

# Conditions of Sale

## \*THESE CONDITIONS CONTAIN LIMITATIONS OF SELLER'S LIABILITY

### 1. General

- (a) In these conditions, "seller" means Dartex Coatings Limited or Dartex Coatings Incorporated. "Buyer" means the buyer indicated on seller's order confirmation and references to the products include their packaging. If seller has not issued an order confirmation, "seller's order confirmation" means any document issued by seller indicating the terms on which the products are supplied.
- (b) These conditions supersede all prior representations or arrangements, and contain the entire agreement between the parties in connection with the products (unless otherwise stated on seller's order confirmation). All other terms and conditions, express or implied, are excluded. None of seller's employees or agents has authority to modify or supplement these conditions or to accept any order except on seller's official sales forms. No products shall be deemed appropriated to the contract until after seller has acknowledged buyer's order in writing.
- (c) Nothing in these conditions shall restrict the statutory rights of a buyer who deals as a consumer.
- (d) Subject to the provisions of this contract, terms defined in the 1990 edition of incoterms have the same meaning when used in these conditions.

### 2. Delivery

- (a) Delivery or despatch dates quoted or requested are given or accepted by seller in good faith but are not guaranteed, and time shall not be of the essence in respect of the seller's delivery or other obligations, unless in the case of a date stated to be "guaranteed" on a seller's order confirmation.
- (b) Delivery shall be made to the place(s) and by the method(s) specified on seller's order confirmation (or if none, ex works or, for export sales, FAS UK port/FOB UK airport). Buyer is responsible for unloading. Buyer's or its carrier's receipt shall be conclusive evidence of delivery.
- (c) Packaging is included in the price and is not returnable unless otherwise stated on seller's order confirmation. Any special packaging requirements will incur a non-refundable additional charge. Buyer shall comply with all applicable law and regulations, and with any return, disposal or other requirements stated on seller's order confirmation, in relation to any packaging in or on which the goods are supplied by buyer, without prejudice to any statutory obligation to which seller itself may be subject in relation to such packaging.
- (d) Buyer shall accept manufacturing tolerances accepted in the trade, and quantities or contract specifications varying by not more than 10% from the contract quantity, and shall pay pro rata for the actual quantity delivered. The quantity stated on seller's despatch note shall be conclusive evidence of the amount delivered except in cases of manifest error.
- (e) Save for the purposes of Clause 3(e), (f) and 7, each delivery shall be treated as a separate contract, and partial deliveries are permitted unless otherwise stated on seller's order confirmation. Accordingly, failure to make any particular delivery, or any breach of contract by seller relating thereto, shall not affect any remaining deliveries.
- (f) Buyer shall not take delivery of the products by any date quoted by seller or requested by buyer or (if none) within a reasonable time. Seller may deliver early where reasonable. Buyer shall be responsible for all storage and other costs relating to buyer's failure to comply with the contract. Buyer shall promptly supply all information and assistance required for seller to execute buyer's order.
- (g) Where the products are supplied under any internationally recognised trading term as specified in Incoterms 1990, the provision by seller of the usual transport document(s) or other evidence of delivery consistent with the relevant trading term will be conclusive evidence of delivery by seller. (If seller or its carrier is unable to provide the products on board ship upon their arrival at the port of delivery, a warehouse receipt for the products shall be treated as sufficient delivery.)
- (h) Unless otherwise specified on seller's order confirmation, buyer undertakes to obtain and comply with any necessary export/import licences, permits and consents for the supply and delivery of the products.
- (i) LATE CLAIMS CANNOT BE ENTERTAINED. CLAIMS FOR GOODS INVOICED AND NOT DELIVERED MUST BE NOTIFIED WITHIN 7 DAYS.

