

FOAMEX SOUTH AUSTRALIA PTY. LTD.

GENERAL TERMS AND CONDITION OF TRADE

1. Orders

- 1.1 Any contract between the company and the customer for the supply of goods and/or services will be subject to these terms and conditions unless a variation has been expressly agreed to by the company in writing.
- 1.2 Credit facilities may be suspended if the customer fails to pay an account within the specified or agreed terms or for any other reason at the company's discretion.
- 1.3 The company continuing to provide credit shall be conditional upon the company being satisfied of the customer's ability to pay and comply with these terms and conditions. If the company ceases to be so satisfied, it may suspend or terminate further deliveries and credit and shall not be liable in any way for any resulting claim, damage, costs or expenses arising.

2. Application

These terms and conditions supersede and prevail over any terms and conditions contained in any customer terms and conditions, any previous dealings with the customer and any oral agreements or representations.

3. Interpretation

In these terms and conditions:

- 3.1 "the company" means Foamex South Australia Pty Ltd ACN 091 792 095 of 15 Peachey Rd, Edinburgh North, SA, 5113;
- 3.2 "the customer" means the party who orders the goods from the company;
- 3.3 "the invoice price" means the price at which the company agrees to sell or supply to the customer;
- 3.4 "order" means an order from the customer for the goods to be sold or supplied by the company to the customer;
- 3.5 except where the context otherwise requires, words denoting individual persons shall include corporations, words denoting the singular number shall include the plural number and vice versa and words denoting any gender shall include all other genders.

4. Payment

- 4.1 The invoice price must be paid in full within 30 days after the date of the invoice.
- 4.2 The customer agrees to pay interest on overdue payments at a rate of 1.5% above the highest interest rate quoted by a trading bank in South Australia for 90 day bank bills at the close of trading on the last business day at the end of the calendar month immediately preceding the date for payment and of each subsequent month until the invoice is paid in full.
- 4.3 The customer agrees that if it fails to make payment in accordance with clause 4.1, the company may recover all legal and collection costs and expenses incurred in collecting or attempting to collect overdue payments.
- 4.4 The invoice price or any outstanding balance shall, notwithstanding anything else in these terms and conditions, become immediately due and payable in full without notice if the customer becomes bankrupt, makes an assignment for the benefit of or a composition or arrangement with his or her creditors or has a trustee appointed by any court under law relating to mental health and insanity or dies or, if the customer is a company, the customer makes an assignment for the benefit of or enters into or proposes a composition or arrangement with its creditors or if a resolution is passed or an order is made for the company to be wound up or if an administrator, a provisional liquidator, a receiver, a receiver/manager, a manager, an official manager or an agent of a secured creditor is appointed or takes possession of any or all of the undertaking and assets of the company or if the company is otherwise deemed unable to pay its debts.

5. Delivery

- 5.1 Unless otherwise stated on the order, the company will deliver the goods Metro Adelaide for standard delivery fee. Any storage fees will be at the expense of the customer. All freight charges must be paid by the customer in addition to the invoice price unless the order accepted by the company state that the price includes freight.
- 5.2 The company shall not be liable for any damages, losses, costs or expenses arising from any failure by the company to deliver the goods or from delay in delivery occasioned by strike, lockout, difficulty in procuring suitable materials, goods or substances required in the manufacture of the goods, shortage of stocks, shortage of labour, lack of skilled labour, delays in transit, prohibitions or restrictions, fire, flood, storm, hostility, civil commotion or other cause whatsoever (whether similar in nature to the foregoing or not) beyond the company's reasonable control.
- 5.3 Where the company is unable to complete delivery of the goods on the delivery date, stated on an order, the order shall, notwithstanding the delay, remain operative. In this event, the customer may cancel the order by notice in writing to the company, provided that the cancellation will not take effect unless the company has failed to deliver the goods by 5.00pm on the fifteenth day after receipt by the company of the notice.
- 5.4 Delay in payment of outstanding invoices by the customer in relation to any orders placed by the customer with the company shall give the company the right, without recourse, to suspend supply or delivery of any goods on any order and to cancel any part of an order.

6. Risk

- 6.1 Risk in the goods will be assumed by the customer upon delivery.
- 6.2 The customer must inspect the goods immediately after delivery and give immediate written notice to the company of any defect or damage revealed by that inspection.
- 6.3 Loss or damage to the goods after risk has been assumed by the customer does not discharge the customer from the customer's obligation to pay the invoice price or any other amounts due to the company.

