

Conditions of business — East Midland Coatings Limited

1. DEFINITIONS

1.1 In these Conditions:

- 1.1.1 “**Conditions**” means these terms and conditions;
- 1.1.2 “**Contract**” means the contract between EMC and the Customer under which the Services are supplied;
- 1.1.3 “**Customer**” means the person, firm or company to whom EMC provides the Services;
- 1.1.4 “**Customer Products**” means the goods, material and items provided by the Customer and in respect of which EMC is to provide the Services;
- 1.1.5 “**EMC**” means East Midland Coatings Limited (Company Number 01825193);
- 1.1.6 “**Materials**” means coatings, goods and any other materials supplied by EMC;
- 1.1.7 “**Order**” means the Customer's order for the Services;
- 1.1.8 “**Price**” means the price for the Services as set out in EMC's quotation;
- 1.1.9 “**Services**” means the coating and other related services provided by EMC including all Materials supplied by it.

2. FORMATION OF CONTRACT

- 2.1 A quotation from EMC is not an offer and, unless it states otherwise, is only valid for a period of 90 days from its date.
- 2.2 Each Order is an offer by the Customer to buy Services in accordance with these Conditions.
- 2.3 An Order is deemed to be accepted by EMC when (and at the earliest of):
 - 2.3.1 it is accepted by EMC in writing;
 - 2.3.2 EMC starts to perform the Services ordered; and
 - 2.3.3 EMC invoices for those Services.
- 2.4 These Conditions are incorporated into the Contract to the exclusion of any terms or conditions including any stipulated or referred to by the Customer.
- 2.5 Except as expressly stated otherwise in it, no variation or amendment to the Contract, or oral promise or commitment related to it, is valid unless approved by an EMC director in writing.

3. PRICES

- 3.1 The Price excludes packing, insurance and carriage, VAT and other taxes or duties, all of which the Customer is liable to pay for in addition to the Price.
- 3.2 The Price assumes the Customer Products are received by EMC in a clean, self-colour condition and may be increased by EMC if they are not (or if any condition in EMC's quotation, such as anodization, is not satisfied).
- 3.3 The Price invoiced is calculated in respect of the quantity of Services actually delivered, irrespective of the quantity specified in any quotation issued or included in any Order.
- 3.4 EMC may adjust its prices to take account of any increase in the cost of materials, parts, labour, transport, changes in work lead times, product dimensions or amounts, specifications or any other unforeseen costs or additional duties of any kind arising for any reason after the date of the Contract. Price changes under this Condition 3.4 shall take effect on the date of service on the Customer of notice of the change but shall only apply to the uncompleted portion of the Contract.

4. PAYMENT

- 4.1 Invoices are payable in pounds sterling by pro-forma status or, if agreed by EMC in writing, are due and shall be paid within 30 days after the last day of the month in which the invoice

was raised. In no circumstances may the Customer make any deduction or withhold payment for any reason at all.

- 4.2 The Customer has 14 days from receipt to query an invoice, following which it is deemed to be correct and accepted.
- 4.3 Without prejudice to any other rights of EMC, if the Customer fails to pay the invoice price by the due date, EMC may:
 - 4.3.1 demand that the Customer shall pay interest on any overdue amount from the date on which payment was due, to the date of actual payment (whether before or after judgment) on a daily basis at a rate of 4% p.a. over the Bank of England base lending rate current at the time and shall reimburse to EMC all costs and expenses (including legal costs) incurred by EMC in pursuing collection of any overdue amount; and
 - 4.3.2 suspend further performance of the Contract.
- 4.4 EMC shall have a lien on all the Customer's Property in EMC's possession for all amounts due at any time from the Customer and may use, sell or dispose of it as agent for and at the expense of the Customer and apply the proceeds towards the payment of such amounts on 28 days' notice in writing to the Customer. On accounting to the Customer for any balance remaining after payment of any amounts due to EMC and the costs of sale or disposal, EMC shall be discharged of any liability in respect of the Customer's Property.

5. CANCELLATION OF CONTRACT

- 5.1 EMC may at its discretion suspend or terminate the supply of the Services, and the Contract, if the Customer fails to make any payment when and as due, or otherwise defaults on any of its obligations under the Contract or any other document with EMC, or becomes insolvent, has an administrative receiver appointed of its business, or is compulsorily or voluntarily wound up, or ceases or threatens to cease trading, or EMC bona fide believes that any of those events may occur, and in case of termination may forfeit any deposit paid.

