

TFS STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions:

Buyer: the person or firm who purchases the Products.

Coating: any surface treatment, coating, paint or other solution or process ordered by the Buyer and applied by the Supplier to the Goods, as set out in the Order and any Specification.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: the Supplier's standard terms and conditions of sale, as set out in this document.

Contract: the contract between the Supplier and the Buyer in accordance with these Conditions.

Delivery Location: has the meaning set out in clause 4.1.

Force Majeure Event: an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (including disputes involving the Supplier's workforce), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

Goods: the goods (or any part of them) owned by the Buyer and provided to the Supplier for Processing, as set out in the Order and any Specification.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks and services marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off and unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Order: the Buyer's order for the Coating and the Processing of the Goods, as set out in the Buyer's purchase order form or the Buyer's written acceptance of the Supplier's quotation, as the case may be.

Process: the manufacturing process undertaken by the Supplier as set out in the Order and in any Specification attached, such processes may include but is not limited to the provision of protective films and/or Coating; and '**Processing**' and '**Processed**' shall be construed accordingly.

Product: the Goods to which Coating has been applied and/or which have undergone Processing.

Receipt: has the meaning given in clause 3.1

Specification: any specification for the Coating and/or the Processing of the Goods, which has been prepared by the Supplier, or prepared by the Buyer and accepted in writing by the Supplier.

Supplier: Trade Fabrication Systems Ltd registered in England and Wales with company number 03523092.

Working Day: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

1.2 In these Conditions, the following shall apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Buyer for the Supplier to Process the Goods in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier (including any guidance by the Supplier as to the suitability of any Process requested by the Buyer) which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any illustrations or descriptions of the Process or sample Products contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the outcome and benefits of the Process. They shall not form part of the Contract or have any contractual force.

- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 (twenty) Working Days from its date of issue unless otherwise agreed in writing.
- 3. DELIVERY OF THE GOODS TO THE SUPPLIER**
- 3.1 The Buyer shall deliver the Goods to the Supplier, at such location as the Supplier specifies (**Receipt**) and shall ensure that each Receipt of the Goods is accompanied by a delivery note, which shows the date of the Order, all relevant Buyer and Supplier reference numbers, the type and quantity of the Goods, special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered for Processing.
- 3.2 The Buyer acknowledges that the Supplier does not, and is under no obligation to, inspect the Goods prior to Processing. The Buyer warrants that the Goods are: (i) suitable for Processing; (ii) of acceptable quality; and (iii) fit for the purpose for the Buyer's intended use following Processing..
- 3.3 The Buyer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.3 shall survive termination of the Contract.
- 4. DELIVERY OF THE PRODUCTS TO THE BUYER**
- 4.1 The Buyer shall collect the Products from the Supplier's premises as set out on the Order form or such other location as may be advised by the Supplier before delivery (**Delivery Location**) following the Supplier notifying the Buyer that the Products are ready for collection.
- 4.2 Delivery shall be completed on the completion of loading of the Products at the Delivery Location (**Delivery**). Unless agreed otherwise, the Supplier shall load the Products on to the Buyer's vehicle at the Delivery Location.
- 4.3 Any dates quoted for Delivery are approximate only, and the time of Delivery is not of the essence.
- 4.4 If the Supplier fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available and suitable processing of the goods in the cheapest market available. The Supplier shall have no liability for any delay in delivering, or failure to deliver, the Products to the extent that such failure is caused by the Buyer's failure to provide the Supplier with adequate Delivery instructions for the Products or any relevant instruction related to the Processing.
- 4.5 Subject to any prior agreed alternative arrangements, if the Buyer fails to accept or take Delivery of the Products within 20 (twenty) Working Days of the Supplier notifying the Buyer that the Products are ready, then except where such failure or delay is caused by the Supplier's failure to comply with its obligations under the Contract in respect of the Products, Delivery of the Products shall be deemed to have been completed at 9.00 am on the 20th Working Day following the day on which the Supplier notified the Buyer that the Products were ready; and the Supplier shall store the Products until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).
- 4.6 The Supplier may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 5. QUALITY**
- 5.1 Unless otherwise alerted at the time of the Delivery, and subject always to clause 3.2, the Supplier warrants that on Delivery, the Products shall:
- conform in all material respects with the requirements of the Order and any applicable Specification;
 - be free from material defects in design, material and workmanship; and
 - be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 Subject to clause 5.3, if:
- the Buyer gives notice in writing within 24 (twenty-four) hours of Delivery that some or all of the Products do not comply with the warranty set out in clause 5.1;
 - the Products are made available for examination, in their original packaging and the Supplier is given a reasonable opportunity to examine such Products; and
 - the Buyer (if asked to do so by the Supplier) returns such Products to the Supplier's place of business at the Buyer's cost,
- the Supplier shall, at its option, repair or replace the defective Products, or refund the price agreed in full.
- 5.3 The Supplier shall not be liable for any failure to comply with the warranty in clause 5.1 if:
- the Buyer makes any further use of the Products after giving a notice in accordance with clause 5.2;

