

## CONDITIONS OF SALE

### 1. DEFINITIONS

**Account Set Up Form:** means the account set up form in Buyer's name with Supplier by virtue of which Buyer is a registered account holder with Seller and able to place Orders for Goods with Seller

**Buyer:** means you, the person or firm who purchases goods from Seller

**Conditions:** means the terms and conditions set out in this document

**Contract:** means the contract between Seller and Buyer for the sale and purchase of the Goods in accordance with these Conditions comprising these Conditions and the Order (once accepted by Seller in accordance with Condition 2 below) and the terms of Buyer's Account Set Up Form

**Goods:** means the goods (or any part of them) set out in the Order

**Order:** means Buyer's order for the Goods, as set out overleaf or otherwise annexed hereto by virtue of the Seller's acceptance of such Order

**Seller:** means us, Zotefoams Plc

### 2. BASIS OF CONTRACT

These Conditions apply to the Contract to the exclusion of any other terms that Buyer seeks or purports to seek to impose or incorporate (including for the avoidance of doubt on or in relation to any purchase order delivered by the Buyer) or which may otherwise be implied or purportedly implied by trade, custom, practice or course of dealing. Without prejudice to the foregoing, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 or the equivalent in any successor legislation from time to time are, to the fullest extent permitted by law, excluded from the Contract.

The Order constitutes an offer by Buyer to purchase the Goods in accordance with these Conditions. Buyer is responsible for ensuring that the terms of the Order are complete and accurate.

The Order shall only be deemed to be accepted when Seller issues written acceptance of the Order, at which point the Contract shall come into existence.

The Contract constitutes the entire agreement between the parties in relation to the relevant Order and Goods to be acquired thereunder.

A quotation for the Goods given by Seller (whether cited in any original Order initiated by Buyer or not) shall not constitute an offer by Seller and the price of Goods in respect of any Contract will be as set out in the final form of any Order accepted by Seller.

### 3. INSTALMENTS

Unless otherwise agreed in writing, where under any Order Goods are to be supplied in instalments, each instalment shall be deemed to be a separate Contract between Seller and Buyer.

### 4. PRICE INCREASES

Where Buyer's Account Set Up Form allows for or envisages periodic or repeat Order placement by Buyer with quoted prices, Seller reserves the right to increase the price of the Goods by giving notice at any time on not less than 30 days prior notice in writing. If Buyer does not wish to proceed with any Order at any such newly notified prices, Buyer must terminate such future Orders within 7 days of the price increase notification by Seller.

### 5. WEIGHT VOLUME AND/OR QUANTITY OF GOODS

The weight, volume and/or quantity of Goods delivered shall be determined at the works or store of Seller's agent at the time of despatch. The weight, volume and/or quantity so determined and declared by Seller or Seller's agent shall be deemed to be that of the Goods delivered, unless Buyer or Buyer's agent notifies any discrepancy in accordance with Condition 18(c) below.

### 6. QUANTITY TOLERANCES

Seller reserves the right to deliver against any Order an excess or deficiency of up to 10% of weight, volume and/or quantity ordered and to invoice accordingly.

### 7. WARRANTIES AND LIABILITIES

(a) Subject to these Conditions, Seller warrants that the Goods will correspond with Seller's relevant product specification (Ref TIS01) (the "**Specification**") for such Goods as at the time of despatch. No other specification, descriptive material, written or oral representation, correspondence or statement or promotional or sales literature shall form part of or be incorporated by performance into these Conditions. Seller reserves the right to amend the Specification including if required by any applicable statutory or regulatory requirements on not less than (60) days prior notice (unless circumstances require any such change to be made more quickly).

(b) Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute, common law or otherwise are excluded to the fullest extent permitted by law. Without prejudice to the generality of the foregoing, Seller does not warrant the fitness of the Goods for any particular purpose, even if that purpose be known to Seller and no such warranty is to be implied from the name or description under which the Goods are sold or in any other literature relating thereto whether issued by Seller or otherwise.

(c) Any claim by Buyer which is based on any failure to correspond with the Specification must (whether or not delivery is refused by the Buyer) be notified to Seller in accordance with Condition 18(c) within the timeframe required there by.

(d) Where any valid claim in respect of any of the Goods which is based on any failure to meet the Specification is notified to Seller in accordance with these Conditions, Seller shall be entitled to replace the Goods (or the part in question) at its own expense or, at Seller's sole discretion, refund to Buyer the price of the Goods (or an appropriate proportionate part of the price) but thereafter Seller shall have no further liability to Buyer.

