

**THE FOAM COMPANY LIMITED  
OUR TERMS AND CONDITIONS**

**1. DEFINITIONS**

1.1 When the following words with capital letters are used in these Terms, this is what they will mean:

1.1.1 **Event Outside Our Control:** is defined in Clause 10.2;

1.1.2 **Order:** your order for the Products set out in the order form;

1.1.3 **Products:** the goods that We are selling to you as set out in the Order;

1.1.4 **Terms:** the terms and conditions set out in this document; and

1.1.5 **We/Our/Us:** The Foam Company Limited (Company Number: 02067653) whose registered office is at Broadway, Didcot, Oxfordshire, OX11 8ES.

1.2 When We use the words "writing" or "written" in these Terms, this will include e-mail unless We say otherwise.

**2. OUR CONTRACT WITH YOU**

2.1 These are the terms and conditions on which We supply Products to you. These Terms apply to Orders placed face to face at Our retail stores or via the telephone with Our retail stores only. They do not apply to orders via our website.

2.2 Please ensure that you read these Terms carefully, and check that the details on the Order is complete and accurate, before you sign the Order. If you think that there is a mistake or require any changes, please contact Us to discuss. We will confirm any changes in writing to avoid any confusion between you and Us.

2.3 When you sign the Order, this does not mean We have accepted your order for the Products. Our acceptance of the Order will take place as described in Clause 2.4. If We are unable to supply you with the Products, We will inform you of this and We will not process the Order.

2.4 These Terms will become binding on you and Us when We issue you with a written acceptance of an Order, at which point a contract will come into existence between you and Us (the **Contract**).

2.5 If any of these Terms conflict with any term of the Order, the Order will take priority.

2.6 You must check:

2.6.1 the size and dimensions of the Products ordered by you; and

2.6.2 that any additional services requested by you such as delivery, assembly or disposal is set out in the Order. If they are not included in the Order then these services have not been ordered and We will not provide these services.

2.7 We shall assign an order number to the Order and inform you of it when We confirm the Order. Please quote the order number in all subsequent correspondence with Us relating to the Order.

2.8 Our website, press and radio advertising are solely for the promotion of Our Products in the UK. Unfortunately, We do not deliver to addresses outside the UK.

2.9 The images of the Products on Our website or in the press are for illustrative purposes only. Although We have made every effort to display the colours accurately, We cannot guarantee that your computer's display of the colours or the printed pictures accurately reflect the colour of the Products. Your Products may vary slightly from those images.

### **3. CHANGES TO ORDER OR TERMS**

3.1 We may revise these Terms from time to time in the following circumstances:

3.1.1 changes in how We accept payment from you;

3.1.2 changes in relevant laws and regulatory requirements.

3.2 If We have to revise these Terms under Clause 3.1 as they apply to your Order, we will give you at least one month's written notice of any changes before they take effect and let you know how to cancel the Contract if you are not happy with the changes. You may cancel either in respect of all the affected Products or just the Products you have yet to receive. If you opt to cancel, you will have to return (at our cost) any relevant Products you have already received and we will arrange a full refund of the price you have paid, including any delivery charges.

3.3 If you wish to cancel an Order before it has been fulfilled, please see your right to do so in Clause 11. In the case of made-to-measure Products, unfortunately, because We make these Products to your specific requirements, you will not be able to cancel an Order once it is made.

### **4. PRODUCTS AND MADE-TO-MEASURE PRODUCTS**

4.1 You should be aware that:

4.1.1 sizes of Products are approximate only. Sizes stated for beds and mattresses refer to the sleeping surface only;

4.1.2 due to manufacturing tolerances mattress sizes and covers may vary slightly from their stated dimensions; and

4.1.3 any comfort grading is for your guidance only.

4.2 We may make some of Our Products according to the measurements you provide Us. For tips on how to measure, please contact Us.

4.3 Please make sure your measurements are correct and accurate. Unfortunately, We cannot accept the return of made-to-measure Products if the reason for the return is because you provided Us with incorrect measurements. However, this will not affect your legal rights as a consumer in relation to made-to-measure Products that are faulty or not as described. Advice about your legal rights is available at your local Citizen's Advice Bureau or Trading Standards office.

