



## 1. DEFINITIONS

1.1 In these conditions of sale ("Conditions") the following words shall have the following meanings:-

"Company" Trident Foams Limited whose registered office is at BKB House, Goyt Valley Industrial Estate, Off Station Road, High Peak, SK23 7SN (Company number 2026997)

"Customer" The person, firm or company with whom the Company makes the contract and which expression shall include (jointly and severally) all principals on whose behalf the Customer orders Goods.

"Contract" Any contract formed between the Customer and the Company for the sale and purchase of the Goods including acceptance, whether verbally or in writing, of the Customer's written order by the Company.

"Delivery" The delivery of the Goods by the Company whether by way of delivery by or for and on behalf of the Company, direct delivery by a supplier on behalf of the Company or otherwise.

"Intellectual Property Rights" The full benefit of all patents, trade and other marks, registered designs (and applications for and rights to apply for the same), copyrights, trade and business names, inventions, discoveries, improvements, designs, techniques, computer programs and other confidential processes and information.

"Order" Any order placed with the Company by the Customer from time to time.

"Goods" The goods or any part thereof (including any instalment of the goods or any parts for them) which are to be supplied by the Company pursuant to the Contract

"Specification" Any technical or other description (whether as to quantity, quality, price, weight or otherwise) of the Goods shown or referred to in the Contract and any performance schedules and/or other characteristics and details contained, mentioned or referred to therein or prepared in accordance therewith.

"Writing" and any similar expression, includes facsimile transmission and comparable means of communication, but not electronic mail.

1.2 These conditions are the only conditions upon which the Company is prepared to deal with the Customer and they shall govern this Contract to the entire exclusion of any other terms and conditions referred to by the Customer or contained in any order, acceptance or quotation or otherwise brought to the notice of the Company.

1.3 All orders shall be deemed to be an offer by the Customer to purchase Goods pursuant to these Conditions and acceptance of Delivery shall be deemed conclusive evidence of the Customer's acceptance of these terms and conditions.

1.4 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing.

In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

1.5 Any reference in these Conditions to any statutory provision shall be construed as a reference to that provision as amended or re-enacted at the relevant time.

1.6 The headings in these Conditions are for convenience of reference only and shall not affect their interpretation.

## **2. QUOTATIONS**

2.1 Quotations are not offers and may be withdrawn or varied at any time prior to acceptance by the Company of the Customer's Order for the Goods being the subject of the quotation.

## **3. ORDERS AND SPECIFICATIONS**

3.1 The Company is to be presumed ignorant of any special purpose or matter for which the Goods are required or any special conditions under which they are to be used unless the Customer informs the Company in Writing of that special purpose or matter or those conditions before the Contract is made. Any intended purpose, matter or conditions of use which are not obvious from the nature of the Goods or their description in the Contract is to be regarded as special for the purposes of this Clause.

3.2 Where the Company recommends Goods to meet the Customer's specific requirements, the Company shall be entitled to assume that the Customer has given to the Company all relevant information as to the requirements and circumstances of its intended use for the Goods. Provided that the Company's recommendation is a reasonable one to make on those assumptions the Customer shall bear the risk that the Goods supplied may prove to be unsuitable for its purposes under the actual conditions of their application, use or storage.

3.3 The Company expressly reserves the right (but accepts no obligation) to make such changes in the Specification of the Goods as are necessary to ensure that the Goods conform with any applicable statutory requirements.

3.4 No Order which has been accepted by the Company may be cancelled by the Customer except with the agreement in Writing by the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

#### **4. PRICE AND PAYMENT**

4.1 The Company reserves the right to vary the price of the Goods prior to acceptance by the Customer of any quotation.

4.2 All prices are (unless otherwise stated) quoted net of VAT, or any other taxes, imposts or duties payable from time to time in respect of the Goods. Any such taxes, imposts or duties shall be payable by the Customer in addition to the purchase price of the Goods and any other sums due to the Company from the Customer.

4.3 The Company shall have the right in respect of any uncompleted portion of the Contract to adjust its prices to reflect any increase in the cost of materials, parts, labour, transport, changes in specifications, work or delivery schedules, quantities taxes, currency fluctuations affecting the Company or its suppliers or delay caused by failure of the Customer to give the Company adequate information or instructions.

4.4 Customer accounts are opened subject to approval of satisfactory references and (unless otherwise agreed by the Company in writing) the terms of payment are on or before the last day of the month following the month of the invoice date in which the Goods were despatched or would have been despatched save for postponement otherwise than due to default of the Company. The Company shall be entitled to submit its invoice with its delivery advice note or at any time thereafter save that where Delivery has been postponed at the request of or by the default of the Customer, the Company may then submit its invoice at any time after the Goods are ready for Delivery or would have been ready but for the request or default of the Customer.

