

## TERMS & CONDITIONS OF PURCHASE

### 1. Interpretation

In these Conditions:

**'Applicable Law'** means any applicable statute or delegated or subordinate legislation, -directive, treaty; any applicable judgment of any court, regulator or tribunal; any legally binding rule, policy, guidance or recommendation, industry code of conduct or guideline, which relates to this Contract and/or the Goods and/or the activities which are comprised in all or some of the Services or the use or application of the output from the Services

**'Buyer'** means Sherwin-Williams Protective and Marine Coatings (Company Number 893081) whose registered office is at Tower Works, Kestor Street, Bolton BL2 2AL.

**'Buyer's Premises'** means the premises set out in the Order

**'Conditions'** means these Terms and Conditions of Purchase

**'Contract'** means a contract for the purchase of Goods and/or Services set out in an Order made by or on behalf of the Buyer with a Seller on these Conditions

**'Goods'** means the goods detailed in each Order placed by the Buyer

**'Industry Standards'** means the degree of skill, care, prudence, supervision, diligence, foresight, quality control and quality management using what the relevant industry would (at the relevant time) be adopted by a leading professional supplier

**'Intellectual Property Rights'** means patents, copyrights, registered and unregistered design rights, drawings, processes, registered and unregistered trade and service marks and such rights as are protected by the law of passing off

**'Order'** means each request made by the Buyer to the Seller, issued or confirmed on the Buyer's official printed order or amendment forms as duly signed on the Buyer's behalf, for the supply of Goods and/or Services

**'Seller'** means the person named as the Seller in the Order

**'Services'** means the services detailed in each Order placed by the Buyer

**'Working Day'** means any day from Monday to Friday inclusive which is not a public or bank holiday.

**2. Acceptance of Entire Agreement:** A Contract for the supply of Goods and/or Services by the Seller to the Buyer on these Conditions will be formed when the Buyer issues an Order to the Seller. For the avoidance of doubt, the Buyer is under no obligation to accept any quotation. These Conditions together with any specification set out in each Order and any proposals, designs, plans and other documents specified by Buyer in such Order shall govern all purchases of Goods and/or Services made by the Buyer from the Seller and will apply to the exclusion of all other terms and conditions including any terms and conditions which the Seller purports to apply under any quotation, acknowledgment, acceptance or confirmation of order, delivery note, invoice or similar document (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing. Unless otherwise agreed in writing by both parties, the Contract shall constitute the complete and final written agreement between the Buyer and the Seller and supersedes all other agreements and understandings between the parties regarding the supply of goods and services. Neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement which is not expressly set out in the Contract.

**3. Price:** The price shall be as set out in the Order and shall be inclusive of all duties, fees, levies and inclusive of all other costs and expenses incurred by the Seller including all packaging, insurance, carriage and delivery costs but exclusive of value added tax (and any other similar or equivalent taxes). The Seller is not entitled to any additional payment unless agreed in writing by the Buyer. The charges and taxes payable by the Buyer in accordance with the Contract must be itemised as separate line items, at the Seller's actual cost, on each invoice.

**4. Standards:** *Goods:* The Seller will ensure that the quantity and description of the Goods will be as set out in the Order and Seller hereby warrants that all the Goods will (i) be fit for any purpose intended and/or held out by the Seller or made known to the Seller expressly or by implication and in this respect the Buyer relies on the skill and judgement of the Seller, (ii) comply with all Applicable Law, Industry Standards and the requirements of any relevant statutory or regulatory bodies, (iii) be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health, and (iv) be free from all defects in design, materials and workmanship. The Buyer has the right to inspect and test the Goods at any time prior to delivery. The Seller will permit the Buyer, its officers, employees, agents and sub-contractors to enter upon the Seller's premises, and will procure permission for such persons to enter upon any relevant third party premises, to carry out inspection and testing and will provide such persons with all facilities reasonably required. *Services:* The Seller will, in performing the Services (i) comply with all Applicable Law, Industry Standards and obey the Buyer's lawful and reasonable directions (including the Buyer's health and safety rules and policies as amended from time to time), (ii) fully co-operate with the Buyer's agents, representatives and contractors, and (iv) fulfil all the requirements set out in the Order. The Seller will deliver the Goods and/or perform the Services on the delivery/performance dates set out in the Order. Time is of the essence in the performance of Seller's obligations under the Contract. The Buyer's acceptance of Seller's late performance shall not be deemed a waiver of this provision.

