

Conditions of business — East Midlands Coatings Limited

Definitions

1 In this document the following words shall have the following meanings.

'Company'	Means East Midlands Coatings Limited.
'Client'	Means the client of the Company.
'Contract'	Means any contract for the sale/supply of Goods by the Company to the Client.
'Goods'	Means any goods forming the subject of this contract including parts and components of or materials incorporated in them or coated on them or as detailed in the order form.
'Price'	Means the price as detailed on the order form.

Quotation

2 Quotations by the Company unless otherwise stated in them shall be open for acceptance within 90 days of the date of the quotation.

Existence of contract

3.1 No Contract shall come into existence until either the Client's order (however given) is accepted by the earliest of:

- the Company's written acceptance;
- delivery of the Goods; and
- the Company's invoice

3.2 These conditions shall be incorporated in the Contract to the exclusion of any terms or conditions stipulated or referred to by the Client.

3.3 Except as expressly provided for in this document no variation or amendment of this document or oral promise or commitment related to it shall be valid unless committed to writing and signed by or on behalf of both parties.

Prices

4.1 The Price for the Goods is ex-works and excludes packing, insurance and carriage, VAT and other taxes or duties and the Company reserves the right to charge the Client for packing, insurance and carriage, VAT and other taxes or duties. The Price invoiced is calculated in respect of the quantity of Goods actually delivered irrespective of the quantity in respect of which any quotation was issued.

4.2 The Company shall have the right in respect of any uncompleted portion of the Contract to adjust its prices for any increase in the price of materials, parts, labour, transport, changes in work or delivery schedules or quantities or any other costs of any kind arising for any reason after the date of the Contract.

4.3 Price changes shall take effect on the date of service on the customer of notice of the change.

Payment

- 5.1** All invoices are payable in pounds sterling within 30 days of the date stated on the Company's invoice (unless agreed otherwise in writing by the Company) and in no circumstances shall the Client be entitled to make any deduction or withhold payment for any reason at all.
- 5.2** Without prejudice to any other rights of the Company if the Client fails to pay the invoice price by the due date the Company shall be entitled to demand that the Client shall pay interest on any overdue amount from the date of 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 base rate from time to time quoted by the HSBC Bank plc and shall reimburse to the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

Title

- 6.1** For the purpose of section 12 of the Sale of Goods Act 1979 the Company shall transfer only such title or rights in respect of the Goods as the Company has and if the Goods are purchased from a third party shall transfer only such title or rights as that party had and has transferred to the Company.
- 6.2** Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Company and shall not pass to the Client until the amount due under the invoice for them (including interest and costs) has been paid in full.
- 6.3** Until title passes the Client shall hold the Goods as bailee for the Company and shall store or mark them so that they can at all times be identified as the property of the Company.
- 6.4** The Company may at any time before title passes and without any liability to the Client:
- repossess and dismantle and use or sell all or any of the Goods and by doing so terminate the Client's right to use, sell or otherwise deal in them; and
 - for that purpose (or determining what if any Goods are held by the Client and inspecting them) enter any premises of or occupied by the Client.
- 6.5** The Company may maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Client.

Risk, delivery and performance

- 7.1** The Goods are deemed to be delivered to the Client when the Company makes them available to the Client or any agent of the Client or any carrier (who shall be the Client's agent whoever pays its charges) at the Company's premises or other delivery point agreed by the Company.
- 7.2** Risk in the Goods passes when they are delivered in accordance with clause 7.1.
- 7.3** The Company may at its discretion deliver the Goods by instalments in any sequence.
- 7.4** Where Goods are delivered by instalments, no default or failure by the Company in respect of any one or more instalments shall vitiate the Contract in respect of the Goods previously delivered or undelivered Goods or entitle the Client to withhold any payment due under this Contract.
- 7.5** The Company may deliver to the Client and the Client shall accept in satisfaction of the Contract a lesser number than the number of Goods ordered.
- 7.6** Any dates quoted by the Company for the delivery of the Goods are approximate only and shall not form part of the Contract and the Client acknowledges that in the performance expected of the Company no regard has been paid to any quoted delivery dates.
- 7.7** If the Client fails:
- to take delivery of the Goods or any part of them on the due date; and

— to provide any instructions or documents required to enable the Goods to be delivered on the due date,

the Company may on giving written notice to the Client store or arrange for the storage of the Goods, and on the service of the notice:

— risk in the Goods shall pass to the Client;

— delivery of the Goods shall be deemed to have taken place; and

— the Client shall pay to the Company all costs and expenses including storage, any redelivery and insurance charges arising from its failure.

