

ENGINEERED FOAM PRODUCTS LTD

STANDARD TERMS AND CONDITIONS OF SALE

1. INTRODUCTION

- a) "Engineered Foam Products", "we" or "our" are Engineered Foam Products Ltd; "you" or "your" are anyone to whom we are supplying goods; and "us" are Engineered Foam Products and you.
- b) We are registered in England and Wales with company number 11414695 and our registered office is at Cornhill Close, Lodge Farm Industrial Estate, Northampton NN5 7UB, United Kingdom.
- c) We have provided you with:
 - a quotation for goods (as further detailed therein) (the "Quotation") and/or
 - an acknowledgement of our agreement to make that supply (the "Acknowledgement").
- d) Unless previously withdrawn, Quotations shall be open for acceptance for a period not exceeding 30 days from the date of the Quotation and thereafter is subject to confirmation at the time of acceptance (by way of the Acknowledgement).
- e) The Acknowledgement and the Quotation (where applicable) each incorporate these supply conditions (the "Conditions") (except where they are specifically amended in the Acknowledgement or Quotation) and:
 - a specification of the goods and any incidental services (if not, our standard specification will apply);
 - the price agreed; and
 - the delivery or collection details.
- f) These Conditions and the Quotation or Acknowledgement (as applicable) (together the "Agreement") represent the whole of the agreement for this supply and supersedes any previous agreement Engineered Foam Products and you may have had in relation to it. No variation to the Agreement is valid unless it is in writing and is signed by our and your respective authorised representatives.
- g) By placing an order with Engineered Foam Products, you are deemed to accept that these Conditions shall apply to and govern any contract between us to the exclusion of all other terms and conditions which may be contained in any quotation, catalogue, price list, order, acknowledgement or any other document (including, without limitation, any terms or conditions which you may purport to apply under any purchase order, confirmation of order or other correspondence or documentation).

2. CANCELLATION AND VARIATION

- a) You may cancel your order at any time before the supply is made. If you do, you are to pay Engineered Foam Products on demand a reasonable cancellation charge which takes into account all work we have done under the Agreement, all costs we have incurred and any costs we are committed to pay, and our loss of profit.
- b) If you ask Engineered Foam Products to vary your order and agree with Engineered Foam Products an appropriate variation to the price and to the time scale for delivery, we agree to make the supply in accordance with those variations. We may vary the price by an amount sufficient to cover any significant increase in the cost of materials or other costs we incur to fulfil your order. We may also substitute suitable alternative materials for any referred to in our acknowledgement which are not available or, if no suitable materials are available, advise you of the estimated delay in fulfilling your order. If we are unable to fulfil your order within a reasonable time due to materials being unavailable for reasons beyond our reasonable control, we may cancel the order with no further obligation to you.

3. PRICE

Unless otherwise stated you are to pay, in addition to the agreed price:

- all applicable VAT (or equivalent), import or export duties and any and all other taxes, tariffs and surcharges of any nature whatsoever now or hereafter levied or imposed in any country or territory (either directly or indirectly) in respect of the sale, supply, delivery or use of the goods;
- the cost of packaging, carriage and insurance; and
- the cost of any artwork, origination and printing stereotypes, the cost of tooling specifically required.

4. PAYMENT

- a) We will invoice you once the goods have been manufactured. You are to pay the invoice within 30 days end of month without set-off or counterclaim. If you have a claim against Engineered Foam Products, you must notify Engineered Foam Products of it promptly and make all reasonable efforts to resolve the dispute amicably.
- b) We are not obliged to supply any goods or services to you while any payment is overdue on this or any other agreement we may have with you.
- c) If any payment is late we may charge you interest at the rate of 3% above the base rate from time to time of Lloyds Bank on any overdue payment from the due date for payment until the date payment is made and charge you for all costs we incur in recovering the outstanding payment.
- d) We may set off any sums owed by you to Engineered Foam Products against any sums owed by Engineered Foam Products to you.

