

CONDITIONS OF SALE

1. GENERAL

1.1 These Conditions contain the entire agreement in connection with Products and/or Services and may only be modified or supplemented by separate written agreement between Seller and Buyer. All other terms and conditions, express or implied, present or historic (including any statements made in any brochure or advertising literature of Seller) are excluded, save in the case of fraud. Unless expressly and specifically agreed in writing to the contrary, Seller will only contract with Buyer on these terms and conditions and will not accept any subsequent terms and conditions of Buyer.

1.2 In these Conditions, terms defined in the Incoterms (current edition) have, unless otherwise specified, the same meaning and:

"Affiliate" means in relation to any company or unincorporated organisation, a company or unincorporated organisation which controls, is controlled by or is in common control with it;

"Buyer" means the person buying the Products or, if agent for another, that person and the other jointly and severally;

"Products" means the products described in Seller's written quotation and include their packaging and any replacement products;

"Seller" means Akzo Nobel Powder Coatings Limited;

"Services" means that technical advice (if any) given by or on behalf of Seller in connection with the Products for which no specific charge is made, whether being specific advice given to Buyer or whether in any of Seller's technical literature including any advice given by any technical representative of Seller made available by Seller at Buyer's site or at any third party premises for this purpose;

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

2. DELIVERY AND/OR PERFORMANCE

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

2.2 Delivery will be to such place as Seller may agree or reasonably specify prior to delivery, otherwise delivery will be DAP. Buyer is responsible for unloading of Products.

2.3 Packaging is not returnable unless otherwise agreed in writing by Seller. Credit will be given to Buyer if packaging is returned empty, clean, securely closed and in good condition within sixty (60) days after receipt by Buyer. Any special packaging requirements will incur an additional charge.

2.4 Save for clause 8, each delivery and/or performance will be treated as a separate contract. Unless otherwise agreed in writing Seller may deliver and/or perform in part and any failure to perform or deliver or any related breach of contract by Seller will not affect any other delivery. Buyer will take delivery of Products on any day up to the date quoted or agreed by Seller or (if none) within a reasonable time. Buyer will bear all storage and other costs (including insurance) arising from Buyer's failure to comply with the contract.

2.5 Conclusive evidence of delivery will be (i) if Products are sold FAS, FOB, Ex Works, Free Alongside Quay (FAQ) or to Buyer's agent, an on-board bill of lading, a mate's receipt or other document in proof of such delivery, (ii) if Seller or its carrier is unable for any reason to place Products on board ship at the place of delivery, a warehouse receipt for Products, (iii) if Products are sold CIF or C&F (or CFR), a receipted bill of lading or way bill, or (iv) in all other cases, a receipt from a carrier or the Buyer.

2.6 If Seller undertakes to obtain any licence(s) required for the export of Products by Seller, Buyer will comply with any such licence(s) and will obtain and comply with all other necessary licences, permits and consents (including all other export/import licences).

2.7 Buyer is responsible for checking and signing for all deliveries and by signing the Buyer indicates that the delivery received is complete and in good condition. If the delivery is short or deemed to be damaged this must be highlighted to the delivery company and the delivery note must be signed for as short or damaged.

3. PRICE AND PAYMENT

3.1 Prices are exclusive of VAT and all other duties, fees or taxes. Any delivery charge will be at cost or as otherwise agreed in writing. Buyer will ensure that any vessel receiving Products as "ship stores in transit" is entitled to receive such stores free of value added taxes and other duties.

3.2 Unless otherwise agreed in writing by Seller, payment is due thirty (30) days from date of invoice. Seller may require security for payment before despatch or performance.

3.3 Payment may be made in any freely negotiable currency using the spot rate of exchange shown on the relevant Reuters screen (or, if there is no such screen then available, then offered by Midland Bank plc in the foreign exchange market) on the earlier of the date on which payment is made and the due date of payment. Seller reserves the right to recover any loss on exchange due to delays in payment.

3.4 Unless the contract states price(s) to be fixed, Seller may increase prices for undelivered balances and/or unperformed Services in accordance with increases in Seller's costs and/or general price list increases occurring after the date of acceptance of order but before despatch and/or performance. Buyer will pay any increases in delivery costs after the date of acceptance of order.

