

# TERMS AND CONDITIONS OF SALE OF HMG PAINTS LIMITED AND ALL SUBSIDIARY AND ASSOCIATED COMPANIES (HEREINAFTER CALLED "HMG")

HMG RESERVES THE RIGHT TO VARY THESE TERMS AND CONDITIONS FROM TIME TO TIME. ALL REASONABLE ENDEAVOURS WILL BE USED TO ENSURE THAT OUT OF DATE VERSIONS ARE REMOVED FROM CIRCULATION AND HMG WILL RELY ON AND WILL EXPECT ALL CUSTOMERS TO RELY ON THE CURRENT TERMS AND CONDITIONS WHICH ARE ALWAYS FOR INSPECTION ON REQUEST

All orders are accepted subject to our Standard Conditions of sale reproduced below which apply to and govern all contracts, quotations, sales, supplies and deliveries of goods, materials, services and other products (hereinafter called Products) by HMG or its representatives to any individual Firm, Company or other person (hereinafter called "the Buyer") and of all or any other conditions, warranties or terms otherwise implied or expressed.

In the absence of a specific contract the giving of an order by the Buyer to HMG for any product shall constitute an unqualified acceptance by the Buyer that if HMG accepts the order, sale supply or delivery of such products by HMG will be governed solely by these Conditions of Sale. In the absence of an express agreement in writing no variation of these Conditions of Sales and no oral stipulations or representations shall be binding on HMG, unless expressly agreed in writing and signed by two directors of HMG on its behalf.

## 1. Prices

Except as otherwise expressly stated and contracted HMG reserves the right to vary prices and payment dates at any time. Stated prices are exclusive of all Valued Added Taxes and Duties. Prices quoted in foreign currency may be adjusted at any time in relation to variations in the appropriate exchange rate and are ex-works HMG premises at Unit 1 Faraday Park, West Portway Ind. Est. Andover, Hants. The prices does not include the cost of freight carriage, packing or insurance, which unless otherwise expressly agreed to in writing will be additionally charged to the buyer.

## 2. Delivery

- 2.1 HMG shall make all reasonable efforts to meet "a delivery date". Time shall be of essence and so long as any circumstances whatsoever may prevent hinder or delay any delivery.
- 2.2 HMG shall not be bound to keep the same and shall not be liable in any manner whatsoever for failure or delay whilst so prevented hindered or delayed.
- 2.3 HMG reserves the right to deliver by instalments. The buyer shall inspect all Products on delivery and unless the Buyer takes the following actions the buyer will be deemed to have accepted the delivery in full contractual satisfaction of the order:
  - 2.3.1 Buyer shall endorse Carrier's note appropriately
  - 2.3.2 Buyer shall advise HMG immediately by telephone and confirm such call in writing to HMG
  - 2.3.3 Buyer shall send full particulars of claim to HMG in writing within 10 days after delivery
  - 2.3.4 In case on non-delivery of a consignment the Buyer shall advise HMG within 10 days after date of invoice.
- 2.4 The date for delivery shall in every case to be dependent upon prompt receipt of all necessary information final instructions or approvals from the buyer.
- 2.5 The Buyer shall be bound to pay for all goods, notwithstanding any alleged non-delivery or shortage of goods, if the foregoing conditions have not been complied with.
- 2.6 HMG will not be liable for any loss or damage associated with the unloading of goods at any designated point of delivery or for placing them in position on site except by prior agreement in writing and if HMG do participate in the unloading (whether with or without such prior agreement) the buyer shall indemnify HMG against any consequences to HMG of its (or its sub-contractors) assisting the Buyer in such unloading.
- 2.7 Section 32(2) & (3) of the Sales of Goods Act 1979 shall not apply.

## 3. Force Majeure

If during the currency of any contract agreement or order entered into between HMG and the Customer, HMG is delayed or hindered in or prevented from performing any or all of its obligations hereunder by war, road blocks, rail blocks, strikes, whether official or unofficial, lock out, picketing or blocking (secondary or otherwise) or any action which could reasonably be described as in the furtherance of or in any way related to an industrial dispute or grievance, riots, civil commotions, epidemic, fire, explosions, accident, flood, plant break-down, or any other cause (whether or not of the same nature as the foregoing) beyond the reasonable control of HMG then HMG shall not in consequence thereof be under any liability in contract in relation to the contract agreement or order and HMG may if it deems so desirable upon giving notice to the Customer partially or wholly suspend deliveries of any goods or preferences of any works during the continuance of such causes and the Delivery Date or Dates shall be correspondingly extended.