### **5. DELIVERY OF PRODUCTS**

5.1 Please note that timescales for delivery and delivery charges will vary depending on the availability of the Products and your address. Please allow for extra time for deliveries to certain areas such as the Scottish Highlands and Islands and certain postcodes. Please ask or contact Us for more details.

5.2 We will advise you at the time of Order or contact you with an estimated delivery date. Occasionally Our delivery to you may be affected by an Event Outside Our Control. See Clause 10 for Our responsibilities when this happens.

- 5.3 If you have asked to collect the Products from Our premises, you can collect the Products from Us at any time during Our working hours of 9AM TO 5PM Monday to Saturday.
- 5.4 Delivery of an Order shall be completed when We deliver the Products to the address you gave Us or you collect them from Us.
- 5.5 If no one is available at your address to take delivery, unless you have given Us suitable alternative instructions, We will leave you a note that the Products have been returned to Our premises, in which case, please contact us to rearrange delivery.
- 5.6 If We are not able to deliver the whole of the Order at one time due to operational reasons or shortage of stock, We will deliver the Order in instalments. We will not charge you extra delivery costs for this. However, if you ask Us to deliver the Order in instalments, We may charge you extra delivery costs. Each instalment shall constitute a separate contract governed by these Terms. If We are late delivering an instalment or one instalment is faulty, that will not entitle you to cancel any other instalment.
- 5.7 The Products will be your responsibility from the completion of delivery or from when you collect the Products from Us.
- 5.8 You own the Products once We have received payment in full.

## 6. **THIRD-PARTY MANUFACTURER'S GUARANTEE OF PRODUCTS**

- 6.1 Some of the Products may come with a manufacturer's guarantee. For details, please refer to the manufacturer's guarantee provided with the Products.
- 6.2 This guarantee is in addition to your legal rights in relation to the Products that are faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.

## 7. **OUR GUARANTEE OF GOODS**

- 7.1 We guarantee that on delivery and for a period of 6 months from delivery, the Products shall be free from material defects. However, this guarantee does not apply in the circumstances described in Clause 7.2.
- 7.2 This guarantee does not apply to any defect in the Products arising from:
- 7.2.1 fair wear and tear;
  - 7.2.2 wilful damage, abnormal storage or working conditions, accident, negligence by you or by any third party;
  - 7.2.3 if you fail to use the Products in accordance with the user instructions;
  - 7.2.4 any alteration or repair by you or by a third party who is not one of Our authorised repairers; or
  - 7.2.5 any specification provided by you.
- 7.3 The price for ex-display items reflects the fact that they are ex-display and may have sustained fair wear and tear. Please check that ex-display items are in a satisfactory condition when placing your Order as ex-display items may not be returned or refunded unless faulty or not as described.
- 7.4 This guarantee is in addition to your legal rights in relation to the Products that are faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.

## 8. **PRICE AND PAYMENT**

- 8.1 The price of the Products will be set out in the Order. Our prices may change at any time, but price changes will not affect Orders that We have confirmed with you.
- 8.2 These prices include VAT. However, if the rate of VAT changes between the date of the Order and the date of delivery or performance, We will adjust the rate of VAT that you pay, unless you have already paid for the Products in full before the change in the rate of VAT takes effect.
- 8.3 The prices for the Products exclude delivery costs, which will be added to the total amount due.
- 8.4 Unless We otherwise agree, where We are providing Products to you, you must make payment for Products in advance.
- 8.5 If you do not make any payment due to Us by the due date for payment, We may charge interest to you on the overdue amount at the rate of 3% a year above the base lending rate of the Bank of England from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay Us interest together with any overdue amount.
- 8.6 However, if you dispute an invoice in good faith and contact Us to let Us know promptly after you have received an invoice that you dispute it, Clause 8.5 will not apply for the period of the dispute.

