

## UK TERMS AND CONDITIONS OF SALE

In the text that follows, the Company supplying products and/or services is referred to as 'the Seller', the firm or company ordering or purchasing products and/or services from the Seller as 'the Customer'.

### 1. General

1.01 Unless a duly authorised representative of the Seller expressly agrees otherwise in writing, all tenders for products, coatings to be applied, materials or equipment to be supplied ('Products'), or services rendered ('Services') by or through the Seller are offered subject to the following express terms and conditions, which shall apply to the exclusion of any other terms and conditions, including the conditions of purchase (if any) notified to the Seller by the Customer.

1.02 No conduct by the Seller shall be deemed to constitute acceptance of any other terms or conditions. No contract shall arise until the Customer's order has been accepted in writing by the Seller.

1.03 These terms and conditions supersede all previous oral or written representations, undertakings or agreements relating to Products and/or Services. The Seller's employees and agents are not authorised to make representations or give undertakings relating to the Products and Services.

### 2. Quotations

2.01 All quotations are subject to confirmation by the Seller on acceptance of any order placed. In the event of articles supplied by the Customer for coating or other processing being in unsuitable condition, or in quantities below the quoted minimum, the right of the Seller to alter the quotation subsequently is reserved.

2.02 Unless otherwise expressly agreed in writing by the Seller, all quotations and prices shall be valid for a period not exceeding 30 days from date of issue.

2.03 After 30 days, quoted prices may be varied by the Seller in accordance with market conditions as at the date of the Seller's actual supply or processing of Products, and in the event of any increase the Customer shall pay such an increase. Without prejudice to the generality of the foregoing, 'market conditions' shall include any increase or decrease in the cost of labour and/or materials and/or transport.

2.04 In the case of Products of the Seller's manufacture, except where otherwise expressly stated, a shortage or surplus not exceeding 10 per cent will be considered due execution of any order. In such cases, the Seller will adjust the price of the Products proportionately. Colours will be subject to reasonable variation.

2.05 The Seller will use all reasonable endeavours to ensure that coating materials applied by the Seller to articles provided by the Customer shall comply with the minimum thickness or weight specified by the Customer but the Seller reserves the right to exceed such minimum thickness or weight. In the event that no minimum specification of weight or thickness is specified by the Customer, orders will be deemed to have been duly executed by the Seller if the weight or thickness of the coating applied by the Seller to the articles supplied by the Customer is within 30 per cent of the nominal thickness or weight specified in the Seller's quotation.

### 3. Erection and Commissioning of Equipment

3.01 Unless specified the price quoted does not include charges for erection, installation or commissioning. These charges are payable by the Customer.

3.02 Where the tender specifies erection or installation the Customer will provide:

- (a) Suitable premises, foundations and building work as required.
- (b) Free access to site to the Seller's engineer(s).
- (c) Lifting tackle, tools and labour as designated in the tender, when required.
- (d) Mains supply services and connection to the terminal points of the equipment.
- (e) Discharge and extraction systems from the equipment.

3.03 The Seller shall determine the number and style of engineer(s) to install the equipment and he or they shall be responsible only to the Seller. Any complaint against the engineer(s) shall be made in writing to the Seller.

3.04 The Seller shall not make any alteration to any building or machine other than is specified in the quotation except by prior agreement with the Customer.

3.05 The Seller accepts no responsibility or liability either at common law or under statute for men employed to assist in the installation except those engaged and paid by the Seller and the Customer shall indemnify, and keep indemnified, the Seller against any claims brought against it. Every care will be taken during installation, but no responsibility will be accepted for any accidental damage which may occur during progress of the work to the Customer's property, or that of third parties, or for any damage or loss (including consequential loss) arising directly or indirectly from such installation.

3.06 Unless otherwise stated the Seller does not accept responsibility for the performance of equipment if used with material not supplied and specified by the Seller.

### 4. Descriptions Designs and Tools

4.01 Unless otherwise expressly agreed in writing by the Seller, all descriptions, illustrations and performance details contained in its catalogues and advertisements and all other statements made by the Seller with regard to Products and Services are intended for information only and shall not form part of any quotation, order or contract.

4.02 All drawings, designs and specifications shall remain the Seller's property and shall not be disclosed, given, copied, loaned, or sold to any third party without the Seller's consent.

4.03 The Customer shall be wholly responsible (in respect of copyright, trade marks, design, all common law and statutory rights and otherwise howsoever) for any Services which he instructs the Seller to perform, and for any design, sketch, drawing, painting, construction work or thing which he supplies and/or instructs the Seller to supply or execute, and for all claims by third parties arising therefrom: and the Customer shall keep the Seller indemnified against all proceedings, claims, costs, expenses and liability whatsoever in respect thereof. The costs of experimental work, incorporating parts or things supplied by the Customer, or carried out at his request, shall be chargeable to the Customer, whether or not the finished article is suitable for the purpose intended.

