

TERMS AND CONDITIONS OF BUSINESS

1. General

1.1 These Terms and Conditions of Business contain the entire agreement in connection with products and/or services and may only be modified or supplemented by separate written agreement between the Company and the Purchaser. All other terms and conditions, express or implied (whether by statute or common law), present or historic (including any statements made in any brochure, website or advertising literature of the Company) are excluded, save in the case of fraud. Unless expressly and specifically agreed in writing to the contrary by an authorised representative of the Company, the Company will only contract with the Purchaser on these Terms and Conditions of Business and shall not be bound by any of the Purchaser's purchasing conditions (or any other terms and conditions put forward by the Purchaser) unless specifically agreed in writing by a Director of the Company.

1.2 In these Terms and Conditions of Business, terms defined in the 2000 edition of Incoterms have, unless otherwise, specified, the same meaning.

1.3 Unless otherwise specified: " the Company " means Sherwin Williams " the Purchaser " means the person/company buying the Products or, if agent for another, that person and the other jointly and severally.

" the Products " means the products and any part of them described in the Company's quotation and includes their packaging and any replacement products.

" Specification " means that specification (if any) included in the Company's written quotation or any other written specification supplied by the Company.

"Sales Order Confirmation" means the Company's Sales Order Confirmation form detailing and confirming the Purchaser's order.

1.4 Any order based on or resulting from any quotation or tender by the Company is deemed to incorporate these Terms and Conditions of Business and no variation or modification of, or substitution for, these Terms and Conditions of Business (even if included or referred to in the document accepting any tender or placing any order) shall be of any effect unless specifically accepted in writing by a Director of the Company. Any quotation is open for a period of 30 working days only. The Company reserves the right to decline any order at its discretion.

1.5 In relation to the Products, the current specification, technical data, health and safety data, weights and instructions for application supplied by the Company constitute a guide only, do not form part of the contract for the supply of the Products and are not binding upon the Company.

2. Terms of Payment

2.1 Time of payment is of the essence of the contract .In respect of credit customers, payment is due within 30 days from the end of the month of supply unless otherwise agreed in writing by the Company. Without prejudice to any other remedy, the Company may charge interest under the provisions of the Late Payment of Commercial Debts (Interest) Act 1998. In respect of pro forma customers, payment shall be made prior to despatch of the good.

2.2 A cancellation fee of 10% of the contracted price (which the Purchaser acknowledges represents a reasonable pre-estimate of the loss suffered by the Company in consequence of any cancellation including loss of profit and administrative costs) will be payable on cancelled orders

(provided that the Company shall be entitled to invoice the full contract price if production has commenced and expenditure been incurred on the contract).

2.3 Items marked # on the Sales Order Confirmation are made to order and, as such, cannot be cancelled or amended once the Company has accepted the Purchaser's order. Neither can the Company accept such items for return unless the material subsequently proves to be faulty.

2.4 Returns can only be accepted if:

- a) this has previously been agreed with the Company;
- b) a returns number has been issued to the Purchaser and ;
- c) the Products are accompanied by the Company's documentation.

Failure to comply with these conditions may result in the Purchaser being invoiced for the disposal costs of any returned items.

2.5 All prices quoted or invoiced are stated net of any value added tax or any other applicable sales tax and delivery charges unless otherwise agreed in writing.

2.6 All payments shall be made without abatement, deduction , counterclaim or set-off of any kind.

2.7 The Company shall be entitled at any time to require from the Purchaser, satisfactory or supplementary security for performance of the Purchaser's obligations under any contract with the Company. Refusal or failure to furnish such security or supplementary security will entitle the Company to suspend delivery or further deliveries to the Purchaser until such security is furnished or to cancel/rescind any or all contracts with the Purchaser in so far as they are not fulfilled, without incurring any liability whatsoever.

2.8 In addition to its other rights hereunder, the Company shall also be entitled to recover all expenses incurred by the Company in collecting or attempting to collect outstanding amounts. Such expenses shall include, but not be limited to, fees of collection agencies, lawyers and accountants.

3. Delivery

3.1 Delivery or despatch dates quoted are given or accepted by the Company in good faith, but not guaranteed unless stated to be "guaranteed " in writing.

