

# TERMS OF SALE AND DELIVERY

## HI-TECH COATINGS INTERNATIONAL LIMITED

Version 04-05-2010

### 1. Applicability

These Terms of Sale and Delivery of Hi-Tech Coatings International Limited (hereinafter referred to as "HTC") ("Terms") apply and are expressly incorporated into (without limitation) offers, purchase contracts, orders, order confirmations, deliveries and all other commercial activities between HTC and its customer (together, the "Contract"), unless expressly specified otherwise in writing. The Terms also apply to HTC and the customer's future business relationships, even if not expressly agreed. The customer's trading terms and conditions of business are hereby expressly excluded from the Contract.

### 2. Conclusion of Contract

(1) HTC's price quotations are subject to change and are non-binding. The Contract is concluded only when HTC transmits to the customer an order confirmation in writing, by fax or via email or upon delivery of the delivery item(s) (hereinafter referred to as the "Goods"). (2) Any guarantee provided to the customer by HTC is in addition to the customer's statutory rights and the nature and scope of such guarantee shall be specified in the order confirmation. (3) HTC reserves the right to make such modifications and/or adjustments to the technical specifications of the Goods as it deems necessary provided such modifications and/or adjustments do not materially affect the nature of the Goods supplied.

### 3. Delivery, Transport and Passing of Risk

(1) Unless otherwise agreed in the Contract, risk passes to the customer with delivery ex work or ex point of shipment. (2) HTC shall at its sole discretion and for the account of the customer be authorised to engage a forwarder to conduct the transport and to effect appropriate transportation insurance which covers the risk of transport of all Goods covered by the order confirmation from the point of shipment to the agreed destination. (3) The Incoterms rules applicable at the date of the Contract are hereby expressly incorporated into the Contract and shall be an interpretative aid to the Terms but only insofar as required by the Terms.

### 4. Delivery and Force Majeure

(1) Unless specified otherwise, delivery times are non-binding. (2) Provided HTC notifies the customer, it shall not be liable for any delay in performing or failure to perform any of its obligations under the Contract caused by events beyond its reasonable control. Such events shall include (without limitation) natural disasters or acts of God, extreme weather conditions, war, terrorist attack, riots, labour disputes, compliance with any law, fire, explosion or accidental damage, loss at sea, collapse of buildings, interruption or failure of utility services and mechanical or IT-related production problems which may affect HTC or its sub-suppliers. (3) Any agreed delivery times shall be extended for at least as

long as any delay in paragraph 4(2). (4) If the delay or stoppage continues for more than 30 continuous days, either HTC or the customer may terminate the Contract with immediate effect on giving prior written notice to the other and neither party shall be liable to the other for such termination. (5) If the delivery time is extended as aforesaid or if HTC is released from its obligation to deliver due to the aforementioned circumstances, HTC shall have no liability to the customer whatsoever and the customer shall not be entitled to bring any such claims against HTC. (6) HTC is permitted to make partial deliveries and to issue partial invoices prior to the expiration of the delivery period, where applicable.

### 5. Prices

5.1 The Goods are sold at their price from time to time. 5.2 All prices (and any ancillary costs and expenses) in the Terms: (a) apply ex work or ex-shipment; (b) are quoted in pounds Sterling or Euros (as applicable) exclusive of transport costs and transport insurance policy; and (c) shall be subject to VAT or such equivalent tax (or any tax replacing them)..

### 6. Payment and Set Off

(1) Payments are to be made to HTC without delay and without any discount, deduction, set-off or counterclaim whatsoever, upon delivery and receipt of the relevant invoice. (2) In the case of default in payment, HTC shall be entitled to hold back the Goods to be delivered to the customer until full payment of the amounts in arrears is made.

### 7. Retention of Title

(1) HTC retains title to the Goods until full payment has been made in accordance with paragraph 6(1) of these Terms. Retention of title shall remain valid until all outstanding sums have been satisfied by the customer in full. The customer shall subject to the remainder of this paragraph 7 and at its own cost and expense hold in custody HTC's property in the Goods. (2) The customer must keep the delivered Goods separately (from other goods held) in a flawless condition while they are subject to the retention of title. (3) The customer must insure the Goods at its own cost and expense against damage arising from (without limitation) fire, explosion, theft, and/or water damage.

### 8. Claims for Defects

(1) Should the Goods in the customer's reasonable opinion be defective, the customer shall upon immediate written notification to HTC have the following rights: (a) Subject to paragraph 8(2) HTC is obliged to cure the defect and may, at its option and without acceptance of any fault on its part, perform this either by removing the defect through remedial measures or by delivering replacement Goods free of charge. The title to any

Goods so replaced shall revert to HTC on replacement.