## 4. Title & Risk

- 4.1 THE RISK in the Goods shall pass to the Customer as from the time when the Goods are either:
  - 4.1.1 Where the Customer or his nominee or representative (which the latter term shall include a carrier nominated by the Customer) collects the Products ex-Company's works delivery shall be effected by delivery of the Products to the Customer or his nominee or representative ex-Customers works; or
  - 4.1.2 Delivery to the Customer premises.
- 4.2 TITLE AND PROPERTY in the Goods shall not pass to the Customer until whichever of the following events first occurs and until such time the goods shall remain the sole and absolute property of HMG:
  - 4.2.1 The Customer shall have paid to HMG the full amount of the agreed price together with the full price of any other goods the subject of any other agreement with HMG entered into before or after the Agreement in question.
  - 4.2.2 The Customer in the ordinary course of its business selling the Products in which case title to the Products shall be deemed to have passed to the Customer immediately prior to delivery of the Goods to the Customers customer; and
  - 4.2.3 HMG waiving its rights under this Clause in respect of specific Products shall forthwith vest in the Customer.
- 4.3 Until property in the Goods passes the Customer shall hold the Products as bailee for HMG.
- 4.4 Notwithstanding that property in the Products has not yet passed to the Customer the Customer may nevertheless in the ordinary course of its business sell the Products.
- 4.5 Until the property in the Products shall have passed to the Customer any of the Products remaining in the possession of the Customer shall be as far as possible kept separate and distinct from all other property of the Customer or of any persons and stored in such a way as to be clearly identified as belonging to HMG.
- 4.6 HMG may at all times revoke the power of sale contained in Condition 4.4 above by notice to the Customer if the Customer is in default for longer than seven days in the payment of any sum whatsoever due to HMG (whether in respect of Goods or any goods supplied at any time by it to the Customer or for any other reason whatsoever) or if HMG has bona fide doubt as to the solvency of the Customer.
- 4.7 The Customers power of sale as contained in Condition 4.4 above shall automatically cease if the buyer (being a Company) enters into liquidation whether compulsorily or voluntarily or has a receiver appointed over all part of its assets; or if the Customer (not being a Company) becomes bankrupt or insolvent or if the customer enters into any arrangement with creditors or takes or suffers any similar action in consequence of debts.
- 4.8 The Customers power of sale contained in Condition 4.4 above shall automatically cease on the happening of any event or default which would cause HMG reasonably to consider that its Title to the Products may adversely affect and the Customer shall notify HMG forthwith of the happening of any such event or default.

## 5. Warranty

- 5.1 HMG hereby warrants its title to the goods but save as to this warranty as to title no other warranty condition or other terms as to the characteristics of the goods, their quality or fitness for any purpose is given or accepted and any warranty condition or other such term whether implied by statute at common law or otherwise is hereby excluded from this contract notwithstanding that the purpose for which the goods are to be used is made known to HMG.
- 5.2 Without prejudice to the above:
  - 5.2.1 HMG reserves the right to refuse to accept at its own discretion any repeat orders for specialised goods made specifically to the Buyers requirements.
  - 5.2.2 HMG does not warrant that instalments of or batches of repeat orders of any product shall comply with the specification or colour match of any other instalment batch or order. In the event that there shall be any said variation of specification or colour match the liability of HMG shall be limited to the invoice price of the instalment batch or order concerned. It is the Buyer's absolute obligation to specify clearly the product being ordered and the specification required. HMG accept no liability for the failure of the Buyer to order the correct product or specification. Wherever appropriate HMG will endeavour to assist Buyers with technical advice and specifications but the Buyer shall at all times be responsible for ordering the correct product or specification and deciding upon fitness for purpose of the product.
- 5.3 HMG reserves the right to alter the composition of the sample or example goods supplied to confirm to any applicable standards or laws or otherwise within reasonable limits having regard to the nature of the goods and the purpose for which they are to be applied.
- 5.4 HMG does not guarantee the suitability of goods made specifically to the Buyer's requirements and differing from HMG's standard specifications even if the purpose for which the goods are required is known to HMG.
- 5.5 Any illustrations performance details examples of applications specifications and colours and all technical data in such literature are based on experience and upon trials under test conditions and are provided for general guidance only. No such information or data shall form part of the contract unless the Buyer shall have complied with the conditions laid out in the introduction relating to statements and representations and HMG shall have given the confirmation referred to in that introduction:

