

1. General

- (a) These Terms of Trade govern the supply by Altex Coatings Limited (the "Company") to you (the "Customer") of Products from time to time. By placing an order for Products with the Company you are deemed to have agreed that all Products are supplied subject to these Terms.
- (b) The Company is entitled at any time by notice in writing to vary any provision of these Terms.

2. Ordering

- (a) Orders are to be placed with the Company by way of a Purchase Order, specifying the required quantity of Products and requested date of delivery.
- (b) Any order placed by the Customer is deemed to be an order incorporating these Terms of Trade.
- (c) The Company is not obliged to accept any Purchase Order.
- (d) The Company may, in its discretion, require the Customer to be approved by the Company for credit purposes prior to accepting any Purchase Order. In such cases the Customer will be required to complete a Credit Application. The Company will advise the Customer promptly as to whether they have been approved for credit purposes.

3. Supply and Delivery of Products

- (a) The Company will exercise reasonable care and skill to supply the Products in accordance with the timeframe and such other directions as specified in the Purchase Order however the Company shall not be liable for any failure to deliver or install, or for a delay in delivery or installation arising from any cause whatsoever beyond the Company's control.
- (b) The Customer shall not be relieved of any obligation to accept or pay for Products by reason of any delay in delivery.
- (c) Freight is payable by the Company on all orders of 120 litres or more for Protective and Commercial Marine products, with the exception of the Pleasure Marine brand AY&B products of 40 litres or over that are placed at one time. Freight charges are payable for all orders below these quantities. Any paint carried by NZ Couriers, Road Services or by Air is subject to a freight charge.

4. Prices

- (a) Prices for the Products are as set out in the Price List or as otherwise quoted in writing by the Company.
- (b) Special prices for large quantity orders may be arranged and agreed upon by the Company in writing.
- (c) Orders for non-standard paint colours may incur a surcharge of \$25 for orders of less than 100 litres.
- (d) All Prices, including any special prices agreed upon or surcharges are exclusive of GST.

5. Payment

- (a) The Customer will pay the Company the Price, plus GST, to the Company by the 20th of the month following the month in which delivery is made.
- (b) Payment of the Price will be subject to the Customer receiving a valid tax invoice.
- (c) Payment is to be by cheque, electronic transfer or such other method as agreed between the Parties.
- (d) Any dispute in relation to the Price payable must be notified to the Company prior to the due date for payment and the Parties will endeavour to resolve the dispute in good faith. If the Customer fails to dispute the Price payable prior to the due date for payment, the Customer shall be deemed to have accepted the amount stated on the invoice.
- (e) Failure to make any payment by the due date will result in the Customer being charged interest at the rate of 15% per annum, calculated on a daily basis on the overdue amount from the due date until the date when payment is received by the Company. The Customer will also be liable to pay all expenses and legal costs incurred by the Company as a result of the Customer's default in payment. Any failure or delay by the Company to charge interest on any unpaid account or to exercise any of its rights will not operate as a waiver of those rights. The Company may apportion payments to outstanding accounts as it sees fit.

6. Risk and Insurance

- (a) All risk in the Products shall pass to the Customer on dispatch of the Products from the Company's premises.
- (b) Notwithstanding clause 6(a) ownership of the Products supplied shall not pass to the Customer until payment in full has been received by the Company. If any Products are mixed or commingled (as defined in the Personal Property Securities Act 1999) with other goods before payment is received by the Company, the Company will own the resulting mixed or commingled goods as if they were the Products supplied.
- (c) After delivery, but while ownership remains with the Company, the Customer must ensure:
 - (i) the Product is clearly identified as belonging to the Company;
 - (ii) any proceeds from a subsequent sale of the Products are held in trust for the benefit of the Company;
 - (iii) no interest of charge over the Products is granted to a third party; and
 - (iv) that the Products are insured against all risks, at the Customer's cost, naming the Company as loss payee, for the Product's full replacement value.

7. Personal Property Securities Act 1999 (PPSA)

- (a) The Customer acknowledges that:
 - (i) these Terms of Trade are a security agreement for the purposes of section 36 of the PPSA;
 - (ii) the Company takes a security interest in any current or future Products supplied to the Customer to secure payment of all amounts owed to the Company by the Customer and the Company has the right to register any such interest, including any Purchase Money Security Interest (as defined in the PPSA);
 - (iii) the security interest will continue until all amounts owing to the Company by the Customer have been paid in full; and
 - (iv) where payment is not made on the due date the Company may exercise any and all remedies afforded to a secured party by Part 9 of the PPSA.
- (b) The Customer waives its right to receive a verification statement under section 148 of the PPSA.
- (c) The Customer will:
 - (i) promptly sign any further documents, provide any further information or so any other things that the Company may reasonably require to perfect and maintain the perfection of the security interest; and
 - (ii) indemnify the Company for all expenses incurred in registering a financing statement or financing change statement or releasing the Products charged by the statement.
- (d) To the fullest extent permitted by law, the Customer agrees that sections 114(1) (a), 117(1) (c), 133 and 134 of the PPSA shall not apply on the enforcement by the Company of any security interest it has in the Products supplied. The Customer also waives any rights it may have under sections 116, 119, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- (e) The Customer must give the Company written notice of any change in its name or address.