4.5 Where Goods are delivered by instalments the Company may invoice each instalment separately.

4.6 The Customer shall not be entitled to withhold or set off payment for Goods delivered for any reason whatsoever.

4.7 In the event of any payment becoming overdue or credit limit exceeded on any account whatsoever then, without prejudice to any other right or remedy available to it the Company may:-

(a) terminate the Contract and/or any other contract between the Customer and the Company; and/or

(b) suspend all further delivery under the Contract or any other contract between the Customer and the Company and/or;

(c) charge interest from the date that the sum becomes due until the date that the sum is paid at the rate of 2% per month on any balance outstanding.

4.8 The Customer shall pay the price of the Goods within one month following the month of the Company's invoice date, unless otherwise agreed by the Company in Writing. Time of payment shall be of the essence of the Contract and the Customer

shall indemnify the Company against any legal or other expenses incurred by the Company in the collection of any outstanding payment on any account whatsoever.

## **5. DELIVERY**

5.1 Where the Contract is to include transport of the Goods, delivery of the Goods shall be made to the Customer's address as stated in the Contract or, if the Goods are to be collected by the Customer, upon such collection from the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection.

5.2 Any dates quoted by the Company for Delivery of the Goods are approximate only and the Company shall not be liable for any loss or damage whatsoever due to delay in Delivery of the Goods howsoever caused. Time of Delivery shall not be of the essence of the Contract. The Company may deliver the Goods to the Customer in advance of any quoted Delivery date upon giving reasonable notice to the Customer.

5.3 The date of Delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Customer as shall be requested by the Company. Alterations made by the Customer after the date of the Customer's Order in Specification or quantities required may result in a delay in delivery and, if reasonably practicable, the approximate length of any such delay shall be notified to the Customer.

5.4 The Company will endeavour to comply with any reasonable requests by the Customer for postponement of Delivery but shall be under no obligation to do so and the Customer shall pay all reasonable and proper costs and expenses arising from such postponement.

5.5 The Company may effect Delivery by instalments in which case these Terms and Conditions shall apply to each instalment as though a separate contract and any failure or defect in any one Delivery will not entitle the Customer to repudiate the Contract as a whole.

5.6 If the Company fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Customer's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.

5.7 If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then, without limiting any other right or remedy available to the Company, the Company may:

5.7.1 store the Goods until actual Delivery and charge the Customer for the reasonable costs (including insurance) of storage; or

5.7.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the Price under the Contract or charge the Customer for any shortfall below the price under the Contract.

## **6. RISK AND TITLE**

6.1 Risk of damage to or loss of the Goods shall pass to the Customer:-

(a) in the case of Goods to be delivered otherwise than at the Company's premises at the time of Delivery or if the Customer wrongfully fails to take Delivery of the Goods, the time when the Customer has tendered Delivery of the Goods; or

(b) in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the Goods are available for collection.

6.2 Until all sums due under this Contract or any other contract have been paid in full by the Customer to the Company the whole right, title and interest, both legal and equitable in and to the Goods shall remain with the Company and the Customer shall keep the Goods as the Company's fiduciary agent and bailee in good and substantial repair and condition, properly stored, protected and insured in such a way that they are identifiable as the property of the Company and are separate from all other goods of the Customer. Until that event the Customer shall be entitled to use or re-sell the Goods in the ordinary course of its business but shall account to the Company for the proceeds of sale or otherwise of the Goods (whether tangible or intangible and including insurance proceeds).

6.3 Until such time as the property in the Goods passes to the Customer (and provided that the Goods are still in existence and have not been resold), the Company may at any time require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, enter on any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

6.4 As all or any of the Goods or some part or constituent of them may have been purchased by the Company under a contract containing a provision reserving title or other property right therein to the vendor thereof the Company shall be liable to transfer to the Customer only such title as the Company may itself have in the Goods.

## **7. CARRIAGE**

Unless otherwise specified prices quoted exclude Delivery to destinations in the United Kingdom in which case the Company will select the mode of transport with due regard to urgency and cost. The entire cost of any mode of transport to destinations in the United Kingdom shall be borne by the Customer.

## **8. WARRANTIES**

8.1 The Customer is deemed to have inspected the Goods on Delivery and unless the Company is notified within seven days of Delivery, or in the case of Goods alleged to be lost or mis-delivered or which the Company fails to release, within seven days after the time when the Goods should in the ordinary course of events have been released, in Writing of the details of any storage loss, damage, mis-delivery of or failure to release any Goods the correct quantity and quality of Goods will be deemed to have been delivered, no claim will be considered and the Company shall be under no liability:

Provided that if the Customer proves that:

(a) it was not reasonably possible for the Customer to advise the Company or make a claim in Writing within the time limit applicable, and

(b) such advice or claim was given or made within a reasonable time,

the Company shall not have the benefit of the exclusion of liability afforded by this clause.