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

Claims notification

8.1 Any claim for non-delivery of Goods shall be notified in writing by the Client to the Company within 10 days of the date of the Company's invoice. The Company may deliver to the Client and the Client shall accept in satisfaction of the Contract a lesser number than the number of Goods ordered.

8.2 Any claim that any Goods have been delivered damaged, are not of the correct quantity or do not comply with their description shall be notified by the Client to the Company within seven days of their delivery.

8.3 Any alleged defect shall be notified by the Client to the Company in seven days of the delivery of the Goods or in the case of any defect which is not reasonably apparent on inspection within seven days of the defect coming to the Client's attention and in any event within six months from the date of delivery.

8.4 Any claim under this condition must be in writing and must contain full details of the claim including the part numbers and order numbers of any allegedly defective Goods.

8.5 The Company shall be afforded reasonable opportunity and facilities to investigate any claims made under this condition and the Client shall, if so requested in writing by the Company, promptly return any Goods the subject of any claim and any packing materials securely packed and carriage paid to the Company for examination.

8.6 The Company shall have no liability with regard to any claim in respect of which the Client has not complied with the claims procedures in these conditions.

Scope of contract

9.0 Under no circumstances shall the Company have any liability of whatever kind for:

9.1 any defects resulting from wear and tear, accident, improper use by the Client or use by the Client except in accordance with the instructions or advice of the Company or the manufacturer of any Goods or neglect or from any instructions or materials provided by the Client;

9.2 any Goods which have been adjusted, modified or repaired except by the Company;

9.3 the suitability of any Goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Company;

9.4 any substitution by the Company of any materials or components not forming part of any specification of the Goods agreed in writing by the Company;

9.5 any descriptions, illustrations, specifications, figures as to performance, drawings and particulars of weights and dimensions submitted by the Company contained in the Company's catalogues, price lists or elsewhere since they are merely intended to

represent a general idea of the Goods and not to form part of the Contract or be treated as representations;

9.6 any technical information, recommendations, statements or advice furnished by the Company, its servants or agents not given in writing in response to a specific written request from the Client before the Contract is made; or

9.7 any variations in the quantities or dimensions of any Goods or changes of their specifications or substitution of any materials or components, if the variation or substitution does not materially affect the characteristics of the Goods, and the substituted materials or components are of a quality equal or superior to those originally specified.

Extent of liability

10.1 The Company shall have no liability to the Client 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 the Company or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract except:

- for death or personal injury resulting from the Company's negligence;
- fraudulent misrepresentation; and
- as expressly stated in these conditions.

10.2 If the Client notifies in writing to the Company that:

10.2(a)

(i) within a period of seven days following that due date of delivery, any Goods have not been delivered; or

(ii) within a period of seven days after any Goods have been delivered such Goods have been delivered damaged or do not comply with their description,

then the Company shall, at its option, replace with similar goods any Goods which are missing, lost or damaged or do not comply with their description, allow the Client credit for their invoice value or repair any damaged Goods;

10.2(b) within a period of seven days after any Goods have been delivered such Goods are defective the Company shall, as its option, replace with similar goods or repair any defective Goods, allow the Client credit for their invoice value or to the extent that the Goods are not of the Company's manufacture, assign to the Client (so far as the Company is able to do so) any warranties given by the manufacturer of the Goods to the Company.

10.3 The delivery of any repaired or replacement Goods shall be at the Company's premises or other delivery point specified for the original Goods.

