

CARPENTER ENGINEERED FOAM SWITZERLAND AG

CONDITIONS OF SALE

The Buyer's attention is drawn in particular to the provisions of Condition 8(5) and Condition 16, which sets out details of how the Company's liability is limited.

1. DEFINITIONS

In these Conditions (unless the context otherwise requires):

- (1) the "Company" means Carpenter Engineered Foam Switzerland AG as well as (where the context so permits) its assigns and any sub-contractor;
- (2) "Goods" means the goods (or any instalment or part of them) to be supplied pursuant to the Contract;
- (3) the "Buyer" means the person, firm or company with whom the Contract is made;
- (4) "Company's Premises" means the premises mentioned in the Company's quotation or other contractual document in respect of the Goods or if not so mentioned means the Company's premises from which the Goods have been despatched;
- (5) the "Contract" means the contract between the Buyer and the Company, including, but not limited to a purchase order, for the sale and purchase of the Goods;
- (6) "Force Majeure Event" means any circumstance or event beyond the reasonable control of a party (and/or of any of its sub-contractors, third party service providers and/or suppliers) whether or not in existence and whether or not foreseeable as at the commencement date of the Contract, including any act of God, war, riot, terrorism, explosion, illness, disease, pandemic or epidemic, abnormal, extreme or unusual weather conditions, loss or rationing of utilities, general market shortages or unavailability of any relevant goods or services, fire, flood, strike, lock out or industrial dispute and/or governmental or regulatory authority action.
- (7) words in the singular shall include the plural and vice versa, references to any gender shall include the others and references to legal persons shall include natural persons and vice versa;
- (8) the headings in these Conditions are intended for reference only and shall not affect their construction.

2. GENERAL

- (1) These Conditions shall apply to the Contract to the exclusion of any other terms and conditions contained or referred to in any order, letter, form of contract or other communication sent by the Buyer to the Company and the provisions of these Conditions shall prevail unless expressly varied in writing and signed by an authorized signatory on the Company's behalf. By placing a purchase order, the Buyer will be deemed to be confirming their acceptance of these Conditions.
- (2) Any concession made or latitude allowed by the Company to the Buyer shall not affect the strict rights of the Company under the Contract.
- (3) If in any particular case any of these Conditions shall be or be held to be invalid or shall not apply to the Contract the other Conditions shall continue in full force and effect.

3. ORDERS

Notwithstanding that the Company may have given a detailed quotation, no order shall be binding on the Company unless it has issued an order acknowledgement to the Buyer.

4. PRICES

Unless otherwise agreed by the Company in writing:

- (1) the price payable for Goods shall be the mutually agreed price as confirmed in writing by the parties, including by email. If there is no written price confirmation, the effective price for the Goods shall be the price reflected on the invoice at the time of shipment. This shall also apply to Goods to be delivered by instalment.
- (2) the Company's prices are subject to adjustment to take account of any variation in the Company's costs due to (a) any factor beyond the Company's control including (but not limited to) variations in wages, the costs of materials, exchange rate fluctuations, alterations of duties or taxes and other costs since the date of the Company's quotation or (if no quotation is issued) the Buyer's order (b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered; or (c) any delay caused by instructions of the Buyer or failure of the Buyer to give the Company adequate or accurate information or instructions. The Company accordingly reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the price is quoted and the invoice so adjusted shall be payable as if the price set out therein were the original contract price.
- (3) All prices are exclusive of Value Added Tax and this will be charged by the Company and will be payable by the Buyer at the appropriate rate.

5. ADDITIONAL COSTS

The Buyer shall indemnify the Company in respect of any loss, cost or expense incurred by the Company as a result, directly or indirectly, of the Buyer's instructions or lack of instructions or through any failure or delay whatsoever in taking or through any other act, neglect or default on the part of the Buyer, its servants, agents or employees.

6. INTELLECTUAL PROPERTY

The Buyer shall indemnify the Company against all cost, claims, losses, expenses and damages incurred by the Company or for which it may be liable due to or arising directly or indirectly out of any infringement or alleged infringement of patents, trademarks, copyright, trade secrets, design right or other intellectual property right occasioned by the importation, manufacture or sale of the Goods if made to the specification or special requirements of the Buyer. All intellectual property rights in or arising out of or in connection with the Goods shall be owned by the Company. The Company reserves all intellectual property rights in any Goods that are delivered to the Buyer.