8.2 The Company shall in any event be discharged from all liability whatsoever and howsoever arising in respect of the Goods unless a claim is brought within one year of the date when the Goods were released or should, in the ordinary course of events, have been released.

8.3 In the computation of time when any period provided by these conditions is seven days or less, Saturdays, Sundays and all statutory public holidays shall be excluded.

8.4 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company may replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), in which case the Company shall have no further liability to the Customer.

8.5 The Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer.

8.6 The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Company's approval.

8.7 The Company shall be under no liability if the total price for the Goods has not been paid by the due date for payment.

8.8 In respect of parts, materials or equipment not manufactured by the Company, the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.

8.9 All other conditions and warranties, express or implied by statute, common law or otherwise are hereby excluded except those which by statute may not be excluded PROVIDED THAT nothing in these Conditions shall affect the statutory rights of the Customer dealing as a consumer (within the meaning of the Contract Terms Act 1977).

## **9. LIMITATIONS OF LIABILITY**

9.1 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any misunderstanding or mis-representation, or breach of any implied warranty, condition or other term, or breach of any duty at common law or under the express terms of the Contract, for any direct loss or expense and/or any indirect loss or expense suffered by the Customer or liability to third parties incurred by the Customer and/or for any consequential loss or damage, (whether for loss or profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Customer, except as expressly provided in these Conditions AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS IN THIS CLAUSE 9.

9.2 Without prejudice to Clause 9.1 or to the Company's other rights hereunder the Company's total liability for any one claim or for the total of all claims arising from any one act or default (whether arising from the Company's negligence or otherwise) shall not in any event exceed the Contract price for the Goods.

## **10. TERMINATION OF CONTRACT**

The Company shall be entitled to terminate the Contract and/or any other Contract with the Customer forthwith by notice without prejudice to any of its other rights:-

- (a) if the Customer (whether under this or any other Contract between the Customer and the Company) is overdue with any payment or is in breach of Contract which breach is incapable of remedy or which if the same be capable of remedy it fails to remedy within 7 days of the Company's written notice so to do; or
- (b) if any distress or execution shall be levied on the Customer's assets, or if the Customer shall make or offer to make any arrangement or composition with creditors or commit an act of bankruptcy or if any petition or receiving order in bankruptcy or an administration order shall be presented or made against the Customer or if the Customer is a limited company and any resolution or petition to wind up the same (other than for the purposes of solvent reconstruction or amalgamation) shall be passed or served or an administration order be made or if a receiver or administrator be appointed of the Customer's assets and undertaking or any part thereof; or

(c) if in the opinion of the Customer, serious doubts arise as to the solvency of the Customer.

## **11. FORCE MAJEURE**

The Company shall have no liability to the Customer in the event of non-delivery or delay in delivery of the whole or any portion of the Goods caused directly or indirectly by act of God, weather, war, terrorism, acts of Government, strikes or lockouts, fire, breakdown of machinery, non-delivery or delay in delivery by the Company's suppliers of goods or materials required, shortage of transport, general shortage of materials and restrictions in the use of power, or any other beyond the Company's complete control. In the event of any delay in Delivery due to any of the aforesaid causes the time for Delivery shall be extended to the extent of the delay caused.

## **12. INTELLECTUAL PROPERTY RIGHTS**

All and any Intellectual Property Rights in any brochures, or literature relating to the Goods belong to the Company and the Customer may not use or infringe any of the Intellectual Property Rights without the prior written consent of the Company.

## **13. CATALOGUES**

The description of Goods in any catalogues used by the Company is given by the way of identification only and the use of such description shall not mean that a sale under this Contract is a sale by description.

## **14. GENERAL**

14.1 This Contract shall be governed and interpreted according to the Law of England and Wales and the Customer agrees to submit to the non-exclusive jurisdiction of the English Courts.

14.2 The Company shall not be liable for any delay or failure to perform any of its obligations in relation to the Goods due to any cause beyond its reasonable control including industrial action.

14.3 The waiver by the Company of any breach or default of these Terms and Conditions shall not be construed as a continued waiver of that breach not as a waiver of any subsequent breach of the same or any other provision.

14.4 If any clause or sub-clause of these terms is held by a competent authority to be invalid or unenforceable the validity of the other clauses and sub-clauses of these Terms and Conditions shall not be affected and they shall remain in full force and effect.

14.5 The Company may assign novate or sub-contract all or any part or parts of this Contract and the Customer shall be deemed to consent to any novation. This Contract is personal to the Customer and it may not be assigned.

14.6 Nothing in this Contract is intended to or will grant any right to any third party to enforce any terms of this contract whether express or implied.



14.7 No variation to these terms and conditions shall be binding unless agreed in Writing between the authorised representatives of the Customer and the Company.

14.8 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.