5. WARRANTY, DEFECTS AND INDEMNITY

- a) It should be noted that the reported product performance of the goods represents test results carried out by Engineered Foam Products in good faith. As such we cannot be responsible for the handling and usage of the systems tested after the date of supply; and therefore, we restrict our liability as set out in this Agreement. You are advised to check the appropriateness of the testing parameters used in the product performance tests for their shipping conditions.
- b) We warrant to you that the goods will be, at the time of delivery and only for the

next 3 months, free from any material defect due to faulty materials and workmanship and that any services will be provided with reasonable skill and care so long as:

- you give Engineered Foam Products full details of any defect immediately it becomes apparent; and
 - the goods have not, in our view, suffered excess wear and tear by improper or careless use or storage, excessive stressing, improper installation, or the like.
- c) All implied warranties or conditions are excluded to the fullest extent permitted by law.
 - d) If you endorse on the delivery note that goods are unexamined and within 3 days of delivery notify Engineered Foam Products in writing of any defects we may, after inspecting the goods (and if we are satisfied that their condition has not deteriorated following delivery) at our discretion repair or replace the defective goods, or take them back and refund the price.
 - e) You undertake to indemnify and hold Engineered Foam Products harmless from and against all liabilities, losses, damages, costs, charges, expenses (including without limitation legal fees and expenses on a full indemnity basis), actions, proceedings, claims and demands incurred by or brought against Engineered Foam Products:
 - arising directly or indirectly out of or in connection with any breach of any of your obligations under any contract or any willful default or negligence on your part or on the part of any of your officers, employees or agents in relation to the goods; or
 - resulting from our acting reasonably in accordance with your instructions (including, without limitation, any claim from a third party that we have infringed any intellectual property rights in the work carried out).
 - f) Our goods may not be suitable for use with all other products. We cannot and do not therefore warrant that our goods will be fit or suitable for the intended application. It is recommended that you satisfy yourself that the other products are compatible both with the raw materials from which our goods are made as well as the goods themselves. Prior to introducing the use of our goods to a commercial application, you should conduct all appropriate tests to identify and prevent problems resulting from environmental stress cracking, dimensional changes, chemical attack, changed mechanical properties, and other relevant factors. You should also verify that the fit of the goods to the other products is satisfactory; that the goods meet your requirements; and that the goods are suitable for the expected distribution and storage conditions. For the avoidance of doubt, to the fullest extent permitted by law, we accept no liability whatsoever for any loss or damage, injury or death caused as a result of your failure to observe any of the aforementioned precautions.

6. TOOLS AND DIES

- a) Tooling charges are 50% with your order with the balance payable on approval of samples, unless provided otherwise in your order.
- b) Modifications to tools are payable on approval of samples.
- c) Tools and dies acquired by Engineered Foam Products against your purchase order are charged only on a part cost basis and remain the absolute property of Engineered Foam Products.
- d) For products that are made from any tools or dies charged above, if no orders have been received for such products within a period of two years from the date of last delivery, then we reserve the right to dispose of or utilise the equipment as we deem fit.
- e) We do not undertake to bear the cost of any modifications or renewals to tools and dies charged above.
- f) You may not remove your tools from our premises until all payments due to us are paid in full.
- g) Any lead times we provide to you in regard to sourcing and delivery of tools is not guaranteed and is an estimate only.
- h) In the event of any theft, accidental loss or damage to the tools, we shall not be liable to you for any delay or non-performance of our obligations under this Agreement.
- i) In the event of any theft, loss or damage to the tools, our insurance will cover the cost to repair or replace the tools only and will not cover any indirect or consequential losses resulting from such theft, loss or damage.

7. DESIGNS/SAMPLES

- a) Where designs or samples are prepared to requirements and submitted to you for approval, no responsibility will be accepted by us for failure of the products due to faulty design after such approval has been received from you.
- b) Any alteration found necessary to correct faults will be subject to extra charges at your cost.

