defects. SELLER MAKES NO WARRANTIES OTHER THAN THOSE MADE EXPRESSLY IN THESE STANDARD TERMS AND CONDITIONS, AND HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Unless otherwise expressly agreed in writing by Seller, Seller assumes no obligation or liability for any technical advice provided by Seller with respect to the use of Products furnished to Buyer, or for any results occurring as a result of the application of such advice. Buyer shall have sole responsibility for selection and specification of the Products appropriate for the end use of such Products.

11. Cancellation

An Order cannot be canceled or modified by Buyer, except with the express written consent of Seller.

12. Termination

Seller may terminate an Order or any part thereof at any time and for any reason. Upon such termination, Buyer agrees to waive all claims for damages, including, without limitation, any loss of anticipated profits, and to accept as its sole remedy for termination the reasonable additional costs of obtaining substitute goods of the same quantity and quality, provided such costs do not exceed the price of such Order.

13. Indemnification

To the maximum extent allowed by law, Buyer shall defend and indemnify Seller and its employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorneys' fees) that Seller may incur or be obligated to pay as a result of: (a) Buyer's negligence, use, ownership, maintenance, transfer, transportation or disposal of any Products; (b) Buyer's violation or alleged violation of any federal, state, county or local laws or regulation related to any Products; or (c) Buyer's breach of an Order or the terms and conditions herein.

14. Limitation of Liability

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOST PROFITS, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND, HOWEVER ASSERTED. SELLER'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATED TO AN ORDER SHALL NOT EXCEED THE PRICE OF THE PRODUCTS GIVING RISE TO THE CLAIM OR, AT THE ELECTION OF SELLER, THE REPAIR OR REPLACEMENT OF SUCH PRODUCTS. ALL CAUSES OF ACTION AGAINST SELLER ARISING OUT OF OR RELATING TO AN ORDER OR THE PERFORMANCE OR BREACH HEREOF SHALL EXPIRE UNLESS BROUGHT WITHIN ONE (1) YEAR OF THE TIME OF ACCRUAL THEREOF. Transportation charges for the return of any Products shall not be paid unless authorized in advance by Seller, its officers, directors or agents. Buyer acknowledges and agrees that the manufacturing services performed by Seller shall not be interpreted as approval of any design or



function determined by Buyer and Seller assumes no liability in regard to Buyer's compliance with the fulfilment of any of its obligations with respect to any statute, regulation or bylaw, or Buyer's failure to comply with or fulfil any of its obligations. Final determination of the suitability of any Products for the use contemplated by Buyer is the sole responsibility of Buyer.

15. Force Majeure

Seller shall not be liable for any delay in or impairment of performance resulting in whole or in part from fire, floods or other catastrophes, acts of God, strikes, lockouts or labor disruption, wars, riots or embargo delays, government allocations or priorities, raw material market conditions, shortages of transportation equipment, fuel, labor or materials, inability to procure supplies or raw materials, severe weather conditions, or any other circumstance or cause beyond the reasonable control of Seller.

16. Assignment

No part of any Order may be assigned by Buyer without prior written approval of Seller. Seller shall be entitled to cancel an Order upon written notice to Buyer in the event that Buyer assigns or attempts to assign such Order without Seller's prior written consent.

17. Intellectual Property

All right, title and interest in any intellectual property rights in and to the Products and any inventions, developments, improvements or modifications of or for the Products shall remain with Seller. Any design, drawings or other information submitted to the Buyer remains the exclusive property of Seller. Buyer shall not, without Seller's prior written consent, copy or disclose such information to a third party. Such information shall be used solely for the use of the Products and not for any other purpose, including the duplication thereof in whole or in part.

18. Notices

All notices must be in writing and shall be deemed given only when sent by first class mail (return receipt requested), hand-delivered or sent by documented overnight delivery service to the party to whom the notice is directed, at its address indicated in the applicable Order or by written notice.

19. Entire Agreement

The terms and conditions herein, together with any Order, comprise the complete and final agreement between Seller and Buyer, and supersede all prior negotiations, proposals, representations, commitments, understandings or agreements between Seller and Buyer, either written or oral, on its subject.

20. Modifications

No Order nor the terms and conditions herein may be modified or amended except in writing signed by both Seller and Buyer specifically referring to the applicable Order or the terms and conditions herein.

21. Order of Precedence

Notwithstanding anything to the contrary or the conditions that may be contained in any Order or other documentation, Seller accepts an Order only on the terms and conditions set forth herein. These terms and conditions exclude any other terms and conditions inconsistent therewith which Buyer might seek to impose even though such other terms and conditions may purport to exclude or supersede any terms and conditions inconsistent with them.

22. Choice of Law and Forum Selection

All dealings between Seller and Buyer shall be governed by the laws of Michigan. Any legal or equitable action of whatever nature against or by Seller arising out of or related to any Order, or arising out of any dealings between Seller and the Buyer shall solely be brought in the appropriate court in the state of Michigan located in the jurisdiction where Seller has its principal place of business. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

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