10.4 Where the Company is liable in accordance with this condition in respect of only some or part of the Goods the Contract shall remain in full force and effect in respect of the other or other parts of the Goods and no set-off or other claim shall be made by the Client against or in respect of such other or other parts of the Goods.

10.5 No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Client or if any adjustments, alterations or other work has been done to the Goods by any person except the Company.

10.6 The Company shall not be liable where any Goods, the Price of which does not include carriage, are lost or damaged in transit and all claim's by the Client shall be made against the carrier. Replacements for such lost or damaged Goods will, if available, be supplied by the Company at the prices ruling at the date of despatch.

10.7 In no circumstances shall the liability of the Company to the Client under this condition exceed the invoice value of the Goods.

General

11.1 The Company may sub-contract the performance of this document in whole or in part.

11.2 The Client shall not assign or (without first obtaining the Company's written consent) sub-let this document or the Contract in whole or in part and it shall be a condition of any such consent to any sub-letting of this document or the Contract that the Client shall:

- ensure and be responsible for the compliance by any sub-contractor with the terms of this document or the Contract;
- include in the sub-contract provisions consistent with these conditions for the benefit of and enforceable by the Company; and
- furnish the Company with copies of any sub-contract upon the Company's request at any time.

11.3 The Company shall have a lien on all the Client's property in the Company's possession for all amounts due at any time from the Client and may use, sell or dispose of that property as agent for and at the expense of the Client and apply the proceeds in and towards the payment of such amounts on 28 days' notice in writing in the Client. On accounting to the Client for any balance remaining after payment of any amounts due to the Company and the costs of sale or disposal the Company shall be discharged of any liability in respect of the Client's property.

11.4 The Company may at its discretion suspend or terminate the supply of any Goods if the Client fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other document with the Company 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 the Company bona fide believes that any of those events may occur, and in case of termination may forfeit any deposit paid.

11.5 If the Goods are coated in accordance with any design or specification provided or made by the Client the Client shall compensate the Company in full on demand for all claims, expenses and liabilities of any nature in connection with them, including any claim, whether actual or alleged, that the design or specification infringes the rights of any third party.

11.6 Except for any which is expressly agreed to be included in the Goods all tools, patterns, materials, drawings, specifications and other data provided by the Company shall remain its property and all knowledge and other technical information, patentable or unpatentable, copyright and registered designs and all other intellectual property rights arising from the execution of any orders shall become the property of the Company.

Confidentiality

12 The Client shall not at any time whether before or after the termination of this document or the Contract divulge or use any confidential information in relation to the Company's affairs or business or method of carrying on business.

Cancellation

13 Orders for Goods which have to be made especially for the Client will be charged in full unless written notice of cancellation is received not later than 8 weeks before the expected delivery date quoted by the Company and coating of them or any components for them has not commenced at the date of that notice. Orders for stock items may be cancelled by written notice at any time before the Goods are allocated to the Contract but if a cancellation notice is received after the Goods have been allocated to the Contract then a packing and handling charge will be payable by the Client.

Force majeure

14 The Company shall not be liable for any failure in the performance of any of his obligations under this document caused by factors outside his control. If such circumstances continue for a continuous period of more than 6 months, either party may terminate this agreement by written notice to the other party.

Law and jurisdiction

15 This document shall be governed by English law and the Client consents to the exclusive jurisdiction of the English courts in all matters regarding it except to the extent that the Company invokes the jurisdiction of the courts of any other country.

Notices

16.1 Any notice given under this deed shall be in writing and may be served:

- personally;
- by registered or recorded delivery mail; or
- by any other means which any party specifies by notice to the others.

16.2 Each party's address for the service of notice shall be his above mentioned address or such other address as he specifies by notice to the others.

16.3 A notice shall be deemed to have been served:

- if it was served in person, at the time of service;
- if it was served by post, 48 hours after it was posted.

16.4 No notices may be served by email, telex or facsimile transmission.

Third parties

17 Pursuant to s 1(2)(a) of the Contracts (Rights of Third Parties) Act 1999 the parties intend that no term of this agreement may be enforced by any person who is not a party to this agreement (*or*) a third party within the meaning of that Act.