**5. Remedies:** *Goods:* If any Goods are not delivered on the delivery date set out in the Order, or do not comply with the undertakings set out in Condition 4, the Buyer shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following remedies, whether or not it has accepted the Goods, (i) to terminate the Contract, (ii) to reject the Goods (in whole or in part) and return them to the Seller at the Seller's own risk and expense, (iii) to require the Seller to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods, (iv) to refuse to accept any subsequent delivery of the Goods which the Seller attempts to make; (v) to recover from the Seller any costs incurred in obtaining substitute goods from a third party, and (vi) to claim damages for any other costs, loss or expenses incurred by the Buyer which are in any attributable to the Seller's failure to carry out its obligations under the Contract. *Services:* If any Services are not supplied in accordance with the Contract, or the Seller fails to comply with the undertakings set out in Condition 4, the Buyer shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following remedies, (i) to rescind the Contract, (ii) to refuse to accept the provision of further Services by the Seller and to require the immediate repayment by the Seller of all sums previously paid by the Buyer under the Contract, (iii) to require the Seller, without charge to the Buyer, to carry out such additional work as necessary to correct the Seller's failure, and (iv) in any case, to claim such damages as it may have sustained in connection with the Seller's breach (or breaches) of the Contract.

**6. Title and Risk:** All goods to be delivered to the Buyer shall be delivered to the address specified in the Order on the date and time specified in the Order and shall be packaged in accordance with Applicable Law and with instructions or specifications in the Order or referred to in drawings or specifications for the Goods. The Seller will be responsible for off-loading the Goods from the delivery vehicle. In the absence of any such instructions or specifications on packing and packaging, the Seller shall (i) comply with Industry Standards to ensure safe arrival of the Goods at the destination specified in the Order, (ii) comply with carrier regulations, and (iii) secure the lowest possible transportation rates. Where the Buyer is responsible for transportation, any extra transportation cost resulting from failure to comply with this Condition shall be charged to the Seller's account. Risk in and title to the Goods shall pass to the Buyer on delivery. The Seller may not deliver the Goods by separate instalments unless the Buyer gives its prior written consent to do so. If the Buyer gives such consent, the Seller will invoice the price for each instalment separately and the Buyer will be entitled, at its sole discretion, to exercise its rights and remedies (whether under these terms and conditions or otherwise) in respect of the relevant instalment or the whole Contract. In the event the Seller reasonably believes that the delivery of Goods or performance of Services pursuant to this Contract may be delayed, the Seller shall immediately inform the Buyer of any such delay and shall submit recovery plans to meet the Buyer's requirements which will be at the Seller's expense. Notwithstanding the foregoing, the Seller shall not be relieved of its liability as a result of the late delivery of such Goods or late performance of such Services.

**7. Payment Terms:** Subject to the Seller performing its obligations in accordance with the terms of the Contract, the Buyer will pay the price set out in the Order to the Seller in accordance with this Condition 7. Itemised invoices must include the purchase order number and the corresponding purchase order item number for the Goods and/or Services in question. Where Goods are delivered the invoice shall also indicate the manufacturer and SKU, the date and terms of delivery or carriage, itemised quantities, descriptions and corresponding prices of the Goods delivered or carried, any discount terms, and a copy of the signed proof of delivery to verify receipt of the Goods by the Buyer. Where Services are performed, the invoice shall also include a reasonably detailed description of the Services provided and/or copies of signed authorised time sheets. Payment of invoices does not constitute acceptance of the applicable Goods or Services by the Buyer and payment thereof is without prejudice to any and all claims the Buyer may have against the Seller under the Contract. The terms of payment, unless otherwise mutually agreed in writing, shall be 60 days from the end of the month in which the invoice was issued by the Seller. The Buyer will be entitled to any prompt payment discounts or other incentives offered by and/or agreed with the Seller notwithstanding any circumstances where payment of the relevant invoice is delayed due to a Disputed Sum or an incorrectly issued invoice. The Buyer will be entitled to set-off any liability which the Seller has to the Buyer under any Contract or to any of its associated companies in respect of other contracts between the Seller and any such parties against any liability the Buyer has to the Seller, whether such liability is present or future, liquidated or unliquidated, under the Contract or any other contract between the parties or other cause of action.

