

Federal Foam Technologies, Inc.

Purchasing Terms and Conditions

By Acceptance of this Order, Vendor agrees with Buyer as follows:

These Purchasing Terms and Conditions create a contract between you and Federal Foam Technologies.

A. PARTIES

“Seller,” as used herein, means the addressee, “Buyer,” as used herein, means Federal Foam Technologies, a Minnesota Corporation.

B. ORDERS AND ACCEPTANCE

1. VERBAL ORDERS – No claimed verbal order by Buyer shall bind Buyer unless confirmed by Buyer by written purchase order;
2. ACCEPTANCE
 - (a) Buyer shall have the right and option to cancel this Order at any time;
 - (b) This Purchase Order is subject only to instructions, terms, conditions, specifications and warranties appearing on both sides of the “Original” copy hereof;
 - (c) Buyer will consider any instrument which contains terms, conditions, specifications, or warranties which are in addition to or inconsistent with these Terms and Conditions (which additions and/or inconsistencies are hereby specifically objected to), to be a counter offer. Buyer will not be bound to such counter offer unless Buyer specifically agrees to the counter offer’s terms in writing; and
 - (d) If Buyer does not accept counter offer in writing, Seller assumes all risk and expense of performing under the counter offer.

C. MATERIALS AND WORKMANSHIP

1. QUALITY – All materials used in the goods delivered under this Order shall be in conformity with applicable drawings, specifications and requirements with respect thereto. Seller shall maintain test data to substantiate compliance with the foregoing, and Seller’s manufacturing processes and inspection system shall be subject to on-site review and verification by representatives of Buyer during performance of this order.
2. SUBSTITUTIONS OR CHANGES – Seller shall give Buyer at least sixty (60) days written notice of any proposed substitutions or changes (other than minor substitutions or changes which do not affect form, fit, function or reliability) that Seller intends to make in relation to any goods or materials ordered hereunder, including substitutions or changes in:
 - (a) Design;
 - (b) Materials or workmanship; or
 - (c) The Processes employed by Seller in the production thereof, following Buyer’s approval of the original design, materials, workmanship to processes either by written notice, prior purchase and acceptance of the item, or submission of initial samples to Buyer. No substitutions or changes shall be binding on Buyer unless approved in writing by Buyer in advance of any shipment hereunder.
3. WARRANTY – Seller warrants that all goods or materials covered by this Order will be of merchantable quality, will be fit for any specific purpose made known to Seller by Buyer, will conform to the drawings, specifications or other related thereto, if any, and will be of good quality, material and workmanship and free from defects. These warranties also shall constitute conditions precedent, shall survive inspection, acceptance and payment, and shall remain in effect for a period of time consistent with the warranty period offered by Buyer on the product in which such goods or materials are used. This warranty shall run to the Buyer and to the customers and users of its products.

D. DELIVERY

1. TIME IS OF THE ESSENCE – Time of delivery is the essence to the contract arising from this Order.
2. COMPLETE DELIVERY – Delivery shall not be deemed complete until goods or materials have been received, inspected and accepted by Buyer, notwithstanding any agreement to pay freight, express or other transportation charges. Buyer’s count will be accepted as final and conclusive on all shipments.
3. OVERAGES – Buyer must approve in writing any quantity of goods or materials that exceed the number of goods or materials ordered. Excess quantities shipped without permission first obtained from Buyer, may be returned at Seller’s expense, including transportation both ways and all handling charges.
4. RIGHT OF REFUSAL – Buyer reserves the right to refuse or return any goods or materials, and to cancel all or any part of this Order, if Seller delivers early, delivers late, or fails to deliver, all or any part of the goods or materials in accordance with the terms of this Order, and any costs in keeping such goods or materials prior to such return, together with the cost of returning the same, shall be at the expense of Seller. Acceptance of any part of the Order, or partial or full payment therefore, shall not bind Buyer to accept future shipments, nor deprive Buyer of the right to return goods or materials already accepted.
5. PACKING AND CARTAGE – No charges will be allowed for not-returnable packages, bags, containers, boxing, crating or cartage unless otherwise specified in this Order. Returnable packaging will be shipped to seller, freight collect. Shipping containers must meet Carrier’s specifications as published in the Uniform Freight Classification.

