

ZOTEFOAMS INC
TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

1. INTERPRETATION

1.1 Definitions:

Business Day: any day other than a Saturday, Sunday, or U.S. federal public holiday.

Charges: the price for the Products and/or Services set out in the Order, exclusive of Taxes.

Contract: the contract between Zotefoams and the Supplier for the supply of Products and/or Services, formed by the Order and these Conditions.

Control: ownership of more than 50% of the voting equity of a person, or the power to direct its management, whether by ownership, contract, or otherwise.

Deliverables: all goods, documents, software, and materials developed by the Supplier as part of or in relation to the Services, including any items specified in the Order.

Delivery Location: Zotefoams' premises or such other location specified in the Order.

Intellectual Property Rights: all patents, copyrights, trademarks, design rights, database rights, trade secrets, and all other intellectual property rights, whether registered or unregistered, anywhere in the world.

Order: Zotefoams' purchase order for Products and/or Services.

Products: the goods to be supplied by the Supplier under the Order, being "goods" under Article 2 of the Delaware Uniform Commercial Code (the "UCC").

Services: the services (including any Deliverables and any installation or commissioning of Products) to be provided by the Supplier under the Order.

Specification: any specification, plan, drawing, or sample for the Products or Services agreed in writing or set out in the Order.

Supplier: the person or entity from whom Zotefoams purchases the Products and/or Services.

Taxes: all applicable sales, use, excise, and similar transaction taxes, but excluding taxes on a party's net income.

Zotefoams: Zotefoams Inc., a Delaware corporation with its principal place of business at 55 Precision Drive, Walton, Kentucky 41005, USA.

Zotefoams Materials: all materials, equipment, tools, drawings, and data supplied by Zotefoams to the Supplier.

1.2 In these Conditions: a reference to a statute includes any amendment or replacement of it; "writing" includes email; "including" means "including without limitation"; and headings do not affect interpretation.

2. BASIS OF CONTRACT

2.1 The Order is an offer by Zotefoams to purchase Products and/or Services on these Conditions. It is accepted on the earlier of the Supplier's written acceptance or any act by the Supplier consistent with fulfilling the Order, at which point the Contract is formed.

2.2 These Conditions govern the Contract and **expressly exclude and reject** any different or additional terms the Supplier seeks to apply (in a quotation, acknowledgment, invoice, or otherwise) or implied by trade or course of dealing, even if Zotefoams accepts or pays for the Products or Services. Zotefoams' acceptance is expressly conditional on the Supplier's assent to these Conditions (UCC § 2-207).

2.3 These Conditions apply to both Products and Services except where stated otherwise. If the Order and these Conditions conflict, the Conditions prevail unless the Order expressly states that it amends these Conditions and identifies the provisions amended.

3. SUPPLY OF PRODUCTS

3.1 The Supplier warrants to Zotefoams that the Products will:

- (a) conform with their description, the Order, the Specification, and any sample, and be of merchantable quality and fit for any purpose made known to the Supplier, Zotefoams relying on the Supplier's skill and judgment (UCC §§ 2-313, 2-314, 2-315);
- (b) be free from defects in design, materials, and workmanship, and remain so for at least 12 months after delivery;
- (c) be delivered with good and marketable title, free and clear of all liens and encumbrances (UCC § 2-312); and
- (d) comply with all applicable laws and regulations relating to their manufacture, labeling, packaging, storage, and delivery.

3.2 These warranties run to Zotefoams and its customers, survive inspection, acceptance, and payment, and are not disclaimed against Zotefoams. Zotefoams may inspect and test the Products at any time; inspection and acceptance does not reduce the Supplier's warranties or obligations.

4. DELIVERY OF PRODUCTS

4.1 The Supplier will deliver the Products, properly packed and with a delivery note, to the Delivery Location on the date stated in the Order (time being of the essence), F.O.B. Destination (UCC § 2-319), with all carriage, insurance, and delivery costs borne by the Supplier. Title and risk pass to Zotefoams on completion of delivery.

4.2 If the Supplier delivers less or more than the quantity ordered, Zotefoams may reject the Products or the excess (returnable at the Supplier's risk and cost). Zotefoams is not deemed to have accepted Products until it has accepted them in accordance with clause 6.1, or, for a latent defect, a reasonable time after it appears (UCC §§ 2-601, 2-608).

5. SUPPLY OF SERVICES

5.1 In providing the Services the Supplier warrants that it will: perform with reasonable skill and care to the best standards of its industry; ensure the Services and Deliverables conform with the Order and Specification and are fit for any purpose made known to it; use suitably skilled personnel and defect-free materials; meet the performance dates in the Order (time being of the essence); comply with Zotefoams' site health, safety, and security policies; and promptly notify Zotefoams of any change of Control of the Supplier.