**8. Intellectual Property:** The Seller shall immediately notify the Buyer if the Seller has or acquires knowledge of any person who claims that the possession and/or use and/or sale of the Goods or

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Services by the Buyer and/or its customers, officers, employees, agents or sub-contractors infringes the Intellectual Property Rights of that or any other person ("**IPR Claim**"). The Seller shall defend, indemnify and hold harmless the Buyer, its customers, officers, employees, agents and sub-contractors against all losses, liabilities, costs, damages and expenses that the Buyer, its customers, officers, employees, agents or sub-contractors do or will incur or suffer, all claims or proceedings made, threatened or brought at law against the Buyer, its customers, officers, employees, agents or sub-contractors by any person and all losses, liabilities, costs (on a full indemnity basis), damages and expenses the Buyer, its customers, officers, agents or sub-contractors do or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceedings, in each case arising out of or in connection with that IPR claim including where they arise from the Buyer's negligence or the negligence of its customers, officers, employees, agent or sub-contractors. If any of the Goods or Services or any component part furnished under the Contract is held to infringe the rights of a third party, the Seller shall, promptly at Seller's expense, procure for the Buyer the right to continue using the Goods or Services, replace them with a substantially equivalent non-infringing goods or services, or modify them so they become non-infringing with substantially equivalent performance. Should the Seller fail to comply with the above the Buyer may, at its option, return the infringing Goods to Seller at Seller's expense or stop using the Services, in which case the Seller shall refund the price set out in the Order to the Buyer within ten (10) days from the delivery of the infringing Goods or Services.

**9. Indemnity and Limitation of Liability:** To the fullest extent permitted by law, the Seller shall indemnify, defend and hold harmless the Buyer, its subsidiaries and affiliates (each an "**Indemnitee**"), from and against all claims, demands, damages, liabilities, costs, losses and expenses (on a full indemnity basis) (including legal fees and court costs and including penalties and interest) incurred or suffered by any Indemnitee and arising out of or resulting from, directly or indirectly, defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with any breach by the Seller of its obligations under the Contract (including any failure or delay in performing, or negligent performance or non-performance of, any of these obligations) including where they arise from the Buyer's negligence. The foregoing indemnity shall be in addition to any other indemnity obligations of the Seller set forth in the Contract. Any insurance recoveries or policies shall not limit any obligation of the Seller under the Contract.

**10. Anti-Corruption; Code of Conduct:** The Seller shall procure that its officers, employees, agents and any other persons who perform services on its behalf in connection with the Contract will not commit any act or omission which causes or could cause the Buyer or the Seller (or those persons) to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption and/or the Foreign Corrupt Practices Act 1977, as amended, 15 U.S.C §§78dd-1, et seq. ("**FCPA**") and will comply with the Buyer's anti-corruption policy as updated from time to time and which is available from the Buyer on request. The Buyer may terminate the Contract immediately by giving written notice to Seller that the Seller is in breach of this Condition 10. The Seller will indemnify the Buyer against all losses, liabilities, costs, damages and expenses that the Buyer incurs or suffers or will incur or suffer, all claims and proceedings made, brought or threatened against the Buyer by any person and all losses, liabilities, costs (on a full indemnity basis), damages and expenses the Buyer incurs or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with any breach of any of the Seller's obligations under this Condition 10 (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations) and/or any proceedings under section 7 Bribery Act 2010 being brought against the Buyer as a result of the Seller's conduct or the conduct of any of its officers, employees, agents or any other persons who perform services for it or on its behalf in connection with the Contract, where such proceedings do not result in a conviction against the Buyer, including the costs of procuring the Goods and/or Services from a person other than the Seller. The Seller further agrees to comply with any relevant equality legislation including but not limited to the Equality Act 2006 and the Equality Act 2010.

