

BFF FOAM CORP. SALE TERMS AND CONDITIONS

These Sale Terms and Conditions are made a part of and will apply to all sales made pursuant to all invoices, quotes or proposals between BFF Foam Corp. (“BFF”) and its customer (“Customer”).

1. Product Design and Tooling

(a) Product design rests solely with the Customer. As requested, BFF may submit suggestions concerning design and construction of products, however BFF does not assume or accept responsibility or liability for the design or sufficiency of any suggestions in the event that same are accepted by Customer. Such suggestions are made solely as a convenience to Customer.

(b) BFF is providing Customer the product Customer requested. It is the sole responsibility and legal obligation of the customer to insure that any product or product component complies with all applicable government and municipal requirements in all jurisdictions in which the product is offered.

2. Prices

(a) Prices do not include taxes of any kind that are levied by any federal, provincial, or other governmental authority, which BFF may be required to collect and/or pay with respect to the sale or shipment of goods sold hereunder. Regardless of when any such taxes are determined or become payable, all taxes are the responsibility of the Customer and are in addition to the prices quoted hereon. If the Customer is exempt to such taxes, the Customer must provide BFF with an exemption number or certificate in order to avoid the withholding of applicable taxes. No adjustments will be made to invoices adjusting these taxes after sixty (60) days from the invoice date.

(b) If a Customer wishes to purchase goods on credit, prior approval must be provided by BFF’s credit department, and all such purchases shall be subject to compliance with the terms of such credit.

(c) BFF prices are FOB point of shipment and prices are quoted based on costs of labour and materials at the date of the quotation. BFF reserves the right to alter its prices to reflect any changes in such costs should they arise.

(d) Pricing is based on the quantities provided at the time of the quote. Should the customer require a different quantity for order, BFF expressly reserves the right to revise the pricing accordingly

(e) Materials that are required to be ordered because they are non-stocked items become the responsibility of the Customer and must be paid for if they cannot be returned to the vendor.

3. Title, Risk of Loss, Shipment, Waiver of Claims

(a) All shipments are FOB point of shipment. Title and all risk of loss or damage passes to the Customer upon presentation of the goods to the common carrier at BFF's facility, or at the shipment location if delivered by BFF.

(b) If, at Customer's request, BFF quotes a Common Carrier freight rate for a "Pre-Pay and Add" shipment, BFF will not be responsible for the additional freight costs due to the carrier changing the quoted rate, and this change will be the responsibility of the Customer.

4. Warranty, Indemnity, Limited Liability

Some Provinces do not allow limitations on implied warranties or the exclusion or limitation of incidental or consequential damages, so the below limitations or exclusions may not apply. This warranty provides specific legal rights, and there may be other rights which vary from Province to Province.

(a) When a product is supplied without prior approval of a sample by Customer, BFF warrants products manufactured or supplied by it to be free from material defects in material and workmanship when shipped from BFF's facility. If products shall be proved to BFF's satisfaction to be defective, such products shall, at BFF's sole option, be repaired or replaced.

(b) When a product is supplied after prior approval of a sample by Customer, BFF warrants that all products supplied will be substantially similar to such sample.

(c) The warranty in Paragraphs 10(a) and 10(b) shall not apply to any non-conformities, errors, or defects:

(1) Existing in or caused by any components or any other materials or items supplied by Customer that may be used or incorporated into the products provided by BFF; or

(2) Due to: (i) the misuse of any goods, parts, components, or products, (ii) the modification of any goods, parts, components, or products, (iii) the failure by Customer to utilize materials or processes compatible with the goods, parts, components, or products, (iv) the failure by Customer to adhere to BFF's directions or specifications concerning the goods, parts, components, or products, or (v) any damage incurred as a result of the prolonged or improper storage of the goods, parts, components, or products by Customer.

(d) Customer acknowledges and understands that BFF makes no warranties in regard to any goods, parts, components, or products sold hereunder except as expressly provided in this paragraph 10. The foregoing warranties are exclusive and in lieu of all other express and implied warranties whatsoever, including but not limited to implied warranties of merchantability and fitness for a particular purpose. Paragraph 10 is the sole and exclusive remedy and measure of damages with regard to any goods, parts, components, or products provided by BFF, and BFF shall not be subject to any other obligations or liabilities whatsoever with respect to parts manufactured or supplied by BFF or services rendered by it.

(e) anything herein to the contrary notwithstanding, BFF shall not be liable for any indirect, special, incidental and consequential damages, nor for any other remedies which customer may have under any applicable law including but not limited to costs of procurement of substitute goods, products and services, loss of goodwill, loss of profits, or loss of business or other economic loss, regardless of whether or not BFF has been informed of such damages or potential damages. Customer's sole and exclusive remedy against BFF for any breach of warranty or any other breach relating to goods delivered pursuant hereto shall be for repair or replacement (at BFF's option) of the goods, parts, components or products failing to comply with the warranty. Notwithstanding the preceding, in the event that customer is deemed to be entitled to monetary damages, in no event shall BFF's entire liability for monetary damages arising out of or related to any goods, parts, components, or products exceed the purchase price paid by customer to BFF for the products out of which such claim or action arose.

(f) Customer agrees to indemnify, defend, and hold BFF harmless from and against all liability resulting from Customer's use of the goods, parts, components, or products provided by BFF other than in strict accordance and compliance with BFF's directions or specifications or in combination with other materials or processes not expressly approved by BFF.

