

**PERFORMANCE FOAMS**<sup>®</sup>  
Closed Cell Expanded Polyethylene, EVA,  
Rubber, Foam Plastic & Vacuum Forming

**TERMS AND CONDITIONS OF TRADE  
(GOODS)**

1. INTERPRETATION

1.1 In these conditions, save where the context otherwise requires, the following words and expressions shall have the following meaning:-

1.1.1 A reference to the company shall be a reference to the following company, any of its branches and any of its subsidiary companies, wholly owned or otherwise:

Company	Registration Number	VAT Number
SONDOR INDUSTRIES (PTY) LTD	1987/003475/07	4020103778

1.1.2 "Business" shall have reference to the sale or manufacturing of any goods or providing of any service or information to the customer;

1.1.3 A reference to "the customer" shall be a reference to the natural or juristic person to whom or on whose behalf the company does any business;

1.1.4 "Special order goods" means goods supplied by the company expressly or implicitly was required or expected to procure, create or alter specifically to satisfy the customer's requirements;

1.1.5 "Non-special order goods" refers to all goods of a "off the shelf" nature;

1.2 Expressions which denote a natural person shall include a reference to body corporate and *vice versa*.

1.3 Expressions which denote the masculine shall include a reference to the feminine gender.

1.4 Expressions which denote the singular shall include a reference to the plural and *vice versa*.

1.5 Headings are for reference purposes only and shall not be considered in the interpretation of the conditions to which they relate.

2. APPLICABILITY OF CONDITIONS

2.1 These conditions shall apply to all business undertaken by the company including, without limitation, all goods sold or manufactured.

2.2 These conditions shall govern all future contractual relationships between the parties.

3. ORDERS

3.1 All orders are subject to :

3.1.1 The availability of necessary stock, equipment, production and design capacity, manpower and materials; and

3.1.2 Acceptance by the company, which need not necessarily be in writing; and

3.1.3 The approval by the customer, if applicable, of the sample referred to in 3.4.2

3.2 Orders for special order goods must be in writing although the company reserves the right, in its sole discretion, to accept oral orders.

3.3 Unless otherwise agreed to by the company in writing, forward orders will be priced at the ruling price as at date of dispatch of the goods.

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\*Non-Executive \*British

**3.4 Where the customer places an order for special order goods:**

- 3.4.1** It is the sole responsibility of the customer to provide the company with all of the necessary details, specifications and dimensions in relation to such goods.
- 3.4.2** The customer must approve any proofs, samples, specimens, sketches, renderings, technical drawings, materials and the like produced by the company in relation to such goods.
- 3.4.3** Such approval shall be binding upon the customer and the company shall not be held responsible for any error contained in such materials which may manifest itself in the goods.
- 3.4.4** The customer shall pay for all costs resulting from any amendments requested by the customer to such materials or to the goods themselves, save in the event that such amendments are necessitated to correct any manifest error made by the company in producing same.
- 3.4.5** The customer shall pay for the cost of all materials produced by the company for it, even in the event that the customer declines to proceed with the manufacture thereof or unreasonably withholds its approval of such materials.

**4. CANCELLATION**

- 4.1** The Customer acknowledges that once an order for special order goods has been accepted by the company, such orders may not be cancelled, varied or withdrawn unless the company has agreed in writing thereto. Should the Company not agree to such cancellation the Customer shall be liable for the full purchase thereof.
- 4.1** The Customer acknowledges that any cancellation of an order for non-special order goods, that has been accepted by the company, the customer shall be liable to pay to the company a handling fee calculated at 15% of the contract price, in addition to reimbursing the company for its out-of-pocket expenses.