(b) If the supplementary performance proves ineffective, the customer is entitled to rescind the Contract or reduce the purchase price. The Customer may not rescind the Contract if the defect is not significant. (c) The customer shall allow HTC sufficient time to carry out the remedial measures and/or deliver the necessary replacements as aforesaid otherwise HTC is released from any liability for consequences which may result from any period of time deemed to be insufficient for the purposes of this paragraph.

(d) Should the customer, for operational reasons, choose to have HTC send the Goods by express courier or send an express technician or perform the work outside normal working hours, the customer shall bear the extra costs thereby arising including for example and without limitation, for extra transport costs, overtime premiums and longer travel routes.

(2) Claims for defects in the Goods are excluded in respect of: (a) used goods unless liability for those defects is expressly agreed upon; (b) coatings, varnishes or similar goods which by their nature have only a limited shelf life if and to the extent the respective shelf life was exceeded; (c) where applicable, other materials and goods where such defects arise from normal wear and tear; and (d) for coatings and/or varnishes in the event of processing, drying or light curing problems, provided that such problems are within the tolerances allowed, or for problems which are based on factors which cannot be influenced by HTC, such as (and without limitation) paper grades, channel flow, impurity of equipment, powdering of the printed sheets or venting of the pile.

(3) If HTC has guaranteed compatibility with third-party products, the guarantee only applies to the product version current at the time of the guarantee and specifically excludes older or future product versions of such product. (4) The customer remains solely responsible for any and all damages resulting from: (a) an unsuitable or improper storage location or method, chemical or electrochemical influences, weather and other natural influences and/or so called acts of God.; and (b) failure by the customer to adhere to any specific information, instructions and/or directions provided by HTC to the customer from time to time with respect to the processing and/or further processing of the Goods.

(5) Upon discovery of defects in the Goods if of a consumable nature, those goods must be separated and maintained in the condition they were in at the time of discovery and must be held ready for inspection by HTC. (6) Failure to comply with paragraph (5) shall deem the relevant goods accepted in their condition at the time of delivery without any further liability on the part of HTC.

### 9. Use of Goods

(1) The successful, effective and safe use of the Goods depends on their respective intended purpose and is dependent on a variety of factors which cannot be influenced by HTC for example and without limitation the customer's choice of application technology, substrate, subject of the printing, print speed, power of curing lamps for UV-applications and ambient conditions during the processing. Accordingly, HTC cannot be held responsible for those factors and/or the consequences of improper use of the Goods contrary to their intended purpose.

(2) The customer is solely responsible for the determination of the actual usage of the Goods and their suitability for the intended purpose. In particular where the Goods are to be used for the production processing or labelling of food packages or for labelling foodstuffs the customer must ensure compliance with all applicable statutory provisions and that no third party is endangered by the use of the Goods.

(3) In the event that the customer resells the Goods, he shall be responsible for providing the relevant purchaser with the necessary information to enable such purchaser to comply with all applicable terms contained in these Terms.

### 10. Liability and Compensation for Damages – the Buyer's attention is drawn particularly to this condition

(1) This paragraph 10 sets out the entire financial liability of HTC (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the customer in respect of: (a) any breach of the Contract, including any deliberate breach of the Contract by HTC, or its employees, agents or subcontractors; (b) any use made by the customer of the Goods or any part of them; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

(2) All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

(3) Nothing in the Contract limits or excludes the liability of HTC: (a) for death or personal injury resulting from negligence; or (b) for any damage or liability incurred by the customer as a result of fraud or fraudulent misrepresentation by HTC.

(4) Subject to paragraphs 10(2) and 10(3): (a) HTC shall not be liable for: (i) loss of profits; or (ii) loss of business; or (iii) depletion of goodwill and/or similar losses; or (iv) loss of anticipated savings; or (v) loss of goods; or (vi) loss of contract; or (vii) loss of use; or (viii) loss of corruption of data or information; or (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and (b) HTC's total liability in contract, tort (including negligence or breach of statutory duty),

misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for those goods the subject of any such claim as envisaged by this sub-paragraph.

### 11. Rescission of Contract

(1) If the Contract is rescinded for example and without limitation due to cancellation by either of the parties to the Contract, the customer is, without prejudice to the steps to be carried out in accordance with the following paragraph, obliged in advance to return the Goods to HTC failing which HTC shall arrange for collection of the Goods from the customer's premises and shall invoice the customer accordingly for its reasonable costs in so doing. (2) In addition, HTC shall be entitled to invoice the customer for its reasonable remuneration for any deterioration, loss of or damage to the Goods or for the impossibility of handing over the Goods to HTC due to other reasons within the customer's sphere of risk and responsibility.

### 12. Assignment

The customer may only assign its rights under the contract if it has received HTC's prior written consent.

### 13. Jurisdiction and Law

(1) The parties hereby submit to the exclusive jurisdiction of the courts of England and Wales. (2) These terms shall be subject to, governed by, and construed in accordance with the laws of England and Wales, excluding the UN Convention relating to the International Sale of Goods.

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