## 9. **OUR LIABILITY TO YOU**

- 9.1 If We fail to comply with these Terms, We are responsible for loss or damage you suffer that is a foreseeable result of Our breach of the Terms or Our negligence, but We are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if they were an obvious consequence of our breach or if they were contemplated by you and Us at the time we entered into this contract.
- 9.2 If We are delivering the Products into your property, We will make good any damage to your property caused by Us in the course of performance. However, We are not responsible for the cost of repairing any pre-existing faults or damage to your property that We discover in the course of performance by Us.
- 9.3 We only supply the Products for domestic and private use. You agree not to use the Products for any commercial, business or re-sale purpose, and We have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 9.4 We do not exclude or limit in any way Our liability for:
- 9.4.1 death or personal injury caused by Our negligence or the negligence of Our employees, agents or subcontractors;
  - 9.4.2 fraud or fraudulent misrepresentation;
  - 9.4.3 breach of the terms implied by section 12 of the Sale of Products Act 1979(title and quiet possession);
  - 9.4.4 breach of the terms implied by sections 13, 14 and 15 of the Sale of Products Act 1979 (description, satisfactory quality, fitness for purpose and samples); and
  - 9.4.5 defective products under the Consumer Protection Act 1987.

## 10. **EVENTS OUTSIDE OUR CONTROL**

- 10.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of Our obligations under these Terms that is caused by an Event Outside Our Control.
- 10.2 An Event Outside Our Control means any act or event beyond Our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks.
- 10.3 If an Event Outside Our Control takes place that affects the performance of Our obligations under these Terms:
- 10.3.1 We will contact you as soon as reasonably possible to notify you; and
- 10.3.2 Our obligations under these Terms will be suspended and the time for performance of Our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects Our delivery of Products to you, We will arrange a new delivery date with you after the Event Outside Our Control is over.
- 10.4 You may cancel the contract if an Event Outside Our Control takes place and you no longer wish Us to provide the Products. Please see your cancellation rights under Clause 11. We will only cancel the contract if the Event Outside Our Control continues for longer than eight weeks in accordance with Our cancellation rights in Clause 11.

## 11. **YOUR RIGHTS TO CANCEL AND APPLICABLE REFUND**

- 11.1 You may cancel the Contract if We are affected by an Event Outside Our Control or We change these Terms under Clause 3.1 to your material disadvantage.
- 11.2 If you place your Order over the telephone to one of Our retail stores, you have a legal right to cancel the Contract under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 during the period set out below in Clause 11.4. This means that during the relevant period if you change your mind or decide for any other reason that you do not want to receive or keep a Product, you can notify us of your decision to cancel the Contract and receive a refund. Advice about your legal right to cancel the Contract is available from your local Citizens' Advice Bureau or Trading Standards office.
- 11.3 However:
- 11.3.1 this cancellation right does not apply in the case of made-to-measure Products or Products made to your specifications or are which are clearly personalised; and
- 11.3.2 you will lose your right to cancel in the case of the supply of sealed Products which are not suitable for return due to health protection or hygiene, if the Products become unsealed after delivery.
- 11.4 Your legal right to cancel the Contract as set out in Clause 11.2 starts from the date the Contract is formed under Clause 2.4. Your deadline for cancelling is 14 days after the day on which you receive the Product, or where the Product is delivered in instalments or your Order is for multiple Products, 14 days after the day on which you receive the last instalment of the Product or the last of the separate Products ordered.
- 11.5 To cancel the Contract, you just need to let us know that you have decided to cancel by contacting us by telephone or by post. If you are e-mailing us or writing to us please include details of your Order to help us to identify it. If you send us your cancellation notice by e-mail

or by post, then your cancellation is effective from the date you send us the e-mail or post the letter to us.

- 11.6 If you cancel your Contract under Clause 11.2 we will:
- 11.6.1 refund you the price you paid for the Products. However, please note we are permitted by law to reduce your refund to reflect any reduction in the value of the Products, if this has been caused by your handling them in a way which would not be permitted in a shop;
  - 11.6.2 refund any delivery costs you have paid, although, as permitted by law, the maximum refund will be the costs of delivery by the least expensive delivery method we offer (provided that this is a common and generally acceptable method);
  - 11.6.3 make any refunds due to you as soon as possible and in any event within the deadlines indicated below:
    - 11.6.3.1 if you have received the Product and we have not offered to collect it from you: 14 days after the day on which we receive the Product back from you or, if earlier, the day on which you provide us with evidence that you have sent the Product back to us. For information about how to return a Product to us, see Clause 11.9;
    - 11.6.3.2 if you have not received the Product or you have received it and we have offered to collect it from you: 14 days after you inform us of your decision to cancel the Contract.
- 11.7 If you have returned the Products to us under this Clause 11 because they are faulty or mis-described, we will refund the price of the Products in full, together with any applicable delivery charges, and any reasonable costs you incur in returning the item to us.
- 11.8 We will refund you using the same method used by you to pay. If you used vouchers to pay for the Product we may refund you in vouchers.
- 11.9 If a Product has been delivered to you before you decide to cancel your Contract:
- 11.9.1 then you must return it to us without undue delay and in any event not later than 14 days after the day on which you let us know that you wish to cancel the Contract. You can either send it back, return it to us in-store or hand it to our authorised carrier;
  - 11.9.2 unless the Product is faulty or not as described (in this case, see Clause 11.7), you will be responsible for the cost of returning the Products to us. If the Product is one which cannot be returned by post, we estimate that if you use the carrier which delivered the Product to you, these costs should not exceed the sums we charged you for delivery. If we have offered to collect the Product from you, we will charge you the direct cost to us of collection.