(g) CUSTOMER ACKNOWLEDGES THAT BFF IS PROVIDING PRODUCT AS REQUESTED AND BFF HAS NOT DONE ANY INVESTIGATION INTO THE FITNESS OF SUCH PRODUCT FOR CUSTOMER'S INTENDED USE. CUSTOMER IS SOLELY RESPONSIBLE FOR ENSURING THE PRODUCTS SUPPLIED MEET THE FEDERAL, PROVINCIAL, AND MUNICIPAL CODES AND REGULATIONS APPLICABLE FOR THE INTENDED USE AND AT THE INTENDED LOCATION.

5. Tolerances, Materials, Quantity

(a) Foam products are inherently subject to industry tolerances. It is understood and agreed that the production variations as published by BFF will be acceptable.

(b) If any raw material that is specified for incorporation into the product covered by the quote shall become unavailable, BFF shall notify Customer and Customer, as its sole remedy, may either cancel the order or Customer may direct BFF to substitute available material for that originally specified, it being understood and agreed that Customer shall assume any and all consequences resulting from such substitution, and BFF shall have no liability or responsibility for the adequacy or sufficiency thereof.

(c) Unless specifically specified by the Customer to the contrary, delivery of ten percent (10%) more or less of completed parts than the quantity specified shall constitute fulfillment of this order and any excess not exceeding ten percent (10%) shall be accepted and paid for by Customer.

(d) BFF will not be responsible for any flaws, or color or thickness variations, in parts from which fabrications are made, nor for other material variations beyond BFF's reasonable control.

(e) In no event shall BFF be held liable or responsible for any loss or damage resulting from or occurring by reason of unavailability of or delay in shipment or receipt of any order caused by temporary product shortages, unavailability, order backlogs, production difficulties, delays in or unavailability of transportation, fire, flood, earthquake, or any other cause beyond the reasonable control of BFF.

6. Patents

If the quote covers parts, goods or other products made specifically for the Customer or that are supplied by Customer, Customer agrees to indemnify and hold BFF harmless against any loss, liability or damage resulting from the infringement of patents, trademarks, or other intellectual property rights of any third-parties and from claims or allegations of such infringement and shall pay all legal and defense costs incurred by BFF in the defense of such actions.

7. Purchase Order Adjustment/Cancellation, Rejections/Claims

(a) Individual Customer Purchase Orders or recurring scheduled Purchase Orders placed with BFF are not subject to cancellation, change or reduction in amount, except with BFF's consent and upon terms that are acceptable to BFF including indemnifying BFF for any loss resulting from such cancellation, change, reduction or suspension. Verbal changes are not accepted and any and all changes must be confirmed in writing.

(b) CLAIMS FOR SHORTAGES OR REJECTIONS FOR DEFECTIVE PRODUCTS MUST BE MADE WITHIN FOURTEEN (14) DAYS OF CUSTOMER'S RECEIPT OF GOODS. CREDIT WILL BE RENDERED ON SUCH DEFECTIVE PARTS AFTER BFF HAS HAD AN OPPORTUNITY TO INSPECT THEM, PROVIDED THEY ARE RETURNED TO BFF, WITHIN THIRTY (30) DAYS, AND PROVIDED THEY HAVE NOT BEEN ALTERED, DAMAGED OR DEFACED IN ANY WAY.

(c) BFF will not be responsible for changes in design, deliveries or other instructions, unless they are furnished in writing and acknowledged by BFF in writing. Customer agrees to pay for all tooling charges caused by changes in design or specifications.

(c) Manufactured parts will be shipped and billed as they are produced.

(d) Reasonable care will be taken by BFF in securing items for shipment. It is the Customer's sole responsibility to verify both the count and condition of shipped items prior to signing the receipt of shipment. Shortages and damages should be listed on the delivering carrier's Bill of Lading at the time of delivery. BFF shall not be held responsible for damage after having received "in good order" receipts from the transportation carrier. All claim for loss and damage must be made by Customer to the carrier on a timely basis, but BFF will provide reasonable assistance to Customer with its efforts in securing satisfactory adjustment of such claims from the carrier.

(e) Returned Merchandise is usually subject to a 20% restocking fee. All returns must follow BFF Return Merchandise Approval (RMA) procedure. Contact your BFF Salesperson for instructions.

8. Delivery

(a) Should shipments be held beyond the scheduled date of delivery for convenience of the Customer, goods may be subject to charges for warehousing the products for the additional length of time.

9. Payment

(a) All invoices shall be due and payable when submitted for payment in accordance with BFF's Credit Terms and Conditions. No withholding of funds, offsets, back charges or credits against amounts otherwise due to BFF is permitted unless specifically agreed to in writing by BFF. Settlement of any amounts due from Customer will be negotiated as separate items and not as offsets or credits against amounts otherwise due BFF from Customer for products sold hereunder.

(b) Any unpaid account shall entitle BFF to exercise all available remedies to collect the debt owed.

10. Additional Provisions

(a) BFF is hereby authorized by Customer to make corrections of any stenographic and clerical errors contained on any quote or proposal.

(b) These Terms and Conditions of Sale shall be controlling with respect to all product sales by BFF and BFF rejects and does not accept any contrary or additional terms or conditions of sale unless agreed to in writing by an authorized officer of BFF. The laws of the Province of British Columbia shall govern all transactions between BFF and the Customer. Jurisdiction and venue for any matter under dispute shall be exclusively in the federal or provincial courts of the Province of British Columbia and the parties hereby and agree and submit to the exclusive jurisdiction of such courts. In any successful action by a party hereto, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of court incurred in such action.