**5. DELIVERY**

- 5.1** Any delivery dates or performance times given or agreed to by the company, if any, are merely estimates and the company shall not be held responsible, and shall incur no liability to the customer, in the event of the company failing to deliver or to perform on the estimated date or within the estimated period unless the customer provides the company with written instructions for a delivery or performance times, which has been accepted by the company.
- 5.2** The company shall be entitled, in its sole discretion, to split the delivery of goods ordered in the quantities and on the dates that it decides.
- 5.3** Any delivery note signed by the customer or by his representative shall be prima facie proof of delivery to the customer.
- 5.4** The customer shall not be entitled to refuse delivery of the goods when tendered by the company and shall, in any event, accept delivery or arrange for collection thereof within 7 (seven) days of notification thereof by the company. Provided that the customer shall not be obliged to accept delivery during an unreasonable time.
- 5.5** Where the company has tendered the goods and the customer has not accepted delivery thereof or arranged for the collection thereof, the company may, without prejudice to its rights, store the goods at the customer's sole risk and expense.

**6. INVOICING**

- 6.1** The company will not, under any circumstances, be precluded from raising or correcting any debit (and from obtaining payment thereof) in relation to any amount due to it.
- 6.2** The company shall be entitled to invoice split deliveries separately.
- 6.3** Should the customer contend that any rate, charge or amount as reflected on any invoice or statement be incorrect, then the customer shall be obliged to notify the company in writing of its contention within 60 (sixty) days of receipt of such invoice or statement, failing which the customer shall be precluded from denying the correctness of such rate, charge or amount.
- 6.4** The customer will pay for all costs or increases resulting from any act or omission of the customer including, without limitation, suspension of delivery, modification of requirements, failure or delay in giving particulars requisite to enable orders to proceed on schedule or requests that goods be delivered earlier or later than scheduled.

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7. PAYMENT

- 7.1 Unless otherwise specifically agreed to by the company in writing, accounts are payable on presentation thereof.
- 7.2 Should facilities, a trade limit, be specifically extended to the customer, subject to clause 8 below, by the company in writing, accounts shall, unless otherwise specifically agreed to by the company in writing, be payable 30 days from date of statement.
- 7.3 All accounts are payable by the customer to the company in full.
- 7.4 Should any account not be paid on due date, all other monies owing by the customer to the company shall immediately become due and payable.
- 7.5 The company shall be entitled, without prejudice to its rights, to levy and to recover from the customer, on a monthly basis, interest on all outstanding accounts at a rate of 3% above the prime lending rate of First National Bank Limited from time to time, compounded monthly in advance, or at the maximum annual rate permitted by the National Credit Act, if applicable, whichever is the higher.
- 7.6 Notwithstanding any prior dealings between the parties, should the customer elect to make payment through any intermediary or service including, without limitation, the postal service, the customer does so at its risk and the responsibility of ensuring that the company actually receives the payment is that of the customer.
- 7.7 Unless specifically agreed to by the company in writing, the company provides no discounts to the customer including without limitation, any early settlement discount. Should the company agree to a discount in writing, such discount may, at the company's option, be forfeited should payment not be made in full on due date.
- 7.8 The company does not necessarily equate the tender of a cheque with full payment. No cheques will be accepted without prior arrangement with the company and the company reserves the right, in any event, to require that such cheque first clear in its account before proceeding with its obligations.

8. TRADE LIMIT

- 8.1 The Customer acknowledges that to qualify for a trade limit it shall complete Annexures "A" and "B" and provide same to the company to allow the company to determine a maximum trade limit as per clause 7.2 above.
- 8.2 The Company shall provide the Customer with the maximum trade limit within 1 week of receiving the Annexures referred to above.
- 8.3 The Company may refuse to provide any further goods to the Customer if the proposed transaction will result in the maximum trade limit being exceeded, however:
  - 8.3.1 The Company may, in its sole and absolute discretion, increase the Customer's maximum trade limit by notice sent to the Customer informing the Customer of the trade limit increase. The Customer agrees to periodically supply, when so requested by the Company, any information including but not limited to the re-submission of Annexures "A" and "B". The Customer may reject the proposed limit increase within 1 week of dispatch of the notice referred to herein;
  - 8.3.2 The Customer may request an increase in the maximum limit by requesting same from the Company and providing Annexures "A" and "B" for the Company to determine whether such increase is warranted.
- 8.4 The Customer undertakes to notify the Company immediately of any change of address, cessation of business, or change in ownership or shareholding of the business.
- 8.5 The Customer acknowledges that, notwithstanding any sale of his business interests, he shall remain liable in full for the settlement of the debt to the Customer and he undertakes to inform the Customer within seven days and by registered mail, of any such change.
- 8.6 All amounts owed by the Customer to the Company shall be immediately claimable and payable should it be revealed that the Customer has made any material misrepresentations in his trade limit application; or the Customer's credit worthiness before the date of payment of any of his accounts with the Company has deteriorated to such an extent that the risk incurred in the collection of the debt has become unacceptably higher than when the trade limit was initially extended; or if the Customer dies/is de-registered during the duration of this agreement, or allows 7 days to lapse after any judgment against him/it, without payment, or neglects to promptly pay any amount, in terms of this agreement, or neglects to fulfil any other conditions or provisions of this agreement, or initiates any insolvency action, cedes or sequesters his estate, or when a Company or any other legal person, is liquidated or placed under judicial management, whether provisionally or finally, or commits any other act which may prejudice the rights of the Company, or if the Company is reasonably convinced that the Customer will not discharge his obligations, or will not be capable of discharging them.
- 8.7 Any extension for payment of the outstanding amount that the Company may grant, shall in no way prejudice the Company's right under these conditions and shall not constitute an amendment or novation of the original trade limit agreement.