3.2 Delivery shall be to such place as the Company may agree or the Purchaser reasonably specify prior to delivery. If no place of delivery is agreed, delivery shall be ex-works the Company's factory premises in Bolton, England. Where the Company agrees to deliver the Products other than ex-works, the Purchaser is responsible for unloading the Products unless otherwise agreed.

3.3 The Company shall use its reasonable endeavours to deliver the Products within the time specified, but accepts no liability for any expenses, loss or damage whatsoever, suffered by the Purchaser or third parties as a result of failure, for whatever reason, to deliver within the time so specified (even if caused by the Company's negligence).

3.4 It is specifically agreed that time shall not be of the essence of the contract and the Purchaser shall not be entitled to cancel or rescind the contract solely on the basis of late or incomplete delivery.

3.5 If the Company delivers to the Purchaser a quantity of Products of up to 5% more or less than the quantity accepted by the Company, the Purchaser shall not be entitled to object to or reject the

Products or any of them by reason of the surplus or shortfall and shall pay for such Products at the pro rata contract rate.

3.6 Complaints or disputes about quantities, weights, packing or mistakes in transportation or in expenses shall be communicated in writing to the Company within 5 working days after delivery of the Products which are the subject of the complaint, failing which all quantities, weights etc. shall be deemed to be in accordance with the contract and the Purchaser shall have no rights or recourse against the Company in respect of such complaint.

3.7 Any inspection and/or testing of the Products required by the Purchaser shall take place at the Company's factory in Bolton, and unless written notice is delivered to the Company within 24 hours after such inspection and/or testing, the Purchaser shall be deemed to have accepted the quality of the Products and their compliance with the contract.

3.8 All Products made to the Purchaser's specifications are deemed to have been inspected and accepted by the Purchaser before the Products are delivered.

3.9 Each delivery and/or performance shall be treated as a separate contract. Unless otherwise agreed in writing the Company may deliver and/or perform in part and any failure to perform or deliver or any related breach of contract by the Company shall not affect any other delivery. The Purchaser shall take delivery of the Products on any day up to the date quoted or agreed by the Company or (if none) within a reasonable time. If for any reason the Purchaser fails to accept delivery of any of the Products when they are ready for delivery or the Company is unable to deliver the Products on time because the Purchaser has not provided appropriate instructions or documents, the Products shall be deemed to have been delivered and the Purchaser shall bear all storage and other costs (including insurance) arising from the Purchaser's failure to comply with the contract.

3.1 Deliveries may be wholly or partially suspended and the time of such suspension added to the original contract in the event of a stoppage delay or interruption of work in the Company's establishment during the delivery period as a result of any event or force majeure as referred to in clause 8.1. The Company shall be entitled at any such time on notice to the Purchaser to make partial deliveries only or to determine the contract without prejudice in any case to rights accrued in respect of deliveries already made. The Purchaser shall pay for the Products delivered the same proportion of the price as the part delivered bears to the whole of the Products agreed to be sold.

3.11 Should default be made by the Purchaser in paying any sum due under any order as and when it becomes due, the Company shall have the right to suspend any or all further deliveries until the default be made good and may cancel the order so far as any Products remain to be delivered thereunder.

3.12 No claim for damage in transit, shortage of delivery or loss or non-delivery of Products where risk passes at the point of delivery will be entertained unless in the case of damage in transit or shortage of delivery a notice in writing is given to the Company within 3 working days of the receipt of the Products followed by a complete claim in writing within 5 working days of the date of delivery or (in the case of non-delivery) within 5 working days of the date when the Products would in the ordinary course of events been delivered. Where Products are accepted from the carrier concerned without being checked, the delivery book of the carrier concerned must be signed " not examined ".

4. Risk and Title

4.1 Risk in the Products shall pass to the Purchaser upon delivery (or deemed delivery) notwithstanding that the property in the Products may not have passed to the Purchaser. The Company shall retain ownership of the Products until:

a) the Company has received payment in full for the Products and of all other sums which are or become due to the Company from the Purchaser on any account ; or

b) the Products are mixed, processed or used so that they lose their identity or are irrecoverably incorporated in, mixed with or applied to other goods ;

4.2 Until ownership passes to the Purchaser, the Purchaser shall:

a) hold the Products on a fiduciary basis as the Company's bailee;

b) maintain the Products in satisfactory condition and keep them insured against all usual risks to the full replacement value;

c) sell, use or part with possession with the Products only in the ordinary course of trading and any sale of the Products shall be at full market value and shall be a sale of the Company's property with the Purchaser acting as principal;

d) where reasonably possible, store the Products separately from all other good of the Purchaser or any third party and keep them clearly identified as the Company's property; and

e) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products.