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E. INSPECTION

1. **INSPECTION AND TEST** – All goods or materials furnished under this Order shall be subject to Buyer's inspection, test and approval during manufacture and prior to shipment, and after receipt notwithstanding any prior payment.
2. **REJECTION AND RETURN** – Buyer shall have the right to reject, rework, or require correction of, any goods or materials found to be defective in material or workmanship, or otherwise not in conformity with the drawings and specifications contained or incorporated in this Order, after inspection or test at any time. Buyer will hold goods or materials rejected or required to be corrected until Buyer and Seller agree to the manner in which Seller will correct materials or Buyer may return goods or materials to Seller at Seller's risk and expense, including transportation both ways and all handling charges. Buyer's costs of rework or sorting such defective goods or materials, in order to keep its production lines in operation, shall be at Seller's expense.

F. INVOICE AND TERMS

1. **INVOICE MAILING** – Invoices shall indicate Buyer's Purchase Order number, shall be mailed to Buyer immediately after shipment, shall be accompanied by an appropriate packing list and bill of lading, and shall not be dated earlier than the applicable shipping date shown in the Order or the date of actual shipment, whichever is later. A separate invoice shall be used for each of Buyer's Purchase Orders.
2. **PAYMENT** – Unless otherwise noted, Buyer shall make payment within thirty (30) days after receipt of a correct invoice or date of shipment, whichever is later, and shall be entitled to all quoted discounts thereon, except where other terms are agreed upon. If a correct invoice does not reach Buyer within four (4) days following the invoice the invoice date, payment deadlines (including any discount periods) will be calculated from the date of receipt of the correct invoice.

G. PRICE

1. **PRICE REDUCTIONS** – If the price of goods or materials ordered decreases between the date of this Order and the time of shipment Buyer shall pay the decreased amount.
2. **OPEN PRICE** – If no price is stipulated in this Order, the price to be charged shall not be higher than Seller's current published price, or that last quoted or charged to Buyer by Seller, whichever is lower, unless Buyer consents thereto in writing.
3. **PRICE INCREASES** – Any proposed increases in price, above the price stated in this Order or Seller's published or quoted price at the date hereof, whichever is applicable, shall be ineffective as to this Order, unless given in writing to Buyer not less than ninety (90) days in advance thereof and Buyer consents thereto in writing prior to the date of shipment hereunder.

H. TERMINATION BY BUYER AND LIMITATION OF LIABILITY - Buyer may terminate this agreement without cause at any time and Buyer's liability for termination, if any, shall be strictly limited to Seller's costs for labor and materials which were incurred before the date of Buyer's termination.

I. EXEMPTION FROM PERFORMANCE- Buyer's duty to perform hereunder shall be excused for circumstances which are beyond the reasonable control of Buyer, including, without limitation, acts of God, force majeure, acts of Government, strikes, inability to obtain labor, utilities, services, raw materials and the like.

J. OTHER MATTERS

1. **INDEMNITY** – Seller shall hold Buyer harmless from and against any and all liability for loss, cost, damages, fined penalties and expenses (including but not limited to such liability resulting from personal injury, property damage, rework or recall of Buyer's products, the intervention of any governmental body, and reasonable attorney's fees) threatened, incurred or arising out of breach of the terms or conditions of this Order, or by reason of:
 - (a) The alleged infringement of any patent, tradename, trademark or copyright covering any goods or materials furnished under this Order, or in connection with Buyer's use, display advertising or resale thereof, unless the same is not customarily offered for sale by Seller and expressly specified by Buyer, and/or
 - (b) Any improper performance or negligent work by Seller under this Order or any allegedly defective material or workmanship in the goods or services furnished hereunder, the failure of any goods or materials furnished hereunder to comply with applicable drawing, specification or the express or implied warranties of Seller, or the failure of Seller to notify Buyer in advance of any substitution or changes as required herein; and/or
 - (c) The alleged or actual violation by such goods or materials, or the method of manufacture, sale, packaging, or labeling thereof, of any law, statute, ordinance or administrative order, rule or regulation.

