

1. Interpretation

1.1. Definitions. In these Conditions, the following definitions apply:

"Business Day" - a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

"Charges" - the charges payable by the Customer for the supply of the Services as agreed in writing between the Supplier and the Customer; in accordance with clause 7;

"Conditions" - these terms and conditions as amended from time to time in accordance with clause 12.8;

"Contract" - the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions;

"Customer" - the person or firm who purchases Services from the Supplier;

Customer Materials" - means the materials provided by the Customer to the Supplier, in respect of which the Services are to be provided, more particularly described in the Specification/Order;

"Finished Product" - means the finished product resulting from the application of the Services to the Customer Materials;

"Order" - means an order for the provision of Services from the Customer to the Supplier;

"Services" - the services, including the Finished Product, to be supplied by the Supplier to the Customer as set out in the Specification/Order;

"Specification" - the description or specification of the Services provided in writing by the Supplier to the Customer;

"Supplier" - Architectural Powder Coatings Limited, a company registered in England and Wales with company number 04384366.

1.2. Construction. In these Conditions, the following rules apply:

- 1.2.1. a "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2. a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3. 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;
- 1.2.4. 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
- 1.2.5. a reference to "writing" or "written" includes faxes.

2. Basis of contract

2.1. The Supplier will provide the Services to the Customer on the terms set out in these Conditions.

2.2. No Order submitted by the Customer shall be deemed to have been accepted by the Supplier unless and until confirmed in writing by an authorised representative of the Supplier.

2.3. The Order submitted to the Supplier by the Customer, must contain the following information:

- 2.3.1. a general description of the Services required;
- 2.3.2. the required timescale for the delivery of the Finished Product;
- 2.3.3. details and specifications of all products required in providing the Services, including any special requirements such as super durable or PVDF powder (in the absence of which the Supplier shall select products at its discretion);
- 2.3.4. a specification of the required colour and gloss level of the paint or coating;
- 2.3.5. details of any specific supplier of paint the Customer may require (in the absence of which the Supplier shall select any supplier at its discretion), though the Supplier reserves the right to decline a Contract if, in its opinion, the specific supplier offers paint that is unsuitable for application under clause 3.4 or where application parameters are unduly onerous;
- 2.3.6. details of the Customer Materials;
- 2.3.7. the location at which the Finished Product will be situated (including distance from the sea, and details of any other environmental factors (such as use in swimming pools or industrial areas) that may impact on the durability of the coating); and
- 2.3.8. the location at which Finished Products are to be delivered.

2.4. Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. 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 Customer 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 30 Business Days from its date of issue.

3. Supply of Services

3.1. Subject to acceptance under clause 2.2 and delivery of the Customer Materials in accordance with clause 5.1, the Supplier shall supply the Services to the Customer in accordance with the Order in all material respects.

3.2. The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3. The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

3.4. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill and that any paint or other coating used in providing the services shall conform with the standards of BS 6496:1984 (1991) and BS EN 12206-1:2004.

4. Customer's obligations

4.1. The Customer shall:

- 4.1.1. ensure that all information set out in the Order is complete and accurate;
- 4.1.2. co-operate with the Supplier in all matters relating to the Services;
- 4.1.3. provide the Supplier with such additional information as the Supplier may request from time to time;
- 4.1.4. obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start.

4.2. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- 4.2.1. the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 4.2.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- 4.2.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. Customer Materials

5.1. The Customer shall at its own cost, deliver or procure the delivery of the Customer Materials to the Supplier at the time specified by the Supplier. The Supplier may collect the Customer Materials where prior agreement has been reached. Time of delivery of the Customer Materials is of the essence of the Contract.

5.2. Risk in the Customer Materials shall pass to the Supplier on delivery, but title to the Customer Materials shall remain with the Customer.

5.3. Subject to clause 7.7, following provision of the Services, the Finished Product shall be delivered by the Supplier within a reasonable period following completion of the Services to the delivery location as set out in the Order, or such alternative location as the Supplier and Customer agree otherwise in writing.

5.4. As an alternative to clause 5.3, the parties may agree that delivery of the Finished Product shall take place by the Supplier making the Finished Product available for collection from the Supplier's premises. If within 10 Business Days of the Supplier notifying the Customer that the Finished Product is available for collection, the Customer has not collected the Finished Goods, the Supplier may resell or otherwise dispose of part or all of the Finished Product and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the amount of the Charges or invoice the Customer for any shortfall below the amount of the Charges.

5.5. Time of Delivery of the Finished Product is not of the essence of the Contract.

5.6. Risk in the Finished Product shall pass to the Customer:

- 5.6.1. in the case of Finished Products being delivered by the Supplier, at the time of arrival at the delivery location with the Customer being responsible for unloading; or
- 5.6.2. in the case of Finished Products being collected by the Customer, once the Finished Product is loaded onto suitable transport provided by the Customer with the Customer being responsible for loading.

