

## TERMS AND CONDITIONS OF SUPPLY

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following words shall have the following meanings:

**'Buyer'** means the person identified as such in the Order confirmation.

**'Conditions'** means these standard terms and conditions of supply set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and Interfoam and reference to

**'Condition'** shall be construed accordingly.

**'Force Majeure Event'** means any event which is beyond the reasonable control of Interfoam.

**'Goods'** means the goods (including any instalment of the goods or any parts for them) described in the Order confirmation which Interfoam is to supply in accordance with these Conditions.

**'Incoterms'** means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Order is made.

**'Order'** means the relevant Order confirmation and these Conditions.

**'Order Form'** means an order document originating from the Buyer with details of goods they wish to purchase from Interfoam.

**'Order Confirmation'** means written notification from Interfoam confirming acceptance of the Order.

**'Payment Terms'** are 30 days from date of invoice unless otherwise stated on invoice or in order confirmation.

**'Performance Dates'** means any dates identified as such in the Order confirmation.

**'Price'** means the price identified in the current price list (available upon request).

**'Buyer Components'** means any part or component provided to Interfoam by the Buyer for any purpose.

**'Special Terms'** means those terms listed as such in the Order confirmation.

**'Interfoam'** means Interfoam Limited (company number 02737780) with registered office at Unit D Ronald Close, Woburn Road Industrial Estate, Kempston, Bedford, MK42 7SH.

1.2 Any reference in these Conditions to a particular piece of legislation or a provision of a particular piece of legislation shall be construed as a reference to that particular piece of legislation as amended, re-enacted or extended at the relevant time and includes any subordinate legislation for the time being in force made under it.

1.3 A reference to person shall include bodies corporate and unincorporate.

1.4 Any phrase introduced by the terms 'including', 'include', 'in particular' or any similar expression shall be construed as illustrative and the words following those terms shall not limit the sense of the words preceding those terms.

### 2. ORDER

2.1 The Order confirmation and these Conditions, shall apply to the Order to the exclusion of any other terms and conditions that the Buyer proposes or seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.

2.2 Variations to the Order or these conditions must be agreed in writing between Interfoam and the Buyer.

2.3 If there is any conflict between these Conditions and any Special Terms, the Special Terms will take precedence. In all other instances, these Conditions take precedence.

2.4 For the avoidance of doubt, the Order Form shall constitute the Buyer's offer to purchase specific goods (subject to these Conditions) and such offer will only be accepted on the issue of the Order Confirmation from Interfoam to the Buyer."

2.5 The Buyer shall be responsible to Interfoam for ensuring the accuracy of the Order confirmation and for giving Interfoam all necessary information to enable Interfoam to perform the Order.

2.6 Interfoam reserves the right to make any changes in the specification of the Goods without notice where such changes are necessary at Interfoam's reasonable discretion provided that (except where a change is required to comply with any applicable statutory or regulatory requirement) such changes do not materially affect the quality or performance of the Goods.

2.7 Interfoam will use reasonable endeavours to provide the Goods in accordance with any Performance Dates and/or times specified in the Order confirmation. If no Performance Dates and/or times are specified in the Order confirmation, Interfoam will supply the Goods within a reasonable time frame.

2.8 The Buyer shall comply with all applicable laws, regulations and other legal requirements in connection with its obligations under the Order and the Buyer's receipt and use of the Goods (including those governing the importation of the Goods into the country of destination and for the payment of any duties on them).

2.9 Interfoam warrants that the Goods on delivery shall be: (i) in conformance in all material respects with the specification, (ii) of satisfactory quality and free from material defects in design, material and workmanship; and (iii) fit for the purpose held out by Interfoam.

### 3. CANCELLATION AND RETURNS

3.1 No Orders accepted by Interfoam may be cancelled by the Buyer except with Interfoam's written agreement and on terms that the Buyer shall indemnify Interfoam in full against all loss incurred by Interfoam at the time of notice as a result of cancellation.

3.2 Without prejudice to the Buyer's statutory rights, Goods supplied in accordance with the Order cannot be returned without the prior permission of Interfoam which shall be at its absolute discretion. Interfoam will not accept or take responsibility for Goods returned without its prior written permission. Duly authorised returns shall be sent to Interfoam's premises at the Buyer's expense.

### 4. PRICE

4.1 The Price of the Goods shall be as set out on the Order confirmation. If no Price is identified in the Order confirmation, the price set out in Interfoam's published price list in force as at the date of delivery shall apply.

4.2 Interfoam reserves the right at any time prior to delivery to adjust the Price of the Goods to take account of any price relevant circumstances which may not reasonably be controlled by Interfoam.

4.3 Unless otherwise stated all prices quoted are net ex-works where delivery takes place at Interfoam's premises. Where delivery takes place anywhere else, all costs or charges in relation to delivery and insurance shall be borne by the Buyer.