- 8.8 The Customer gives the Company the following warranties, representation and undertakings, each of which is deemed to be material:
- 8.8.1 the Customer will pay timeously all amounts owing by it to the Company; and
  - 8.8.2 in the case of a Close Corporation, Company or Trust, the members, shareholders or trustees, as the case may be, have passed the required resolution authorising the designated signatory to conclude an agreement with the Company in respect of the grant of the trade limit by the Company to the Customer and a copy thereof can be obtained by the Company should it so request.
- 8.9 The Company shall be entitled, at its sole discretion, to withdraw, limit or reduce any trade limit facilities granted to the customer at any time and without prior notice to the Customer.
- 8.10 The trade limit granted to the Customer shall not be deemed to be the limit of a Customer's indebtedness to the Company.
- 8.11 The Customer agrees that the information provided by it to the Company may be utilised by the Company to conduct a credit assessment or affordability assessment in respect of the Customer.
- 8.12 The Company has the Customer's consent to request and to obtain from any third party including, without limitation, any registered credit bureau, or any credit provider, information relevant to the conduct of a credit assessment or affordability assessment in respect of the Customer or to the tracing of the Customer.
- 8.13 The further terms of clause 7 are to read as included herein.

9. OWNERSHIP AND RISK

- 9.1 Ownership in and of any goods supplied by the company shall remain vested in the company until such time as they have been paid for in full.
- 9.2 Risk in and to the goods shall pass to the customer upon delivery thereof to the customer or its representative.

11. LIABILITY

- 11.1 The customer warrants that all details, specifications and dimensions provided to the company for the manufacturing of special order goods is correct and fit for the purpose which it is intended to be used.
- 11.2 **The company will not under any circumstances be held liable for any loss, direct or indirect, for any cause whatsoever due to the details, specifications or dimensions provided by the customer being incorrect or that the customer had attempted to use the special order goods for purposes other than intended by the customer when placing the order.**

12. ARBITRATION

At the option of the company or the customer, all disputes arising out of or in connection with any contractual relationship or other business dealings between the parties shall be referred for arbitration in Cape Town under the Rules of the Arbitration foundation of South Africa by one or more arbitrators appointed in accordance with the said rules, whose award shall be binding upon the parties.

13. FORCE MAJEURE

No failure by the company or the customer to perform any of its obligations shall constitute a breach of such obligations nor give rise to any claim or remedy by the customer in the event that such failure arose as a result of force majeure, including acts of God, war, revolution, riot, civil unrest, strikes or other labour action, sanctions, natural disasters, changes in law, regulations, ordinances of the like or as a result of any other circumstance wholly beyond its control.

14. CONSUMER PROTECTION ACT

14.1. Insofar as the Consumer Protection Act governs this agreement and/or the relationship between the parties, it is specifically agreed that in the event of any clause or sub-clause herein not being permitted in terms of the Consumer Protection Act, such clause or sub-clause shall be severed from this agreement and be treated as if it were not a part of this agreement. All provisions which automatically apply to an agreement of this nature in terms of the Consumer Protection Act are automatically incorporated herein.

