

# TERMS AND CONDITIONS OF SALE FOR TRADE CUSTOMERS ONLY

## 1. APPLICATION:

These terms and conditions of sale shall apply to every contract for the sale of goods ("the goods") to the person or organisation buying the goods ("the buyer") which are made by Protective Paints Limited ("Protective") and shall not be deemed or construed to be modified, rescinded or waived in whole or in part except by written amendment by the parties.

## 2. PRICE:

2.1. The purchase price of the goods shall be the price ruling at the date of delivery unless otherwise agreed in writing between the parties.

2.2. Unless otherwise stated the purchase price is exclusive of Goods and Service Tax, sales tax, or any other taxes, import duties, levies, tariffs, freight or insurance charges which if applicable are an extra charge and are payable on the date on which the price is payable.

## 3. PAYMENT

3.1. Payment is to be made on the 20<sup>th</sup> of the month following the date of dispatch of the goods ("due date").

3.2. Should payment in full not be paid to Protective Paints by the due date then:

(A) Protective may charge the Buyer interest on the outstanding account at a rate equal to 6 per cent per annum above the indicator Lending Rate of Westpac Banking Corporation for the period during which payment has been overdue calculated on a daily basis until the date payment is received by Protective

(B) Protective reserves the right to suspend or cancel deliveries of the goods to the Buyer.

## 4. DELIVERY:

4.1. Protective does not guarantee delivery, and any time or date for delivery given by Protective is intended only as an estimate, and Protective is not responsible for the consequences of delay or non-delivery however arising.

4.2. The goods may be delivered in instalments, and in such case each delivery shall be regarded as a separate contract and the goods delivered shall be paid for accordingly.

4.3. If the buyer fails or refuses to accept delivery, then the goods shall be deemed to have been delivered when Protective were willing to deliver them and the Buyer shall nevertheless make any payments provided herein upon the basis that such delivery has been effected.

4.4. Where delivery is affected in containers the Buyer will be responsible for the prompt unpacking and return of the containers. Any costs arising from the delay in unpacking and return of these containers will be an extra charge.

4.5. The method of transportation is at Protective's option. If the Buyer wishes to nominate the transporter any additional costs shall be charged as an extra and all such transport shall also be at the Buyer's risk.

## 5. GOODS FOR RETURN:

5.1. No goods may be returned by the Buyer to Protective after the expiration of **seven days** from the date of receipt.

5.2. Where Protective does accept the goods for return, the cost for the return shall be to the Buyer's account, and Protective may charge the buyer a handling fee of 10% of the value of goods returned.

5.3. Where Protective have manufactured goods to the Buyer's specification or the Buyer's instructions then the goods are non returnable and no refund is available.

## 6. DAMAGE OR LOSS IN TRANSIT:

If when taking delivery at its premises or otherwise, the Buyer signs a clean receipt for the goods which later are found to have been damaged or lost in transit, thereby prejudicing a possible claim on a third party, Protective shall not be responsible for any loss or damage involved.

## 7. RISK:

Notwithstanding that property and title in the goods remain with Protective, the risk of any loss or damage or deterioration of the goods due to any cause whatsoever will be borne by the Buyer from the time of delivery to a carrier nominated by Protective for delivery to the Buyer.

## 8. DAMAGES:

In no circumstances whatsoever shall Protective be liable for any loss or damage direct or indirect consequential or otherwise, howsoever arising, whether suffered by the Buyer or any third party beyond the invoice value of the goods and no such loss or damage will be recoverable by the Buyer in any event, unless he gives written notice of his claim to Protective within seven days of receipt of the goods or of the occurrence of the claimed damage.

## 9. WARRANTY:

Goods are guaranteed to be of merchantable quality. Any warranties or conditions, statutory or otherwise, as to the goods quality or fitness for any purpose are hereby excluded to the fullest extent permitted by law. Where however goods are supplied to the specifications of the Buyer these goods are guaranteed by Protective to be manufactured in accordance with those specifications.

## 10. ORDERS BY TELEPHONE:

Telephone orders are accepted by Protective at the risk of the Buyer as deliveries made before written confirmation is received are made for the benefit and as a service to the Buyer. Confirming orders shall be marked "Confirmation of Telephone Order" and orders not so marked may be treated as an original open order and duplicated. Protective will not be responsible for expenses and inconvenience incurred thereby.

## **11. CANCELLATION OF ORDERS:**

Once a contract has been made the Buyer shall not be entitled to cancel the same in respect of the goods or any part thereof. Nevertheless upon receipt by Protective of a written request for cancellation and written agreement of the Buyer to accept a cancellation charge to meet costs incurred by Protective in relation to the contract prior to cancellation, Protective may in its discretion agree to the cancellation of the contract in whole or part.

## **12. PROPERTY:**

12.1. Ownership of and title to the goods shall remain with Protective until the purchase price and all other monies owing by the Buyer to Protective in respect of the goods have been paid in full to Protective.

12.2. While the ownership of and title to goods remains with Protective, the goods must be stored separately and marked so as to be identifiable as being the property of Protective. Protective shall have the right to enter the premises of the Buyer, or where so ever the goods are stored to recover the goods.

12.3. If the Buyer fails to pay for the goods on due date, or commits an act of bankruptcy, or compounds or arranges with all or any number of creditors, or baring a company has a Receiver appointed, or goes into liquidation whether voluntary or otherwise, Protective shall be entitled to recover possession of all goods supplied by it.

## **13. TECHNICAL ADVISE:**

Technical advice given verbally or in writing is based on knowledge or tests, believed to be reliable and is offered as a helpful suggestion only. It is hereby expressly stated and understood however that where all such technical advice is given Protective assumes no obligation or liability as to advice given or the results obtained. All such advice shall be given and accepted at Buyers risk and the Buyer shall use his own judgement and rely on same in all such matters. Further, where equipment or other companies' products are mentioned, an unqualified recommendation is not implied.

## **14. HEALTH AND SAFETY:**

It is the Buyer's responsibility to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the storage, handling and use of the goods and where information is supplied to the Buyer on potential hazards relating to the goods, to bring such information to the attention of its employees, agents, subcontractors, visitors and customers. Without prejudice to the foregoing, it is also the Buyer's responsibility to provide safe facilities for the reception of the goods in storage.

## **15. EXPORT PROHIBITION:**

The goods are sold for use in New Zealand only and must not be exported elsewhere, directly or indirectly, without the prior written agreement of Protective.

## **16. CONSUMER GUARENTEES ACT 1993:**

The Buyer hereby acknowledges that he is buying the goods for the purposes of a business and any and all warranties and guarantees contained in the Consumer Guarantees Act 1993 or any other legislation are hereby excluded, waived and/or negated to the fullest extent permitted and in any event will not apply.

## **17. COSTS:**

If the Buyer defaults in performing its obligations under this agreement and Protective incurs expenses in enforcing its rights under this agreement, the Buyer shall pay those expenses (including full legal costs) to Protective on demand.

## **18. ARBITRATION:**

Any disagreement between Protective and the Buyer touching the construction or interpretation of these terms will be submitted to arbitration in accordance with the laws of New Zealand.

## **19. JURISDICTION:**

The construction, validity and performance of the contract shall be governed by New Zealand law.