



General Terms and Conditions of Trade – Protective Coatings Services

1. General

- a) Orders are accepted subject to the following general terms and conditions of trade (Conditions) and the placing of an order with Nukote Australia Pty Limited (Company) is deemed to be acceptance of these Conditions by the party purchasing the product and or Services (Customer).
- b) Goods means the plant, machinery, part, equipment, vessel or other subject matter accepted by the Company access provided or supplied by or on behalf of the Customer.
- c) Services means the whole of the operations undertaken by the Company in respect of the Goods.
- d) The Company is not bound by any agreement purporting to waive or vary these Conditions unless such agreement to so waive is in writing and signed by an executive officer of the Company.
- e) The Company reserves the right to accept or refuse the provision of Services at its sole discretion. All Services are provided to the Customer subject only to these Conditions which prevail at all times over the conditions of contract of the Customer. In the event of and to the extent of any inconsistency between these Conditions and the conditions which are incorporated or issued by the Customer, these Conditions prevail.
- f) These Conditions any other documents attached hereto evidence the entire agreement for the provision of the Services by the Company to the Customer.
- g) The Customer warrants that the information it provides to the Company in relation to the Goods, including the nature, number of packages, weight and size etc. is accurate and will indemnify the Company against all loss, damages and expenses arising from inaccuracies in such particulars, including in connection with any prosecution by a relevant authority.
- h) All the rights, immunities and limitations of liability in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of these Conditions by the Company or any other person entitled to the benefit of such provisions.
- i) It is agreed that if any provision or any part of any provision of these Conditions is unenforceable such unenforceability shall not affect any other provision or any other part of such provision.

2. Prices and Terms of Payment

- a) Quotations and/or the Company price list are not an offer by the Company to supply the Services referred to in such quotations or price lists, and no order placed in response to a quotation or price list will be binding unless accepted by the Company in writing. All such acceptances by the Company are subject to availability of the necessary materials and to the Company being able to obtain any necessary authorisation and/or licences and to the same remaining valid.
- b) Prices are based upon the prices and costs of materials, labour, fuel, transport and overhead expenses current at the date of the quotation and may be varied by the Company at any time either before or after acceptance of the order to correspond with any variation in such prices or costs which may occur at any time before the Services are completed.
- c) Unless otherwise stated in the Company's quotations or price lists current at the time of the Company's acceptance of an order, prices quoted are strictly net. All product and or Services delivered to the Customer by the Company in any calendar month must be paid for in full in Australian dollars by the Customer on or before the Company's last trading day in the month following in which the product and or Services were delivered or provided ("the Due Date").
- d) Should the Customer fail to make payments as set out in (c) above, the Company shall be entitled to charge interest at 1.5% of the outstanding amount per month, prorated for lesser periods, from the due date until the date upon which payment is received.

3. Exclusive Remedies

- a) No set-off, counterclaim, deduction or extension of time that is not expressly provided for by these Conditions shall be available to or asserted by the Customer in relation to amounts owed to it the Company or otherwise in connection with these Conditions.
- b) These Conditions state the only representations, guarantees and warranties made by the Company and are the sole and exclusive rights and remedies available to the Customer. Warranties of merchantability, warranties arising from course of dealing or usage of trade, and warranties of fitness for a particular purpose are expressly excluded to the extent permitted by law.

4. Title

The Customer warrants that it is either the owner or the authorised agent of the person or persons owning or having any interest in the Goods or any part of the Goods and enters into this agreement on its own behalf

or as authorised agent of that person or those persons. Further the Customer undertakes to indemnify the Company in respect of any liability whatsoever and howsoever arising in connection with the provision of the Services and/or the product to any person (other than the Customer) who has or claims to have any interest in the Goods.

5. Changes in the Services

- a) The Customer may require the Company to increase, decrease or omit any part of the Services or to provide additional Services ("Variation"), in which case the time for completion of the Services may be adjusted by the Company to reflect such Variation.
- b) Any charges and expenses incurred in connection with Services provided by way of Variation shall be payable in accordance with the Company quotation.