(e) Seller shall not be liable to Buyer:-

(i) by reason of any representation or (without prejudice to Condition 2 above) any implied warranty, condition or other term or any duty at common law or under the express terms of these Conditions or the Contract, for any indirect or consequential loss or damage (whether for loss of profits, business, contracts, revenues, anticipated savings or otherwise), costs, expenses or other claims for indirect or consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which may directly or indirectly arise out of or in connection with the supply of the Goods or

their use of resale by Buyer except as expressly provided in these Conditions, and

(ii) for any loss, damage or injury directly or indirectly arising out of the use of the Goods in conjunction with any other goods or materials.

(f) Where the Goods are likely to come into contact with foodstuffs or pharmaceuticals or other regulated co-components, whether directly or indirectly or are likely to be used in the manufacture of toys or other regulated products, Buyer may request, if appropriate, prior written confirmation of compliance with relevant legislative or regulatory standards for the required applications from Seller but shall otherwise be solely liable for ensuring the suitability of the Goods for such purposes and without prejudice to the foregoing, Seller shall not be liable for any loss or damage directly or indirectly arising out of any failure by Buyer to obtain such confirmation or failure to observe any recommendations so given by Seller.

(g) Seller's liability in contract or tort or otherwise for any loss or damage arising (whether or not from the Seller's negligence) directly or indirectly out of the supply or use of the Goods or of the packages, pallets or containers by which the Goods are delivered or in which the Goods are contained, shall be limited to the purchase price of the Goods from which the loss or damage arises.

(h) Notwithstanding any other provision of these Conditions including the foregoing provisions of this Condition 7, nothing in these Conditions or otherwise excludes or limits the liability of the Seller to the extent such exclusion of limitation would be unlawful:

(i) for death or personal injury caused by the Seller's negligence or that of its agents or employees for which it has legal liability; or

(ii) under section 2(3), Consumer Protection Act 1987 or any equivalent provision in any successor legislation from time to time; or

(iii) for any matter which it would otherwise be illegal for the Seller to exclude or attempt to exclude or limit its liability; or

(iv) for Seller's fraud or fraudulent misrepresentation.

(i) Without prejudice to Condition 7(f) above, where the Goods are to be used in conjunction with other goods or materials, it is the responsibility of the Buyer to obtain from the manufacturers or suppliers of such other goods or materials all technical data and other properties relating to those other goods or materials to satisfy itself of the compatibility with the Goods and no liability on the part of the Seller is accepted in respect of the use of the Goods in conjunction with any other goods or materials.

(j) The Goods are sold in good faith and on the basis that where any use or on-sale of the Goods by the Buyer is subject to UK, EU or US export controls, the Buyer shall comply with the relevant laws and regulations in respect of such use or on-sale and export. The Seller assumes no responsibility and accepts no liability for the failure of the Buyer to comply with such laws and regulations.

#### 8. FORCE MAJEURE

Neither party shall be liable to the other if, by reason of any cause which is either beyond the reasonable control of (or could not have been reasonably prevented by) either party, Buyer is prevented from or

delayed in taking delivery or Seller is prevented from, delayed or hindered in making delivery of any Goods under any Order or any part thereof at the times stated for delivery. If delivery of Goods or any part thereof cannot be made by Seller for any such reason within 21 (twenty one) days of the date upon which delivery would have taken place had force majeure not occurred, either party shall be entitled to cancel the relevant Order or instalment by written notice to the other (in which event Buyer will be issued a credit note for any monies paid in respect of such Order as at the date of cancellation).

#### 9. SUITABILITY OF COLLECTING VEHICLES

Although Seller may inspect any collection vehicle used by Buyer or anyone acting on its behalf in order to check its suitability, Seller shall neither be responsible for the condition of such vehicle nor be liable for any damage or loss to Goods resulting from such condition or its use. Without prejudice to the foregoing, Seller reserves the right not to admit to its premises any vehicle it reasonably considers to be unsuitable or unsafe to take collection of any Goods without liability for non-delivery or deemed non-delivery on Seller's part in such circumstances.

#### 10. FAILURE TO MAKE OR TAKE A DELIVERY

(a) Time shall not be of the essence in respect of any delivery date specified in any Order. Should Seller fail to make delivery of the Goods or any instalment thereof within 21 (twenty one) days of the agreed time for delivery for any cause other than those mentioned in clause 8 above, then Buyer shall be entitled to cancel the relevant Order or instalment by written notice to the Seller (in which event Buyer will be issued a credit note for any monies paid in respect of such Order as at the date of cancellation).

(b) Notwithstanding clause 3 above, should Buyer fail to take delivery of the Goods, or any part thereof, within 14 (fourteen) days of the time stated for delivery by reason of any clause other than those mentioned in clause 8 above, then Seller shall be entitled to cancel such delivery and all other outstanding deliveries or instalments and to charge Buyer with any loss suffered, including storage charges (both before and after termination) and any loss incurred in selling or otherwise disposing of the relevant Goods and or any cost of scrappage or de-assembling the relevant Goods.