### 3. Price

- (a) Unless otherwise stated on seller's order confirmation, prices are ex works and exclusive of VAT and all other duties, fees or taxes. All sums due to seller shall be paid in the currency and to the address stated on seller's order confirmation, or such other address as seller may require.
- (b) Unless otherwise stated on seller's order confirmation, payment is due on the twentieth day of the month following the month of invoice, but seller may require security for payment before despatch in the circumstances described in Clause 6(c).
- (c) Where prices are quoted in currencies other than sterling, buyer shall compensate seller for any currency losses suffered by seller as a result of buyer's failure to pay for the products on the date specified in Clause 3(b).
- (d) Unless prices are stated to be fixed on seller's order confirmation, seller may increase prices in accordance with increases in seller's cost or general price list increases occurring after the date of seller's order confirmation but before despatch.
- (e) In the circumstances described in Clause 6(c), all unpaid balances owing to seller from buyer shall become a debt immediately due and payable to seller, irrespective of whether ownership of the products has passed to buyer under Clause 7.
- (f) Time of payment is of the essence of the contract. Seller may charge interest at 4% above National Westminster Bank plc's base rate per annum for the time being (to accrue from the day to day) on any sum owed to seller under the contract which is not paid on the date specified in Clause 3(b), after as well as before any judgment. Buyer may not withhold payment or make any set-off on any account. Aswell as charging interest, the seller also reserves the right to charge for third party costs including all legal fees.
- (g) Seller may appropriate sums received from buyer against any debt due to seller from buyer (under this or any other contract), irrespective of any purported appropriation by buyer.
- (h) Where any business or division of seller is indebted to buyer in respect of goods or services supplied by buyer (whether or not such debt is then due and payable), seller may, without prior notice to buyer, set off any or all of such indebtedness against any monies owing by Buyer to Seller, whereupon buyer shall, to the extent of such set-off, be discharged from its obligations to pay for products (without prejudice to any other remedies of seller in respect of any non-payment or other default by buyer) and seller shall to the same extent be discharged from its indebtedness to buyer.

### 4. Seller's Warranty

- (a) Seller warrants that upon delivery the products:
- (i) are sold with good title; and
- (ii) comply with seller's current published specification or data sheet for the products (or, where there is none, that they comply with any specification appearing on seller's order confirmation and are made with sound materials and workmanship to normal standards accepted in the industry), in all material respects ("seller's warranty"). If the products correspond in all material respects to any sample supplied or accepted by seller as the agreed sample, they shall be considered to comply with seller's warranty.
- SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE FIT FOR ANY PARTICULAR PURPOSE OR FOR INTENDED USE BY BUYER, AND IT IS FOR BUYER TO SATISFY ITSELF THAT THE PRODUCTS ARE SO FIT.**
- (b) Seller's Warranty shall cease to apply if buyer fails materially to comply with any instructions of seller relating to the products.
- (c) Buyer shall examine the products as soon as reasonably practicable after delivery. Buyer shall immediately notify seller of any incomplete or failed delivery, loss or damage during carriage or if the products fail to comply with seller's Warranty. Buyer shall notify seller within 30 days after the date when buyer became or ought reasonably to have become aware of any of the above, and in any event before the earlier of
- (i) 6 months from the date of despatch by seller; and
- (ii) 30 days after the products have been used or put into process. Buyer shall (subject to Clauses 4(f) and 5(a)) be treated as having waived all claims connected with the matter which should have been notified. In any event, no claims will be considered in respect of fabric after it has been cut.
- (d) Subject to notification within the period required by Clause 4(c), if it is shown to seller's reasonable satisfaction that the products fail materially to comply with Seller's Warranty, Seller shall be given a reasonable opportunity to correct such failure, and if seller does not or is unable to do so, seller will be at buyer's option to either (i) accept a price reduction (or, if the products have depreciated for reasons other than seller's default or have been used or put into process, a reasonable part of the purchase price), or replace the products (if reasonably practicable) within a reasonable time, free of charge. SUCH CORRECTION, REFUND OR REPLACEMENT SHALL, SUBJECT TO CLAUSE 4 (f) BELOW AND TO CLAUSE 8(A) BELOW, BE SELLER'S SOLE LIABILITY IN RELATION TO ANY SUCH FAILURE. Replacement products are covered by these conditions, including Seller's Warranty. Products which are allowed not to comply with the contract shall as far as possible be preserved for inspection by seller, and if replaced or if a refund is made shall be returned to seller (at seller's cost) if seller reasonably so requests.
- (e) Clause 4(a)(ii) does not apply to seconds, remainder stock or samples or to goods sold as obsolete or sub-standard.
- (f) Seller does not exclude any liability which cannot be excluded as between Buyer and Seller under any United Kingdom legislation.
- (g) If the products are intended by seller to be and are in fact resold by buyer in the United Kingdom to individual(s) without further processing, testing or inspection, seller will pay reasonable compensation to buyer for any damages and costs finally awarded against buyer in the United Kingdom under part 1 of the Consumer Protection Act 1987 ("the CPA"), but only to the extent that seller is itself liable under the CPA for the claim in question because the products were defective (within the meaning of the CPA) at the time of delivery by seller, seller shall not be liable to the extent that any liability is seller's responsibility under Clause 8(d) (i) or arises from any default of buyer (including but not limited to any failure by buyer to ensure that the products are used only for uses recommended by seller) or where buyer knew or ought reasonably to have known of the said defect.
- (h) It is a condition of buyer's right of recovery under Clause 4(f) that buyer shall promptly notify seller of any relevant claim, shall comply with the seller's reasonable requirements to minimise liability and/or avoid further liability, and shall allow the seller conduct of any action and/or settlement negotiations.