6. Liability

- a) The Goods remain at the risk of the Customer during the Services and the Company will have no liability to the Customer in connection with loss or physical damage to the Goods unless such loss or damage is solely attributable to negligence by the Company in the provision of the Services to the Customer.
- b) The Company is not otherwise responsible in tort, contract or bailment or otherwise for any loss of, damage to a deterioration of the Goods or misdelivery, failure to deliver or delay in delivery of the Goods.
- c) In no circumstance is the Company liable for any loss suffered by the Customer in connection with the Goods or the Services that is an indirect loss including:-
 - (i) losses that are purely financial or economic losses;
 - (ii) loss of opportunity;
 - (iii) losses in connection with contracts, agreements or understandings the Customer has with third parties;
 - (iv) any other losses whatsoever that do not arise directly from physical damage to or loss of the Goods and are consequential in nature.
- d) Insurance for the Goods is the responsibility of the Customer and the Company will not arrange insurances for the Goods.
- e) In all cases where liability of the Company has not been excluded, whether by these Conditions, by statute or by international convention or otherwise, the liability of the Company whatsoever and howsoever arising is limited to:
 - (i) Australian \$100 or the value of the Goods the subject of the Contract at the time the Goods were received by the Company, whichever is the lesser; or
 - (ii) in the case of a breach of an Australian Consumer Law Guarantee, the payment of the cost of having the Services supplied again.
- f) The Company shall not be liable for any claims whatsoever not notified in reasonable detail to it by the Customer within six (6) months following completion of the Services.

7. Security

- a) The Company, its servants and agents shall have a particular and general lien on any Goods and any documents relating to those Goods, and a right to sell the Goods and documents whether by public or private sale or auction without notice, for all sums payable by the Customer to the Company including all debts, charges, expenses or other sums due and owing by the Customer or its servants or agents. In addition, the lien shall cover the costs and expenses of exercising the lien and of such a sale including reasonable legal fees. The lien and rights granted by this clause shall survive delivery of the Goods and the Company shall be entitled to retain the proceeds of sale of the Goods in respect of any outstanding amounts referred to in this clause. Where the proceeds of sale are not sufficient to cover all amounts payable to the Company, the Company is entitled to recover any deficit from the Customer. The Company sells or otherwise disposes of such Goods and any other documents as principal and not as agent and is not the trustee of the power of sale.
- b) From the time the Company, or its servants or agents, receive the Goods into its custody, the Goods and all of the Customer's present and future rights in relation to the Goods and any documents relating to those Goods, are subject to a continuing security interest in favour of the Company for the payment of all the amounts owed for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any at all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals, servants or agents. Further, the continuing security interest shall cover all the costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including legal and administration costs.

- c) For the purpose of these Conditions the Company shall be deemed to have custody and possession of the Goods whether the Goods are in the actual physical custody and possession of the Company or any subcontractors, servants or agents, and whether or not the Company is in possession of any documents of title relating to the Goods. The Customer and the Company agree that the Company has possession of the Goods within the meaning of section 24 of the Personal Properties Securities Act 2009 even if the Goods are in possession of the Company's subcontractor's servants or agents.
- d) The Customer acknowledges that the Company may, at the Customer's cost, register its security interests granted by the Customer under these Conditions, and all of the Customer's present and future rights in relation to the Goods, on the Personal Property Securities Register established under PPSA.
- e) The Customer will immediately inform the Company if an insolvency event occurs with respect to the Customer. The Customer shall not change its name or other details without first notifying the Company in writing with at least 14 days notice before such change takes effect.
- f) The Customer will not:
 - (i) permit to subsist any other security interest in relation to the Goods which would rank ahead of the Company's interests or;
 - (ii) except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of the Goods.
- g) In addition to any rights that the Company has under the PPSA the Company shall have the right, as the Customer's agent, at any time while any amount owing by the Customer to the Company under the Contract remains outstanding, to enter into the premises where the Goods are stored and remove them without being responsible for any damage caused in exercising this right. The Customer shall indemnify the Company for all such monies and all such costs, charges and expenses in repossessing the Goods and or product.
- h) The Customer and Company agree pursuant to section 115 of the PPSA to contract out of sections 95, 96, 120, 121, 123 and 125 and, to the extent permitted by law, Divisions 3 and 4 of the PPSA.
- i) Every special instruction to the effect that charges shall be paid by a person other than the Customer shall be deemed to include a stipulation that if that nominated person does not pay those charges within seven (7) days of delivery or attempted delivery of the Goods, then the Customer shall pay those charges to the Company within seven (7) days of being notified of that person's failure to pay.