6. ACCEPTANCE AND ZOTEFOAMS' REMEDIES

6.1 Upon delivery of the Products or Deliverables or completion of the Services, Zotefoams shall have 30 days to inspect and evaluate whether the Products, Deliverables, and Services conform to the Specifications and description and requirements set forth in the Order. Acceptance shall occur only upon Zotefoams' written notice of acceptance, or on expiry of that 30 day period without notice of rejection; neither payment nor receipt of the Products or Deliverables shall constitute acceptance. Zotefoams' acceptance shall not limit its rights or remedies with respect to latent defects, fraud, or Supplier's express warranties, nor relieve the Supplier of liability for non-conformities discovered after acceptance. If the Supplier delivers late, or the Products or Services do not conform, then without limiting any other right, Zotefoams may: (a) terminate the Contract immediately on notice; (b) reject the Products or Deliverables (in whole or part) and require repair, replacement, or re-performance; (c) obtain substitute goods or services elsewhere and recover the additional cost from the Supplier; (d) require a refund of sums paid for rejected or undelivered supply; and (e) claim damages. These remedies are cumulative and in addition to any remedy at law or in equity, including under the UCC.

7. ZOTEFOAMS' OBLIGATIONS

7.1 Zotefoams will provide the Supplier with reasonable access to its premises and such information as the Supplier reasonably requests, in each case as needed for the Services.

8. CHARGES AND PAYMENT

8.1 The Charges are the Supplier's full remuneration and include all packaging, insurance, and carriage. The Charges are exclusive of Taxes; Zotefoams will pay applicable sales and use Taxes properly invoiced, unless it provides an exemption certificate. Each party bears its own income and franchise taxes.

- 8.2 Zotefoams will pay each undisputed, correctly rendered invoice within 60 days of receipt. Zotefoams may set off any amount owed to it by the Supplier against any amount payable to the Supplier. Interest on late, undisputed payments accrues at the lesser of 1.5% per month or the maximum rate permitted by law.

9. INTELLECTUAL PROPERTY

- 9.1 All Intellectual Property Rights created in the Services or the Deliverables (the “Work Product”) are a *work made for hire* for Zotefoams under 17 U.S.C. § 101. To the extent they are not, the Supplier hereby assigns the Work Product to Zotefoams absolutely, and waives all moral rights (including under 17 U.S.C. § 106A) to the extent permitted by law. The Supplier will, at Zotefoams' request, sign any documents needed to perfect Zotefoams' title.
- 9.2 The Supplier warrants that the Products, Services, and Deliverables, and Zotefoams' use of them, will not infringe any third party's rights. Zotefoams retains all rights in Zotefoams Materials, which the Supplier will use only to perform the Contract and keep in safe custody at its own risk.

10. INDEMNITY AND LIABILITY

- 10.1 The Supplier will indemnify, defend, and hold harmless Zotefoams and its affiliates from and against all losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of: (a) death, bodily injury, or property damage caused by defective Products or Deliverables; (b) the Supplier's breach or negligent performance; (c) any actual or alleged infringement of a third party's Intellectual Property Rights by the Products or Deliverables; and (d) the acts or omissions of the Supplier or its personnel. Zotefoams will give prompt notice of any claim, and the Supplier will conduct the defense with counsel reasonably acceptable to Zotefoams and not settle it without Zotefoams' consent.
- 10.2 **TO THE FULLEST EXTENT PERMITTED BY LAW: (A) ZOTEFOAMS' TOTAL AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THE CONTRACT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, WILL NOT EXCEED THE CHARGES PAID TO THE SUPPLIER FOR THE PRODUCTS OR SERVICES UNDER THE ORDER GIVING RISE TO THE CLAIM, AND (B) ZOTEFOAMS WILL NOT BE LIABLE FOR ANY LOSS OF PROFIT, REVENUE, BUSINESS, PRODUCTION, DATA, OR GOODWILL, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THEIR POSSIBILITY AND EVEN IF A LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.**
- 10.3 The limits in clause 10.2 do not apply to (and nothing limits) liability for: death or bodily injury; fraud; gross negligence or willful misconduct; the Supplier's indemnity and confidentiality obligations; or any liability that cannot be limited by law. Zotefoams' warranties and remedies are not disclaimed, and if any remedy fails of its essential purpose Zotefoams may pursue all other remedies (UCC §§ 2-316, 2-719).

11. REPRESENTATIONS AND WARRANTIES

- 11.1 The Supplier represents and warrants that: it has authority to enter into the Contract, and doing so does not breach any other agreement; it will comply with all applicable laws and hold all necessary licenses and consents; it has good and unencumbered title to the Products and Deliverables; the Products and Deliverables do not infringe any third party's rights; and it will comply with, and cause its personnel to comply with, Zotefoams' policies notified to it.