### 5. Force Majeure

- (a) Seller shall 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.
- (b) Seller may where reasonable in all the circumstances (whether or not involving seller's negligence) without liability suspend or terminate (in whole or in part) its obligations under the contract, if seller's ability to manufacture, supply, deliver or acquire materials for the production of the products by seller's normal means is materially impaired.

### 6. Termination and Suspension

- (a) Except where buyer has caused or contributed to any delay, buyer may (as buyer's 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;
- (i) by any date stated to be "guaranteed" on seller's order confirmation; or
- (ii) within 60 days after any date quoted on seller's order confirmation (unless the goods have been specially manufactured or adapted for buyer).

### 6. (continued)

- (b) Seller may (without prejudice to its other rights or remedies) terminate or suspend seller's performance of the products, or any part of the contract in the circumstances described in Clause 6(c). Seller may also suspend deliveries while investigating any claim relating to prior shipments (under any contract) of products.
- (c) The relevant circumstances are if:
- (i) Buyer fails to take delivery of or to pay for the products on date required under Clause 2(f) or 3(b) respectively or breaches any other term of the contract, or if buyer is late in payment or performance under or otherwise breaches any other contract for the sale or purchase of goods or services between Buyer and Seller; or
- (ii) Buyer becomes bankrupt or insolvent or if a receiver or encumbrance takes possession of any material part of buyer's assets, or buyer suffers any foreign equivalent of the foregoing; or
- (iii) Seller has reasonable grounds for suspecting that an event in Clause 6(c)(ii) has occurred or will occur, or that buyer will not pay for the products on the due date, and so notifies buyer.
- (d) If buyer provides seller with security for the contract price, reasonably acceptable to seller, within 3 working days after a notice has been given under Clause 6(c)(iii), seller shall withdraw the notice.