**If the Products are faulty**

- 11.10 Because you are a consumer, we are under a legal duty to supply Products that are in conformity with the Contract. As a consumer, you have legal rights in relation to Products that are faulty or not as described. These legal rights are not affected by your right of return and refund in this Clause 11 or anything else in these Terms. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.

## 12. **OUR RIGHTS TO CANCEL AND APPLICABLE REFUND**

12.1 If We have to cancel an Order for Products (including made-to-measure Products) before the Products are delivered:

12.1.1 We may have to cancel an Order before the Products are delivered, due to an Event Outside Our Control or the unavailability of stock. We will promptly contact you if this happens.

12.1.2 If We have to cancel an Order under Clause 12.1.1 and you have made any payment in advance for Products that have not been delivered to you, We will refund these amounts to you.

12.1.3 Where We have already started work on your Order for made-to-measure Products by the time We have to cancel under Clause 12.1.1, We will not charge you anything and you will not have to make any payment to Us.

## 13. **INFORMATION ABOUT US AND HOW TO CONTACT US**

13.1 We are a company registered in England and Wales. Our company registration number is 02067653 and Our registered office is at Broadway, Didcot, Oxfordshire, OX11 8ES. Our registered VAT number is [NUMBER].

13.2 If you have any questions or if you have any complaints, please contact Us. You can contact Us by telephoning Our customer service team at [NUMBER] or by e-mailing Us at [E-MAIL ADDRESS].

13.3 If you wish to contact Us in writing, or if any Clause in these Terms requires you to give Us notice in writing (for example, to cancel the contract), you can send this to Us by e-mail, by hand, or by pre-paid post to The Foam Company at Broadway, Didcot, Oxfordshire, OX11 8ES. We will confirm receipt of this by contacting you in writing. If We have to contact you or give you notice in writing, We will do so by e-mail, by hand, or by pre-paid post to the address you provide to Us in the Order.

## 14. **HOW WE MAY USE YOUR PERSONAL INFORMATION**

14.1 We will use the personal information you provide to Us to:

14.1.1 provide the Products;

14.1.2 process your payment for such Products; and

14.1.3 inform you about similar products or services that We provide, but you may stop receiving these at any time by contacting Us.

14.2 You agree that We may pass your personal information to credit reference agencies and that they may keep a record of any search that they do.

14.3 We will not give your personal data to any other third party.

## 15. **OTHER IMPORTANT TERMS**

15.1 We may transfer Our rights and obligations under these Terms to another organisation, and We will always notify you in writing if this happens, but this will not affect your rights or Our obligations under these Terms.

15.2 You may only transfer your rights or your obligations under these Terms to another person if We agree in writing.

- 15.3 This contract is between you and Us. No other person shall have any rights to enforce any of its terms. However, the purchaser of your property will have the benefit of the guarantee at Clause 6.1 if you transfer it to them, but We and you will not need their consent to cancel or make any changes to these Terms.
- 15.4 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 15.5 If We fail to insist that you perform any of your obligations under these Terms, or if We do not enforce Our rights against you, or if We delay in doing so, that will not mean that We have waived Our rights against you and will not mean that you do not have to comply with those obligations. If We do waive a default by you, We will only do so in writing, and that will not mean that We will automatically waive any later default by you.
- 15.6 These Terms are governed by English law. You and We both agree to submit to the non-exclusive jurisdiction of the English courts. However, if you are a resident of Northern Ireland you may also bring proceedings in Northern Ireland, and if you are a resident of Scotland, you may also bring proceedings in Scotland.