7. Title

- 7.1 It is expressly agreed and declared by both parties that in relation to goods supplied by the company to the customer, the sole and absolute property and title in those goods shall remain with the company as legal and equitable owner until the later of:
 - (a) receipt of payment in full for the goods; and
 - (b) receipt of payment in full of all other monies owing or unpaid by the customer to the company including monies in respect of goods previously or subsequently supplied to the customer by the company.
- 7.2 Until payment in full of the invoice price, interest and any other charges payable by the customer in relation to the goods, the customer will be a bailee of the goods for the company and will not be able to pass title to the goods to any third party. The customer must retain the goods separately and apart so that they can remain clearly identifiable as the property of the company.
- 7.3 If the customer sells the goods to which it does not have title to a third party, the customer must hold the proceeds of such sale, whether mixed with funds of the customer or any other party or not, on trust for the company and the company shall be entitled to recover the outstanding balance of the invoice price, interest and any other outstanding charges in relation to the goods from those funds.
- 7.4 If the goods or any part thereof are made into a new item or items by the customer, or are mixed with any other goods or if the goods become in any way whatsoever components of other goods, the company will acquire title to those goods so as to secure payment to it of the full invoice price. The company and the customer expressly agree that any transfer of title to other goods in which the goods hereby sold are incorporated will occur at the time of events referred to. The customer will also retain such other goods as bailee for the company separately and apart so that each such item can be clearly identifiable as the property of the company and, without prejudice to any other rights the company may have in relation thereto, the customer will be fully liable for any damage suffered by the company by virtue of the conversion of any such item without the express prior written permission of the company.
- 7.5 The customer's right to possess the goods ceases immediately if the customer does or fails to do anything which would entitle a receiver, a receiver and manager, an administrator or a trustee to be appointed in respect of the customer, the customer's undertaking or property or any part thereof, or entitle a person to present a creditor's petition for winding up.
- 7.6 If the invoice price is not paid on the due date or the customer's right to possession of the goods ceases, the company, its employees and agents may enter any premises owned, occupied, leased or controlled by the customer to repossess the goods. The value of the goods, or if the goods are sold by the company, the proceeds of sale of the goods, less costs and expenses of repossession and sale, shall be set off against or applied towards satisfying any amount owing by the customer to the company.
- 7.7 The customer agrees that the company's employees or agents may enter upon any of the customer's premises (doing all that is necessary to gain access) where it is reasonably thought goods supplied under this agreement might be stored for the purpose of examining or recovering the goods.
- 7.8 The customer acknowledges and expressly agrees that this clause 7 constitutes a Security Agreement which creates a Security Interest in favour of the company in all goods, including any Commingled Goods, supplied by the company to the customer. The customer acknowledges and agrees that:
 - (a) the company may, without providing notice to the customer, apply to register the company's Security Interest pursuant to the PPSA and it is the intention of both parties that upon registration of the company's Security Interest on the personal property securities register ("PPSR"), a Purchase Money Security Interest will result;
 - (b) the customer agrees that the company is not required to disclose to an interested person information regarding the company's Security Interest unless required to do so by law and that this clause constitutes a Confidentiality Agreement for the purposes of section 275(6) of the Personal Properties Securities Act ("PPSA");
 - (c) upon the company's request, the customer will promptly sign any documents, provide any further information and do anything else reasonably required by the company to enable perfection of the company's Security Interest or registration of a Financing Statement or Financing Change Statement under the PPSA;
 - (d) the customer will not register a Financing Statement or Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the goods without the company's prior written consent;
 - (e) the customer will not grant any other Security Interest or any lien over the goods;

- (f) the customer will give the company not less than 14 days written notice of any proposed change in the customer's name or contact details; and
- (g) the customer waives any rights the customer may have to receive any notices required under sections 95, 118, 121, 130, 132, 135 and 157 of the PPSA.

7.9 Apart from previously defined terms, in clause 7.8:

- (a) all capitalised terms have the same meaning prescribed to them in the PPSA; and
- (b) reference to "goods" means goods supplied by the company to the customer from time to time.

8. Claims

Any claim by the customer as to insufficient performance or breach of the terms and conditions of an order must be made to the company in writing within seven days of delivery. If the customer considers that it has any other claim against the company, it must:

- 8.1 give written notice to the company of the nature of the claim immediately upon becoming aware of the circumstances which give rise to the claim:
- 8.2 allow the company, its servants and agents full and free access to the goods in relation to which the claim is made to inspect and test the goods in any manner which the company may reasonably require to determine whether the claim is justified or not.

9. Implied conditions

Save for the conditions implied by the Act or any other law which cannot be excluded or waived, no conditions, guarantees or warranties expressed or implied by law whether by statute or otherwise are binding upon the company. It is hereby agreed that there are no understandings, agreements or representations expressed or implied relating to any sale or supply of goods to the customer other than those specified herein or otherwise set out in writing in relation to particular order, all of which entirely supersede all previous tenders, negotiations and discussions between the company and the customer.

10. Liability

Should the company be liable for the breach of a guarantee implied by The Australian Consumer Law (being Schedule 2 of the Competition and Consumer Act 2010 (Cth) (as amended) ("the Act") (not being a condition or warranty to which Sections 51, 52 or 53 applies), subject to the qualification contained in Section 64A of the Act, the company's liability for such breach shall be limited to any one of the following as determined by the company:

- 10.1 in respect of goods:
 - (a) the replacement of goods or supply of equivalent goods;
 - (b) the repair of the goods;
 - (c) the payment of the cost of replacing the goods or acquiring equivalent goods; or
 - (d) the payment of the cost of having the goods repaired; and
- 10.2 in respect of services:
 - (a) the supplying of the services again; or
 - (b) the payment of the cost of having the services supplied again.

11. Waiver

Failure by the company to insist upon strict performance of any term or condition herein shall not be deemed a waiver thereof or of any rights the company may have and shall not be deemed a waiver of any subsequent breach of any term or condition.

12. Licences

All goods are sold on the understanding that all necessary licenses and permits under all relevant statutes, rules and regulations have been obtained by the customer and that the customer's purchase and use of the goods will not in any way involve the company in any infringement of any statute, ordinance, rule or regulation.

13. Notices

Notices to the company shall be transmitted by pre-paid registered mail to the usual place of business of the company with a copy to the registered office of the company. No notice or payment transmitted to the company shall be deemed to have been given or made until it is actually received at its usual place of business.

14. Severance

Should any part of these terms and conditions be held to be void or unlawful, these terms and conditions will be read and enforced as if the void or unlawful provisions have been deleted.

15. Law

These terms and conditions shall be governed by the laws of the State of South Australia, notwithstanding the place in which the goods or any of them are to be delivered. The customer submits to the jurisdiction of the courts of or in the State of South Australia including all courts of appeal therefrom.

I acknowledge that the above terms and conditions shall apply to any contract for the supply of goods and services by the company to
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("the customer") where the customer's order is accepted by the company after the date on which this form is signed and returned to the company and I confirm that I have the authority to sign this form on behalf of the customer.