### 7. Risk and Title

- (a) The products are at the risk of the buyer from the time of delivery.
- (b) Ownership of the products shall not pass to the buyer until seller has received in full (in cash or cleared funds) all the sums due to it in respect of:
- (i) the products; and
- (ii) all other sums which are or which become due to the seller from the buyer on any amount; and until such time, full legal and beneficial title in the products shall be vested in the seller.
- (c) Until ownership of the products has passed to the buyer, the buyer must:
- (i) Hold the products on a fiduciary basis as seller's bailee;
- (ii) store the products (at no cost to seller) separately from all other goods of the buyer or any third party in such a way that they remain readily identifiable as the seller's property;
- (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the products; maintain the products in good condition and keep them insured on the seller's behalf for their full price against all risks to the reasonable satisfaction of the seller. On the request the buyer shall produce the policy of insurance to the seller; and
- (iv) hold the proceeds of the insurance referred to in condition 7.(iv) on trust for the seller and not to mix them with any other money, nor pay the proceeds into an overdraft bank account.
- (d) A buyer may resell the products before ownership has passed to it solely on the following conditions:
- (i) any sale shall be effected in the ordinary course of the buyer's business at full market value;
- (ii) The buyer shall hold such part of the proceeds of sale as represent the amount owned by the buyer to the seller on behalf of the seller and the buyer shall account to the seller accordingly.
- (iii) Any such resale shall be as a sale of the seller's property on the buyer's own behalf and the buyer shall deal as principal when making such a sale.
- (e) The buyer's right to possession and use of the products shall terminate immediately if:
- (i) The buyer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the completion of a company or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or if an application is made to the court for an administration order in respect of the buyer, or if any person appoints or purports to appoint an administrator of the buyer by notice, or if any person gives notice to appoint either paragraph 15 or paragraph 26 of schedule B1 to the insolvency Act 1986 of his intention to appoint an administrator of the buyer, or if an order or interim order for the administration of the buyer is made or if the buyer has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the buyer; or
- (ii) The buyer offers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its contractual obligations to seller under the contract or any other contract between the seller and the buyer, or is unable to pay debts within the meaning of section 123 of the insolvency Act 1986 or the buyer ceases to trade; or
- (iii) The buyer encumbers in any way charges any of the products.
- (f) The seller shall be entitled to recover payment for the products notwithstanding that ownership of any of the products has not passed from the seller.
- (g) The buyer grants the seller, its agents and employees an irrevocable licence at any time to enter any premises where the products are or may be stored in order to inspect them, or, where the buyer's right to possession has terminated, to recover them.

### 8. Intellectual Property/Third Party Claims

- (a) Seller will defend buyer against any third party claim made against buyer in the United Kingdom alleging that the products as such, in the original state sold by seller, infringe and patent, registered design, trademark, trade name or copyright effective in the United Kingdom, and seller will pay any damages and costs finally awarded against buyer in the United Kingdom in respect of such a claim.
- (b) Clause 8(a) shall not apply to the extent that the products are manufactured to buyer's design or other specification (or as provided in Clause 8(d)(i)) or in respect of any use of the products not contemplated by seller at the date of seller's order confirmation.
- (c) Buyer shall not use any trademarks or trade names applied to or used by seller in relation to the products in any manner not approved by seller.
- (d) BUYER SHALL INDEMNIFY SELLER AGAINST ANY LIABILITY INCURRED BY SELLER:
- (i) AS A RESULT OF INCORPORATING PROPERTY OF BUYER IN THE PRODUCTS OR APPLYING ANY TRADEMARK OR SERVICE OR DESIGN TO THE PRODUCTS ON BUYER'S INSTRUCTIONS, OR COMPLYING WITH ANY OTHER INSTRUCTIONS OF BUYER RELATING TO THE PRODUCTS; AND
- (ii) IN RELATION TO ANY THIRD PARTY CLAIMS ARISING FROM THE USE MADE OF OR DEALINGS BY BUYER IN THE PRODUCTS (IRRESPECTIVE OF WHETHER THEY INVOLVE THE NEGLIGENCE OF SELLER OR EMPLOYEES), EXCEPT AS PROVIDED IN CLAUSE 8(a) AND 4(f) OR IF ARISING FROM SELLER'S WILLFUL DEFAULT.
- (e) The indemnified party shall promptly notify the other of any relevant claim, shall comply with the other's reasonable requirements to minimise liability and/or avoid further liability, and shall allow the other conduct of any action and/or settlement negotiations on reasonable terms.

### 9. ADVICE AND ASSISTANCE

- SELLER SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, AND IRRESPECTIVE OF THE NEGLIGENCE OF SELLER, ITS AGENTS OR EMPLOYEES, FOR ANY REPRESENTATIONS, ADVICE OR ASSISTANCE GIVEN (UNDER THIS CONTRACT OR OTHERWISE, AND WHETHER BEFORE OR AFTER THE DATE OF THE CONTRACT) BY OR ON BEHALF OF SELLER IN CONNECTION WITH THE PRODUCTS OR THE CONTRACT, UNLESS AND THEN ONLY TO THE EXTENT THAT SELLER HAS MADE SUCH REPRESENTATIONS, AND/OR AGREED TO PROVIDE SUCH ADVICE OR ASSISTANCE, FOR A FEE UNDER A SEPARATE WRITTEN CONTRACT WITH BUYER.