7. TERMS OF PAYMENT

- (1) The Buyer shall pay for the Goods in accordance with the payment terms as agreed in writing by the parties or, if none are agreed, thirty (30) days from invoice date save that payment shall become due in any event forthwith upon the occurrence of any of the events referred to in Condition 15 hereof.
- (2) If the Goods are delivered in instalments the Company shall be entitled to invoice each instalment as and when delivery thereof has been made and payment shall be due in respect of each instalment whereof delivery has been made notwithstanding non-delivery of other instalments of other default on the Company's part.
- (3) If upon the terms of the Contract the price shall be payable by instalments or if the Buyer has agreed to take specified quantities of Goods at specified times a default by the Buyer in the payment of any due instalment or the failure to give delivery instructions in respect of any quantity of Goods outstanding shall cause the whole of the balance of the price to become due forthwith.
- (4) The price of the Goods shall be due in full to the Company in accordance with the terms of the Contract and the Buyer shall not be entitled to exercise any set-off, lien or any other similar right or claim.
- (5) The time of payment shall be of the essence of the Contract.
- (6) Without prejudice to any other rights it may have the Company is entitled (both before and after any judgement) to: (a) charge statutory interest on overdue payments of the price of the Goods or the price of any instalments thereof; and (b) suspend further deliveries under any orders if payment from the Buyer is overdue.

8. DELIVERY

- (1) All times, dates or periods given for delivery of the Goods are given in good faith, but without any responsibility on the Company's part.
- (2) Time of delivery shall not be of the essence of the Contract.
- (3) Any period for delivery shall be calculated from the time of the Company's acceptance of the Buyer's order or from the Company's receipt of all information necessary to enable the Company to manufacture or procure the manufacture of the Goods (whichever shall be the later).
- (4) Where the Goods are handed to a carrier for carriage to the Buyer any such carrier shall be deemed to be an agent of the Company and not of the Buyer.
- (5) The Company shall have no liability (whether in contract or for negligence or otherwise howsoever) for loss of or for damage to the Goods occurring prior to delivery or for any claim that any item delivered pursuant to the Contract is defective or is otherwise not in accordance with the Contract (being a defect or loss, damage or non-compliance which would be obvious upon a reasonable inspection of the Goods) or for non-delivery unless claims to that effect are notified in writing by the Buyer to the Company (and in the case of claims for loss, damage or non-delivery with a copy to the carrier if the Company's own vehicles have not been used to deliver the Goods):
 - within seven days of delivery for loss, damage, defect or non-compliance with the Contract; or
 - within ten days of the date of the invoice for non-delivery.
- (7) In the event of a valid claim for defect, loss, damage or non-compliance with the Contract or non-delivery the Company undertakes at its option either to repair or replace the items concerned at its expense but shall not be under any further or other liability in connection with such non-delivery, loss, damage or non-compliance.
- (8) If the Buyer shall fail to give notice in accordance with the Condition 8(5) above the items delivered shall be deemed to be in all respects in accordance with the Contract and without prejudice to earlier acceptance by the Buyer it shall be bound to accept and pay for the same accordingly and all claims in respect of non-delivery, loss, damage defect or non-compliance shall (save as set out in Condition 13 below) thereafter be wholly barred.
- (9) If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery, the Company may at its sole discretion without prejudice to its other rights and for such period as the Company may determine store the Goods at the Buyer's risk and take all reasonable steps to safeguard and insure them at the Buyer's cost provided that the Buyer shall be immediately informed thereof.

- (10) The Company shall have the right to make delivery by instalments of such quantities and at such intervals as it may decide, and any express provision as to instalments in the Contract shall be in addition to and not in derogation of this right.

9. RETURNS

Goods supplied in accordance with the Contract cannot be returned without the Company's prior written authorisation. Duly authorised returns shall be sent to the Company's premises at the Buyer's expense.