4.3 The Company shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Company.

4.4 At any time when the price for the Products or part thereof remains unpaid, the Company shall be entitled to call upon the Purchaser to return the Products and the Purchaser irrevocably permits the Company by its servants or agents upon request to enter upon any premises where the Products are or may be stored and recover the Products for its own use. The Purchaser shall not be entitled to make any claim against the Company in respect of such entry or recovery. The right of the Company shall operate at all times and in particular when the Purchaser is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any statutory modification or re-enactment thereof, or if the Purchaser, being an individual, shall commit an act of bankruptcy or be adjudicated bankrupt and his property become vested in the Official Receiver or any other party, or (if the Purchaser is a company) if any resolution or petition to wind up the company's business is passed or presented or an Order is made by the Court for the winding up of the company or if a Receiver or Liquidator is otherwise appointed and this clause and these Terms and Conditions of Business shall be binding upon any such Official Receiver or Liquidator or other party in whom the assets of the Purchaser shall from time to time become vested. In any of the circumstances described in this clause 4.4, the Company's permission for the Purchaser to sell or use the Products shall terminate.

4.5 If the law of the territory in which the Products are situated does not permit the retention of title or recovery of Products as provided herein but allows other protective rights then this contract reserves such rights and the Purchaser grants such rights to the Company and undertakes to take such further action to perfect the Company's rights as may be appropriate.

5. Quality and Performance

5.1 The Company warrants that the Products will correspond with the Specification, or any specification of the Purchaser that is expressly agreed in writing by the Company, but otherwise the Company does not warrant that the Products are fit for any particular purpose or an intended use by the Purchaser and the Purchaser shall satisfy itself that Products are so fit.

Sherwin-Williams Protective & Marine Coatings

Tower Works, Kestor Street, Bolton, BL2 2AL, United Kingdom

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Registered in England Reg. No. 893081 Reg. Office Tower Works Kestor Street Bolton BL2 2AL England

5.2 Notwithstanding that a sample of the Products may have been exhibited to and inspected by the Purchaser, it is hereby declared that such sample was so exhibited and inspected solely to enable the Purchaser to judge for itself the quality of the bulk and not so as to constitute a sale by sample under this contract. The Purchaser shall take the Products at its own risk as to their corresponding with the said sample or as to their quality, condition or sufficiency for any purpose.

5.3 Whilst the Company makes every effort to ensure that product consistency and colour reproduction is as accurate as possible, slight variations may occur from batch to batch.

5.4 The performance of the Products is totally dependent on the correct use of the Company's cleanser thinners as detailed on the Company's Technical Data Sheets. The Company accepts no responsibility or liability for the non-performance of the Products if other than those cleanser thinners are used.

5.5 Recommendations or suggestions relating to the use of the Products made by the Company, whether contained in the Company's technical literature, or given in response to specific enquiry or otherwise, are based on the most up-to-date and reliable data available to the Company. However, since the Products are often supplied for uses outside of the scope of the Company's knowledge or expertise, since variations in environment, changes in procedures or use, or extrapolation of data may cause unsatisfactory results and since Products and information are intended for use by Purchasers having skill and know-how in the industry in relation to such Products and information, it is expressly agreed that it is the Purchaser's sole responsibility to satisfy itself as to the suitability of the Products for the particular use proposed and it shall be deemed that the Purchaser has so satisfied itself and accepted any resulting risk.

6. Defective Products

6.1 The Purchaser shall inspect the Products immediately on their arrival and shall, within 5 working days of delivery/collection, give notice in writing to the Customer Services Department of the Company of any matter or thing by reason of which the Purchaser alleges that the Products are not in accordance with the contract. If the Purchaser shall fail to give such notice the Products shall be deemed to be in all respects in accordance with the contract and the Purchaser shall be bound to accept and pay for the same accordingly.

