

Standard Terms and Conditions for Sale of Goods

These Standard Terms and Conditions for the Sale of Goods (the “**Terms**”) are applicable to all quotes, bids and sales of products and goods (the “**Goods**”) by ACH Foam Technologies, Inc. (“**ACH**”), however, the price, quantity and Delivery Location (as defined below) for the Goods may be separately agreed and/or set forth in a quote delivered by ACH, an order issued by the applicable customer (“**Buyer**”) and accepted by ACH or some other communication between ACH and the customer (such as agreed price, Delivery Location and quantity, together with these Terms, the “**Agreement**”).

1. Terms of Agreement Prevail Over Buyer’s Purchase Order. The parties intend solely for the express terms and conditions contained in this Agreement. In the event of a conflict between these Terms and any term or condition in any other document, website, order or communication, these Terms shall control. Any terms and conditions which seek to add to this Agreement, including any terms or conditions stated on an order or website, shall have and be given no effect. These Terms supersede all prior oral or written agreements, proposals, discussions, correspondence, representations, warranties and covenants. No course of prior dealings, acceptance or acquiescence in a course of performance and no usage of the trade shall be relevant to supplement, explain or modify this Agreement. All representations, promises, warranties or statements by an agent or employee of ACH that differ in any way from this Agreement hereof shall be given no effect or force. No waiver or alteration of Terms shall be binding unless in writing signed by an authorized employee of the ACH. Notwithstanding the foregoing, if ACH and customer have separately negotiated and entered into a separate agreement signed by both parties (“**Separate Agreement**”), such Separate Agreement shall control over any conflicting term or condition of this Agreement.

2. Ordering Procedure.

2.1 Purchase Orders. By issuing an order for Goods to ACH, Buyer makes an offer to purchase such Goods pursuant to this Agreement.

2.2 Acceptance, Rejection and Cancellation of Purchase Orders. ACH has no obligation to accept any order; however, ACH may accept an order (whether submitted by Buyer or via acceptance of a bid or quote) by confirming the order in writing or by delivering the applicable Goods to Buyer, whichever occurs first (each accepted order, an “**Order**”). ACH may reject or cancel an Order, which it may do without liability or penalty, and without constituting a waiver of any of ACH’s rights or remedies under this Agreement.

2.3 Rush Orders. Any Order placed with less than four (4) business days’ notice for delivery may incur a rush order fee which may be up to fifteen percent (15%) additional charge over the prices stated for the Goods.

2.4 Cancellation or Modification. Upon acceptance of an Order, Buyer shall be obligated to purchase from ACH quantities of Goods specified in such Order. Cancellation or modification of all or part of any Order is subject to ACH’s prior written consent in each instance. If cancellation or modification is allowed, Buyer agrees to pay to ACH all expenses incurred and damage sustained by ACH as a result of the cancellation or modification.

3. Shipment, Delivery, Acceptance and Inspection.

3.1 Shipment. ACH shall select the method of shipment of and the carrier for the Goods. ACH, in its sole discretion, without liability or penalty, may make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale and Buyer shall pay for the Goods shipped, in accordance with the payment terms specified in this Agreement, whether such shipment is in whole or partial fulfillment of an Order. Buyer agrees to use first-in-first-out inventory practices with respect to the Goods it purchases from ACH.

3.2 Delivery. Unless otherwise agreed to in writing by the parties, ACH will at Buyer’s cost and expense deliver the Goods, at the location specified in the Order (the “**Delivery Location**”), using ACH’s standard methods for packaging and shipping. All ACH deliveries must be unloaded within two (2) hours of arrival at Delivery Location. Buyer will be charged an hourly rate of \$40.00/hour for every hour beyond the 2-hour maximum that is needed to unload the Goods. This additional charge will be applied to the invoice.

3.3 Late Delivery. Any time quoted for delivery is an estimate only; *provided, however*, that ACH shall use commercially reasonable efforts to deliver all Goods within a reasonable time consistent with the Order.

3.4 Transfer of Title and Risk of Loss.

(a) Title to Goods shipped under any Order passes to Buyer upon Buyer's payment in full for the Goods.

(b) Risk of loss or damage passes to Buyer upon delivery to the carrier.

