

# Terms and Conditions

All sales of goods and services by Merryweather Foam, Inc. ("Seller") to the party identified on the face hereof ("Purchaser") are subject to the terms and conditions set forth herein, and these terms and conditions are hereby incorporated into each quotation, purchase order, and invoice related thereto:

1. **ACCEPTANCE:** The acceptance of any order from Purchaser is conditioned upon the acceptance by Purchaser of all Terms and Conditions contained herein. Any inconsistent or additional terms contained in the Purchaser's order are hereby rejected. The Terms and Conditions as stated herein shall not be modified other than in writing signed by Seller and Purchaser.

2. **TITLE & RISK OF LOSS:** Unless otherwise stated herein, title in and risk of loss for all goods sold hereunder shall pass to Purchaser upon the earlier of: (a) delivery to carrier F.O.B. Seller's plant, or (b) pick-up by Purchaser at Seller's plant. Title in and risk of loss for all materials delivered by Purchaser to Seller for services shall remain with Purchaser at all times.

3. **PRICES & TAXES:** Unless otherwise stated herein, all prices for goods or services shall be at the price schedule then in effect on the date of shipment and are payable within thirty (30) days of the date of invoice. Unless otherwise stated herein, the prices quoted are F.O.B. Seller's plant. Seller may invoice any order upon completion of such order, regardless of whether pick-up or delivery is delayed by Purchaser. Purchaser understands supply chain variance exists and agrees to purchase and accept a different quantity on the same pricing terms as stated in the order. Unless otherwise agreed by Seller in writing, the amount of any local, state or federal tax levied on the goods or services referred to herein to the date of shipment shall be added to the amount paid by, and remain the sole responsibility of, the Purchaser. Any portion of the price which is not paid in accordance with the terms of payment herein stated shall bear interest from the due date at the rate of 0.05% per day until paid. In the event Seller incurs any cost, expense, and/or fee (including, but not limited to, reasonable attorney fees and court costs) in collecting amounts due hereunder or in the enforcement of its rights hereunder ("Enforcement Costs"), then Purchaser shall reimburse Seller for all such Enforcement Costs upon demand. The amount of any local, state, federal, provincial, or international tax or tariff levied on the goods or other services referred to herein shall be added to the amount paid by, and remain the sole responsibility of, Purchaser.

4. **DELAY IN PERFORMANCE:** Seller shall not be responsible or liable for any delays or failures in manufacture or delivery of the goods, or failures in the performance of services due to any cause or condition beyond the control of the Seller, including, without limitation, strikes or labor difficulties, fire, floods, inability to secure transportation facilities, actions of the elements, shortage of materials or equipment, riots or other civil commotions, Acts of God and war.

5. **DELIVERY:** Seller reserves the right to over or under ship any order. Any dates or schedules which may be specified for the delivery of the goods or services covered hereby have been stated only approximately and are estimated from the date of receipt of Purchaser's order, with complete drawings, specifications, designs, samples, and other information reasonably requested by Seller provided in order to proceed with the manufacture of the goods. Seller shall not incur any liability, either direct or indirect, nor shall any order be cancelled, because or as a result of any delays in meeting such dates or schedules. Seller shall have the right to suspend scheduled shipping date in the event of Purchaser's default in payment pursuant to the terms of any outstanding invoices for previous shipments. Seller's measurements shown on the packing slip accompanying each delivery shall be deemed correct unless Purchaser notifies Seller of a discrepancy within ten (10) days of delivery. Any order that remains in Seller's plant more than sixty (60) days after its completion

may be assessed a storage fee of \$50 per skid or box for each month of storage. All pick-ups must be scheduled in advance with Seller's customer service representative.

6. **WARRANTY:** Seller makes no warranty whatsoever, except as to title, with respect to goods manufactured, compounded, and/or designed to Purchaser's own specifications and Purchaser shall, at its own expense, defend and save Seller harmless from and against any claim, suit, expense, or otherwise, which shall be asserted or brought against Seller by reason of Seller's manufacture or sale of such goods. All goods are sold and samples of goods provided with the understanding that Purchaser has independently determined the suitability or compatibility of such goods for its purposes. Seller does not recommend specific applications for its goods or assume any responsibility for use, results obtained, or suitability for specific application. Any statements, technical information, or recommendations concerning goods sold or samples provided by Seller are based upon data provided to Seller by its suppliers and believed to be accurate, but do not constitute a guarantee or warranty. Seller makes no representation or warranty that the delivery or subsequent use of the goods ordered shall be free of the claim of any third party by way of infringement.

Seller, at its sole option, will either (a) repair or replace any of the goods which fail to meet Purchaser's specifications or are due to Seller's defective materials or workmanship, or (b) re-perform any services that are non-conforming due to Seller's workmanship; provided, however, if Seller determines that repair or replacement is not commercially practicable, Seller shall issue a credit in favor of Purchaser in an amount not to exceed the purchase price of the goods. All claims for breach of this warranty must be made to Seller within thirty (30) days after the date of shipment of the good to which the claim relates and must be returned at Purchaser's expense to Seller's plant in accordance with Seller's written material return authorization and instructions. Seller's warranty shall extend only to the original Purchaser from Seller. Seller's warranty does not cover the effects of normal wear, tear, deterioration, or abuse of the goods (or materials to which the services were performed), or the effects of improper storage or handling of the goods or materials to which the services were performed.