8. Warranties

- (a) Except as provided in any written warranty supplied by the Company, and without detracting from a Customer's rights under the Consumer Guarantees Act 1993 where it applies, to the maximum extent permitted by law, the Company shall not be liable for any express or implied warranty or representation given by the Company, its servants or agents as to fitness for purpose or installation or use of the Product or for any losses the negligence of the Company, its servants or agents. For the avoidance of doubt the Company has no liability whatsoever for any verbal statements or representations made.
- (b) The Customer agrees with the Company that where the Products are acquired for the purpose of a business, the Consumer Guarantees Act 1993 shall not apply.

9. Use of Products / Product Data Sheets / Brochures / Colour Charts

- (a) All Products must be used strictly in accordance with the instructions for use supplied with the relevant Product, whether contained on the Product packaging or specified in the relevant product data sheet. The Company accepts no responsibility for, and shall have no liability whatsoever in relation to, any use of the Products that is not in accordance with such instructions for use.
- (b) Any information contained in any datasheet or brochure supplied by the Company is provided as a guide only and is provided without warranty, implied or otherwise. It is your responsibility to determine the suitability of any information or product for the use contemplated. Conditions of use, application and the substrate are beyond the control of the Company so no liability whatsoever (whether as to coverage, performance, injury or otherwise) is accepted on the basis of information contained in such datasheets or brochures.
- (c) The Company is not liable for any statements, representations, guarantees or warranties provided in any data sheet produced by a manufacturer of Products.
- (d) Altex printed colour charts are available as a guide only as colours can vary in appearance with different gloss levels, lighting, substrate texture, application method and technique.

10. Site Coatings Condition Assessment

- (a) Where the Company undertakes a site coatings condition assessment at your request, the Company shall not be taken to be making or giving any representation as to the structural integrity or remaining service life of any plant, equipment, component, surface or structure within the audit area, whether expressly commented on or not. Any advice or recommendations provided by the Company regarding the condition and remaining service periods of existing paint coatings shall be based on visual inspections only and reliant on information regarding the age, relevant historic and on-going environmental conditions as advised by the Customer.

11. Spot Checks

- (a) Where Company representatives undertake Dry Film Thickness Spot Checks ("Spot Checks") they shall be of a limited and visual nature only. Spot Checks shall not be relied on as anything more than confirmation that the visual condition of the coating is generally consistent with the coating having been correctly applied. In no circumstances whatsoever shall Spot Checks be taken as a representation that the coating has in fact been correctly applied. The parties agree that the application of the coating is the responsibility of the applicator and the Company shall have no liability whatsoever for losses or damage arising from or connected to poor coating application.

12. Credits and Returns

- (a) Products purchased and then returned will not be accepted for credit unless the following conditions have been complied with:
 - (i) Tins must be unopened, clean and resalable;
 - (ii) Returns must be within 20 Working Days of purchase and accompanied by proof of purchase;
 - (iii) Returns must be at the Customer's expense.
- (b) Any Products returned may incur a restocking charge of 25% of the Price of Product.
- (c) Special tints are not returnable.
- (d) The Company has the right to decline to accept the return of any Product or to provide any credit.

13. Default and Termination

- (a) If the Company has reasonable grounds to believe:
 - (i) The Customer is in material breach of these Terms of Trade;
 - (ii) The Customer commits an act of bankruptcy or is placed into liquidation; or
 - (iii) A receiver or manager has been appointed in respect or any part or the whole of the Customer's assets,The Company may:
 - (iv) Withhold delivery of the Products; or
 - (v) Treat any order for the Products to have been cancelled and enforce their security interest in the Products.
- (b) Termination or cancellation of any order will not affect the rights, powers, remedies, obligations, duties and liabilities of either Party which have accrued before termination.

14. Intellectual Property

- (a) The Customer acknowledges that the Company is the sole owner of all intellectual property relating to the Products or the business of the Company.
- (b) The Customer indemnifies the Company against any infringement or unauthorised use by the Customer of any trademark, tradename, patent or copyright design relating to the Products or the business of the Company and it is specifically agreed that the sale of the Products does not confer on the Customer any licence or right to use any trademark, tradename, patent or copyright design belonging to the Company.