- 5.5.1 In the event of the condition of the goods being such as might or would (subject to these conditions) entitle the Buyer to claim damages to repudiate the contract or to reject the goods the Buyer shall not then do so but shall first ask the Seller to supply satisfactory substitute goods and HMG shall thereupon be entitled at its option to supply satisfactory substitute goods free of cost and within a reasonable time or to repay the price of the Goods in respect of which the complaint is made.
- 5.5.2 If HMG do so supply satisfactory substitute goods or effect repayment pursuant to condition 5.5.1 above, the Buyer shall be bound to accept such substitute goods or repayment and HMG shall be under no liability in respect of any loss or damage whatsoever arising from the initial delivery of the defective goods or from the delay before the substitute good are delivered or the repayment is affected.

## 6. Miscellaneous

HMG shall have the right in its absolute discretion and without assigning any reason therefore and notwithstanding any contract the Customer may have made with a third party to terminate without notice any agreement to make supplies to any person or to refuse or limit the amount of credit to be given to any person and to withhold supplies to any person.

## 7. Patents & Trademarks and Health & Safety

No Representation, Warranty or Indemnity is given by HMG that the goods do not infringe any Letter, Patent, Trade Mark, Registered Designs or other industrial rights. In compliance with the Health & Safety at Work Act 1974, HMG's Product Labels give (as required by the Statutory Regulations for the labelling of Paint, Ink and other ancillary products) information of known hazards associated with the product and sales literature states their properties. However almost all Products may be hazardous in certain conditions if handled and applied without due care. HMG's resources are available on request to provide any information Buyers may require in order to meet their obligations under the Safety at Work Act 1974. The Buyer shall after delivery of the goods be solely responsible for their safe and satisfactory storage and shall be responsible for complying with any statutory or other requirement with regard to the storage use or handling of the goods. The Buyer shall indemnify HMG against any claim by any Third Party caused by products delivered by HMG proving not to be fit and suitable for such Third Party's purposes for any reason.

## 8. Liability for Accidents & Damage

- 8.1 HMG is ISO 9000(2) Quality Assurance approved and our system is working to procedures to ensure the highest possible standard of service is maintained. HMG stipulates that it will make appropriate representations where requested as to quality and fitness for a particular purpose and as to merchantability of any Products sold or supplied by it. HMG shall not be liable in respect of any claim whether arising in contract or for any injury loss or damage caused to any person or property arising out of the use of any of the Products supplied (except where such loss, injury damage or claim be occasioned by the negligence of HMG or any employee of HMG) except as herein provide.
- 8.2 HMG will however give the most sympathetic consideration to any complaint as to either manufacture or workmanship and if in its side discretion it comes to the conclusion that such complaint is justified it will be prepared to deal with the same in the manner in which its absolute discretion it sees fit.
- 8.3 For HMG to consider any claim the following provisions must be honoured:
  - 8.3.1 Any problem must be notified to the Managing Director as soon as the problem is identified but in any event within three working days. Three working days is considered reasonable given the nature of the Products;
  - 8.3.2 A detailed written explanation of the problem must be sent to the Managing Director as soon as possible but in any event within seven days;
  - 8.3.3 HMG and any person working for or on its behalf must be given full and immediate access to all information documentation and material (including access to sites). Furthermore the Buyer shall indemnify HMG in respect of all and any claims made or proceedings taken against HMG (and associated legal costs incurred by HMG) by any person from a company including employees of HMG or of the Buyer or of any contractor employed by the Buyer (or their personal representatives) whether in respect of death or personal injury are caused by a negligent act or omission on the part of HMG;
  - 8.3.4 All and any complaints must be made in good faith and the Buyer must co-operate with HMG or its representatives in any areas where HMG in its absolute discretion deems such co-operation to be necessary;
  - 8.3.5 In all circumstances a Buyer must use (or ensure that a third party uses) any Products supplied to it for a specific purpose, for that purpose alone and in accordance with all instructions and advice given by HMG;
  - 8.3.6 Except in circumstances where HMG makes an offer of redress which is refused by the Buyer (any such offer being made without prejudice to its position generally) then liability for loss and damages of whatever nature (excluding consequential loss) is limited to three times the cost of the Products in question.

