

NOVO FOAM PRODUCTS LLC
STANDARD TERMS & CONDITIONS OF SALE

- 1. DEFINITIONS.** As used in these Terms and Conditions, "NFP" means Novo Foam Products LLC, an Ohio limited liability company; "Buyer" means the purchaser of any Product(s) (as defined below) and all others liable for their purchase price; and "Product" or "Products" means the goods identified on the purchase order to be manufactured, supplied and/or delivered by NFP.
- 2. ORDER ACCEPTANCE.** Any and all sales of Products are expressly conditioned upon Buyer's assent to the Terms and Conditions as set forth herein. If the terms and conditions in the Buyer's purchase order, or any other of Buyer's oral or written communications, are inconsistent with the Terms and Conditions contained herein, NFP's acknowledgment, acceptance, or performance of said order shall not be construed as assent to any of the terms in Buyer's order, but shall instead constitute a counter offer, and Buyer shall be deemed to have accepted the counter offer and the Terms and Conditions set forth herein unless it notifies NFP to the contrary in writing within five (5) business days after receiving the NFP's acknowledgment. Printed material on the Buyer's forms shall not constitute a sufficient writing to modify these Terms and Conditions. No addition to or modification of the Terms and Conditions shall be binding upon NFP unless specifically agreed to by NFP in a writing executed by an authorized representative of NFP. In the event of any conflict between these Terms and Conditions and those submitted by Buyer, the following Terms and Conditions will prevail.
- 3. SHIPMENT TERMS.** All Products are F.O.B. point of shipment. Unless otherwise requested in writing by Buyer, NFP shall select the carrier. Risk of loss passes upon delivery to the carrier and Buyer must file any claim for damage in transit with the carrier. Buyer assumes all risks of and responsibility for loss, damage, to, delay in shipment or non-delivery of the Products after their delivery to the point of destination. NFP assumes no responsibility to insure shipments unless requested to do so at Buyers' expense, by Buyer.
- 4. PRICES AND PAYMENT TERMS.** Prices stated in a written quotation from NFP are those currently in effect and shall remain "firm" for thirty (30) days. After thirty (30) days prices are subject to change without notice. Prices do not include freight (unless stated), applicable federal, state or local taxes. Unless otherwise expressly provided in these Standard Terms and Conditions (i), terms of payment are net cash payable at thirty (30) days from the date of shipment as evidenced by NFP's invoice date, and (ii) no discounts, anticipation or allowances are permitted.
- 5. ASSURANCES.** Buyer warrants to NFP that Buyer is solvent, that Buyer is able and intends to pay each of its obligations when due, and that all checks, drafts and other items tendered to NFP in payment for delivery of its Products will be honored in accordance with NFP's terms. Buyer acknowledges that NFP relies upon Buyer's representations of its solvency to induce NFP to deliver its Products. As such, Buyer agrees that NFP shall have the right to cancel any unperformed or unprocessed order without notice to Buyer in the event that Buyer becomes insolvent, is adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statute, or becomes unable to meet its financial obligations in the normal course of business.
- 6. CLAIMS.** Any claim concerning any Product(s) that could be discovered by inspection upon delivery of said Product(s) must be reported promptly in writing to the delivering carrier and also to NFP. In the case of a claim against NFP, inspection shall be promptly arranged with NFP and, where appropriate, representatives of the carrier. Buyer must settle any damage, loss or shortage occurring in transit with the common carrier without offset of or deduction from the purchase price of the Product(s) affected. Buyer shall set aside, protect, and hold those deliveries which are the subject of its claim without further processing until NFP has an opportunity to inspect its delivery and advise Buyer of the disposition, if any, to be made of them. In no case shall any delivery be returned without first securing the written authority of NFP.
- 7. DELIVERY.** Delivery dates specified are desired and not promised dates, however, NFP will make all reasonable efforts to adhere to the delivery dates furnished by the Buyer. NFP shall not be liable for any damages, loss or expense of the Buyer for failure to comply with any shipping or delivery dates for any reason whatsoever. By consenting to or accepting delivery of the Products, Buyer waives any and all claims against NFP for damage by reason of any delay.
- 8. MODIFICATION.** Buyer may not cancel, modify, or amend any terms of a purchase order or hold up releases after NFP has begun processing Buyer's order, except with NFP's written consent and

subject to conditions then to be agreed upon, including timely receipt of all change orders and reimbursement to NFP for all costs, expenses and lost profits resulting therefrom. NFP reserves the right at any time to: (i) discontinue the manufacture or supply of any Product, (ii) make changes in the design of any Product, or (iii) make improvements to the Products; without incurring any obligation to correct, modify, adjust, or improve the Products previously manufactured and/or delivered by NFP.

