

# Terms And Conditions Of Sale

## 1. DEFINITIONS

"the Seller" means NU-COAT Ltd.

"the Purchaser" means the person, firm, or company to be supplied with the Goods by the Seller.

"Goods" means the goods, materials and/or other items to be supplied pursuant to the Contract.

"the Contract" means the contract for sale and purchase of the Goods made between the Seller and the Purchaser to which these Conditions apply.

"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Purchaser and the Seller.

"Writing" means telex, cable, facsimile transmission or comparable means of communication.

## 2. BASIS OF SALE

(a) The Conditions constitute the entire Contract for the sale of Goods by the Seller to the Purchaser.

(b) No variations or waiver of or addition to the Conditions shall be effected unless agreed in writing and signed by a director of the Seller and the duly authorised representative of the Purchaser.

(c) The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Purchaser acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

(d) Any advice or recommendation given by the Seller or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Purchaser's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

## 3. RETENTION OF TITLE ON SALES OF GOODS

Title to the Goods shall remain vested in the Seller and shall not pass to the Buyer until the purchase price for the Goods has been paid in full and received by the Seller.

## 4. TECHNICAL SPECIFICATIONS

(a) All technical specifications, information and particulars in relation to the Goods and made available by the Seller are believed to be true at time of publication but do not constitute a warranty or guarantee.

(b) The Purchaser shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Purchaser, and for giving the Seller any necessary information relating to the Goods within sufficient time to enable the Seller to perform the Contract in accordance with its terms.

(c) It is the responsibility of the Purchaser to ensure that the Goods are suitable for any particular application.

## 5. QUOTATIONS

A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or amend the same at any time prior to the Seller's acceptance of the Purchaser's order.

## 6. PRICES

(a) The price of the Goods shall be the quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in the Seller's published price list current at the date of acceptance of the order. Unless otherwise stated, prices are nett, ex works and exclusive of VAT or other sales tax, which taxes the Purchaser shall be additionally liable to pay to the Seller.

(b) Notwithstanding any acceptance of the said prices by the Purchaser, the right of the Seller is reserved for the same to be increased up to the date of despatch should there be any increase in the Seller's current price list for goods of the same or comparable description to those agreed to be sold which becomes effective prior to the date of despatch, in which case the goods or the undelivered balance thereof shall be invoiced and paid for at the agreed prices plus the amount of the relevant increase.

## 7. DELIVERY

(a) Delivery of the Goods shall be made by the Purchaser collecting the Goods at the Seller's premises at a time after the Seller has notified the Purchaser that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the goods to that place.

(b) Any dates quoted for the delivery of the Goods are approximate only and the Seller shall not be liable for any delay in the delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Purchaser.

(c) If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Purchaser's fault, and the Seller is accordingly liable to the Purchaser, the Seller's liability shall be limited to the excess (if any) of the cost to the Purchaser (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

(d) If the Purchaser fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise by reason of any cause beyond the Purchaser's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may;

i) store the Goods until actual delivery and charge the Purchaser for the reasonable costs (including insurance) of storage; or

ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Purchaser for the excess over the price under the Contract or charge the Purchaser for any shortfall below the price under the Contract.

## 8. RISK AND PROPERTY

(a) Risk of damage to or loss of the Goods shall pass to the Purchaser;

i) in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Purchaser that the Goods are available for collection; or

ii) in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Purchaser wrongfully fails to take delivery of the Goods, the time when the Seller has tended delivery of the Goods.

(b) Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, the property in the Goods shall not pass to the Purchaser until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Purchaser for which payment is then due.

(c) Until such time as the property in the Goods passes to the Purchaser, the Purchaser shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate of those of the Purchaser and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Purchaser shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Purchaser and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

(d) Until such time as the property in the Goods passes to the Purchaser (provided the goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Purchaser to deliver up the Goods to the Seller and, if the Purchaser fails to do so forthwith, to enter upon any of the premises of the Purchaser or any third party where the Goods are stored and repossess the Goods.