15. Collection of Information

- (a) The Customer authorises the Company to:
 - (i) Collect and hold personal and credit information about the Customer from any source the Company considers appropriate for the purpose of determining the Customer's credit worthiness, credit history or credit capacity, for debt collection or any related purpose, or for providing the Customer with information about the Products; and
 - (ii) Disclose the personal and credit information to anyone else for the purposes set out in clause 15(a)(i) above.
- (b) The Customer must notify the Company of any changes in circumstances that may affect the accuracy of any personal or credit information that the Company has collected about the Customer under these Terms of Trade, including any change in name, business practice or any other details.
- (c) Where the Customer is an individual, they may access and request correction of any personal or credit information that the Company has collected about them as an identifiable individual, subject to the restrictions contained in the Privacy Act 1993.

16. Dispute Resolution

- (a) Where any dispute arises in connection with these Terms of Trade the complaining party must promptly give full written particulars of the dispute to the defaulting party. The Parties shall then endeavour to meet and resolve the dispute in good faith.
- (b) Where any dispute remains unresolved within 30 Working Days of written particulars being given, either party is free to seek resolution of the dispute by whatever means available at law.

17. Force Majeure

Neither party will be liable to the other for any delay or non-compliance with their obligations under these Terms of Trade caused by a Force Majeure Event, provided each party has taken all reasonable steps to minimise any loss, damage or delay resulting from a Force Majeure Event.

18. No Waiver

Failure by the Company to insist upon strict performance of any term or condition herein shall not be deemed a waiver thereof or of any rights the Company may have and shall not be deemed a waiver of any subsequent breach of any term or condition.

19. Contracts Privity Act 1982

These Terms of Trade do not and are not intended to create an obligation or benefit enforceable at the suit of any third party.

20. Governing Law

These Terms of Trade will be governed and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

21. **Interpretation**

- (a) In these Terms of trade, unless the context otherwise requires:
- "Company" means Altex Coatings Limited and its permitted successors and assigns;
- "Credit Application" means the application for credit control form prescribed by the Company and available upon request.
- "Force Majeure Event" means an event or cause reasonably beyond a party's control including any action of Government, act of God, fire, earthquake, storm, flood, landslide, explosion, power failure, sabotage, epidemic, national emergency or act of war but does not include financial management difficulties or any risk or event, including those listed above, the effects of which could have been prevented by the taking of reasonable care by either Party;
- "GST" means goods and services tax chargeable or for which a person may be liable under the Goods and Services Tax Act 1985;
- "Parties" means the Company and the Customer and "party" means either one of the Company or the Customer;
- "Price" means the price (exclusive of GST) for the Product(s) as quoted by the Company in writing or as specified in the Price List;
- "Price List" means the list describing the relevant charges for the Products current at the time of delivery of the Products, and as amended by the Company from time to time, available upon request.
- "Products" means high performance coating products and includes, without limitation, various resins, acrylics, solvents, coatings and primers together with any associated works or services required to supply the Products. A full list of current Products is available on the Company's website at www.altexcoatings.co.nz.
- "Purchase Order" means an order placed with the Company verbally or in writing for a specified quantity of Products;
- "Terms of Trade" means these terms of trade as amended or replaced from time to time; and
- "Working Day" means any day other than a Saturday or Sunday or Public Holiday observed in New Zealand.
- (b) In these Terms of Trade:
- (i) Terms given a defined meaning have that meaning where the context permits;
 - (ii) Words referring to the singular include the plural and vice versa;
 - (iii) Any reference to any of the Parties includes that party's executors, administrators or permitted assigns;
 - (iv) Everything expressed or implied in these Terms of Trade which involves more than one person binds and benefits those people jointly and severally;
 - (v) Clause headings are for reference purposes only;
 - (vi) A reference to a person includes any other entity or association recognized by law;
 - (vii) All references to dollars and \$ are references to New Zealand dollars unless otherwise stated;
 - (viii) References to time of day are references to New Zealand time;
 - (ix) All periods of time or notice exclude the days on which they are given and include the days on which they expire;
 - (x) Time is of the essence.

22. **Entire Agreement and Contracting Out**

- (a) These Terms of Trade, together with any other written agreements or documents supplied in connection with the supply of Products (such as producer statements, specifications, warranty statements, Product datasheets and disclaimers) constitute the entire agreement between the Parties relating to supply of Products and supersede any verbal discussions or earlier representations by email or otherwise.
- (b) The Customer agrees that where they are in trade (as defined in the Fair Trading Act 1988 (the "FTA")), sections 9, 12A and 13 of the FTA shall not apply.

23. **Acceptance**

I/We have familiarised myself/ourselves with the contents to these Terms of Trade. By my/our signature/s below, I/we acknowledge, understand, accept and agree to comply with the information above provided by Altex Coatings Limited.

Company Name:	
Signed on behalf of the Company:	
Print Name:	
Individual Name:	
Individual Signature:	
Date:	