

## TERMS AND CONDITIONS OF PURCHASE

1. **APPLICABILITY OF TERMS AND CONDITIONS.** These terms and conditions shall govern and control all sales by “Novagard Solutions”, Foam Seal, Inc. and NSCG, Inc., herein called “Seller”, unless otherwise expressly agreed to in writing and signed by Seller at its home office in Cleveland, Ohio, by an authorized agent. The accompanying quotation or confirmation of sale issued by Seller and these terms and conditions comprise the entire agreement between the parties and supersede all other prior or contemporaneous understandings and agreements, both written and oral. Terms and conditions contained in Buyer’s purchase order, or any other writing in which Buyer manifests its intent to purchase, that are different from, in addition to, in conflict with or otherwise vary the terms herein are hereby objected to and shall not be binding on Seller. Buyer shall be deemed to have agreed to all terms and conditions contained herein by issuing a purchase order number and upon receipt from Seller of a written acknowledgement of Buyer’s placement of an order. If for any reason, Seller’s Quotation is deemed an acceptance of an offer made by Buyer, such acceptance is expressly conditioned on Buyer’s assent to the terms herein which assent shall be evidenced by the earlier of Buyer’s acceptance of items delivered by Seller or any other performance by Buyer hereunder.

2. **QUOTATIONS, ORDERS AND PRICES.** All prices and specifications set forth on the face of Seller’s Quotation are subject to change without notice, unless expressly indicated otherwise on the face of the Quotation. All quotations on Seller’s standard catalog items are made subject to prior sale of such goods.

3. **TAXES.** Seller’s prices do not include any Federal, state or local taxes or fees or any custom, export, import, wharfage or associated dues or duties, and any such taxes or fees now in effect or hereafter levied shall be in addition to such prices and shall be paid by the Buyer. Buyer shall defend, indemnify and hold Seller harmless from and against any and all such taxes and fees including, without limitation, any cost expense, attorney’s fees, interest or penalty assessed against or incurred by Seller as a result of Buyer’s failure to pay and such taxes or fees.

4. **SHIPMENT, FREIGHT AND DELIVERY.** Unless otherwise agreed by Seller in writing, all domestic prices are F.O.B. point of shipment with freight collect or prepaid and added to the invoice. All international sales (outside the United States) are Ex Works point of shipment with freight collect or prepared and added to the invoice. Special packing, shipping and transportation charges resulting from compliance with Buyer’s request with respect to the use of any agency or method of transportation other than which would otherwise have been designated by Seller, shall be paid by Buyer. In the event Buyer elects to pick up its purchase at Seller’s plant or warehouse, said plant or warehouse shall be deemed the point of shipment. Seller’s placement of the purchased goods at the point of shipment in the possession of a trucking company railroad company or other common carrier or on Buyer’s vehicle shall constitute delivery to the Buyer, and thereafter Buyer shall bear all expense and risk of loss.

Seller may, in its sole discretion, without liability or penalty, make partial shipments of goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

5. SHIPPING ESTIMATES. Shipping estimates made to Buyer shall date from receipt by Seller of Buyer's complete and final instructions. Shipping date of goods requiring inspection by the buyer before shipment will be extended by the time consumed by any such inspection.

6. TERMS. Unless otherwise agreed by Seller in writing, net thirty (30) days from date of Seller's invoice. A service charge of one and one-half percent (1.5%) per month will be added to all past due invoices, but only to the extent lawfully chargeable.

7. FINANCIAL RESPONSIBILITY. Notwithstanding any provision herein to the contrary, Buyer's financial responsibility is at all times subject to approval of Seller's Credit Department, and Seller at any time may require payment in advance or satisfactory security or guarantee that invoices will be paid promptly when due. If Buyer fails to comply with any terms of payment, Seller may withhold any further deliveries or terminate this Agreement, and any unpaid amount thereupon shall be due and owing immediately.

8. DEVIATIONS IN AMOUNTS MANUFACTURED; SUBSTITUTIONS AND MODIFICATIONS. Goods manufactured by Seller to meet Buyer's instructions, specification or requirements are subject to a plus or minus deviation of five percent (5%) in quantity. Seller shall have the right to make substitutions and modifications in and to the items delivered hereunder so long as such substitutions or modifications do not or will not, in Seller's judgment, materially impair the overall performance of the items. Buyer shall not be entitled to object to or reject the goods or any portion of them by reason of the surplus or shortfall and shall pay for such goods the price set forth in the sales confirmation adjusted pro rata.