6. CUSTOMER PRODUCTS

- 6.1 The Customer is responsible for delivering Customer Products to EMC's premises at Barleyfield, Hinckley Fields, Industrial Estate, Hinckley, Leicestershire LE10 1YE (or such other premises as it may notify to the Customer).
- 6.2 Unless EMC agrees otherwise:
 - 6.2.1 the Customer is responsible for providing adequate packaging for the Customer Products to ensure that they are suitably protected and are safe for handling;
 - 6.2.2 EMC is only obliged to take receipt of the Customer Products during EMC's normal hours; and
 - 6.2.3 the Customer shall notify EMC of any special precautions which must be taken, or risks associated with the handling or stage of the Customer Products.
- 6.3 Risk in Customer Products remains with the Customer at all times save for damage or loss caused by the gross negligence or serious misconduct of EMC or its employees.
- 6.4 If requested to do so by EMC, the Customer shall remove from EMC's premises any Customer Products which are in the possession or control of EMC, failing which EMC may dispose of them as it thinks fit at the Customer's cost.
- 6.5 EMC is not obliged to retain or return any packaging, storage or other material which is used to deliver the Customer Products.
- 6.6 Should EMC agree to procure Customers Products for the Customer, it does so as agent, not principal, and as such shall have the rights implied in favour of the agent under law.

7. PERFORMANCE

- 7.1 The Services are deemed to have been completed when, in respect of a batch of Customer Products, EMC notifies the Customer that they are available for collection. The Customer shall then organise the collection of those Customer Products as soon as practicable.

7.2 EMC may charge for reasonable storage costs if the Customer fails to collect Customer Products on a timely basis and, ultimately, may dispose of them as described in Condition 6.4.

7.3 EMC may perform the Contract in parts or instalments and determine the sequence in which it provides its Services. Where Services are performed in instalments, no default or failure by EMC in respect of any one or more instalments shall vitiate the Contract in respect of the Services performance or not performed or entitle the Customer to withhold any payment due under the Contract.

8. TIME FOR PERFORMANCE

8.1 Any dates quoted by EMC for the performance by it of the Contract are approximate only and do not form part of the Contract.

8.2 EMC shall not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in performance from any cause at all nor shall any such delay or failure entitle the Customer to refuse to accept any performance of or repudiate the Contract.

8.3 Any claim for non-performance of the Contract shall be notified in writing by the Customer to EMC within 10 days of the date of EMC's invoice.

9. WARRANTY AND CLAIMS PROCEDURE

9.1 Subject to the remainder of this Condition 9, if EMC provides defective Services (including for these purposes because the Materials in them are not of the correct quantity, quality, dimensions, tolerances or specification or do not comply with their description) EMC shall, at its option, either:

9.1.1 reperform or otherwise remedy the Services concerned; or

9.1.2 allow the Customer credit for their invoice value.

9.2 Claims from the Customer under Condition 9.1 ("**Claims**") must be notified by the Customer to EMC:

9.2.1 within seven days of the date the Customer collects the products to which the Claim relates; or

9.2.2 in the case of any defect which is not reasonably apparent on inspection, within seven days of the defect coming to the Customer's attention; and

9.2.3 in any event within six months from the date on which EMC notifies the Customer that the Customer Products are available for collection.

9.3 Any remedial work to be carried out by EMC shall be done at its premises.

9.4 Any Claim must be in writing and must contain full details of the Claim.

9.5 The Customer shall give EMC a reasonable opportunity and facilities to investigate any Claims and the Customer shall, if so requested in writing by EMC, promptly return any Customer Products the subject of the Claim securely packed, and carriage paid to EMC for examination.

9.6 Under no circumstances shall EMC have any liability of whatever kind for:

9.6.1 any Claim in respect of which the Customer has not complied with the Claims procedures in this Condition 9;

9.6.2 any defects resulting from wear and tear, accident, improper use by the Customer or use by the Customer except in accordance with the instructions or advice of EMC or the manufacturer of any Materials;

9.6.3 adjustments, modifications or repairs to work done by EMC by anyone other than EMC;

9.6.4 the suitability of any Services for any purpose or use under specific conditions whether the purpose or conditions were known or communicated to EMC;

9.6.5 any descriptions, illustrations, specifications, figures as to performance, drawings and, weights or dimensions submitted by EMC, contained in EMC's catalogues, price lists or elsewhere, since they are merely intended to represent a general