6.2 Where the Products contain a latent defect which the Purchaser could not reasonably be expected to discover upon arrival of the Products, the Purchaser may make a claim under the warranty in Condition 5.1 by notifying the Company in writing of such claim within 5 working days of the date of discovery of the defect or (if earlier) within 5 working days of the date on which the Purchaser ought to have discovered the defect.

6.3 No claim for defects shall be entertained:

a) after the expiration of the applicable shelf life of the Products, or one year from the delivery date whichever is earlier; or

b) unless the Company is given a reasonable opportunity, within 30 days after receiving notice of the defect, or accessing any relevant site and conducting an initial examination of the Products and those products to which the Products have been applied.

6.4 The Company's obligations under the warranty in clause 5.2 or for any defect notified in accordance with clauses 6.1 or 6.2 are limited, at the Company's option, to the replacement of the Products or relevant portion of them, or to a refund of a portion of the purchase price paid by the Purchaser. Any refund will be paid to the Purchaser when the defective Products are returned to the

Company. If the Company complies with this clause 6.4 it shall have no further liability for a breach under the product warranty in respect of such Products.

7. Limitations of Liability

7.1 The Company shall not be liable to the Purchaser by reason of any representation, or any implied warranty, condition or other term, or any statutory duty or duty at common law, or under the express or implied terms of the contract, or in tort (including negligence) or otherwise, for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Products or their use or resale by the Purchaser or in connection with any recommendations or suggestions or services provided with the Products, except as expressly provided in these Terms and Conditions of Business.

7.2 The Company shall not be liable in any way whatsoever (including, without limitation, under the warranty in clause 5.2 or for any defect notified in accordance with clause 6.1 or 6.2) for:

- a) any defect in the Products arising from any specification supplied by the Purchaser;
- b) any storage, handling or use of the Products that is the Purchaser's responsibility under clause 5.4 or 5.5;
- c) the incompatibility of any Products supplied by the Company with the products of other manufacturers or suppliers;
- d) inadequate or incorrect surface preparation or coating application work carried out by, or the faulty equipment or product of the Purchaser, or any third party;
- e) use of the Products other than in accordance with the Specification or any other specification expressly agreed in writing with the Purchaser or use in any abnormal environmental conditions;
- f) any representations, advice or assistance given or omitted to be given in connection with the Products, services or the Specification or the contract, other than services specifically charged for by the Company. Where the Company has specifically charged for services, and in the absence of any other written agreement, the Company shall provide the services with reasonable care and skill and liability for failure, subject to clause 7.6, shall be limited to a refund of the fee charged for those services;
- g) the supervision or quality control (or lack thereof) by or on behalf of any third party.
- h) if the Purchaser or any third party continues to apply the Products after giving the Company notice of any defect.

7.3 The Purchaser shall indemnify the Company against all damage or injury to any person or loss of or damage to any property and against all actions, demands, costs, charges, expenses or other loss suffered or incurred by the Company arising in whole or in part from any of the following:

- a) mixing the Products with any other goods or complying with any specification or other instruction of the Purchaser relating to the Products;
- b) the use or dealings in the Products by or on behalf of the Purchaser;
- c) any claims that any patent, trademark, copy right, design right, know-how or other intellectual property right of any third party has been infringed through the manufacture, sale or use of

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the Products or any materials provided with them or performance of any services (save to the extent that the same have been supplied in accordance with the Specifications or are registered trade marks of the Company); and

d) any act, omission, negligence, and/or breach of these Terms and Conditions of Business or otherwise through the default of the Purchaser.

7.4 Each party shall promptly notify the other of any relevant claim under this contract and shall comply with the other's reasonable requirements to minimise and/or avoid further liability. In the case of an intellectual property rights infringement claim relating to any of the Company's intellectual property rights, the Purchaser shall allow the Company conduct of any action and/or settlement negotiations, on reasonable terms, and in the case of any claim in respect of which the Purchaser is required to indemnify the Company, the Company shall allow the Purchaser conduct of any action and/or settlement negotiations on reasonable terms.

7.5 Nothing in these Terms and Conditions of Business excludes or limits the liability of the Company;

a) for death or personal injury caused by the Company's negligence;

b) under section 2(3) Consumer Protection Act 1987;

c) for any matter which it would be illegal for the Company to exclude its liability; or

d) for fraud or fraudulent misrepresentation.