9. ACCEPTANCE. Buyer shall notify Seller of any defect, error or shortage in any items received by Buyer in writing, within thirty (30) days after deliver thereof, and said written notice must state the applicable Seller Order Number and must be accompanied by any documents or support that substantiates the alleged defect, error or shortage. If Buyer fails to provide Seller with timely written notice of any such defect, error or shortage and the documents or papers in support thereof and the applicable Seller Order Number, Buyer shall be deemed to have waived such defect, error or shortage and shall be deemed to have accepted the items delivered.

10. BUYER'S AGREEMENT TO DEFEND. If any goods are manufactured or sold by Seller to meet Buyer's instructions, specification or other requirements and such goods are not included among Seller's standard catalog items offered by it to the trade generally in the usual course of its business, Buyer agrees to defend, indemnify and hold Seller harmless from and against any and all loss, cost, damage, liability or expense (including, without limitation, any penalties or punitive damages, attorneys' fees and expenses and cost of suit) arising out of the manufacture, sale or use of such goods, including, without limitation, claims for actual or alleged infringements of any United States or foreign patent or copyright, or any actual or alleged unfair competition resulting from similarity in design, trademark or appearance.

Seller shall supply buyer with catalogs, specifications, instructions and recommended installation procedures pertaining to goods sold to Buyer. However, Buyer alone shall be responsible for the proper training, instruction and supervision of its contractors, employees, agents or purchasers with respect to

the safe and correct use and application of such goods.

If any goods sold to Buyer are not used by Buyer in accordance with Seller's catalogs, specifications, instructions and recommended installation procedures, Buyer agrees to defend, indemnify and hold Seller harmless from and against any and all loss, cost, damage, liability or expense (including, without limitation, costs of suit and attorney's fees and expenses) arising out of or relating to or resulting in any way from such use by Buyer.

11. NOTIFICATION OF ACCIDENT OR MALFUNCTION. Buyer shall in writing, notify Seller promptly, and in any event within thirty (30) days, of any accident or malfunction involving Seller's product which results in personal injury or damage to property and shall cooperate fully with Seller in investigating and determining the cause of such accident or malfunction. In the event that Buyer fails to give such written notice to Seller and to so cooperate, Buyer agrees to defend, indemnify and hold Seller harmless from and against any and all loss, cost, damage, liability or expense (including, without limitation, costs of suit and attorneys' fees and expenses) arising out of or relating to or resulting in any way from such accident or malfunction.

12. TOLERANCES AND VARIATIONS. Except in the particulars specified by Buyer and expressly agreed to in writing by Seller, the goods being sold to Buyer shall be produced in accordance with Seller's standard practices. All goods, however, including those produced to meet an exact specification, shall be subject to tolerance and variations consistent with good manufacturing practices in regard to dimension, weight, section composition, mechanical and electrical properties, to normal variations in surface and internal conditions and in quality; and to deviations from tolerances and variations consistent with practical testing and inspection methods.

13. WARRANTY AND DISCLAIMERS OF WARRANTY. Seller warrants to Buyer that the goods supplied hereunder will be free from material defects in material and workmanship under normal and proper usage for a period of one year from the date of manufacture by Seller, except for PVC – Foam products with adhesive which the Seller warrants for a period of six months. The foregoing warranty shall not cover and Seller makes no warranties with respect to (i) any good that have been subject to abuse, misuse, misapplication, neglect, and/or alterations, to improper or incorrect installation or maintenance; or to abnormal conditions of use, temperature, moisture, dirt or corrosive matter; and (ii) any materials, parts, goods or other components that are manufactured by someone other than Seller.

**THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER IMPLIED OR OTHERWISE ARISING BY OPERATION OF LAW, TRADE, USAGE OR COURSE OF DEALING, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

Buyer shall provide Seller with written notice of any breach of the warranty set forth above within thirty (30) days after Buyer discovers, or should have discovered, the alleged breach. Time is of the essence herein, and Buyer's failure to provide timely written notice to Seller of any alleged breach of the foregoing warranty shall fully and completely release and discharge Seller from any obligation or liability for that breach of warranty. The foregoing warranty extends only to Buyer and to no other person.

14. REMEDIES AND LIMITATIONS OF REMEDIES. In the event of any material breach of the warranty set forth above, Seller shall, at its sole option, credit Buyer's account or repair any defective goods or furnish a replacement part or goods, all subject to Buyer timely providing the required written notice of the alleged breach.

THE REMEDIES SET FORTH HEREIN SHALL BE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO BUYER SO THAT SELLER'S CREDIT OF BUYER'S ACCOUNT OR REPAIR OR REPLACEMENT IS A FULFILLMENT OF ALL SELLER'S OBLIGATIONS. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

If requested by Seller, the goods alleged to be defective shall be returned to Seller, at its direction and expense, for examination. No goods are to be returned to Seller without its prior written authorization. If Seller discovers that any goods so returned are not covered by the foregoing warranty, Seller reserves the right to charge Buyer for all transportation costs and expenses incurred by Seller in examining, processing or handling such goods. Any controversy or claims arising out of or relating to this contract or the breach hereof, must be commenced within two (2) years after the cause of action has accrued.