4.4 The cost of pallets and returnable containers will be charged to the Buyer at Interfoam's discretion.

4.5 The Buyer agrees to pay for any loss or extra cost incurred by Interfoam caused by: (i) the Buyer's instructions or lack of instructions or failure/delay in taking delivery; (ii) any change in delivery dates, quantities or specifications for the Goods requested by the Buyer; or (iii) any act, omission or default on the part of the Buyer its servants, agent's or employees.

### 5. PAYMENT

5.1 Interfoam shall invoice the Buyer upon completion of delivery.

5.2 The Buyer shall pay for the Goods in accordance with the Payment Terms or terms as stated on invoice.

5.3 The Price of the Goods shall be due in full to Interfoam in accordance with Condition 5.2 and the Buyer shall not be entitled to exercise any set off, lien or other similar right or claim.

5.4 Interfoam reserves the right to request advance payment and/or to demand security for payment before continuing with or delivering any Order (or part thereof).

5.5 Interfoam reserves the right to charge interest at four per cent (4%) per annum above the base lending rate of Barclays Bank plc from time to time on all overdue accounts, such interest being deemed to accrue on a daily basis from the due date for payment until the obligation to make payment is discharged.

### 6. DELIVERY

6.1 Unless otherwise agreed in writing by Interfoam, delivery will be deemed to have been effected when the Goods are delivered to:

6.1.1 Interfoam's premises once loaded on transport if the Buyer's transport is used; or

6.1.2 the Buyer's premises or such other premises as may be agreed by Interfoam and the Buyer if Interfoam's transport (or a third party acting on behalf of Interfoam) is used as indicated on the Order confirmation.

6.2 Where delivery is to take place in accordance with Condition 6.1.2, the Buyer shall:

6.2.1 provide, at the delivery address and at its own expense, adequate and appropriate parking, equipment and manual labour for unloading the Goods; and

6.2.2 be responsible for the unloading of the Goods.

6.2A The Buyer shall ensure that an authorised person signs a delivery note on delivery of the Goods as described in 6.1.1 or 6.1.2.

6.3 The Buyer accepts and acknowledges all times of deliveries of the Goods (including Performance Dates) are approximate only and Interfoam shall not be liable for any delay in delivery of the Goods however caused. Time of delivery is not of the essence.

6.4 Interfoam reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment.

6.5 Risk of damage to or loss of the Goods shall pass to the Buyer:

6.5.1 in the case of Goods to be collected at Interfoam's premises, at the time where the goods are loaded onto buyer specified transport or;

6.5.2 in the case of Goods to be delivered otherwise than at Interfoam's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when Interfoam has tendered delivery of the Goods.

6.6 Title in the Goods (both legal and equitable), shall pass to the Buyer when Interfoam has received in cash or cleared funds payment in full for all Goods delivered to the Buyer under this and all other Orders between Interfoam and the Buyer for which payment of the full Price of the Goods thereunder has not been paid.

6.7 Unless and until title passes to the Buyer: (i) it shall store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as Interfoam's property; and (b) if the Buyer fails to pay any outstanding invoices or the Buyer's financial standing becomes compromised, Interfoam may require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

6.8 Any liability of Interfoam for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Order rate against any invoice raised for such Goods.

6.9 Unless otherwise agreed in writing between the Buyer and Interfoam, the Goods shall be delivered Incoterms EXW at Interfoam's premises and Interfoam shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979 should other Incoterms apply.

### 7. INSPECTION/SHORTAGES

7.1 Interfoam shall not be liable for non-delivery, partial loss or damage to the Goods occurring prior to delivery or for any claim that the Goods are not in accordance with the Order unless claims to that effect are notified in writing by the Buyer to Interfoam (and in the case of claims for non-delivery, partial loss or damage with a copy to the carrier if Interfoam's transport has not been used to deliver the Goods):

7.1.1 within seven (7) days of delivery for partial loss or damage or non-compliance with the Order; or

7.1.2 within fourteen (14) days of the date of the invoice for non-delivery.

7.2 If the Buyer shall fail to give notice in accordance with Condition 7.1 above, the Goods shall be deemed to be accepted and in accordance with the Order and the Buyer shall be bound to accept and pay for the same accordingly.

### 8. REMEDIES

8.1 Nothing in these Conditions shall limit or exclude either party's liability for:

8.1.1 death or personal injury resulting its negligence or the negligence of its employees, agents or sub-contractors (as applicable);

8.1.2 fraud or fraudulent misrepresentation; or

8.1.3 any matter in respect of which it would be unlawful to exclude or restrict liability.

8.2 Subject to Condition 8.1 above, Interfoam shall under no circumstances be liable to the Buyer in respect of:

8.2.1 any defect in the Goods arising out of the act, omissions, negligence or default of the Buyer, its servants or agents including in particular but without limitation any failure by the Buyer to comply with any recommendations of Interfoam as to storage, use or handling of the Goods;

8.2.2 imperfect work caused by any inaccuracies in any drawing, bills of quantities or specifications provided by or on behalf of the Buyer;

8.2.3 Goods (parts or components) not manufactured by Interfoam without any warranty; or

8.2.4 any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow Interfoam's instructions, misuse or alteration of or repair of the Goods without Interfoam's approval.