12. INSURANCE

- 12.1 During the Contract, the Supplier will maintain with reputable insurers: Commercial General Liability (including products and completed operations) of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate; umbrella or excess liability of at least \$4,000,000; Workers' Compensation at statutory limits and Employer's Liability of at least \$1,000,000; Automobile Liability of at least \$1,000,000 combined single limit; and, where it provides Services, Professional Liability / Errors and Omissions of at least \$2,000,000 per claim. The Supplier will maintain the products and completed operations cover, and any Professional Liability cover, for three (3) years after the Contract ends. The Supplier will ensure that its subcontractors maintain insurance appropriate to the work they perform. Zotefoams will be named as additional insured on the Commercial General Liability, umbrella or excess, and Automobile Liability policies, that cover will be primary and non-contributory, and the Supplier waives subrogation against Zotefoams. The Supplier will provide certificates on request. Insurance does not limit the Supplier's liability.

13. CONFIDENTIALITY

- 13.1 Each party will keep the other's confidential information protected and confidential, use such confidential information only to perform the Contract, and disclose it only to personnel who need it (and who are bound by like written obligations) or as required by law. These obligations do not apply to information that is public, already known or disclosed by a third party without breach, or independently developed without breach.

14. COMPLIANCE

- 14.1 The Supplier will comply with all applicable anti-bribery and anti-corruption laws (including the U.S. Foreign Corrupt Practices Act) and all applicable forced-labor and supply-chain laws (including the Uyghur Forced Labor Prevention Act and 19 U.S.C. § 1307), and will ensure no Products are made with forced labor. The Supplier will adhere to Zotefoams' ethics, anti-bribery, and responsible-sourcing policies (at <https://www.zotefoams.com/governance/>), impose these obligations on its own supply chain, and confirm its compliance checks to Zotefoams on request.

15. DATA PROTECTION

- 15.1 Where the Supplier processes personal information for Zotefoams, it acts as a service provider: it will process that information only to perform the Services and not sell or retain it for any other purpose; keep it secure; not engage sub-processors without Zotefoams' consent; notify Zotefoams without undue delay of any security breach; and return or delete such personal information on termination. Each party will comply with applicable U.S. state privacy and data-breach laws (including the CCPA where it applies).

16. TERMINATION

- 16.1 Without limiting its other rights, Zotefoams may terminate the Contract immediately on written notice if the Supplier: (a) commits a material breach and, where remediable, fails to cure it within 14 days of notice; (b) breaches clause 14 or any representation or warranty; (c) becomes insolvent, is unable to pay its debts as they fall due, becomes subject to any bankruptcy or receivership proceeding, or makes an assignment for the benefit of creditors; or (d) undergoes a change of Control.
- 16.2 Zotefoams may terminate the Contract for convenience: for Products, at any time before dispatch; and for Services, on 30 days' written notice, paying the Supplier's reasonable costs actually incurred up to termination. Where both are supplied, Zotefoams may terminate either part and continue the rest.

17. CONSEQUENCES OF TERMINATION

- 17.1 On termination, the Supplier will immediately deliver all Deliverables and return all Zotefoams Materials. Termination does not affect accrued rights, and any clause intended to survive termination (including clauses 8, 9, 10, 11, 12, 13, and 17) will continue in force.

18. GENERAL

- 18.1 **Governing law and jurisdiction.** The Contract is governed by the law of the State of Delaware (excluding its conflict-of-laws rules and the UN Convention on Contracts for the International Sale of Goods). The parties submit to the exclusive jurisdiction of the state and federal courts located in New Castle County, Delaware.
- 18.2 **Jury waiver. EACH PARTY WAIVES ANY RIGHT TO A JURY TRIAL IN ANY PROCEEDING ARISING OUT OF THE CONTRACT.**
- 18.3 **Force majeure:** Neither party is liable for delay caused by events beyond its reasonable control, including acts of God, fire, flood, epidemic, war, terrorism, labor disputes, shortage of materials or energy, transport disruption, governmental action, or failure of suppliers. If such an event lasts 30 days, either party may terminate the affected supply without liability.
- 18.4 **Assignment.** The Supplier may not assign or subcontract any of its rights or obligations without Zotefoams' prior written consent; Zotefoams may assign or subcontract freely on notice.
- 18.5 **Notices.** Notices must be in writing and delivered by hand, nationally recognized overnight courier, certified mail, or email (with confirmation), to the address in the Order or, for Zotefoams, to Zotefoams Inc., 55 Precision Drive, Walton, Kentucky 41005, USA. Email is not valid for service of legal process.

18.6 **Other terms.** No variation is effective unless in writing and signed by Zotefoams. A waiver is effective only if in writing and does not waive any later breach. If any provision is unenforceable it will be modified or severed and the rest will continue. The Contract is the entire agreement between the parties and supersedes prior understandings. The parties are independent contractors, not partners or agents. No one other than the parties (and, for the indemnity, the indemnified persons) has any right to enforce the Contract. Zotefoams' rights and remedies are cumulative, and Zotefoams may seek injunctive relief for breach. The Contract may be signed in counterparts, including electronically.