8. DELIVERY OR COLLECTION

- a) We are to use reasonable endeavours to have the goods ready when agreed, but this is only an estimate of the delivery or collection date. You can only refuse to accept delivery after that date if
 - after the date of our acknowledgement of your order you have sent Engineered Foam Products a written notice specifying a deadline date and
 - we have specifically accepted that deadline date in writing.
- b) Where we are delivering goods to you, you are responsible for unloading them. Where you fail to take delivery or collect goods in accordance with the Agreement, you must pay on demand our storage and additional carriage costs.
- c) You have no right to reject goods if they vary from the specification and that variation is not material to their use or functionality or is a variation in quantity which is within 10% of the quantity ordered (but we will in this case adjust the price to take account of the variation).

A) PACKAGING

- a) The cost of packaging will be as specified in our Quotation.
- b) We decide the appropriate method of packaging. Packages and wrappers are free and non-returnable.
- c) Pallets, carboys and any other packaging identified in the acknowledgement as belonging to Engineered Foam Products remain our property and must be returned to Engineered Foam Products within one month of delivery. If not we will invoice you for their replacement cost.

B) CUSTOMER APPROVALS

- a) Where we supply qualification documents, packing procedures, proofs, printing details, artwork or other specimens for you to approve as complying with your order you must do so promptly and in writing. We are not responsible for any delay you cause. Our obligation is to supply the goods in the form you approve. We are not responsible for any errors which you do not identify in writing at the time you give your approval.
- b) All prices we give you for printing are made subject to our receiving suitable copy matter, and are on the basis that we can use our standard range of ink colours. Any deviations may result in an extra charge being made.

C) PASSING OF RISK AND TITLE

- a) The goods are at your risk:
 - when you start loading them onto the collection vehicle, if you are collecting them; or
 - when you start unloading them at the delivery address, if we are responsible for delivery; or
 - from the agreed time for delivery or collection if you fail to accept delivery or to collect the goods as agreed.
- b) The goods do not belong to you until we have received payment of the price and all additional payments due in full. Until then:
 - you hold the goods as our fiduciary agent, must clearly identify the goods (and any new product into which they are incorporated) as our property, and keep them properly stored and insured; and
 - we may enter your premises at any time to repossess the goods if you fail to pay the price and other payments when due or we reasonably believe that you will not be able to pay the price and other payments when due (and for these purposes you grant Engineered Foam Products an irrevocable licence to enter any premises where the goods are located).

D) INTELLECTUAL PROPERTY

- a) We are to own all intellectual property created under the Agreement. Where necessary, you are to assign or procure the assignment of all such rights (including moral rights) to Engineered Foam Products. We do not grant you the right to use any intellectual property, except as expressly set out in the specification of the goods. If the goods can be used as part of a system protected by a patent, we give you no right to use the system unless you buy the other components of the system from Engineered Foam Products.
- b) The copyright of all drawings and/or samples submitted is our property and drawings or samples are issued on condition that they are not copied or re-printed and that the contents are not disclosed either wholly or in part to any third party without our consent.

E) TERMINATION

- a) Either of Engineered Foam Products may terminate this Agreement immediately on written notice if the other is in material or persistent breach of an obligation and cannot put it right or does not put it right within 21 days of receiving notice to do so. On termination any then existing claims which either of Engineered Foam Products has against the other remain in force.
- b) We may terminate this Agreement immediately on notice if we reasonably believe that you will not be able to pay the price or other payments when due and in that event we have no further liabilities under the Agreement.