8.3 If any defect caused by faulty manufacture, materials or workmanship is discovered during the three (3) month period commencing with the date of despatch, Interfoam will at its own election: repair the Goods at its own expense, replace them, or refund the Price of the Goods pro rata. Subject to condition 8.1, this shall be the Buyer's sole and exclusive remedy.

8.4 The Buyer cannot claim the benefit of Condition 8.3, unless:

8.4.1 it informs Interfoam of the relevant defect in writing within seven (7) working days of discovering it and gives Interfoam the opportunity to inspect the Goods;

8.4.2 it returns the Goods to Interfoam;

8.4.3 the total Price for the Goods has been paid by the due date for payment; and

8.4.4 the Goods are unused and in an unaltered state.

8.5 Where the Goods are for delivery by instalments any defect in any instalment shall not be a ground for cancellation of the remainder of the instalments.

8.6 Interfoam shall not be liable by reason of any representation (unless fraudulent), or implied warranty, condition or other term, or any duty at common law, or under the express terms of the Order, for loss of profit or loss of business or business opportunity or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Interfoam, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Order or at all) or their use or re-sale by the Buyer and the entire liability of Interfoam for any one (1) claim or for the total of all claims arising from any one (1) act or default of Interfoam (whether arising from Interfoam's negligence or otherwise) under or in connection with the Order shall not exceed the Price paid for the goods.

8.7 Subject to clause 8.1.3, Interfoam shall not be liable to the Buyer under any circumstances for loss suffered as a result of Buyer Components.

8.8 The Buyer shall indemnify Interfoam for any loss arising out of or in connection with any claim made against Interfoam in connection with Buyer Components.

### 9. FORCE MAJEURE

9.1 Interfoam shall not be liable to the Buyer for delay or non-performance of its obligations under the Order to the extent that this is due to a Force Majeure Event.

### 10. EXPIRY AND CANCELLATION

10.1 Expiry or cancellation of the Order shall be without prejudice to the rights, remedies, obligations and liabilities of either party that have accrued prior to cancellation. Conditions which expressly or by implication survive expiry or cancellation of the Order shall continue in full force and effect.

### 11. CONFIDENTIALITY AND PRIVACY

11.1 A party (Receiving Party) will keep in strict confidence all confidential information that has been disclosed to it, or otherwise obtained by it from the other party, or any person on behalf of the other party, and will not use such confidential information or disclose it otherwise than as may be necessary for the performance of the Order.

11.2 The Receiving Party will restrict disclosure of such confidential information to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Receiving Party's obligations or exercising the Receiving Party's rights under the Order; and will ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which apply to the Receiving Party.

11.3 Conditions 11.1 and 11.2 will not apply to the extent that disclosure is a requirement of any applicable statutory or regulatory requirement.

11.4 Interfoam and the Buyer will duly observe all their respective obligations under applicable privacy and data protection legislation which arise in connection with the Order.

### 12. HEALTH AND SAFETY

12.1 Interfoam shall not be liable for any failure on the part of the Buyer to comply in all respects with safety precautions and transportation, handling, storing or machining as would be expected from a person

operating in accordance with good industry practice or otherwise instructions notified by Interfoam to the Buyer or otherwise set out or referred to in Interfoam's latest trade literature (as modified by any recommendations Interfoam may have made), and the Buyer shall indemnify Interfoam against any cost, claims or demands which may be incurred by Interfoam as a result of any such failure on the part of the Buyer.

### 13. GENERAL

13.1 A person who is not a party to the Order has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Order, but this Condition 13.1 does not affect a right or remedy of a third party which exists or is available apart from that Act.

13.2 The Buyer shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Order.

13.3 No waiver by Interfoam of any breach of the Order by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision. Failure or delay by Interfoam in enforcing or partially enforcing any provision of the Order shall not be construed as a waiver of any of its rights under the Order.

13.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part such provision (or part thereof) shall be deemed severable and the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

13.5 The Buyer shall, promptly at Interfoam's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Interfoam may from time to time require for the purpose of securing for the parties the full benefit of the Order.

13.6 Nothing in the Order shall be construed as creating a partnership or joint venture of any kind between the parties and neither party shall have the authority to bind the other party or to contract in its name for any purpose.

13.7 The Order shall be the entire agreement between the parties in relation to the matters discussed herein and no other terms shall apply to it.

13.8 The Order and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and all disputes arising in connection with the Order shall be submitted to the jurisdiction of the English courts. The parties hereby expressly agree to exclude and disclaim the application of the provisions of the United Nations Convention on the

Contracts for the International Sale of Goods (also referred to as the **Vienna Convention**), and any successor convention or legislation, to the Order.