### 10. LIMITATION OF LIABILITY

- (a) WITHOUT PREJUDICE TO ANY OTHER LIMITATION OF SELLER'S LIABILITY (WHETHER EFFECTIVE OR NOT):
- (i) IN NO CIRCUMSTANCES WHATEVER SHALL SELLER BE LIABLE (IN CONTRACT, TORT OR OTHERWISE, AND IRRESPECTIVE OF ANY NEGLIGENCE OR OTHER ACT, DEFAULT OR OMISSION OF SELLER OR ITS EMPLOYEES OR AGENTS) FOR ANY INDIRECT OR CONSEQUENTIAL LOSSES (INCLUDING LOSS OF GOODWILL, BUSINESS OR ANTICIPATED SAVINGS), LOSS OF PROFITS OR USE, OR (SUBJECT TO CLAUSES 4(f) AND 8(a) ANY THIRD PARTY CLAIMS, IN CONNECTION WITH THE PRODUCTS OR THE CONTRACT.
- (ii) EXCEPT AS PROVIDED UNDER CLAUSES 4(f) AND 8(a), SELLER'S TOTAL AGGREGATE LIABILITY IN CONNECTION WITH THE PRODUCTS OR THE CONTRACT (IN CONTRACT, TORT OR OTHERWISE AND WHETHER OR NOT RELATED TO ANY NEGLIGENCE OR OTHER ACT, DEFAULT OR OMISSION OF SELLER OR ITS EMPLOYEES OR AGENTS), IS LIMITED TO THE INVOICE PRICE FOR THE PRODUCTS CONCERNED, EX-WORKS AND EX VAT.
- (b) WITHOUT PREJUDICE TO SELLER'S WARRANTY, BUYER'S SOLE REMEDY SHALL BE IN DAMAGES.
- (c) SELLER'S WARRANTY AND BUYER'S REMEDIES UNDER CLAUSE 4(f) AND CLAUSE 8(a) 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, AND IRRESPECTIVE OF THE NEGLIGENCE OF SELLER OR ITS EMPLOYEES OR AGENTS) OR ANY OTHER WARRANTIES, OBLIGATIONS, REPRESENTATIONS, LIABILITIES, TERMS OR CONDITIONS ARE HEREBY EXPRESSLY EXCLUDED.
- (d) WITHOUT PREJUDICE TO CLAUSE 4(c), NO ACTION MAY BE BROUGHT AGAINST SELLER IN CONNECTION WITH THE PRODUCTS OR THE CONTRACT UNLESS PROCEEDINGS ARE ISSUED AGAINST SELLER WITHIN TWO YEARS AFTER BUYER BECAME OR OUGHT TO HAVE BECOME AWARE OF THE DEFECT OR RISE THEREOF.
- (e) THIS CLAUSE 10 APPLIES NOTWITHSTANDING ANY FUNDAMENTAL BREACH OR BREACH OF A FUNDAMENTAL TERM OF THE CONTRACT BY SELLER.

### 11. Miscellaneous

- (a) The contract may not be assigned by buyer without seller's prior written consent.
- (b) 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 U.K., on the third working day after being placed prepaid in the first class post to buyer's or seller's U.K. address. Qualified acceptances by buyer on delivery notes shall not constitute notice of any claim or acceptance by seller of any such qualification.
- (c) No failure by seller to enforce any provision of this contract shall be construed as a release of its rights relating thereto or to sanction any further breach.
- (d) If any provision of the contract is found to be invalid or unenforceable it shall have effect to the maximum extent permitted by law, or, if not so permitted shall be deemed deleted.
- (e) The provisions of Clauses 3(h), 7, 8(d) and 10 shall survive any termination of this contract.

### 12. Law

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