4.04 Mould tools manufactured by the Seller, on behalf of the Customer, shall remain the property of the Seller at all times and property in such moulds and tools shall only vest in the Customer if they have been charged and paid for by the Customer on a 'full tool cost' basis. 'Part tool costs' paid by the Customer shall not entitle him to claim ownership. The Seller shall be a fiduciary agent and gratuitous bailee of the said tools, and while taking all reasonable care to protect them against loss, damage or destruction (excluding fair wear and tear, and obsolescence) shall not be held liable for such loss, damage or destruction unless negligence can be proved. Without prejudice to the generality of the foregoing any such tools or moulds which are not used for more than three years may be destroyed or otherwise disposed of at the sole discretion of the Seller, without incurring any liability to the Customer.

### 5. Delivery

5.01 Unless otherwise specified the price quoted is ex-works, carriage and packing extra at cost. Except as specified below no responsibility for damage or deterioration to any Products will be accepted once they have left the Seller's premises.

5.02 Where Products are quoted F.O.B. the Seller's responsibility shall cease when the Products are placed on board ship. Where Products are quoted C.I.F. the Seller reserves the right to send the Products by the cheapest method and route.

Where additional charges are incurred at the Customer's request, following consignment of Products by other than the cheapest method or route, or to a different destination than quoted for, the Seller reserves the right to recover these additional costs from the Customer.

5.03 Except for Products quoted C.I.F. the Seller reserves the right to consign Products by any route and in any number of lots, and where Products are to be consigned in two or more lots (either on one or more than one invoice) proper payment of each invoice in accordance with the terms thereon printed shall be a condition

precedent to further deliveries. Each delivery shall constitute a separate contract and any failure or defects in any one delivery shall not vitiate the contract as to the remaining deliveries.

5.04 Where Products are conveyed other than by the Seller's own transport, they are in all cases consigned at the Customer's risk and will not be insured in transit except at the Customer's request and cost. While any items belonging to the Customer are on the Seller's premises or in transit they are at the Customer's risk and should be kept fully insured by the Customer unless otherwise expressly agreed in writing by the Seller.

5.05 Where contracts provide for a specified delivery date, and Products are ready on that date, any deferment of the delivery at the request of the Customer shall not prejudice the issuing of invoices as if the Products had been despatched on the appointed day, and further invoices may be raised for storage costs, and Products being held at the Customer's risk. Time of delivery is not of the essence.

5.06 The times given for delivery are approximate, and without guarantee. Time of delivery is not of the essence and the Seller whilst using its best endeavours to comply with these times accepts no liability for failure to deliver any goods on a stated date.

5.07 Should the Customer require the Seller to make delivery of an order earlier than the agreed date, every effort will be made to achieve this but reasonable allowance must be made by the Customer in such cases. Should such delivery necessitate the working of overtime, or other additional costs, a charge will be made to cover such costs.

## 6. Defects

6.01 (a) The Seller will replace or repair at its option any of its coatings or Products proved to its reasonable satisfaction to have broken down or developed faults within 3 months of delivery by reason of defects in processing, or in materials used.

(b) The Seller will replace or repair at its option any defective equipment or part thereof of its manufacture, which proves to be defective within a period of 6 months from delivery by reason of defective material or faulty workmanship (fair wear and tear excepted) or

(c) the Seller will replace any raw materials of its manufacture which prove to be defective within a period of 30 days of delivery by reason of defective material or faulty workmanship.

(d) In the event that the Seller may require for inspection all or part of allegedly defective Products, the return to the Seller's premises of these items shall be at the expense of the Customer.

6.02 Any material or equipment not of the Seller's manufacture is sold under such warranty only (if any) as the makers give the Seller provided the Seller is able, without expense, to enforce it but such material or equipment is not guaranteed by the Seller in any way. The Customer shall co-operate in the settlement of disputes with other suppliers.

6.03 The Customer shall inspect the Products upon delivery and shall be deemed to have accepted them unless it gives notice of alleged defects in writing within 10 days of receipt of goods or materials supplied, failing which no responsibility for replacement will be accepted. In the event that the Seller accepts responsibility, it shall be allowed a reasonable time to remedy the defect or failure.

6.04 Every endeavour will be made to ensure the highest standard of materials and workmanship, but no guarantee or warranty is given or implied by the Seller in respect of any Products or Services. This restriction applies (without limitation) to the design, efficiency or suitability of the Products for any purpose whatsoever, and to the conditions under which the Products may safely be used.

6.05 Save as expressly provided in these terms and conditions, all other warranties, conditions or other terms whether express or implied by statute, common law, trade usage or the conduct of the parties including (but not limited to) those relating to the quality of the Products or Services, their fitness for any particular purpose, their correspondence with description or sample are excluded to the fullest extent permitted by law.

