

### Terms and Conditions

Merryweather Foam, Inc. (herein referred to as the "Seller") hereby quotes to the party identified on the face of hereof (herein referred to as the "Purchaser") the opportunity to purchase the goods identified on the face hereof upon the terms and conditions set forth on the face hereof and herein below:

1. **ACCEPTANCE:** The acceptance of any order from Purchaser pursuant to this Quotation is conditioned upon the acceptance by Purchaser of all Terms and Conditions contained in this Quotation. Any inconsistent or additional terms contained in the Purchaser's Order are hereby rejected unless expressly accepted in writing by the Seller within ten (10) days after its receipt of such Order. The Terms and Conditions as stated herein shall not be modified other than in writing signed by the Seller and the Purchaser.
2. **TITLE & RISK OF LOSS:** Title in and risk of loss for all goods sold hereunder shall pass to Purchaser upon delivery to carrier F.O.B. Seller's plant.
3. **PRICES & TAXES:** Unless otherwise stated herein, all prices for materials purchased shall be involved at the price schedule then in effect on the date of shipment and are payable within thirty (30) days of the date of invoice. Unless otherwise stated herein, the prices quoted are F.O.B. Seller's plant. Unless otherwise agreed by the Seller in writing, the amount of any local, state or federal tax levied on the products referred to herein to the date of shipment shall be added to the amount paid by and remain the sole responsibility of the Purchaser. Any portion of the price which is not paid in accordance with the terms of payment herein stated shall bear interest from the due date at the rate of 0.05% per day until paid.
4. **DELAY IN PERFORMANCE:** Seller shall not be responsible or liable for any delays or failures in manufacture or delivery due to any cause or condition beyond the control of the Seller, including, without limiting the generality of the foregoing, strikes or labor difficulties, fire, floods, inability to secure transportation facilities, actions of the elements, shortage of materials or equipment, riots or other civil commotions, Acts of God and war.
5. **DELIVERY:** Seller reserves the right to over or under ship any order by 10% of the ordered quantity. Any dates or schedules which may be specified for the delivery of the products covered hereby have been stated only approximately and are estimated from the date of receipt of Purchaser's Order, with complete drawings, specifications, designs, samples and other information reasonably requested by the Seller provided in order to proceed with the manufacture of the products. Seller shall not incur any liability, either direct or indirect, nor shall any Order be cancelled, because or as a result of any delays in meeting such dates or schedules. Seller shall have the right to suspend scheduled shipping dated in the event of Purchaser's default in payment pursuant to the terms of any outstanding invoices for previous shipments. Seller's measurements shown on the packing slip accompanying each delivery shall be deemed correct unless Purchaser notifies Seller of a discrepancy within ten (10) days of delivery.
6. **WARRANTY:** The Seller makes no warranty whatsoever, except as to title, with respect to products manufactured, compounded and/or designed to Purchaser's own specifications and the Purchaser shall, at its own expense, defend and save the Seller harmless from and against any claim, suit, expense or otherwise which shall be asserted or brought against the Seller by reason of Seller's manufacture or sale of such products. All products are sold and samples of products provided with the understanding that Purchaser has independently determined the suitability or compatibility of such products for its purposes. Seller does not recommend specific applications for its products or assume any responsibility for use, results obtained or suitability for specific application. Any statements, technical information or recommendations concerning products sold or samples provided by Seller are based upon data provided to Seller by its suppliers and believed to be accurate, but do not constitute a guarantee or warranty.

The Seller at its sole option will repair or replace any of the products which fail to meet Purchaser's specifications or are due to Seller's defective materials or workmanship; provided, however, if Seller determines that repair or replacement is not commercially practicable Seller shall issue a credit in favor of Purchaser in an amount not to exceed the purchase price of the products. All claims for breach of this warranty must be made to Seller within sixty (60) days after the date of shipment of the product to which the claim relates and must be returned at Purchaser's expense to Seller's plant in accordance with Seller's written material return authorization and instructions. Seller's warranty shall extend only to the original Purchaser from the Seller. Seller's warranty does not cover the effects of normal wear, tear, deterioration or abuse of the products or the effects of improper storage or handling of the product.