10. CARRIAGE

- (1) Unless otherwise agreed by the Company in writing, the Goods will be delivered ex the Company's premises and the price of the Goods is exclusive of insurance, customs, duties, packaging and transport to the Buyer's premises.
- (2) Where the Buyer requests delivery in a manner other than that selected by the Company in Condition 10(1) above, any difference in price shall be charged to the Buyer's account.

11. PASSING OF TITLE AND RISK

- (1) From the time of delivery the Goods shall be at the Buyer's risk who shall be solely responsible for their custody and maintenance but, unless otherwise expressly agreed in writing, the Goods shall remain the Company's property until all payments to be made by the Buyer under the Contract and any other contract between the Company and the Buyer and on any other account whatsoever have been made in full and unconditionally. Whilst the Company's ownership continues the Buyer shall keep the Goods labelled as belonging to the Company and separate such Goods from all other goods in its possession as bailee for the Company.
- (2) The Buyer may only re-sell the Goods to the Buyer's customers in the ordinary course of the Buyer's business as a fiduciary and trustee for the Company. In the event of any resale by the Buyer of the Goods the Company's beneficial entitlement shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefore shall be assigned to the Company and until such assignment shall be held on trust in a separate identified account for the Company by the Buyer and such proceeds shall not be mingled with other moneys or paid into any overdrawn bank account and shall at all times be identified as the Company's money's.
- (3) Without prejudice to the equitable rules as to tracing, in the event of failure to pay the price in accordance with the Contract the Company shall have power to re-sell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose the Company and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Buyer to remove the Goods.
- (4) Pending payment of the full purchase price of the goods the Buyer shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft, and other risks usually covered by insurance in the type of business carried on by the Buyer in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company's interest.
- (5) The Company is hereby licensed to enter upon any premises in the ownership, possession or control of the Buyer at any time to recover the Goods.

12. CONDITIONS AND WARRANTIES

- (1) Any samples, drawings, measurements, descriptions, advertising, photographs, catalogues, websites or similar which may be provided by the Company concerning any Goods are produced and provided solely for the purpose of giving an approximate idea of the Goods described and such information and items shall not form part of any Contract nor have any contractual force.
- (2) The Company warrants that all Goods supplied by it shall be free from material defects in materials and workmanship. The Company will repair or replace without charge any Goods that are not merchantable because of defects in materials or workmanship. WHERE LAWFULLY PERMITTED, THESE EXPRESS WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE REMEDY OF REPAIR OR REPLACEMENT IS THE SOLE AND EXCLUSIVE REMEDY ARISING FROM THE SALE OF THE COMPANY'S PRODUCTS.

13. DEFECTIVE GOODS

- (1) Notice of a claim for defective Goods must be given promptly in writing within seven days after (i) discovery of the defect or (ii) the defect ought reasonably to have been discoverable. The Company will, at its own discretion, either repair it or supply a replacement thereof free of charge at the place of delivery specified by the Buyer for the original Goods provided that in any case the original Goods have been accepted and paid for.
- (2) In the case of Goods not manufactured by the Company, the Company will pass on to the Buyer to the extent that it is able any benefits obtainable under any warranty given by the Company's supplier provided that the Goods have been accepted and paid for.
- (3) Nothing herein shall impose any liability upon the Company in respect of any defect in the Goods arising out of the acts, omissions, negligence or default of the Buyer, its servants or agents including in particular (but without prejudice to the generality of the foregoing) any failure by the Buyer to comply with any recommendations of the Company as to storage and handling of the Goods.

- (4) 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 and the Buyer shall be bound to accept delivery thereof.

14. BUYERS SPECIFICATION

The Company shall not be liable for imperfect work caused by any inaccuracies in any drawing, bill of quantities, specification or other information supplied by or on behalf of the Buyer.