15. FORCE MAJEURE. Seller shall not be liable for any default in the production or delivery of any goods when such default or delay results whether directly or indirectly from: (a) accidents to or breakdowns or mechanical failure of Seller's plant machinery or equipment; strikes or other labor troubles or labor shortages; fire; flood; wars; acts of the public enemy; acts of God; delays by any supplier, delays in transportation or lack of transportation facilities; embargoes; shortages of, or reductions of other acts required or requested by Federal, state or local governments, or any subdivision, bureau or agency thereof; or (b) any other cause beyond the control of Seller. SELLER SHALL NOT BE LIABLE FOR ANY LOSS, COST, PENALTY OR ANY CONSEQUENTIAL, INCIDENTAL, OR OTHER DAMAGES OF ANY KIND OCCASIONED BY OR ARISING OR RESULTING FROM ANY DEFAULT OR DELAY IN DELIVERY BY SELLER WHETHER OR NOT SAID LOSS, COST, PENALTY OR DAMAGE WAS REASONABLY FORESEEABLE.

16. CANCELLATION. Orders shall not be cancelable by Buyer for delays in delivery or other cause until written notification of such intention has been received by Seller. In any event, however, Buyer shall be obligated to accept and pay for any goods previously shipped to its order, and to pay cancellation charges based on expenses incurred or commitments made by Seller for any goods which are in the process of manufacture especially for Buyer. Seller reserves the right on orders for all standard stock items cancelled by Buyer to apply a minimum cancellation charge of \$50.00 or 25% of

the purchase price of the unshipped portion of the order, whichever is greater.

17. RETURNS. No goods may be returned without first having secured prior written authorization from Seller's home office, Cleveland, Ohio. Only non-obsolete standard stock items in original cartons may be returned, freight prepaid. Return requests must be initialed within one year from date of original shipment. Such requests will follow the same channels as order placement. Returns will be subject to factory inspection for resalability and for quantity before credit, which will be applicable to replacement or future purchase by Buyer, is issued. Seller reserves the right to apply minimum restocking charge of \$50.00 or 25% of the purchase price of the returned materials, whichever is greater, plus original freight charges to all returns.

18. GOVERNING LAW; SUBMISSION TO JURISDICTION. The rights of Seller and Buyer and the construction of these terms and conditions shall be governed by the laws of the State of Ohio, without giving effect to principles of conflict of laws. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Ohio, in each case located in Cuyahoga County, Ohio, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

19. NOTICES. Any notice to Seller required or permitted hereunder shall be deemed to have been effectively delivered if in writing and served by personal delivery to Seller or sent by registered or certified mail with return receipt requested (or such form of mail as may be substituted therefore by postal authorities), postage prepaid, to Seller at the address specified on the front page hereof and marked ATTN: Finance Department.

20. NO WAIVER. The failure of either party to insist in any one or more instances upon a strict performance of any of the terms, conditions and covenants hereof shall not affect or in any way impair the right of such party to require a strict performance of any such term, condition or covenant in the future; nor shall the waiver by either party of a breach of any term, condition or covenant hereof in any instance be construed or held to be a waiver of such term, condition or covenant, or any succeeding breach of the same, or any other term, condition or covenant hereof.

21. BINDING EFFECT; NO THIRD PARTY BENEFICIARIES. These terms and conditions shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. These terms and conditions and any related agreement are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever.

22. SEVERABILITY. Each provision hereof shall be severable, and in the event any provision hereof is held to be contrary to law, invalid or unenforceable, the remaining provisions shall not be affected thereby, but shall remain in full force and effect.

23. HEADINGS. The paragraph headings herein are solely for the convenience of and reference by the parties and do not constitute any part of these terms and conditions.

24. CONFIDENTIALITY. Buyer shall consider all information furnished by or obtained from Seller in

connection with the sale of goods hereunder to be confidential and shall not (i) disclose any such information to any other person, or (ii) use such information for any purpose, other than performing this contract.

25. SECURITY INTEREST. To secure Buyer's obligations arising hereunder and any other obligations of Buyer to Seller howsoever created Buyer hereby grants and conveys to Seller a security interest in and to the goods delivered to Buyer hereunder, any other goods delivered to Buyer and the proceeds of the foregoing. Upon Seller's request, Buyer shall execute financing statements and any other documents that Seller deems reasonably necessary to perfect its security interest. The security created hereby shall terminate with respect to any goods returned to Seller pursuant to the foregoing paragraphs captioned "Remedies and Limitation of Remedies" and "Returns."

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