(e) The Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness of any of the Goods which remain the property of the Seller, but if the Purchaser does so all monies owing by the Purchaser to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## 9. TERMS OF PAYMENT

(a) Payment of invoices shall be made without any deduction or set off in cash so as to be received by the Seller not later than the last day of the month following the month of delivery of the Goods, unless otherwise agreed in writing. Interest shall be payable on overdue accounts at the rate of two per cent (2%) per month to run from the due date for payment thereof until receipt by the Seller of the full amount whether or not after judgement. The time of payment for the Goods shall be of the essence of the Contract.

(b) If in the case of the Contract or any order involving more than one delivery default is made in payment on the due date the Seller shall have the right to suspend all or any further deliveries pending payment or to terminate the Contract in its entirety by notice in writing to the Purchaser.

## 10. LIABILITY

(a) The Seller shall not be liable to the Purchaser:

i) for shortages of quantity delivered unless the Purchaser notifies the Seller of any claim for short delivery within fourteen days of receipt of the Goods.

ii) for damage to or loss of the Goods or any part thereof in transit (where the Goods are carried by the Seller's own transport or by a carrier on behalf of the Seller) unless the Purchaser shall notify the Seller of any such claim within fourteen days of receipt of the Goods or the scheduled date of delivery whichever shall be earlier.

iii) in respect of any defect in the Goods arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval.

(b) Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

(c) Any claim by the Purchaser which is based on any defect in the quality or conditions of the Goods or their failure to correspond with specifications shall (whether or not delivery is refused by the Purchaser) be notified to the Seller within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Purchaser does not notify the Seller accordingly, the Purchaser shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and the Purchaser shall be bound to pay the price as if the Goods have been delivered in accordance with the Contract.

(d) Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specifications is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Purchaser the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Purchaser.

(e) Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Purchaser by reason of any representation, or any implied warranty, condition or other term, or any duty, at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its suppliers or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Purchaser, except as expressly provided in these conditions.

## 11. THIRD PARTY RIGHTS

(a) The Purchaser shall indemnify the Seller against any and all claims, costs, demands and expenses incurred by or made against the Seller as a direct or indirect result of the carrying out of any work required to be done on or to the Goods in accordance with the requirements or specifications of the Purchaser involving any infringement or claim of infringement or industrial property right vested in any third party.

(b) In any case where the Goods are or are capable of becoming the subject of any industrial or intellectual property right of any third party the Seller warrants that it shall transfer to the Purchaser only such title as it may have to the Goods.

## 12. FORCE MAJEURE

(a) The Seller shall not be liable to the Purchaser for any loss or damage which may be suffered by the Purchaser as a direct or indirect result of the Seller being prevented, hindered or delayed in the performance of its obligations under the Contract by reasons of any force majeure circumstances.

(b) In this Condition "force majeure circumstances" shall mean any Act of God, war, riot, strike, lock out, trade dispute or labour disturbance, epidemic, accident, breakdown of plant or machinery, fire, explosion, flood, drought, government action, difficulty in obtaining workmen, materials or transport or other circumstances whatsoever outside the control of the Seller affecting the provision of the Goods and services hereunder or of materials therefor by the Seller's usual source of supply or the manufacture of the Goods by the Seller's normal means of delivery of the Goods by the Seller's normal route or means of delivery.

## 13. INSOLVENCY OF PURCHASER

(a) This clause applies if:

i) the Purchaser makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Purchaser; or

iii) the Purchaser ceases to or threatens to cease, to carry on business; or

iv) the Seller reasonably apprehends any of the events mentioned above is about to occur in relation to the Purchaser and notifies the Purchaser accordingly.

(b) If this clause applies, then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Purchaser, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 14. GENERAL

(a) The failure on the part of the Seller to exercise or enforce any rights conferred by the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

(b) Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

(c) Headings to any of these Conditions are included to facilitate reference only and shall not affect the construction thereof.

(d) The Contract shall be governed by and construed and interpreted in accordance with the laws of England and for the purpose of settlement of any dispute arising out of or in connection with the Contract the parties hereby submit themselves to the jurisdiction of the English courts.

(e) 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.

## 15. DATA PROTECTION

Your data will be used by NU-COAT Ltd. only for research and analysis purposes and to advise you of products, services and special promotions.

You may ask us for details of the personal data that we hold on you and can require us to correct it if appropriate. Please refer to our Privacy Notice.