15. DEFAULT OR INSOLVENCY OF BUYER

If the Buyer shall be in breach of any of its obligations under the Contract or if any distress or execution shall be levied on the Buyer's property or assets or if the Buyer shall make or offer to make any arrangement or composition with his creditors or commit any act of bankruptcy or if any bankruptcy petition be presented against him or (if the Buyer is a company) if any resolution or petition to wind up such company shall be passed or presented or if a receiver, administrative receiver or administrator of the whole or any part of such company's undertaking property or assets shall be appointed the Company in its discretion and without prejudice to any other right or claim may by giving notice in writing to the Buyer, (i) cancel, rescind and/or terminate any and every contract between the Company and the Buyer in whole or in part, and/or (ii) (without prejudice to the Company's right to subsequently chose (i) for the same cause should it so decide) suspend delivery of any further deliveries (as the case may be) of Goods until any default by the Buyer be remedied.

16. LIMITATION OF LIABILITY

- (1) References to liability in this Condition 16 include every kind of liability arising under or in connection with the Contract including liability in contract, tort, misrepresentation, or otherwise.
- (2) Nothing in the Contract limits any liability which cannot legally be limited, including liability for: (a) death or personal injury caused by Company's negligence; or (b) Company's gross negligence or wilful misconduct.
- (3) Subject to Condition 16(2), the total liability of the Company to the Buyer shall not exceed the price of the Goods.
- (4) Subject to Condition 16(2), the following types of loss are wholly excluded: (a) loss of profits; (b) loss of sales or business; (c) loss of agreements or contracts; (d) loss of anticipated savings; (e) loss of use or corruption of software, data or information; (f) loss of or damage to goodwill; and (g) indirect or consequential loss.

17. PRODUCT INTEGRITY

The Buyer shall:

- (1) Convey to its customers or end-users of the Goods, as applicable (and shall procure that its customers so convey to their customers or end-users of the Goods, as applicable) all information relating to the safety of the Goods from time to time requested by the Company.
- (2) Provide the Company within 72 hours of receipt all information in its possession relating to any defect or failure in the Goods together with all information relating to any query, complaint or investigation concerning the Goods.
- (3) Maintain a record of the names and addresses of all customers or end-users, as applicable, it supplies the Goods to (and shall in turn strongly recommend all its customers to maintain such a record). The Buyer shall provide the Company with such other assistance as it requests to trace the Goods when, in the Company's opinion, safety issues make this necessary or desirable.
- (4) Assist and co-operate fully with the Company, and (where so requested by the Company) with any relevant authority, in relation to any notification, withdrawal from the market, product recall, or other corrective action. If a product recall or other corrective action is required as a result of an act, default or omission of the Buyer then the recall or other action shall be at the expense of the Buyer and the Buyer shall indemnify the Company for all actual costs, damages, losses and expenses incurred or suffered by the Company in connection with such action.
- (5) Comply with all applicable legal obligations in relation to product liability, safety, marking, labelling, packaging, safety information and warnings, traceability, monitoring, notification and corrective action.
- (6) Shall indemnify the Company for all costs, damages, losses and expenses incurred or suffered by the Company in connection with any failure by the Buyer to ensure that products sold by it comprising or incorporating any or all of the Goods are compliant with all relevant laws and regulations and applicable product safety standards.

18. EXPORT TERMS

- (1) In 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 Contract is made and as spelled out in each relevant invoice. Unless the context otherwise requires, a term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in the Contract, but if there is any conflict between the provisions of Incoterms and the Contract, then the latter shall prevail.
- (2) Where the goods are supplied for export from Switzerland the provisions of this Condition 18 shall (subject to any special terms agreed in writing between the Company and the Buyer) apply notwithstanding any other provision of these Conditions.
- (3) The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination, and into any country through which the Goods are transported, and for the payment of any duties on or in respect of the importation or transportation of the Goods.
- (4) Unless otherwise agreed, payment of all amounts due from the Buyer to the Company shall be made at sight by irrevocable letter of credit opened by the Buyer in favour of the Company and confirmed by a first class (main) Swiss Bank acceptable to the Company. All bank charges in the export territory are to be borne by the Buyer.

19. REPRESENTATIONS

No statement, description, information, warranty, condition or recommendations contained in any catalogue, price list, advertisement or communication or made verbally by any of the Company's agents or employees shall be construed to enlarge, vary or override in any way any of these Conditions.