**EXCEPT FOR THE EXPRESS WARRANTY AS DESCRIBED ABOVE, THERE ARE NO OTHER WARRANTIES OR GUARANTEES, EITHER EXPRESS OR IMPLIED, WRITTEN, ORAL OR ARISING UNDER CUSTOM OF TRADE, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, NO WARRANTIES OR REPRESENTATIONS AT ANY TIME MADE BY ANY REPRESENTATIVE OF THE COMPANY SHALL BE EFFECTIVE TO VARY OR EXPAND THE ABOVE-REFERENCED EXPRESS WARRANTY OR ANY TERMS HEREOF.**

7. **LIMITATION OF LIABILITY:** In no event shall the Seller be liable to the Purchaser or any third party for consequential, incidental or special damages resulting from or in any manner related to the products, their delivery, non-delivery, design, use, or any inability to use the same, whether such damages be claimed under contract, tort or any other legal theory. Purchaser understands that the sole and exclusive remedy of the Purchaser shall be the repair or replacement of any defective product pursuant to the warranty provision herein above contained. Should the product prove so defective, however, as to preclude the remedying of warranty defects by repair or replacement, the Purchaser's sole and exclusive remedy and the Seller's sole and exclusive liability shall be the refund of the purchase price upon Purchaser's return of the products to the Seller. This limitation of liability shall survive the termination, expiration or cancellation of this contract.
8. **CANCELLATION OR CHANGE ORDERS:** No orders may be withdrawn or cancelled by the Purchaser, nor may they be deferred when ready, unless the Seller shall first be paid a cancellation or deferral charge of a reasonable amount acceptable to Seller. Deferral of shipment of any order beyond thirty (30) days from its originally scheduled shipment date shall give Seller the right to issue its invoice for such deferred order. In the event Purchaser shall request changes in its order after receipt thereof by the Seller, it shall be responsible for all changes reasonably incurred by the Seller with respect to such changes.
9. **INFRINGEMENT CLAIMS:** The Seller makes no representation or warranty that the delivery or subsequent use of the products ordered shall be free of the claim of any third party by way of infringement.
10. **INDEMNIFICATION:** Purchaser shall indemnify Seller against all claims, loss, liability and expense (including but not limited to reasonable attorney fees) on account of any damaged property or injury or death of persons (including Purchaser's employees) arising out of the Purchaser's unloading, storage, handling, use or disposal of the products except for any portion of damages attributable to Seller's negligence. This indemnity obligation of Purchaser will survive the expiration, termination or cancellation of this contract.
11. **APPLICABLE LAW:** The Terms and Conditions applicable to the transaction provided for herein shall be determined and construed in accordance with, and shall be governed by the laws of the State of Ohio. Further, Purchaser and Seller agree to submit to the jurisdiction of the appropriate State or Federal Court within Ohio for purposes of resolving any dispute or claim arising in connection with said transaction.
12. **THIRD PARTY BENEFICIARIES:** Nothing in this contract shall be construed as creating any act or beneficial right in or on behalf of any third party.
13. **NON-WAIVER:** The failure of either party to insist or enforce in any instance strict performance of any of the terms of this contract or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.
14. **INTEGRATION:** There are no understandings between the parties hereto as to the subject matter of this contract other than as set forth herein. All previous communications between the parties hereto concerning the subject matter of this contract, whether verbal or written, including but not limited to Purchaser's Order are hereby abrogated and withdrawn, and this contract constitutes the whole of the agreement between the parties hereto. Any additional Terms and Conditions of a Purchase Order or Change Order shall not apply hereto unless agreed to by the parties in writing.