## 7. Payment

7.01 Payment shall be made in accordance with the Conditions stated in the Seller's Tender or Quotation. Time of payment is of the essence. In the event of payment being made in a currency other than Sterling no account shall be taken of any revaluation or devaluation of Sterling and/or such other currency between the date of the quotation and the date of payment, and the rate of exchange as between Sterling and such other currency ruling at the time of quotation shall apply.

7.02 Where the contract is executed by separate deliveries the Seller reserves the right to claim payment for each delivery.

7.03 The Seller may charge interest (both before and after judgement) on overdue accounts at the rate of 3% over the base rate from time to time of the Seller's bank compounded monthly from the date on which the account falls due to the date on which payment is received by the Seller.

7.04 In the event of a Customer failing to make payment against any invoice at the time stated in the Seller's tender or quotation, the Seller shall be entitled to delay, suspend or cancel any further deliveries to that Customer, and to retain any of the Customer's goods or Products in its hands without prejudice to any other rights to which the Seller may be entitled. The Customer shall indemnify the Seller fully against all fees, costs and expenses incurred in collecting any sum payable by the Customer.

7.05 Notwithstanding any other provision of the contract (express or implied), property in the Products shall not pass to the Customer and legal and beneficial ownership thereof shall remain vested in the Seller until the Seller has received in cash or cleared funds, payment in full of the price of the Products (together with all other amounts, including interest & taxes, payable in respect thereof) and all other sums due from the Customer to the Seller on any other account whatsoever. Nothing contained in this condition shall affect the passing of risk of loss or damage to the Products which shall pass at the time provided in the foregoing conditions. Until such time as the property in the Products passes to the Customer -

(a) the Customer shall hold the Products as the Seller's fiduciary agent and bailee; and

(b) the Customer shall keep the Products separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Seller's property.

(c) the Seller may at any time enter upon any land or buildings on which the Products are or the Seller believes the Products may be situated to inspect and/or repossess the same;

(d) the Seller shall be entitled, where the Products have been fixed or attached to any other product, to detach the Products in order to recover possession of them;

(e) except for a sale or use of the Products in the ordinary course of its business (where the Customer shall hold the proceeds of sale on trust for the Seller) the Customer shall not otherwise (and shall not purport to) sell, mortgage, encumber or part with possession of the Products nor allow any lien or other encumbrance to arise over the Products.

7.06 Crates, cases and packing materials where invoiced to Customers must be paid for at the invoicing prices, irrespective of damage occurring in transit, unless returned in good condition, carriage paid, to the Seller's premises before the time for payment of the Invoice. Packing materials specified as 'nonreturnable' must not be returned to the Seller.

7.07 Any sums becoming due on a contract in respect of a bulk order or otherwise where payments are to be spread over a period shall be immediately due and payable in full in the event of a Customer (being a Company) going into liquidation, or (being an individual) having a receiving order made against him, or purporting to give or create any mortgage or charge over the Products supplied by the Seller or having committed an act of bankruptcy.

## **8. Limitations**

8.01 The remedies of the Customer set forth herein are exclusive and in lieu of all other rights and remedies available to the Customer under contract, statute, tort at law or otherwise.

8.02 Nothing in these terms and conditions shall exclude or limit the Seller's liability under Part 1 of the Consumer Protection Act 1987 or for death or personal injury resulting from the Seller's negligence or for any breach of its obligations under section 12 of the Sale of Goods Act 1979 (as amended).

8.03 The liability of the Seller, its employees and agents to the Customer in respect of any direct damage to the Customer's physical property caused by the Seller's negligence shall be limited to £50,000 in respect of any single event or series of connected events.

8.04 In all other cases, the aggregate liability of the Seller, its employees and agents for any claims of the Customer whether in contract, tort (including negligence or breach of statutory duty) or otherwise however shall in no event exceed the price of the Products or Services with respect to which such claim is made.

8.05 The Seller, its employees and agents shall not in any circumstances be liable for any indirect, consequential, economic or special loss or damage including without limitation loss of contracts, revenue, profits, goodwill, anticipated savings and loss arising from any third party claim.

## **9. Claims and Disputes**

9.01 Any Customer wishing to make a claim alleging shortage in respect of Products, Services or materials processed by the Seller, shall give notice in writing within 3 days of delivery of the Products, stating fully the grounds of that claim.

9.02 The contract shall be deemed to have been made in England and will be governed in all respects by the laws of England. The parties to the contract hereby submit to the nonexclusive jurisdiction of the English courts.

## **10. Force Majeure**

10.01 The Seller shall not be liable to the Customer or be deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Products or Services to be supplied under the contract, if the delay or failure was due to any cause beyond the Seller's reasonable control including without limitation any Act of God, explosion, flood, tempest, fire or accident; war; prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

## **11. General**

11.01 These terms and conditions may only be varied in writing signed by a duly authorised representative of the Seller. No delay or failure by the Seller in enforcing its rights under these terms and conditions shall be deemed to be a waiver of such rights. No waiver by the Seller of any breach of the contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.02 If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.