7.6 Except as provided under clause 7.5, the Company's total aggregate liability in contract, misrepresentation or otherwise, in connection with the Products, Specification or services or the contract is limited to the contract price of the Products sold. However in the event of tort (including negligence or breach of statutory duty), the Company's total aggregate liability in connection with the Products, Specification or services or the contract is limited to 3 times the contract price of the Products sold.

8. Force Majeure

8.1 Without prejudice to the other restrictions on liability contained herein, the Company shall not be liable for defaults under the contract due to force majeure, including, but without limitation, acts of God, acts of governmental authority, acts of the public enemy, weather, fire, flood, riot, strike, labour trouble, breakdown of machinery, accident or other contingencies/circumstances beyond the reasonable control of the Company, which reasonably prevent fulfilment. In such cases the Company shall have the option to cancel the contract, insofar as it is not fulfilled or defer the fulfilment of all its obligations including the delivery of the Products, or any part thereof, without being under obligation to pay any damages whatsoever.

8.2 In cases of deferred fulfilment, the Company shall have the option to cancel the contract, within six months of the notification to the Purchaser of the decision to defer fulfilment.

9. Confidentiality

9.1 Each party shall keep secret at all times (and shall procure that its employees do the same) any information of a confidential nature (including any trade secrets, proprietary techniques and know-how) obtained from the other by reason of this contract except if the information is already in the public domain, must be disclosed by law or which the receiving party can show was in its

possession before disclosure by the other. Neither party shall use, copy or reproduce confidential information except for the purpose for which it was disclosed.

10. Intellectual Property

10.1 The Purchaser is not granted any licence to use or reproduce the Company's trade marks or other intellectual property rights, and the Purchaser shall not (and shall ensure that its employees and directors shall not) use, exploit or adapt any such intellectual property rights or any Products or other materials to which they are applied or in which they are incorporated except as may be expressly permitted in writing by a Director of the Company.

11. Determination

11.1 If the Purchaser shall make default in or commit any breach of any of its obligations to the Company or if any distress or execution shall be levied upon the Purchaser its property or assets or if the Purchaser shall make or offer to make any arrangements or composition with creditors or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against him, or if the Purchaser shall be a limited company and any resolution or petition to wind up such company's business shall be passed or presented otherwise than for reconstruction or amalgamation or if a receiver of such company's undertaking property or assets of any part thereof shall be appointed the Company shall have the right forthwith to determine any order then subsisting and upon written notice of such determination being posted by it to the Purchaser any subsisting order shall be deemed to have been determined without prejudice to any claim or right the Company might otherwise make or exercise.

12. Assignment

12.1 The Company may assign this contract or any part of it to any person, firm or company.

12.2 The Purchaser shall not be entitled to assign this contract or any part of it without the prior written consent of the Company.

13. Waiver

13.1 The waiver by the Company of any right or the failure by the Company to exercise any right or to insist on the strict performance of any provision of this contract shall not operate as a waiver of, or preclude any further exercise or enforcement of any other right or provision of this contract.

14. Severability

14.1 Each provision of this contract is severable and distinct from the others. The parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law. If in any particular case any of the clauses or sub-clauses of these Terms and Conditions of Business shall be held to be invalid or shall not apply to this contract, the other clauses and sub-clauses shall continue in full force and effect.

15. Notices

15.1 Any notice required to be served under this contract shall be served on the Company at its registered offices in the UK or such other address as the Company may from time to time notify to the Purchaser and on the Purchaser at the address notified to the Company, by first class post, registered air mail or by facsimile. The Purchaser is responsible for notifying the Company in writing of any change of address, email address or fax number;

15.2 Any such notice served by post shall be deemed to have been served:

a) in the case of a destination in the UK two days after the date of despatch and, in the case of overseas airmail seven days after the date of despatch; and

b) in the case of facsimile when the addressee's machine acknowledges receipt thereof.

16. Legal Construction

16.1 This contract shall be governed by and construed in accordance with the laws of England and Wales. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this contract or the transactions contemplated by this contract. The Purchaser hereby agrees, for the Company's exclusive benefit, that the courts of the Company's country shall have sole jurisdiction to hear all claims or proceedings connected with Products, services or the contract. The Company may nevertheless bring claims in any other court of competent jurisdiction.

16.2 The provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this contract.

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