3.5 In the circumstances described in clause 7.2, clause 2.4 will not apply and all unpaid balances owing to Seller from Buyer will become a debt immediately due and payable to Seller, whether or not property in Products has passed to Buyer.

3.6 Time of payment is of the essence of the contract. Without prejudice to any other remedy Seller may charge interest at 4% above HSBC Bank plc base rate for the time being per annum (to accrue from day to day) on any sum which is not paid on the due date after as well as before any judgment.

3.7 Seller may appropriate sums received from Buyer against any debt whatsoever due to Seller from Buyer (irrespective of any purported appropriation by Buyer) and may, without prejudice to any other right or remedy, by notice in writing to Buyer, set off any or all of the monies owing by Buyer or any of its Affiliates to Seller for the supply of products against any indebtedness of Seller or any of its Affiliates to Buyer or any of its Affiliates. In no circumstances may Buyer withhold payment or make any set-off on any account.

3.8 Buyer will on demand indemnify Seller against all costs, charges, expenses and legal costs incurred by Seller in recovering sums owing by Buyer (including without limitation in seizure of vessels).

4. WARRANTIES

4.1 Other than for samples or goods sold as obsolete or sub-standard, Seller warrants ("the Warranty") that upon delivery Products are sold with good title, are made with sound materials and workmanship, comply with Seller's then current published product data sheets and comply with the Specification.

4.2 Seller does not warrant that Products are fit for any particular purpose or an intended use by Buyer and Buyer will satisfy itself that Products are so fit. If Products correspond to any sample supplied or accepted by Seller they will be deemed to comply with the Warranty.

5. LIMITATIONS OF LIABILITY

5.1 Seller will not be liable under clause 4 unless Buyer satisfies Seller that it has strictly complied with any instructions of Seller relating to Products and Services. Seller will not be liable under clause 4 in respect of any Products which are used after notice has been given that Products fail to comply with the Warranty.

5.2 Buyer will examine Products within fourteen (14) days after delivery. Delivery will be determined in accordance with clause 2.2 of these Conditions. Buyer will then immediately notify Seller of any incomplete or failed delivery, loss or damage during carriage, shortage of weight or quantity or if Products fail to comply with the Warranty and will in the case of damaged Products be entitled to notify Seller that it rejects all or any part of the damaged Products in that delivery. Unless Buyer so notifies Seller within thirty (30) days after the date when Buyer became or ought reasonably to have become aware of any of the above Buyer will be treated as having waived all claims connected with the matter which should have been notified. Where notification is so made no action whatsoever may be brought against Seller in connection with Products, Services and/or the contract unless proceedings are issued against Seller within two (2) years after Buyer became or ought to have become aware of the circumstances giving rise thereto.

5.3 Provided notification is made within the above thirty (30) day period, if it is shown to Seller's reasonable satisfaction that Products fail materially to comply with the Warranty, Seller will be given a reasonable opportunity to correct such failure. If the failure is not corrected, Seller will at Buyer's option either refund the purchase price (or, if the Products have depreciated for reasons other than Seller's default or been used or put into process, a reasonable part of the purchase price), or replace part or the whole of the Products (if reasonably practicable) within a reasonable time, free of charge. Such correction, refund or replacement will, subject to clause 5.6, be Seller's sole liability in relation to any such failure and will in no circumstances exceed three (3) times the invoice value of the Products in question.

5.4 Products which are alleged not to comply with the Warranty will as far as possible be preserved for Seller's inspection, and will be returned to Seller (at Seller's cost) if Seller reasonably so requests. Buyer will be deemed to have waived its rights in respect thereof unless, wherever possible, it has given Seller reasonable opportunity to inspect such Products.

5.5 Seller will not be liable in any way whatsoever for:

(a) the incompatibility of any Products supplied by Seller with the products of other manufacturers or suppliers;

(b) inadequate or incorrect surface preparation or coating application work carried out by, or the faulty equipment or product of Buyer or any third party;

(c) any representations, advice or assistance given or omitted to be given in connection with Products, Services, the Specification or the contract, other than Services specifically charged for by Seller. Where Seller has specifically charged for Services, and in the absence of any other written agreement, Seller will provide the Services with reasonable care and skill and liability for failure will be limited to a refund of the fee charged for those Services;

(d) the supervision or quality control (or lack thereof) by or on behalf of any third party.