#### 11. DELIVERY AND RISK

Buyer shall be solely responsible for the proper unloading or discharging of Goods delivered pursuant to this contract and delivery shall be deemed to be affected and risk shall pass to the Buyer as follows:

(a) in all cases where the Goods are to be delivered by air freight, road or rail, at the commencement of unloading the Goods from the vehicle transporting them;

(b) where Goods are to be collected by Buyer or by anyone acting on its behalf, when the Goods have been placed on the vehicle collecting them (unless such loading is performed by the Buyer in which case it is at the commencement of that process).

#### 12. TITLE TO GOODS

(a) Title to Goods shall only pass to Buyer upon delivery when Seller has received full payment in respect thereof prior to such delivery.

(b) In all other circumstances, title to the Goods shall remain vested in Seller and Buyer shall maintain the Goods in satisfactory condition and hold the

Goods on a fiduciary basis as bailee until full payment in respect thereof has been received by Seller or (without prejudice to Buyer's obligation to make timely payment for the same) the Goods have been processed or incorporated into another composition, whichever is the earlier.

(c) So long as title to the Goods remains vested in Seller, Buyer shall hold the Goods in store in such a manner as clearly and separately to identify the same as the Goods of Seller or, where the Goods are of necessity stored in silos or bulk tanks with other goods of a like or similar specification or nature, to identify the quantity therein being the property of Seller and Seller shall have the right, without prejudice to the obligation of Buyer to duly pay for the Goods, to recover possession of the Goods and for that purpose to enter into any premises occupied by Buyer.

(d) Nothing herein shall prevent or restrict Buyer from selling in the ordinary course of business Goods which have been processed or compositions into which the Goods have been incorporated, but if Goods which have not been processed or incorporated as aforesaid are resold before payment in respect thereof has been received in full by Seller, Buyer shall hold as trustee for Seller all monies received by it from the sale of such Goods.

### 13. PAYMENT

(a) All Goods will be invoiced and shall be payable in accordance with the Buyer's account status in accordance with its Account Set Up Form.

(b) Without prejudice to any other remedy available to it in respect of such non-payment, Seller reserves the right to charge interest at the rate of three per cent (3%) above the Base Lending Rate for the time being of Barclays Bank plc on any sums not received by their due date. Such interest shall accrue on a daily basis from and including the due date until but excluding the date of actual payment of the overdue amount, whether before or after judgment and shall compound with the original amount due on a fortnightly basis in arrears. Buyer shall pay all accrued interest together with the overdue amount.

(c) Any credit given by Seller in respect of a Contract may be terminated forthwith and the unpaid price of the Contract shall become immediately due for payment without prejudice to Seller's rights under Condition 12 above if Buyer fails to make any payments due to Seller by the time stipulated in respect of any other goods which are subject to any other contract of sale between Seller and Buyer.

(d) Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and Buyer shall not be entitled to assert any credit, set-off or counterclaim against Seller in order to justify withholding payment of any such amount in whole or in part. Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by Buyer against any amount payable to Buyer by Seller whether under or in relation to the Contract or otherwise.

(e) In the event Buyer is late in paying any Order or part Order and such default is continuing, without prejudice to any other remedy available to it in respect of such non-payment, Seller shall be entitled to suspend the delivery of any other Goods the subject of such Order or any other Order (then current or placed at any time thereafter) placed by the Buyer for Goods.

### 14. PACKAGES, PALLETS AND CONTAINERS

Where packages, pallets or other containers are required in Buyer's Account Set Up Form to be returnable they should be returned in good order at Seller's expense to the works or depot named on Seller's invoice and Buyer shall notify Seller of the date of despatch thereto. If Buyer fails within a reasonable period (and in any case within three (3) months) to return any such package or pallet or container in good order and condition, Buyer shall pay the cost of replacements thereof to Seller on invoice from Seller for the same.

### 15. CUSTOM-MADE TOOLS, MOULDS, ETC

Unless otherwise agreed, any custom-made tools, moulds or other equipment made for the manufacture of Goods to be supplied to Buyer shall remain the absolute property of Seller notwithstanding any sum charged by Seller to Buyer in respect thereof and/or any payment made by Buyer therefor.

### 16. BAR CODES

(a) Where required by Buyer in Buyer's Account Set Up Form, in the case of machine readable codes or symbols required by Buyer, Seller shall print the same as specified or approved by Buyer in accordance with generally accepted standards and procedures.

(b) Buyer shall be responsible for satisfying itself that the code or symbol reads correctly on the equipment likely to be used by those for whom the code or symbol is intended.