## 9. Governing Law

This Agreement will be governed by and construed in accordance with English Law. The Buyer irrevocably submits in respect of all matters and disputes arising out of this Agreement to the exclusive jurisdiction of the English Courts.

## 10. Assignment

This contract is personal to the Buyer and may only be assigned with the written consent of HMG.

## 11. Payment & Discount

- 11.1 Unless otherwise agreed in writing payment shall be due and payable by the last day of the month following the date of invoice. If HMG considers the creditworthiness of the Buyer to have deteriorated after the date of the contract HMG shall be entitled to require payment prior to delivery. The time for payment shall be of the essence of the contract.
- 11.2 HMG shall be entitled to submit its invoice(s) at any time after the goods are ready for delivery or would have been ready in the ordinary course but for the Buyers request or default.
- 11.3 Where goods are delivery by instalment separately the Buyer shall pay such invoices in accordance with these conditions.
- 11.4 No disputes arising under the contract nor delays otherwise than due to default by HMG shall interfere with prompt payment in full by the Buyer.
- 11.5 In the event of default in payment by the Buyer HMG shall be entitled with prejudice to any other right or remedy to do all or any of the following:
  - 11.5.1 to suspend all further deliveries under the contract and under any other contract(s) between HMG and the Buyer than current without notice;
  - 11.5.2 to charge interest on any amount outstanding at the rate of 2% above the base rate of Lloyds TSB Bank plc such interest being charged as a separate continuing obligation not merging with any judgement.
  - 11.5.3 to serve notice on the Buyer requiring immediate payment for all goods supplied by HMG under this and all other contracts with the Buyer whether or not payment is due or invoiced;
  - 11.5.4 to sue for the price of the goods notwithstanding that title has not passed to the Buyer.

## 12. Cancellation of Goods

Orders for Products may not be cancelled or suspended without HMG's prior written consent. Any cancellation or suspension of an order with HMG does not agree to be on the condition that the Buyer shall indemnify HMG against any loss incurred wholly or in part by the cancellation or suspension.

## 13. Return of Goods

No Products are supplied on a sale or return basis. There should be no liability on HMG to accept returned Products. Any Products returned by a Buyer or anybody acting on his behalf will remain the risk of the Buyer and HMG for the avoidance of doubt confirms that no liability of any description is accepted in respect of returned Goods.

## 14. Confirmation of Orders

- 14.1 In order to avoid orders being duplicated, all orders that are confirmation of orders previously placed shall clearly indicate the fact. Unless clear indication is given that any order verbal or written the Buyer shall accept delivery of the goods and pay for the same in full.
- 14.2 Where the Buyer orders non-standard products which are specifically manufactured to his unique requirements, the Buyer shall accept the supply of a quantity whether more or less within 10% of the stipulated amounts in such circumstances the invoice value of the goods shall be subject to a corresponding adjustment.

## 15. Export

- 15.1 Without prejudice to these Conditions of Sale, products for export shall be at the Buyer's risk from the time of collection by the Freight Carrier from the Company's Works. All prices quoted are ex-works HMG's premises and will be exclusive of all Taxes, Duties, Insurance, Packing and Freight, unless otherwise expressly quoted for in writing and any other costs incurred by HMG but not included in the price of the products.
- 15.2 The uniform Law on International Sales shall not apply to this contract. The terms of payment shall be as specified in writing by HMG.
- 15.3 Where the prices quoted are in any currency other than Sterling, these prices are based on the relevant exchange rate of the currency concerned ruling on the date of quotation and HMG reserves the right to vary the prices if there shall be any change incurred in the rate at the time of despatch.