14.2 Insofar as the Consumer Protection Act ("CPA") governs this agreement, the parties attention is drawn to the fact that Section 55(2) provides that, except to the extent contemplated in subsection (6), every consumer has a right to receive goods that:-

- (a) Are reasonably suitable for the purposes for which they are generally intended;
- (b) Are of good quality, in good working order and free of any defects;
- (c) Will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply;
- (d) Comply with any applicable standards set out under the Standards Act 1993 (Act No. 29 of 1993), or any other public regulation

14.3 *Section 55(6) of the CPA provides that subsection (2)(a) and (b) do not apply to a transaction if the consumer:-*

- (a) Has been expressly informed that the particular goods were offered in a specific condition; and*
- (b) Has expressly agreed to accept the goods in their condition, or knowingly acted in a manner consistent with accepting the goods in that condition.*

14.4 **The customer confirms that it may carefully inspected the items on delivery thereof and hereby expressly agrees to accept the items in the condition as it is when delivered, provided that all details, specifications and dimension of the customer have been complied with.**

14. ADDRESS

14.1 In the event that these conditions are annexed or attached to, or incorporated by reference in, a document in which the customer's physical address or addresses are reflected, then the customer agrees to accept delivery of any notice or service of any court process or other documentation, including notifications in terms of the National Credit Act, at such address or any of such addresses.

14.2 Any notice will be deemed to have been duly delivered to the customer:-

- 14.2.1 within 30 (thirty) days of postage by prepaid registered mail to any postal address of the customer as reflected in any document to which these conditions are annexed or attached or incorporated by reference;
- 14.2.2 within 1 (one) hour of being faxed to any fax number of the customer as reflected in any document to which these conditions are annexed or attached or incorporated by reference;
- 14.2.3 upon being delivered by hand to any physical address of the customer as reflected in any document to which these conditions are annexed or attached or incorporated by reference.

15. LITIGATION

15.2 In the event of one party taking legal action against the other party because of a breach by that party of its obligations, the party in breach shall pay for all legal costs incurred by the innocent party on the scale as between attorney and client including, without limitation, collection fees, tracing agents fees and fees of counsel as on brief.

17. NON VARIATION

17.1 No amendment, alteration, variation, deletion, addition or termination to or of these conditions or the contract to which these conditions are annexed, attached or incorporated, whether consensual or unilateral, shall be of any effect unless reduced to writing and signed by both parties.

17.2 These conditions supercede, and will apply in the future to the exclusion of, any provision contained in any purchase order, enquiry, remittance, trading conditions, purchase conditions or other documents of the customer.

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18. NON WAIVER

No latitude, indulgence or extension of time granted by the company to the customer shall in any way prejudice the rights of the company nor be construed as a waiver of the company's rights.

19. SEVERABILITY

Each of these conditions shall be considered to be a separate provision, distinct from the others. In the event of any of these conditions being found to be illegal, invalid, prohibited or unenforceable, such conditions shall be ineffective only to the extent of that illegality, invalidity, prohibition or unenforceability and the remaining conditions shall remain of full force and effect.

**Insofar as the Consumer Protection Act governs this agreement and/or the relationship between the parties, it is specifically agreed that in the event of any clause or sub-clause herein not being permitted in terms of the Consumer Protection Act, such clause or sub-clause shall be severed from this agreement and be treated as if it were not a part of this agreement. All provisions which automatically apply to an agreement of this nature in terms of the Consumer Protection Act are automatically incorporated herein.**

20. APPLICABLE LAW

These conditions and any contract to which these conditions are annexed or attached or incorporated by reference, shall be governed by, and interpreted in accordance with, the laws of the Republic of South Africa.

21. VALUE ADDED TAX

Unless the contrary is stated by the company in writing, all prices quoted by the company to the customer are exclusive of Value Added Tax, which tax payable by the customer in addition to the said price.

Signed at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Witness: \_\_\_\_\_

Customer: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

(who hereby warrants his/her authority).

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