3.5 Inspection. Buyer shall inspect Goods received under this Agreement within three (3) business days following receipt of such Goods ("**Inspection Period**") and either accept or, only if any such Goods are Nonconforming Goods (as defined below), reject such Goods. If Buyer discovers any Nonconforming Goods, Buyer must request an authorization from ACH to return the Nonconforming Goods (the "**Return Material Authorization**"). In order for Buyer to receive a Return Material Authorization, Buyer shall provide ACH with the following information prior to expiration of the Inspection Period: (a) the part number or description of the Good, (b) the job or Order number, (c) the quantity of each Good to be returned, and (d) a detailed description of all defects and nonconformities. All defects and nonconformities that are not so specified will be deemed waived by Buyer, and such Goods shall be deemed to have been accepted by Buyer. Upon Buyer's receipt of the Return Material Authorization from ACH, Buyer shall return the Goods to ACH within a number of days and in accordance with the Return Material Authorization. If Buyer timely requests a Return Material Authorization, and returns the Nonconforming Goods to ACH in accordance with the Return Material Authorization, ACH shall determine, in its reasonable discretion, whether the Goods are Nonconforming Goods. If following receipt of the Goods in accordance with a Return Material Authorization ACH determines that such Goods are Nonconforming Goods, ACH, in its sole discretion, shall either: (i) replace such Nonconforming Goods with conforming Goods; or (ii) refund to Buyer such amount paid by Buyer to ACH for such Nonconforming Goods returned by Buyer to ACH. Buyer shall ship, at ACH's request and expense, all Nonconforming Goods to ACH's designated location. If ACH exercises its option to replace Nonconforming Goods, ACH shall ship to the Delivery Location, at ACH's expense and risk of loss, the replacement Goods. **THE REMEDIES SET FORTH IN THIS SECTION 3.5 ARE BUYER'S EXCLUSIVE REMEDIES FOR THE DELIVERY OF NONCONFORMING GOODS, SUBJECT TO BUYER'S RIGHTS UNDER SECTION 6.3 WITH RESPECT TO ANY SUCH GOODS FOR WHICH BUYER HAS ACCEPTED DELIVERY UNDER THIS SECTION 3.5.** "**Nonconforming Goods**" means any goods received by Buyer from ACH pursuant to an Order that: (A) do not conform to the Goods listed in the applicable Order; (B) do not conform to the Specifications; or (C) exceed (and then only to the extent the goods exceed) the quantity of Goods ordered by Buyer pursuant to an Order. Where the context requires, Nonconforming Goods are deemed to be Goods for purposes of this Agreement.

4. Price and Payment.

4.1 Price. Buyer shall purchase the Goods from ACH at the prices set forth in the Order, or if no prices are set forth in the Order at ACH's then-current list price for such Goods (the "**Prices**").

4.2 Shipping Charges, Insurance and Taxes. All Prices are exclusive of, and Buyer is solely responsible for, and shall pay all taxes, levies, imposts, duties, deductions, charges, fees or withholdings imposed, levied, withheld or assessed by any governmental authority, with respect to, or measured by, the manufacture, sale, shipment, use or Price of the Goods (including interest and penalties thereon); *provided, however*, that Buyer shall not be responsible for any taxes imposed on, or with respect to, ACH's income, revenues, gross receipts, personnel or real or personal property.

4.3 Payment Terms. Buyer shall pay to ACH all invoiced amounts within thirty (30) days from the date of such invoice. Buyer shall make all payments in US dollars by check or wire transfer. In some cases, ACH may also accept payment via credit card or other payment card subject and, in such instances, Buyer hereby agrees to pay an additional 3% of the amount of such payment.

4.4 Late Payments. Buyer shall pay interest on all late payments calculated daily and compounded monthly, at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law. Buyer also shall reimburse ACH for all reasonable costs incurred by ACH in collecting any late payments, including attorneys' fees and court costs. In addition to all other remedies available under this Agreement or at law (which ACH does not waive by the exercise of any rights under this Agreement), if Buyer fails to pay any undisputed amounts when due under this Agreement, ACH may suspend the delivery of any Goods.

4.5 No Set-off Right. Buyer shall not have, and acknowledges that it does not have, any right, under this Agreement, any Order, or any other agreement, or under law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to ACH.

5. Term; Termination.

5.1 Termination. In addition to any remedies that may be provided under this Agreement, ACH may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of this Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

5.2 Effect of Expiration or Termination. Any termination under this Agreement automatically operates as a cancellation of any deliveries of Goods to Buyer that are scheduled to be made subsequent to the effective date of termination, whether or not any orders for such Goods had been accepted by ACH. With respect to any Goods that are still in transit upon termination of this Agreement, ACH, in its sole discretion, may require that all sales and deliveries of such Goods be made on either a cash-only or certified-check basis.

6. Limited Warranty.

6.1 Limited Product Warranty. Goods sold by ACH are subject to the then-current standard limited warranties available on ACH's website at the time of delivery of the Goods (the "**Limited Warranties**").

6.2 Warranty Limitations. The Limited Warranties do not apply to any Good that (a) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by ACH; or (b) have been reconstructed, repaired or altered by anyone other than ACH.