20. FORCE MAJEURE

The Company shall not be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The Company shall be entitled to delay or cancel delivery or to reduce the amount of Goods delivered if and to the extent that it is prevented from or hindered in or delayed in manufacturing, obtaining or delivering Goods due to a Force Majeure Event. The time for performance of the Company's obligations shall be extended accordingly. If the Force Majeure Event prevents, hinders or delays the performance of the Company's obligations for a continuous period of more than six weeks, the Buyer may terminate this agreement by giving four weeks' written notice to the Supplier.

21. CANCELLATION

Save as provided in conditions 15 and 20 hereof, the Contract may not be cancelled, rescinded or terminated by the Buyer except by agreement in writing of both parties and upon the payment to the Company of such amount as may be necessary to indemnify the Company against all loss resulting from the said cancellation, rescission or termination.

22. SUB-CONTRACTING

The Company may assign the Contract with the Buyer or sub-contract the whole or any part thereof to any person, firm or company. The Buyer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

23. THIRD PARTY RIGHTS

The Contract does not give any third party who is not a party to the Contract any right, whether under applicable laws or regulation regarding third party contractual rights or otherwise, to enforce any term of the Contract.

24. VARIATION

No variation of this Contract shall be effective unless it is in writing (including wet-ink or facsimile or electronic signatures) and signed by the parties (or their authorised representatives).

25. ENTIRE AGREEMENT

The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

26. NOTICES

Any notices to be served on either party by the other shall be in writing and sent by pre-paid registered post to the registered office address of the other party or such other address as is notified in writing by that party from time to time. Such notice shall be deemed to have been received by the addressee 72 hours after posting provided applicable evidence of posting is retained and produced on request. Whilst the parties may make operational communications via email, formal notice may not be served via email.

27. PRODUCT WARNING

**WARNING!
URETHANE FOAM IS FLAMMABLE!**

URETHANE FOAM WILL BURN IF EXPOSED TO AN OPEN FLAME OR OTHER SUFFICIENT HEAT SOURCE. DO NOT EXPOSE URETHANE FOAM TO OPEN FLAMES OR ANY OTHER DIRECT OR INDIRECT HIGH TEMPERATURE IGNITION SOURCES SUCH AS BURNING OPERATIONS, WELDING, BURNING CIGARETTES, SPACE HEATERS OR NAKED LIGHTS.

ONCE IGNITED, URETHANE FOAM WILL BURN RAPIDLY, RELEASING GREAT HEAT AND CONSUMING OXYGEN AT A HIGH RATE. IN AN ENCLOSED SPACE THE RESULTING DEFICIENCY OF OXYGEN WILL PRESENT A DANGER OF SUFFOCATION TO THE OCCUPANTS. HAZARDOUS GASES RELEASED BY THE BURNING FOAM CAN BE INCAPACITATING OR FATAL TO HUMAN BEINGS IF INHALED IN SUFFICIENT QUANTITIES.

ONCE IGNITED, URETHANE FOAM IS DIFFICULT TO EXTINGUISH. FOAM FIRES THAT APPEAR TO BE EXTINGUISHED MAY SMOLDER AND REIGNITE. ALWAYS HAVE FIRE OFFICIALS DETERMINE WHETHER A FIRE HAS BEEN EXTINGUISHED.

Please refer to the pertinent labels, instructions, Safety Data Sheets/Product Information Sheets and other Carpenter literature for further information about the Goods, which are also available upon request. DO NOT USE, HANDLE, TRANSPORT OR STORE THE GOODS WITHOUT BECOMING COMPLETELY FAMILIAR WITH THESE MATERIALS.

28. GOVERNING LAW AND JURISDICTION

The Contract shall be exclusively governed by and construed in accordance with the substantive laws of Switzerland, excluding its conflict of laws principles and excluding the UN Convention on Contracts for the International Sale of Goods. The exclusive place of jurisdiction for any dispute, claim or controversy arising under, out of or in connection with or related to the Agreement (or subsequent amendments thereof), including, without limitation, disputes, claims or controversies regarding its existence, validity, interpretation, performance, breach or termination, shall be the city of Zurich, Switzerland.