F) LIABILITIES

- a) Samples, descriptions, illustrations, forecasts, brochures and other literature we may have supplied show only the general character of the goods and must not be relied on.
- b) We do not seek to exclude or restrict our liability for (i) fraud; (ii) fraudulent misrepresentation; (iii) death or personal injury caused by our negligence; or (iv) any other liability which cannot lawfully be limited or excluded.
- c) Where we or our employees or agents negligently damage your property when delivering goods, our total liability to you in respect of an event or series of connected events is limited to £100,000.
- d) In respect of any other claims our liability is limited, to the maximum extent permitted by law, to any direct loss or damage up to 100% of the amount of the price paid for the goods on the specific purchase order giving rise to the claim.
- e) We have no liability (directly or indirectly) for any loss of profit, business, revenue, opportunity, contracts, goodwill, revenues or, anticipated savings or wasted expenditure, corruption or destruction of computer data or for any indirect or consequential loss (whether for loss of profits or otherwise) whatsoever, whether caused by our negligence, breach of contract, tort, breach of statutory duty or otherwise arising out of or in connection with the Agreement.
- f) Neither of us is liable for any failure to fulfil our obligations to the other where such failure is due to circumstances beyond our reasonable control.

G) GENERAL

- a) If any license or consent of any government or other authority shall be required for the acquisition, carriage storage or use of the goods by you, you shall obtain the same at your own expense and if requested by Engineered Foam Products, produce evidence of the same to Engineered Foam Products.
- b) No benefits are to be conferred on any third party by the Agreement and a person who is not a party to the Agreement shall not have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- c) Any notice under this Agreement shall be in writing and served by delivering it personally or sending it by pre-paid recorded delivery or registered post to the registered address of Engineered Foam Products or you (as applicable). Any such notice shall be deemed to have been received:

- if delivered personally, at the time of delivery; and
- in the case of pre-paid recorded delivery or registered post 48 hours from the date of posting,

provided that if deemed receipt occurs before 9am, on a business day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a business day, or on a day which is not a business day, the notice shall be deemed to have been received at 9am on the next business day.

- d) Each provision of the Agreement is severable and distinct from the others. If any part of the Agreement is or at any times becomes to any extent invalid or unenforceable under any enactment or rule of law in any jurisdiction that does not affect the remainder and all other provisions of the Agreement will continue in full force and effect. If any provision of the Agreement is so found to be invalid, illegal or unenforceable, but would be valid, legal or enforceable if some part of the provision were deleted or amended, that provision will apply with whatever modification(s) as are necessary to make it valid, legal and enforceable. Invalidity or unenforceability in one jurisdiction does not affect validity or enforceability in another.
- e) Where you leave any of your property with Engineered Foam Products you do so at your own risk. You must get a receipt for it.
- f) No waiver by Engineered Foam Products of any breach of the Agreement by you shall be considered as a waiver of any subsequent breach of the same or any other provision.
- g) We are responsible for making the supply to you but we may arrange to do so through agents or subcontractors.
- h) You must not novate, assign or otherwise transfer the all or any of your rights, interests or obligations under the Agreement without our prior written consent, which will not be unreasonably withheld.
- i) This Agreement and its subject matter are confidential and must not be disclosed to any person without our permission.
- j) Provisions relating to warranties, limitation of liability, intellectual property, confidentiality and obligations on termination survive termination or expiration of the Agreement.

H) FORCE MAJEURE

- a) We shall not be liable to you for any delay or non-performance of our obligations under this Agreement arising from any cause or causes beyond our reasonable control, including (but not limited to) any of the following: act of God, governmental act or instruction, war, fire, flood, explosion, civil commotion, epidemic or pandemic, a failure of a supplier of ours to provide raw materials needed to manufacture the goods or a disruption or failure to our utility supply.

I) GOVERNING LAW AND JURISDICTION

- a) The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including any non-contractual disputes or claims) will be governed by and construed with the laws of England.
- b) Subject to sub-paragraph c) below, Engineered Foam Products and you irrevocably agree and acknowledge that the courts of England are to have exclusive jurisdiction for the purpose of hearing and determining any suit, action or proceedings and/or to settle any disputes (including any non-contractual disputes or claims) arising out of or in any way relating to the Agreement or its formation or validity ("Proceedings") and for the purpose of enforcement of any judgment against its property or assets.
- c) Nothing in this paragraph 14 shall (or shall be construed so as to) limit the right of Engineered Foam Products to take Proceedings against you in the courts of any country in which you have assets or in any other court of competent jurisdiction nor shall the taking of Proceedings in any one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.