- (b) the Buyer has installed the Products into a larger good, construction or other fabrication whether before or after giving notice pursuant to clause 5.2;
 - (c) the defect arises due to the Buyer failing to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice;
 - (d) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Buyer;
 - (e) the defect arises as a result of a pre-existing defect with the Goods;
 - (f) the Buyer alters or repairs the Products without the written consent of the Supplier;
 - (g) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions, or due to transport following the delivery;
 - (h) the Product differs from the Order and/or Specification as a result of changes made to ensure it complies with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Buyer in respect of any failure to comply with the warranty set out in clause 5.1.
- 5.5 These Conditions shall apply to any repaired or replacement Products supplied by the Supplier.
- 5.6 The Buyer acknowledges that in any application of the Coating, there are inherent pigmentation limitations which may result in variations in the shade and colouring of any given colour, which are outside the control of either party (**Batch Issues**). Accordingly, the Supplier shall not be liable for:
- (a) variations in colour between different instalments of Products contained in the same Order; or
 - (b) variations in colour or quality, which arise due to the Products having been Processed under different Orders,
- unless Batch Issues arise in circumstances where the Buyer's total Coating requirements for any given project are contained within one Order as at the Commencement Date.

6. TITLE AND RISK

- 6.1 The risk in the Goods and Products shall remain with the Buyer at all times and the Buyer shall keep the Goods insured against all risks for their full price during the period from the first Receipt to Delivery . Subject to clause 6.3, title to the Goods or Products shall not pass to the Supplier.
- 6.2 While the Goods and Products are held by the Supplier, the Supplier shall:
- (a) hold the Goods and Products on a fiduciary basis as the Buyer's bailee;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods and Products, save where the same is necessary in order to Process the Goods; and
 - (c) give the Buyer such information relating to the Goods and Products as the Buyer may reasonably require from time to time.
- 6.3 Title to the Coating shall pass to the Buyer upon the earlier of:
- (a) the Supplier receiving payment in full (in cash or cleared funds) for such Coating; or
 - (b) the Coating being applied to the Goods in such a manner as to make it irreversibly combined with the Goods to form the Products.

7. PROCESSING

- 7.1 The Supplier shall Process the Goods for the Buyer in accordance with the Order and, where relevant, the Specification, in all material respects. The Supplier warrants to the Buyer that the Processing will be provided using reasonable care and skill.
- 7.2 Notwithstanding clause e, the Supplier shall be entitled to refuse to Process any Goods which, in its opinion, are not suitable for Processing or may cause a health and safety risk at the Supplier's premises whether before, during or after Processing.
- 7.3 The Supplier reserves the right to amend the Process or any Specification if required by any applicable statutory or regulatory requirements and may also make changes to the Processing if such changes do not materially affect the nature or quality of the Product.
- 7.4 No warranty is given by the Supplier as to the suitability of the Process requested by the Buyer. The Buyer shall ensure that the treatments provided by virtue of the Process are fit for the Buyer's intended ultimate purpose for the Products.
- 7.5 The Supplier shall not be held liable for losses arising due to incorrect use or misuse by the Buyer of the Coatings.
- 7.6 The Buyer acknowledges that where Processing is ordered in instalments or across multiple Orders, it is the Buyer's responsibility to ensure Products are installed in the Buyer's end project with due care and with full consideration of Batch Issues.