5.6 (a) Seller does not exclude or restrict any liability which cannot be excluded or restricted as between Buyer and Seller, including in respect of a Buyer who deals as a consumer, as a matter of law under any applicable legislation.

(b) Buyer will promptly notify Seller of any claim against Buyer under any consumer protection legislation granting rights to consumers which Seller cannot by law exclude or restrict. To the extent only be liable to Buyer in the event Products were defective (within the meaning of applicable legislation) at the time of delivery by Seller and will not be liable to the extent that any liability arises from any act or omission of Buyer.

5.7 Without prejudice to any other limitation of Seller's liability (whether effective or not):

(a) in no circumstances whatsoever (including any fault or default of Seller) will Seller be liable for any indirect or consequential losses (including loss of goodwill, business or anticipated savings), loss of profits or use, any rectification costs or (subject to clause 5.6) any third party claims, in connection with Products, Specification, Services or the contract;

(b) except as provided under clauses 5.3 and 5.6, Seller's total aggregate liability under any proceedings or law in connection with Products, Specification, Services or the contract is limited to the cost of Products sold, provided however that this clause will not affect any written performance guarantee given to Buyer.

5.8 The Warranty and Buyer's remedies under clauses 5 and 7.1 are in substitution for any other warranties, obligations, representations, liabilities, terms or conditions (whether they are express or implied, or arise in contract, tort, or otherwise) in connection with Products and/or Services (including, without limitation, any relating to satisfactory quality, fitness for purpose, conformity with description or sample, care and skill or compliance with representations) which are hereby expressly excluded.

5.9 Unless specifically stated otherwise in these Conditions, Buyer's sole remedy will be in damages. This clause 5 applies notwithstanding any fundamental breach or breach of a fundamental term of the contract by Seller.

6. EVENTS BEYOND SELLER'S REASONABLE CONTROL

Seller will not be liable for any failure to comply with the contract related to any circumstances whatever (whether or not involving Seller's negligence) which are beyond Seller's reasonable control and which prevent or restrict Seller from complying with the contract. However, Seller may where reasonable and without liability suspend or terminate all or some of its obligations under the contract if Seller's ability to fulfil such obligations is materially impaired.

7. TERMINATION AND SUSPENSION

7.1 Except where Buyer has caused or contributed to any delay, Buyer may (as Buyers sole remedy, without affecting the balance of the contract quantity) terminate the contract by notice to Seller in respect of any instalment of Products which is not despatched by any date stated in writing to be "guaranteed" by Seller or within sixty

(60) days after any date indicated by Seller or quoted on Seller's written quotation unless the goods have been specially manufactured or adapted for Buyer.

7.2 Seller may (without prejudice to its other rights or remedies) terminate or suspend Seller's performance of the whole or any outstanding part of the contract in the relevant circumstances. Seller may also suspend deliveries or supply of Services while investigating any claim relating to prior shipments (under any contract) of Products. Clause 2.4 will not apply in these circumstances. The relevant circumstances are:

(a) Buyer failing to take delivery of or to pay for Products and/or Services (if any) by the due date, or breaches any other term of the contract; or

(b) Buyer becoming bankrupt or insolvent or if a receiver, administrator or encumbrancer takes possession of any material part of Buyer's assets, or Buyer suffers any equivalent of the foregoing;

(c) Seller having reasonable grounds for suspecting that an event in clause 7.2(b) has occurred or will occur, or that Buyer will not pay for Products or Services on the due date, and so notifies Buyer; or

(d) where the contract is for a fixed price, there has been a substantial increase in Seller's costs of manufacture and supply of Products and/or Services between the date of contract and date of despatch arising from circumstances beyond Seller's reasonable control and Seller and Buyer have failed within thirty (30) days of Seller notifying Buyer of such increase, to reach agreement on a reasonable adjustment in the price for remaining deliveries to recognise such increase.

7.3 If Buyer provides Seller with security for the contract price, reasonably acceptable to Seller, within three (3) working days after a notice has been given under clause 7.2(c), Seller will withdraw the notice.