(c) Buyer shall indemnify Seller against any claim by any party resulting from the code or symbol not reading or not reading correctly for any reason except to the extent that such claim arises from any failure of Seller to comply with (a) above which is not attributable to error falling within tolerances generally accepted in the trade in relation to such printing.

### 17. CANCELLATION

Without prejudice to its other rights and remedies, Seller may defer or cancel any further deliveries or instalments of Goods due in the event that Buyer shall:

(a) fail to make any payment when it becomes due in respect of any sum payable to Seller whether under the Contract or otherwise howsoever, or

(b) enter into any composition or arrangement with its creditors or any of them, or

(c) being an incorporated company, have an administrator, administrative receiver or a receiver appointed or shall pass a resolution for winding up or a court shall make an order to that effect, or

(d) not being an incorporated company, have a receiving order made against it, or

(e) be in breach of any of these Conditions or of any other contract between the parties.

### 18. CLAIMS

(a) Where Seller is responsible for delivery, Buyer shall be responsible for making a physical inspection of all deliveries on or following delivery and any claims for physical damage to or partial loss of Goods in transit must be submitted in writing to Seller's carrier and Seller or Seller's agent within three (7) days of delivery.

(b) As soon as reasonably practicable and in any event within thirty (30) days of receipt of the Goods, Buyer shall examine them for latent defects for the purpose of ascertaining whether they conform to the Contract (including that the Goods correspond to the Specification) and if such Goods do not so conform,

promptly give written notice thereof to Seller with sufficient particulars and assistance as reasonably required by Seller for Seller properly to assess the same. No Goods the subject of any such notice may be used by Buyer or on-sold by the Buyer pending resolution of the same and Seller shall not be liable to the Buyer for any loss or damages caused by or as a result of any such usage or on-sale. Without prejudice to the foregoing, Buyer shall permit Seller to investigate the matters relevant to any such notification before the remainder of the Goods comprised in the same consignment may be returned to Seller.

(c) In the absence of notification of any claim or otherwise in accordance with (a) or (b) above, the Goods shall be deemed to have been delivered and accepted in conformity with the Contract.

#### 19. INTELLECTUAL PROPERTY RIGHTS and CONFIDENTIALITY

(a) All Seller's materials, such as but not limited to instruction manuals and documents are the exclusive property of Seller.

(b) Seller retains all rights in its intellectual property including, but not limited to, Seller's trademarks, patents, rights in and to Goods and inventions and know-how and for the avoidance of doubt nothing contained in the Contract, whether express or implied, shall be deemed to confer any rights upon Buyer to apply any trade mark owned or licenced for use by Seller or any of Seller's associated companies to any Goods supplied under the Contract or otherwise. Nothing herein gives Buyer any right to copy or reverse engineer any Goods or part thereof or otherwise to seek to imitate or adapt the Goods in any way (save for the specific purpose for which they are acquired by Buyer).

(c) When Goods are made or adapted by Seller in accordance with Buyer's specifications, Buyer shall indemnify Seller on demand against all costs, claims and expenses incurred by Seller in respect of the infringement or alleged infringement by such Goods of any intellectual property rights including, but not limited to, patents, un/registered designs, trademarks or other rights belonging to third parties and without prejudice to the foregoing, all intellectual property rights in and to the Goods so made or adapted shall vest absolutely in Seller.

(d) Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a

confidential nature and have been disclosed to Buyer by Seller, its employees, agents or subcontractors or which they shall have otherwise ascertained and any other confidential information concerning the Seller's business or its Goods or its services which Buyer may obtain. Buyer shall restrict disclosure and use of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging Buyer's obligations under the Contract or in respect of its use of the Goods for the bona fide purposes for which they are acquired by Buyer and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality and use corresponding to those which bind the Buyer. Buyer shall indemnify Seller on demand against all damages, costs, claims and expenses suffered or incurred by Seller in respect of any breach by Buyer or any other such persons of the provisions of this Condition 19(d).

#### 20. NON-ASSIGNABILITY

The Contract is not assignable by Buyer without Seller's prior consent in writing.

#### 21. VARIATION OF CONTRACT

Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding if specifically agreed in writing and signed by or on behalf of Seller by a duly authorised signatory.

#### 22. GOVERNING LAW

The construction, validity and performance of the Contract shall be governed by the law of England and Wales.

#### 23. ENTIRE AGREEMENT

The Contract constitutes the whole contract and understanding of the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract. Each party acknowledges that in entering into the Contract, it has not relied on and shall have no right or remedy in respect of any statement, representation, assurance or warranty (whether made negligently or innocently) other than are expressly set out in the Contract.

#### 24. THIRD PARTY RIGHTS

Save for Seller's associated companies to the extent relevant, no one other than Buyer and Seller shall have any right to enforce any of the terms of the Contract or these Conditions.