

ACCEPTANCE OF TERMS. INNOVATIVE FOAM INC.'S (HEREAFTER "INNOVATIVE") ACCEPTANCE OF BUYER'S PURCHASE ORDER IS EXPRESSLY CONDITIONED UPON BUYER'S ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS OF SALE, WHICH ARE IN LIEU OF ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED IN BUYER'S PURCHASE ORDER OR OTHER DOCUMENT OR COMMUNICATION PERTAINING TO BUYER'S ORDER OR THE GOODS. BUYER'S ASSENT TO THESE TERMS AND CONDITIONS SHALL BE CONCLUSIVELY PRESUMED FROM BUYER'S ACCEPTANCE OF ALL OR ANY PART OF THE GOODS OR FROM PAYMENT BY BUYER FOR ALL OR ANY PART OF THE GOODS. NONE OF THESE TERMS AND CONDITIONS MAY BE ADDED TO, MODIFIED, SUPERCEDED OR OTHERWISE ALTERED, EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY AUTHORIZED REPRESENTATIVES OF THE PARTIES HERETO. FAILURE OF INNOVATIVE TO OBJECT TO ANY TERMS OR CONDITIONS WHICH MAY BE CONTAINED IN ANY DOCUMENT OR FORM OF BUYER SHALL NOT BE CONSTRUED AS A WAIVER OF THESE CONDITIONS, NOR AS AN ACCEPTANCE OF ANY SUCH TERMS AND CONDITIONS.

ORDER AND ACCEPTANCE; INITIAL DEPOSIT. No order submitted by Buyer shall be deemed accepted by Innovative unless and until confirmed in writing by Innovative. **Innovative requires an initial deposit of one-half (50%) of the quoted price before beginning production – production to be commenced upon approval of design/artwork and receipt of the initial deposit.**

PRICE; ADJUSTMENT FOR TAXES. The price shall be as quoted, subject to any adjustment required as a result of the following: Buyer shall be responsible for any excises, levies, taxes or fees Innovative is required to pay or collect under law, with respect to the manufacture, sale/purchase, storage, transportation, delivery or use of the goods, and the Price shall be adjusted accordingly.

PAYMENT. **Dependent upon the approved order, payment in full is required prior to shipping, delivery or installation.** In any other situation, payment terms are net thirty (30) days from the date of invoice. Any payments not made within thirty (30) days of the date of invoice shall be subject to a late payment charge of 1 1/2% per month (compounded) on the unpaid balance of any amount then past due.

SHIPMENT/RISK OF LOSS. Delivery terms are FOB Innovative's plant, Hutchinson, MN. Buyer shall assume all risk of loss or damage upon delivery by Innovative to the carrier at the point of shipment. Scheduled dates of delivery are estimates and not a guaranty of a particular date of delivery.

INSPECTION/ACCEPTANCE/RETURN. Buyer must inspect the goods and make any claim in writing no later than 72 hours after delivery of the order. If such claim is not made within those 72 hours, the order shall be deemed accepted and any claim otherwise waived by Buyer. Buyer acknowledges the goods are essentially "one off" – that is made on a special order basis to specifications provided by Buyer. Buyer may not return and Innovative will not accept, any goods, under warranty claim or otherwise, without Buyer first reporting to Innovative the reasons for such return and Innovative providing such reasonable instructions as Innovative may give in authorizing any return. Returned material must be unused or not installed. Innovative may deny credit on returned goods not meeting these requirements.

CANCELLATION. Orders accepted by Innovative are subject to cancellation by Buyer only upon the express written consent of Innovative. Upon such cancellation and consent, Innovative shall cease work and hold for Buyer all completed and partially completed articles and work in progress; and, Buyer shall pay Innovative for such work and materials that have been committed to and/or identified to Buyer's order, plus a reasonable cancellation charge as prescribed by Innovative.

BUYER'S HOLD HARMLESS RESPONSIBILITY. Buyer acknowledges that Innovative's goods are produced or provided according to Buyer's specifications; and, Buyer is solely responsible for the accuracy of those specifications. Buyer acknowledges that Buyer is not relying on Innovative in any way with respect to the suitability of its products or the adequacy of the specifications. Innovative has no responsibility for design, engineering, or other advice, regarding any product specifications provided by Buyer. Buyer agrees to defend, save and hold Innovative harmless from any and all claims, demands or liabilities of any nature, whether resulting from injury to person, property or other, including all costs, expenses or judgments arising in whole or in part, directly or indirectly, out of the negligence or lack of care by Buyer or Buyer's customers, agents, employees or invitees involving the design or use of the Goods. This indemnification shall include all costs, attorney's fees and other expenses paid or incurred by or imposed upon Innovative in connection with the defense of any such claim