8. RISK AND TITLE

8.1 Risk in Products will pass to Buyer upon delivery and, notwithstanding clause 8.2, Seller will have no responsibility in respect of the safety of the Products thereafter.

8.2 Notwithstanding delivery, Seller will retain ownership of Products until Seller has received payment in full for Products and all other sums which are or become due to Seller from Buyer on any account.

8.3 Buyer will insure Products against all usual risks to full replacement value until ownership passes to Buyer. Until such time as the property in the Products passes to Buyer, Buyer will be entitled to resell or use the Products in the ordinary course of its business but will hold the Products as Seller's fiduciary agent and bailee and will properly store, protect and insure the Products, will keep them separate from all other goods and will identify them as Seller's property. In addition, Buyer will not be entitled to pledge, or in any way charge by way of security for any indebtedness, any of the Products which remain the property of the Seller. Any insurance monies received by Buyer in respect of Products owned by Seller, will be held on trust for Seller. In the circumstances described in clause 7.2, Buyer's right to sell, use or part with possession of Products will terminate immediately. Seller may without prejudice to Seller's other remedies enter Buyer's premises, and recover and/or sell such Products.

9. THIRD PARTY CLAIMS AND CONDUCT OF CLAIMS

9.1 Buyer will not use any trademarks or tradenames applied to or used by Seller in relation to Products in any manner not approved by Seller

9.2 Buyer will indemnify Seller against any liability incurred by Seller: (i) from incorporating property of Buyer in Products or complying with any Specification or other instruction of Buyer relating to Products; and (ii) arising from the use of or dealings in Products by or on behalf of Buyer, except as provided in clause 5.6 or if arising from Seller's wilful default.

9.3 Each party will promptly notify the other of any relevant claim under this contract (including, without limitation, under Clause 5.6), will comply with the other's reasonable requirements to minimise and/or avoid further liability and will allow the other conduct of any action and/or settlement negotiations, on reasonable terms.

10. INFORMATION AND COMPLIANCE WITH LAWS

10.1 Buyer will ensure that all Products are safely and lawfully received, stored, maintained, used or applied by Buyer and will obtain relevant information in Seller's possession relating thereto.

10.2 Buyer will ensure that all appropriate safety information (whether supplied by Seller, Buyer or another) is distributed and drawn to the attention of customers and all personnel (including Buyer's employees) who require it for the safe handling or use of Product and will promptly supply to Seller all information and assistance required for Seller to execute Buyer's order.

10.3 Buyer will comply with all relevant and applicable legislation, rules, regulations, codes of practice, guidance and statutory requirements that from time to time come into force, including, without limitation, any of the preceding that relate to competition, anti-corruption, bribery and/or export controls.

11. MISCELLANEOUS

11.1 The contract may not be assigned by Buyer without Seller's prior written consent.

11.2 Notices must be in writing to Seller's or Buyer's address and are deemed delivered on the first working day after sending by hand or (subject to confirmation of transmission) by telex or facsimile, or, within the UK, on the third working day after being placed prepaid in the first class post to Buyer's, or Sellers, UK address. Qualified acceptances by Buyer on delivery notes will not constitute notice of any claim or acceptance by Seller of any such qualification.

11.3 No failure by Seller to enforce any provision of this contract will be construed as a release of its rights relating thereto or to sanction any further breach.

11.4 If any provision of the contract is found to be invalid or unenforceable it will have effect to the maximum extent permitted by law, or, if not so permitted, will be deemed deleted.

11.5 The price of the Products and the commercial terms of these Conditions, the Specification and any contract are commercially sensitive and confidential to the Seller and Seller requires that they are kept secret for a period of ten (10) years from the date of signing these Conditions. Buyer may disclose this information where required by law, court order, or regulation or act of any governmental authority including the Freedom of Information Act provided (to the extent permissible by law) it has notified Seller in advance and agreed the scope of disclosure with it.

11.6 The Contracts (Right of Third Parties) Act 1999 will not apply to these Conditions.

12. LAW

This contract will be governed by and construed in accordance with the law of England. Buyer hereby agrees, for Seller's exclusive benefit, that the English courts will have sole jurisdiction to hear all claims or proceedings connected with Products, Services or the contract. Seller may nevertheless bring claims in any other court of competent jurisdiction.