- idea of the Services and are not to form part of the Contract or be treated as representations;
- 9.6.6 any defect arising from any design, specification or instructions provided by the Customer or arising due to the Customer's default or negligence;
- 9.6.7 differences in colour or shading between different batches of finished Customer Products or Products within a batch;
- 9.6.8 any technical information, recommendations, statements or advice furnished by EMC, its servants or agents not given in writing in response to a specific written request from the Customer before the Contract is made; or
- 9.6.9 any variations in the quantities or dimensions of any Services or Materials or changes of their specifications or substitution of any materials or components, if the variation or substitution does not materially affect their characteristics and the substituted services, materials or components, as applicable, are of a quality equal or superior to those originally specified.
- 9.7 The Customer is entirely responsible for assessing the suitability of the Services for their intended purpose, regardless of whether EMC provides any recommendations in that respect.
- 9.8 Where EMC is liable in accordance with this Condition 9 in respect of only some or part of the Services, the Contract shall remain in full force and effect in respect of the other or other parts of the Services and no set-off or other claim shall be made by the Customer against or in respect of such other or other parts of the Services.
- 9.9 In view of the commitments provided by EMC under this Condition 9, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 and sections 13, 14 and 15 of the Sale of Goods Act 1979 are excluded from the Contract to the fullest extent permitted by law.

10. LIABILITY LIMITS

- 10.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to, liability for:
 - 10.1.1 death or personal injury caused by negligence;
 - 10.1.2 fraud or fraudulent misrepresentation; and
 - 10.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 10.2 Subject to Condition 10.1:
 - 10.2.1 EMC shall have no liability to the Customer for any loss (including loss of profit or other economic loss (direct or indirect), indirect or consequential loss) or damage of any nature (howsoever caused) or loss or damage (contractual, tortious, breach of statutory duty or otherwise) arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of EMC or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract; and
 - 10.2.2 EMC's total liability to the Customer shall not exceed the total invoice value of the Contract.

11. INTELLECTUAL PROPERTY

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by EMC. For these purposes "**Intellectual Property Rights**" means patents, rights to inventions, copyright, moral rights, rights in designs, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

11.2 If Services are performed in accordance with a specification supplied by the Customer, it shall indemnify EMC against all liabilities, costs, expenses, damages and losses suffered or incurred by EMC, arising out of or in connection with any claim made against EMC for actual or alleged infringement of a third party's intellectual property rights arising as a consequence of adhering to the Customer's specification.

12. DATA PROTECTION

12.1 Each party agrees that, in connection with the performance of its respective obligations under the Contract, it shall comply with the provisions of the General Data Protection Regulation, together with the Data Protection Act 2018 and any other law applicable to the protection of personal data in effect from time to time (together, "**Data Protection Legislation**"), in each case to the extent it applies to each of them. Where used in this Condition 12, the expressions "**controller**" and "**personal data**" bear their respective meanings given in Data Protection Legislation.

12.2 For the purposes of the Data Protection Legislation, EMC is the controller of personal data it collates under this Contract and will collect that data in accordance with its Privacy Notice which can be found on its website (www.eastmidcoat.com/privacy-policy).

13. CONFIDENTIALITY

13.1 The Customer shall not at any time whether before or after the expiry or termination of the Contract divulge or use any confidential information in relation to EMC's affairs or business or method of carrying on business.

14. FORCE MAJEURE

14.1 EMC shall not be liable for any failure in the performance of any of its obligations under the Contract caused by factors outside its reasonable control. If such circumstances continue for a continuous period of more than 6 months, EMC may terminate the Contract by notice to the Customer.

15. GENERAL

15.1 EMC may sub-contract the performance of the Contract in whole or in part.

15.2 The Customer shall not assign or sub-contract (without first obtaining EMC's written consent) its rights or duties under the Contract in whole or in part and it is a deemed condition of any sub-contracting that the Customer shall ensure and be responsible for the compliance by any sub-contractor with the terms of the Contract.

15.3 Any notice given under this Contract shall be in writing and may be served:

15.3.1 personally;

15.3.2 by registered or recorded delivery mail; or

15.3.3 by any other means which any party specifies by notice to the others.

15.4 Each party's address for the service of notice shall be its above-mentioned address or such other address as it specifies by notice to the other.

15.5 A notice shall be deemed to have been served:

15.5.1 if it was served in person, at the time of service; or

15.5.2 if it was served by post, 48 hours after it was posted.

15.6 Notices may not be served by email, telex or facsimile transmission.

15.7 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition 15.7 shall not affect the validity and enforceability of the rest of the Contract.

15.8 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute

a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 15.9 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 15.10 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.11 Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract. Nothing in this Condition shall limit or exclude any liability for fraud.
- 15.12 No term of the Contract may be enforced by any person who is not a party to it or a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999.
- 15.13 The Contract is governed by English law and the Customer consents to the exclusive jurisdiction of the English courts in all matters regarding it, except to the extent that EMC invokes the jurisdiction of the courts of any other country.