**11. Insurance:** The Seller shall procure and maintain appropriate insurance coverage, and shall provide the Buyer upon request with a copy of any policy of insurance, meeting or exceeding the following requirements as well as any requirements imposed by Applicable Law: Public and Products Liability Insurance and Employer's Liability Insurance in each case for an amount not less than of £5,000,000 or such other figure advised by the Buyer in writing, from a reputable and authorised insurer. If the Seller fails to maintain in force any such insurances, the Buyer may (but will not be obliged to) pay any premiums required to keep such insurances in force in respect of a Contract and may, in either case, recover from the Seller on written demand as a debt the amount of any premium paid and any further cost incurred by the Buyer in connection with the procurement and maintenance of such insurances. The obligation of the Seller to provide insurance shall not limit in any way the liability or obligations assumed by the Seller.

**12. Governing Law:** The Contract shall be construed interpreted and governed by the law of England and Wales. Each party agrees that the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this Contract (including any non-contractual obligations).

**13. Confidentiality and Nondisclosure:** "Confidential Information" shall mean the Contract and any information, action, process, design, idea, formula, technique, diagram, specification, model, concept, experience, knowledge, supporting documents, material, program, software, electronic files regardless of format, Intellectual Property Rights, which the Buyer has deemed to be confidential or proprietary or which any reasonable professional should know to be confidential. The Seller shall protect any and all Confidential Information and other information it receives from the Buyer as though it were its own. The Seller shall not disclose Confidential Information to any third parties without express written authorisation from Buyer or use Confidential Information for its own benefit or for the benefit of any third parties during or after termination or completion of the Contract. The Seller shall protect all Confidential Information or any other information it receives from the Buyer, and will return all copies of the Confidential Information to Buyer at the termination of the Contract, or will destroy all copies and provide an affidavit attesting to its destruction. To the extent that the Seller has incorporated or included Buyer's Confidential Information into its own materials, including but not limited to documents, systems, programs, and developments, such materials shall also be returned to Buyer or destroyed. Confidential Information does not apply to information that is: (i) generally known information, assuming the Seller is not responsible for its undesired dissemination; (ii) learned by the Seller from a legal source (without breaching confidentiality obligations) other than the Buyer; (iii) independently developed by the Seller of its own efforts and which the Seller can demonstrate by written or other tangible evidence it rightfully possessed prior to disclosure by the Buyer. Buyer, in addition to Buyer's other rights and remedies, reserves the right to terminate the Contract if Seller fails to protect the Confidential Information.

**14. Term and Termination:** The Buyer shall have the right to terminate the Contract or any part thereof at any time for any reason on 30 days' prior written notice to Seller to that effect. The Buyer may terminate the Contract prior to delivery on written notice in the event that the Seller has a receiver, administrator or provisional liquidator appointed; is subject to a notice of intention to appoint an administrator; passes a resolution for its winding-up; has a winding up order made by a court in respect of it; enters into any composition or arrangements with creditors; or ceases to carry on business and the Seller will immediately notify the Buyer upon the occurrence of any such circumstance. Any provisions that expressly or impliedly should continue after the termination of this Contract shall continue. Upon receipt of written notice of termination, Seller shall promptly comply with the directions in such notice and shall take action necessary to terminate the work subject to the notice, and will minimise costs and liabilities for the terminated work.

**15. Miscellaneous:** The Seller is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person, and the Seller's employees and any approved sub-contractors shall at all times be under the Seller's supervision, direction, and control. This is a non-exclusive relationship and the Buyer has the right to purchase similar goods or services from third parties. Any notice given under the Contract shall be effective three Working Days after posting by prepaid post or at the time of delivery if personally delivered and notice shall be delivered or sent to the address specified in the Order or at such address notified by one party to the other for the purpose of receiving notices. The Buyer's failure to insist on the Seller's strict performance of the Contract or any of these Conditions or a delay in exercising or failure to exercise a right or remedy under or in connection with the Contract at any time shall not be construed as the Buyer's waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of, that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default. If any provision in the Contract or any related document is held by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term shall be deemed to be severed from the Contract and shall not affect the remainder of the Contract. The Contract shall enure to the benefit of and be binding upon the successors and permitted assigns of the parties to it. The Seller may not assign, transfer, charge or deal in any way with all or part of the benefit of, or its rights under the Contract without the prior written consent of the Buyer. The Seller may not use Buyer's name or any of the Buyer's or its affiliates' trademarks, trade names, or logos for any reason, including in any client list, press release, brochure, advertisement or the like.