6.3 Buyer's Exclusive Remedy. Notwithstanding any other provision of this Agreement, this Section 6.3 contains Buyer's exclusive remedy for a breach of Section 6.1. Buyer's remedy under this Section 6.3 is conditioned upon Buyer's compliance with its obligations under this Section 6.3. During the warranty period, with respect to any Goods alleged to be in breach of Section 6.1: (a) Buyer shall notify ACH, in writing, of any alleged claim or defect within ten (10) days from the date Buyer discovers, or upon reasonable inspection should have discovered, such alleged claim or defect (but in any event before the expiration of the applicable warranty period); (b) Buyer shall obtain a Return Material Authorization in accordance with Section 3.5 and ship, at ACH's request and expense, such allegedly defective Goods to ACH's designated location for inspection and testing by ACH; (c) if ACH's inspection and testing reveals that such Goods are defective and any such defect has not been caused or contributed to by any of the factors described under Section 6.1 above, ACH, in its sole discretion and at its expense, shall repair or replace such defective Goods; and (d) ACH shall ship to Buyer, at ACH's expense, the repaired or replaced Goods to the Delivery Location. THIS SECTION 6.3 SETS FORTH BUYER'S SOLE REMEDY AND ACH'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED PRODUCT WARRANTY SET FORTH IN THIS SECTION 6.

6.4 DISCLAIMER OF OTHER WARRANTIES; NON-RELIANCE. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 6 (A) NEITHER ACH NOR ANY PERSON ON ACH'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT,

WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED; AND (B) BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY ACH, OR ANY OTHER PERSON ON ACH'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 6.

7. Limitation of Liability.

7.1 NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES. IN NO EVENT SHALL ACH OR ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT ACH WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

7.2 MAXIMUM LIABILITY FOR DAMAGES. IN NO EVENT SHALL ACH'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO ACH PURSUANT TO THE APPLICABLE ORDER GIVING RISE TO THE CLAIM.

7.3 ASSUMPTION OF RISK. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY GOODS IN THE PRACTICE OF ANY PROCESS, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS OR FAILURE RELATED TO THE USE OF SUCH GOODS.

8. Intellectual Property Rights. Buyer acknowledges and agrees that all intellectual property rights relating to the manufacturing of the Goods are the sole and exclusive property of ACH or its third party licensors, and Buyer shall not acquire any ownership interest in any of ACH's intellectual property rights under this Agreement. Any goodwill derived from the use by Buyer of ACH's intellectual property rights inures to the benefit of ACH or its third-party licensors. Without limiting the foregoing, all tooling, dies, test and assembly fixtures, gauges, jigs, patterns, casting patterns, cavities, molds, and documentation (including engineering specifications and test reports) used by ACH in connection with its manufacture and sale of the Goods, together with any accessions, attachments, parts, accessories, substitutions, replacements and appurtenances thereto are owned by ACH ("**ACH Tooling**") and Buyer has no right, title, or interest in or to any of the ACH Tooling.

9. Confidentiality. All non-public, confidential, or proprietary information of ACH, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, that ACH discloses to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as "confidential," in connection with the Agreement, is confidential, solely for the use of performing the Agreement, and may not be disclosed or copied unless authorized in advance by ACH in writing. Upon ACH's request, Buyer will promptly return all documents and other materials received from ACH. ACH will be entitled to injunctive relief for any violation of this Section 10, without having to post bond or establish the insufficiency of a remedy at law. This Section 10 does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

10. Miscellaneous.

10.1 Relationship of the Parties. The relationship between ACH and Buyer is solely that of vendor and vendee, and are independent contracting parties.

10.2 Survival; Statute of Limitations. Any provision that, in order to give proper effect to its intent, should survive such expiration or termination, including, without limitation, Section 3.5, Section 4, Section 6 and Section 7, will survive the expiration or earlier termination of this Agreement.

10.3 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Agreement to effect the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

10.4 Right to Manufacture and Sell Competitive Goods. This Agreement does not limit ACH's right to manufacture or sell, or preclude ACH from manufacturing or selling, to any person or entity, or entering into any agreement with any other person or entity related to the manufacture or sale of, the Goods and other goods or products that are similar to or competitive with the Goods.

10.5 Waiver. No waiver under this Agreement is effective unless it is in writing and signed by an authorized representative of ACH. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement: (a) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or (b) any act, omission or course of dealing between the parties.

10.6 Assignment. Buyer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of ACH. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating party of any of its obligations under this Agreement.

10.7 Force Majeure. ACH will not be liable for any failures or delays caused by strikes, differences with workers, or any causes beyond the reasonable control of ACH, including but not limited to fires, floods, accidents, action of any governmental authority, war, insurrection or riots, or shortages of labor, energy, raw materials, production facilities, or transportation. Where delays or failures are caused by labor difficulties, ACH will not be obligated to seek or obtain any settlement that, in ACH's sole judgment, is not in ACH's best interest.

10.8 Successors and Assigns. This Agreement is binding on and inures to the benefit of the parties and their respective permitted successors and permitted assigns.

10.9 Dispute Resolution. These Terms are made under and will be construed in accordance with the laws of the State of Colorado, other than such laws, rules, regulations and case law that would result in the application of the laws of a jurisdiction other than the State of Colorado. Any suit to enforce any provision of this Agreement, or arising out of or based upon this Agreement, shall be brought exclusively in the state or federal courts located in Denver, Colorado.