EXCEPT FOR THE EXPRESS WARRANTY AS DESCRIBED ABOVE, THERE ARE NO OTHER WARRANTIES OR GUARANTEES, EITHER EXPRESS OR IMPLIED, WRITTEN, ORAL, OR ARISING UNDER CUSTOM OF TRADE, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. NO WARRANTIES OR REPRESENTATIONS AT ANY TIME MADE BY ANY REPRESENTATIVE OF SELLER SHALL BE EFFECTIVE TO VARY OR EXPAND THE ABOVE-REFERENCED EXPRESS WARRANTY OR ANY TERMS THEREOF.

7. **LIMITATION OF LIABILITY:** In no event shall Seller be liable to Purchaser or any third party for consequential, incidental, or special damages resulting from or in any manner related to the goods, their delivery, non-delivery, design, use, or any inability to use the same, whether such damages be claimed under contract, tort, or any other legal theory. Purchaser understands that the sole and exclusive remedy of Purchaser shall be the repair or replacement of any defective good or the re-performance of the non-conforming services pursuant to the warranty provision herein above contained. Should the goods or services prove so defective, however, as to preclude the remedying of warranty defects by repair, replacement, or re-performance, Purchaser's sole and exclusive remedy and Seller's sole and exclusive liability shall be a credit in favor of Purchaser in an amount not to exceed: (a) the purchase price of the goods upon Purchaser's return of the goods to the Seller, or (b) the cost of the materials provided by Purchaser upon which the services were performed. This limitation of liability shall survive the termination, expiration, or cancellation hereof.

8. **CANCELLATION OR CHANGE ORDERS:** No orders for goods or services may be withdrawn or cancelled

by Purchaser, nor may they be deferred when ready, unless Seller shall first be paid a cancellation or deferral charge of a reasonable amount acceptable to Seller. Deferral of shipment of any order beyond thirty (30) days from its originally scheduled shipment date shall give Seller the right to issue its invoice for such deferred order. In the event Purchaser shall request changes in its order after receipt thereof by Seller, Purchaser shall be responsible for all charges and expenses reasonably incurred by Seller with respect to such changes.

9. INDEMNIFICATION: Purchaser shall indemnify Seller against all claims, loss, liability, and expense (including but not limited to reasonable attorney fees) on account of any damaged property or injury or death of persons (including, without limitation, Purchaser's employees) arising out of Purchaser's unloading, storage, handling, use, or disposal of the goods (or materials to which the services were performed), or arising out of any infringement claim where Seller was not responsible for the design of the goods, except for any portion of damages attributable to Seller's gross negligence. This indemnity obligation of Purchaser will survive the expiration, termination, or cancellation of these terms and conditions or any transaction pursuant hereto.

10. APPLICABLE LAW: The Terms and Conditions applicable to the transaction provided for herein shall be determined and construed in accordance with, and shall be governed by the laws of the State of Ohio. The parties agree that the United Nations Convention of Contracts for the International Sale of Goods will not apply to these terms and conditions or any transactions pursuant hereto. Further, Purchaser and Seller agree to submit to the jurisdiction of the appropriate State or Federal Court within Summit County, Ohio for purposes of resolving any dispute or claim arising in connection with said transaction.

11. THIRD PARTIES: Nothing in this contract shall be construed as creating any act or beneficial right in or on behalf of any third party. Seller is not responsible for any delays caused by third parties utilized by Seller to produce its goods or the inability of any such third parties to deliver their goods or services to Seller. It is understood by Purchaser that Seller's quote may be based on a quote from a third party and Seller shall not be bound by its own quote if any third party fails to provide its goods or services as promised or agreed.

12. NON-WAIVER: The failure of either party to insist or enforce in any instance strict performance of any of these terms and conditions or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

13. INTEGRATION: There are no understandings between the parties hereto as to the subject matter of this contract other than as set forth herein. All previous communications between the parties hereto concerning the subject matter of this contract, whether verbal or written, including but not limited to Purchaser's order are hereby abrogated and withdrawn, and these terms and conditions constitute the whole of the agreement between the parties hereto. Any additional terms and conditions of a purchase order or change order shall not apply hereto unless agreed to by the parties in writing. Delivery of a purchase order by Purchaser shall be deemed to be an acceptance by Purchaser of the terms and conditions included herein. Any different terms or conditions in any purchase order, regardless of whether such terms and conditions are material or not, shall not be binding unless expressly accepted in writing by Seller and Seller specifically objects to the inclusion of any different or additional terms or conditions by Purchaser. If Purchaser does include different or additional terms and conditions in its purchase order, acceptance, confirmation, or other written form, neither Seller's delivery of all or part of the goods, nor performance of the services, nor any other action, except a written notice from Seller, shall constitute acceptance of such additional or different terms, but instead the terms and conditions herein shall govern.