In connection with the foregoing, Seller shall upon Buyer's request, immediately assume the handling adjustment and defense of any claim covered by the terms hereof, provided, however, that Seller shall keep Buyer fully informed of all proceedings hereunder. In addition, in order to assure compliance with the foregoing, Seller shall maintain adequate insurance coverage in such amounts and with such companies as are reasonably acceptable to Buyer (naming Buyer as a "named insured" thereunder), and upon request, shall furnish the Buyer a satisfactory certificate evidencing such insurance coverage.

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2. **ATTORNEYS' FEES** – Seller shall pay Buyer's attorneys' fees, costs and expenses incurred in connection with any cause of action Buyer brings against Seller. This shall include any claim based in either contract or tort.
3. **TOOLING** – All materials, tools, jigs, fixtures, film, plates, specifications, methods, process and any and all other property, owned, furnished or paid for by Buyer, either in the form of a lump sum payment or by amortization of any portion or all of the cost thereof over the purchases provided hereunder, shall be the property of Buyer subject to removal or repossession by Buyer, or delivery from Seller to Buyer upon demand, at any time and without cost or expense to Buyer. Seller shall provide separate and distinct storage for any such property; shall maintain an appropriate marking on the same including the tool number designated by Buyer, and on the separate storage area, to clearly and permanently identify thereon, for the fair and reasonable value thereof, and shall not use the same to perform any work or orders for any other customer. The fact that such items are owned and supplied by Buyer, shall not excuse Seller for failure to meet drawings and specifications as required herein. Seller shall assume full liability for and maintain and repair such property and deliver same to Buyer in good condition, reasonable wear and tear excepted; and shall provide Buyer with inventories thereof or certify to Buyer that all use thereof is or has been expended on Buyer's order or orders, as Buyer may from time to time request.
4. **COMPLIANCE WITH LAWS** – Seller acknowledges and agrees that goods and materials furnished to Buyer hereunder, may be resold, either directly or indirectly, for personal family or household use, and by acceptance of and performance under this Order. Seller certifies and warrants the all Federal, State and municipal laws have been complied with. Seller also certifies and warrants that the goods, materials and services required hereunder will be and have been produced, and services rendered, in compliance with all applicable requirements of Section 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof.
5. **ON-SITE ACTIVITIES** – In case this Order applies to services to be performed on Buyer's premises, Seller acknowledges and agrees that personnel performing such services shall be deemed to be employees of Seller or independent contractors, and not agents of Buyer, and Seller shall provide insurance covering liability to the employees engaged in the work, and to the public and for property damage. Seller shall furnish acceptable certificates evidencing worker's compensation, public liability, and property damage insurance coverage when requested by Buyer.
6. **DISCONTINUANCE OF BUYER'S BUSINESS** – Discontinuance of, or substantial interference with, Buyer's business, in whole or in part, by reason of fire, flood, earthquake, tempest or other acts of God or by strikes, war, embargo, civil commotion, governmental regulation or other causes reasonably beyond Buyer's control (whether like or unlike the foregoing) shall give Buyer the option of canceling all or any part of the undelivered goods covered by this Order without liability in respect of the goods so cancelled.
7. **WAIVER** – No Waiver by buyer of any of the terms of this Order shall operate to relieve Seller from responsibility for any prior or subsequent breach hereunder.
8. **APPLICABLE LAW AND ASSIGNMENT** – This Order shall be governed by the laws of the State of Minnesota, is not assignable by Seller, and constitutes the entire Agreement between Buyer and Seller.
9. **AFFIRMATIVE ACTION COMPLIANCE** – Buyer is an Equal Opportunity Employer. In accordance with the requirements of Executive Order 11246, Seller is hereby informed of its obligation to take affirmative action to provide equal employment opportunity without regard to race, creed, color, national origin, age, sex, physical handicap or military service. Unless otherwise exempted, during the performance of this contract, Seller agrees to comply with the terms of the equal opportunity clause set forth in 41 C.F.R. 60-1.4(a), the affirmative action clause for disabled veterans set forth in 41 C.F.R. 60-250.4, the affirmative action clause for handicapped workers, set forth in 41 C.F.R. 60-741.4, and the special disabled veterans reporting requirements clause set forth in 41 C.F.R. 61-250.10, to the full extent required by law.