9. LIMITED WARRANTY. All Products delivered by NFP are warranted to NFP's original Buyer only. NFP's obligation under this limited warranty is strictly limited to repairing and/or replacing, at NFP's option, any delivered Product found to its satisfaction to be defective, provided that a written claim has been received from Buyer within 30 days after delivery thereof, and said Product(s) are, upon request, returned to NFP's factory from which it was shipped, transportation prepaid. These are the exclusive remedies for breach of warranty. Neither the receipt of information from Buyer, nor the delivery by NFP of the Products shall in any manner imply a warranty on the part of NFP that the Products will be suitable for the purposes disclosed by Buyer, nor any obligation or liability on the part of NFP respecting the suitability of the Products. This warranty does not apply where any claimed defect arose as a result of Buyer's misuse, neglect, alteration or accident. NFP will not be liable for any loss of profit, loss by reason of plant shutdown, non-operation or increased expense of operation, loss or damage of any nature, and Buyer expressly waives all claims for such loss or damage. In no event shall NFP be liable for incidental, indirect, consequential, or special damages, for costs of removal or disposal, or for costs of shipment. THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES EXPRESS OR IMPLIED AND NFP SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. These limitations and exclusions will apply regardless of the form of action, including misrepresentation, negligence or gross negligence.

10. LIMITATION OF LIABILITY. With respect to any Product purchased under this order and alleged to be the cause of any loss or damage to Buyer, the sum equal to the invoiced price of such Product (or if not separately priced, NFP's established selling price for such item) shall be the ceiling limit on NFP's liability, whether founded in contract or tort (including negligence, strict tort liability or breach of warranty), arising out of or resulting from: (i) this order or the performance or breach thereof, or (ii) the design, manufacture, delivery, sale, repair, replacement, use or furnishing of any such Product(s). The price(s) stated for Product(s) are based upon and in consideration for limiting NFP's liability. Failure of Buyer to give timely written notice of its claim shall bar Buyer from any remedy. No claim or action arising out of these Terms and Conditions, Buyer's order, or other document pertaining to the Products may be brought by Buyer more than twelve (12) months after the date of delivery of its performed Products. In no event shall NFP be liable for incidental, indirect, consequential, or special damages, for costs of removal or disposal, or for costs of shipment.

11. INDEMNIFICATION. Buyer shall indemnify and hold NFP harmless against any and all losses, liabilities, damages, costs, or expenses arising from: (i) any and all claims which may be made against Buyer or NFP by reason of injury or death which were caused by or alleged to have been caused by the use, resale, transfer or alteration of the Products furnished to Buyer hereunder; (ii) any and all damages to Buyer's property which are caused by any act or omission, negligence or otherwise, of Buyer or any subcontractor of Buyer or of any of Buyer's employees, workmen, servants or agents; and (iii) in the case of any goods furnished hereunder in accordance with the special request, plans or specifications of the Buyer, any infringement or alleged infringement of any United States or foreign letters patent by any of the goods delivered hereunder.

12. CHARGEBACK LIMITATION. Buyer agrees not to "chargeback" or debit sales orders without first contacting NFP's Buyer Service Department to discuss whether the alleged error resulting in Buyer's claim for a price adjustment was a sole, direct and proximate result of error or negligence on the part of NFP. Buyer must prove by preponderance of the evidence that the damages allegedly sustained by Buyer are the sole, direct and proximate result of NFP's error or negligence. Buyer agrees that any disputes that cannot be resolved amicably between NFP and Buyer shall be submitted to binding arbitration in Cleveland, Ohio under and subject to the laws of the State of Ohio. Under no circumstances shall a chargeback occur or sales order debited without first contacting NFP relative to the above procedure. In the event Buyer debits a sales order without first following the above provisions, NFP shall be entitled to recover damages, including attorney's fees and interest, on the debited amount.

13. CONDITIONS NOT WAIVED. NFP's failure to enforce or declare a default or breach with respect to any particular term or condition listed in these Terms and Conditions shall not constitute a waiver of NFP's right to enforce or be protected by any other terms or conditions or, on a subsequent occasion, that particular term or condition.

14. ALTERATION OF TERMS AND PAROL EVIDENCE. The Terms and Conditions set forth herein are intended by the Buyer and NFP as a final expression and a complete and exclusive statement of their agreement, and may be varied or modified only as provided for herein.

15. INVALID TERM. The validity of any term within these Terms and Conditions shall not affect any other of its terms.

16. ARBITRATION. Any dispute related to or arising from these Terms and Conditions on which an amicable understanding cannot be reached, to the maximum extent allowed by law and irrespective of the type of relief sought, shall be submitted to and resolve any arbitration, and such arbitration shall be the sole remedy for such matter. Such arbitration shall be heard and conducted in Cleveland, Ohio and shall be conducted expeditiously and confidentially in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as such rules shall be in effect on the date of delivery of demand for arbitration, with the exception that the arbitrator may not award any punitive or exemplary damages or any damages other than compensatory. The award rendered may be entered by any court having jurisdiction thereon.

17. GOVERNING LAW. These Terms and Conditions and any sale hereunder shall be governed by and construed in accordance with the internal laws and not the conflict law rules of the State of Ohio.