8. Intellectual Property

The Company will not be liable in respect of any claim which may be made against the Company for infringement of letters patent, registered designs or any other intellectual property which may arise as a result of the Company carrying out instructions given by the Customer and the Customer agrees to indemnify and keep indemnified the Company from and against all or any such claims and against all costs, damages and expenses incurred by or recovered against the Company in respect of any such claims.

9. Delivery and/or Pick up

- a) The Company reserves the right to apply a delivery or pick up charge depending on size of the Goods and or freight distance. Any delivery or pick up date given by the Company are approximate only and no liability can be accepted for any loss, injury, damages or expenses consequent upon any delay in delivery or pick up from any cause whatsoever. Any such delay will not entitle the Customer to cancel any order or to refuse to accept delivery or pick up at any time.
- b) The Customer must inspect product and or Services immediately upon delivery or pick up and must within 7 days of inspection give written notice to the Company, with particulars, of any claim that the product and or Services are not in accordance with the contract. If the Customer fails to give that notice, then to the extent permitted by law the product and or Services will be treated as having been accepted by the Customer.
- c) In any event the Company shall be discharged from all liability whatsoever unless suit is brought within nine months of delivery of the product or the date on which it should have been delivered.

10. Goods and Services Tax

This Clause applies if the Company is or may become liable to pay GST in relation to any supply under these Conditions.

- a) Unless otherwise stated, all charges quoted are exclusive of GST. In addition to such charges, the Customer must pay GST on the Taxable Supply to the Company of an amount equal to the GST exclusive consideration multiplied by the GST Rate. GST shall be payable by the Customer without any deduction or set off for any other amount at the same time as the GST exclusive consideration is payable. In all other respects, GST shall be payable by the Customer to the Company upon the same basis as the GST exclusive consideration is payable by the Customer under these Conditions.

- b) The Company must issue an Invoice or Invoices to the Customer for the amount of GST referable to the Taxable Supply. The Company must include in any such Invoice such particulars as are required by the GST Law in order that the Customer may obtain an input tax credit for the amount of GST payable on the Taxable Supply.
- c) If any part of the consideration is referable to both a Taxable Supply and anything that is not a Taxable Supply, the amount of GST payable by the Customer shall be determined by the Company and shall be the same amount of GST that would be payable if the Taxable Supply were the only Supply made to the Customer.
- d) If the Customer makes default in the payment on the Due Date of any amount payable pursuant to (b) then without prejudice to any other remedies of the Company, the Customer shall pay to the Company upon demand an amount equal to the amount of any damages or interest or additional GST that may become payable by the Company arising out of the default of the Customer.

11. Notices

Any notice sent in connection with these Conditions shall be in writing and delivered by hand or registered mail to a party at its address specified in these Conditions or otherwise duly notified for the purposes.

12. Termination

Either party may terminate this Agreement:

- (a) if the other is in material breach of its obligations hereunder which breach has not been remedied within twenty-eight (28) days of a written request to remedy the breach or has failed duly to pay money outstanding to the other within twenty eight (28) days of the date such money was due;
- (b) in the case of the Customer, upon giving the Company forty five (45) day notice of its intention to do so; or
- (c) in the case of the Company, if it discovers that the Customer has made any material misrepresentation connected with the Services, the project to which they relate or the circumstances in which they may be performed; or
- (d) if the other becomes insolvent or an order is made or resolution passed for its winding up or a receiver or administrator is appointed to it or any of its assets or it takes steps with a view to any compromise or arrangement with its creditors; or
- (e) if it becomes unlawful for a party to perform its material obligations under this Agreement, in each case such termination to take effect without prejudice to accrued rights and obligations.

13. Force Majeure

If the Company is delayed in or prevented from making delivery owing to an event beyond the Company's reasonable control, the Company will be at liberty to cancel or suspend the contract without incurring any liability for any loss or damage resulting.

14. Law and Arbitration

- a) Any dispute arising in connection with the Services shall be referred to the senior executives of the parties who will use their best endeavours to settle the dispute as soon as possible.
- b) In the event the dispute is not able to be resolved despite the attempts set out in (a) above, any dispute or difference whatsoever arising out of or in connection with these Conditions shall be submitted to final and binding arbitration in Perth, Western Australia, in accordance with, and subject to, the Resolution Institute Arbitration Rules and the laws of Western Australia.

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