BUYER'S WARRANTY – INTELLECTUAL PROPERTY. Buyer agrees and acknowledges that the Buyer is the legal owner and/or licensee of ALL designs (including, but not limited to, artwork, words and phrases, trademarks, etc.) submitted to Innovative; and, the parties agree Buyer shall retain ownership of Buyer provided content. Buyer assumes sole responsibility and liability of ALL forms of work submitted to Innovative; and, Buyer shall indemnify, defend, and hold Innovative Foam and its agents harmless from all claims, liabilities, and expenses, including but not limited to actual attorney fees, arising out of any claim of infringement of a patent, copyright, trademark, trade name, or other proprietary right, or claim of unfair trade or of unfair competition in connection with the manufacture, sale, or use of the goods sold to Buyer, except to the extent that any claim, liability, or expense arises solely from specifications developed by Innovative.

BUYER'S AUTHORIZATION – USE OF IMAGES. Buyer grants Innovative a non-exclusive, non-assignable, non-transferable license to use images of the Goods produced for Buyer and Buyer's trademarks, wordmarks or service marks, solely for Innovative's promotional, advertising, or reference materials, whether on Innovative's web site(s) or published elsewhere.

INNOVATIVE'S WARRANTY AND DISCLAIMER.

INNOVATIVE WARRANTS THAT THE GOODS AND SERVICES SUPPLIED SHALL COMPLY WITH THE SPECIFICATIONS PROVIDED BY BUYER. THE FOREGOING WARRANTY IS THE SOLE WARRANTY PROVIDED BY INNOVATIVE; AND, INNOVATIVE SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES WITH REGARD TO THE GOODS AND SERVICES PROVIDED BY INNOVATIVE. BUYER ACKNOWLEDGES THAT BUYER IS NOT RELYING ON INNOVATIVE IN ANY WAY FOR DESIGN OR ENGINEERING WITH RESPECT TO THE GOODS OR THE ADEQUACY OF THE SPECIFICATIONS PROVIDED BY BUYER. BUYER'S RESPONSIBILITY SHALL INCLUDE, BUT NOT BE LIMITED TO, RESPONSIBILITY FOR DETERMINING SUITABILITY OF GOODS AND SERVICES PROVIDED BY INNOVATIVE. NOTWITHSTANDING ANY OTHER PROVISION IN THIS DOCUMENT, INNOVATIVE EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

NO CONSEQUENTIAL DAMAGES. UNDER NO CIRCUMSTANCES WHATSOEVER SHALL INNOVATIVE BE LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE AND WHETHER BASED UPON LOST GOODWILL, LOST RESALE PROFITS, LOSS OF USE OF MONEY, WORK STOPPAGE, IMPAIRMENT OF OTHER ASSETS, OR OTHERWISE AND WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY IN TORT, NEGLIGENCE, MISREPRESENTATION, OR OTHERWISE, EXCEPT ONLY IN THE CASE OF PERSONAL INJURY WHERE APPLICABLE LAW REQUIRES SUCH LIABILITY. INNOVATIVE'S LIABILITY TO BUYER, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED IN ANY CASE THE RETURN OF THE AMOUNT OF THE PURCHASE PRICE PAID BY BUYER.

FORCE MAJEURE. Innovative and Buyer assume the non-occurrence of the following contingencies which, without limitation, might render performance by Innovative impractical: acts of God, governmental actions, terrorist acts, utility interruptions, strikes, riots, fires, war, assertions by third parties of infringement claims, late or non-delivery by suppliers to Innovative, and all other contingencies beyond the reasonable control of Innovative.

GOVERNING LAW. The rights and obligations of the parties shall be governed by, construed and enforced in accordance with, the laws of the State of Minnesota, excluding its conflict of laws rules to the extent such rules would apply the law of another jurisdiction. The parties hereto consent to the jurisdiction of all federal and state courts in Minnesota, and any action or proceeding arising out of or related to this Agreement shall be brought and enforced only in the state and federal courts located in Minnesota, and the parties consent to the personal jurisdiction of such courts and waive any argument that venue in any such forum is not convenient.

ENTIRE AGREEMENT AND AMENDMENT. This document contains all of the terms of the agreement between Innovative Foam and Buyer with regard to its subject matter and supersedes all prior oral or written representations, agreements, and other communications between Innovative Foam and Buyer. The contract evidenced by this document may be amended only in writing signed by Buyer and an authorized agent of Innovative Foam.

SEVERABILITY. All terms shall be enforced only to the maximum extent permitted by law. If any term is invalid or unenforceable, all other terms shall remain in full force and effect.