8. BUYER'S OBLIGATIONS

- 8.1 The Buyer shall:
- (a) ensure that the terms of the Order and (if submitted by the Buyer) the Specification are complete and accurate; and

- (b) provide the Supplier with the Goods to be Processed and such information and materials as the Supplier may reasonably require to supply the Processing, and ensure that such information is accurate in all material respects.
- 8.2 If the Supplier's performance of any of its obligations in respect of the Processing is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (**Buyer Default**):
- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
 - (c) the Buyer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Buyer Default.

9. CHARGES AND PAYMENT

- 9.1 The price for Processing the Goods shall be the price set out in the Order. The price is inclusive of all costs and charges (including for the cost of the Coating) but exclusive of VAT. Where VAT is applicable, the Buyer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable at the same time as payment is due.
- 9.2 The Supplier reserves the right to increase the price, by giving notice to the Buyer at any time before Delivery, to reflect any increase in the cost to the Supplier that is due to:
- (a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Buyer to change the delivery date(s), quantities or types of Products ordered, the Order or the Specification; or
 - (c) any delay caused by any instructions of the Buyer in respect of the Goods or failure of the Buyer to give the Supplier adequate or accurate information or instructions in respect of the Goods or due to provision of defective Goods.
- 9.3 The Supplier shall invoice the Buyer on or at any time after completion of the Processing, whether or not delivery has occurred.
- 9.4 The Buyer shall pay each invoice submitted by the Supplier in accordance with the terms of the invoice. Time for payment shall be of the essence of the Contract.
- 9.5 Without limiting any other right or remedy of the Supplier, if the Buyer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 8 (eight) per cent per annum above the then current National Westminster Bank's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 9.6 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Buyer against any amount payable by the Supplier to the Buyer.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Processing shall be owned by the Supplier.

11. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to its employees, agents or subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.

12. LIMITATION OF LIABILITY

- 12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- (d) defective products under the Consumer Protection Act 1987.

12.2 Subject to clause 12.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and
- (b) the Supplier's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the cost of the Process and cost of provision of a suitable replacement Product.

12.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 (thirty) days after receipt of notice in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 (fourteen) days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(b) to clause 13.1(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under this Contract on the due date for payment.

13.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend all further deliveries of Products under the Contract or any other contract between the Buyer and the Supplier if:

- (a) the Buyer fails to make pay any amount due under this Contract on the due date for payment; or
- (b) the Buyer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l), or the Supplier reasonably believes that the Buyer is about to become subject to any of them.

14. CONSEQUENCES OF TERMINATION

14.1 On termination of the Contract for any reason:

- (a) the Buyer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Products supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Buyer immediately on receipt; and
- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

15. GENERAL

- 15.1 The Supplier shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event. If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 8 (eight) weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.
- 15.2 Neither party may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party without the prior written consent of the other party (such consent not to be unreasonably withheld).
- 15.3 Any and all notices or other information to be given by one of the parties to the other shall be deemed sufficiently given when forwarded by first class mail or recorded delivery to the other party at the respective addresses given at the head of this Agreement. A notice shall be deemed to be served two working days after it has been posted. For the avoidance of doubt, notices under this Contract shall not be served using electronic mail.
- 15.4 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.
- 15.5 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 15.6 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 15.7 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 15.8 The Contract (Rights of Third Parties) Act 1999 does not apply so as to give a person who is not a party to the Contract any rights under it.
- 15.9 Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.
- 15.10 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.