6. Customer Warranties

6.1. The Customer warrants, represents and undertakes to the Supplier that:

- 6.1.1. the information provided pursuant to clause 4.1.3 above is accurate in all material respects;
- 6.1.2. where it does not hold title to the Customer Materials, it is authorised to enter into this Contract for the provision of Services in respect of the Customer Materials;
- 6.1.3. the Customer Materials:
 - 6.1.3.1. are free from material defects in design, quality, material and workmanship;
 - 6.1.3.2. are suitable for the provision of the Services thereto; and
 - 6.1.3.3. do not contain any defective base metals, any impurities or contaminants, have not been subjected to finishing operations which have compromised surface integrity or presentation; or have not been packed in such a way that make them unsuitable for the application of the services.

6.2. The Customer 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 professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any breach of the warranties contained in clause 6.1 above.

7. Charges and payment

7.1. In consideration for the provision of the Services, the Customer shall pay the Charges. The Charges are inclusive of the costs and charges of packaging, transport and delivery of the Finished Product to the delivery location set out in the Order and agreed by the Supplier.

7.2. The Supplier reserves the right to increase the Charges, by giving written notice to the Customer, at any time, to reflect:

- 7.2.1. any increase in costs to the Supplier which is due to any factor beyond the control of the Supplier, such as (without limitation) any increase in the costs of labour, raw materials, fuel, transportation, goods or costs of manufacture; and/or
- 7.2.2. any additional delivery costs incurred by the Supplier, if the Customer requires, and the Supplier agrees to, deliver the Finished Products to a location other than that specified in the Order.

7.3. The Supplier shall invoice the Customer at any time following delivery of the Finished Product.

7.4. The Customer shall pay each invoice submitted by the Supplier by no later than the 25th day of the month following the month in which the invoice was raised. The Customer shall pay in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

7.5. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer 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 on the supply of the Services at the same time as payment is due for the supply of the Services.

7.6. Without limiting any other right or remedy of the Supplier, if the Customer 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 per cent per annum above the then current Barclay's Bank's base lending 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.

7.7. Without limiting any other right or remedy of the Supplier, if the Customer fails to make a payment to the Supplier under any account whatsoever by the due date for payment, the Supplier shall have the right to re-sell or otherwise dispose of any of the Customer Materials and/or Finished Product, and may apply the proceeds arising to discharge the sums outstanding from the Customer to the Supplier, and any surplus shall be paid to the Customer.

7.8. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer 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 Customer against any amount payable by the Supplier to the Customer.

8. **Supplier Warranty**

8.1. The Supplier will, where it is able to do so, pass on the benefit of any guarantee provided by the manufacturer of any paint or other coating which is used in the provision of the Services.

8.2. The duration of the guarantee relating to the paint or other coating and the Services will be that available from the relevant paint manufacturer at the time of provision of the Services for the location detailed under clause 2.3.7.

9. **Limitation of liability:**

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

9.1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:

9.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

9.1.2. fraud or fraudulent misrepresentation; or

9.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

9.2. Subject to clause 9.1:

9.2.1. the Supplier shall not be liable to the Customer, 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 including any losses that may result from a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors; and

9.2.2. the Supplier's total liability to the Customer 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, including losses caused by a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors shall not exceed the Charges.

9.3. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

9.4. This clause 9 shall survive termination of the Contract.

10. **Termination**

10.1. Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

10.1.1. the Customer commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that party being notified in writing of the breach;

10.1.2. the Customer 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;

10.1.3. the Customer 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 the Customer with one or more other companies or the solvent reconstruction of the Customer;

10.1.4. 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 Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

10.1.5. the Customer (being an individual) is the subject of a bankruptcy petition or order;

10.1.6. a creditor or encumbrancer of the Customer 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 days;

10.1.7. 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 Customer (being a company);

10.1.8. a floating charge holder over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;

10.1.9. a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;

10.1.10. any event occurs or proceeding is taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1.2 to clause 10.1.9 (inclusive);

10.1.11. the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

10.1.12. the Customer (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.

10.2. Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

10.2.1. the Customer fails to pay any amount due under this Contract on the due date for payment;

10.2.2. the Customer fails to deliver or procure the delivery of the Customer Materials in accordance with clause 5.1;

10.2.3. on inspection of the Customer Materials, the Supplier decides, at its absolute discretion, that the Customer Materials are not suitable for the provision of the Services.

10.3. Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 10.1.2) to clause 10.1.12, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

11. **Consequences of termination**

On termination of the Contract for any reason:

11.1.1. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

11.1.2. the Supplier shall return to the Customer, at the Customer's expense, all Customer Materials (and where Services have been provided, the Finished Product) in its possession or control provided that the Customer has paid all Charges due under the Contract;

11.1.3. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or 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; and

11.1.4. clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12. **General**

12.1. Force majeure:

12.1.1. For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), 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.

12.1.2. The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

12.1.3. If the Force Majeure Event prevents the Supplier from providing any of the Services for more than four 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 Customer.

12.2. Assignment and subcontracting:

12.2.1. The Supplier 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 or agent.

12.2.2. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

12.3. Notices:

12.3.1. Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

12.3.2. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

12.3.3. This clause 12.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

12.4. Waiver:

12.4.1. 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.

12.4.2. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

12.5. Severance:

12.5.1. 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.

12.5.2. 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.

12.6. No partnership: 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.

12.7. Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

12.8. Variation: 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.

12.9. Governing law and jurisdiction: 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.