

**TERMS AND CONDITIONS OF SALE****1 Definitions**

- 1.1 "The Supplier" means Automotive Paint Supplies.
- 1.2 "The Buyer" means the person firm or company named as "the Buyer" in the Terms and Conditions of Sale and in any other documents of the supplier.
- 1.3 "The Paint Mixing Machine" means the machine supplied by PPG INDUSTRIES (UK) LTD or MAX MAYER UK LTD and which at all times remains the property of the said manufacturer and is neither the property of the Supplier nor the Buyer and is placed in the Buyer's premises by way of licence.
- 1.4 "The Goods" is to include all instruction leaflets, manuals, drawings, illustrations and specifications provided by the Supplier to the Buyer.
- 1.5 "The Agreement for Sale" means agreements, warranties, conditions, representations and other terms set out in the terms and conditions and in any other suppliers documents which together are referred to as "The Agreement for Sale".

**2 The Agreement**

- 2.1 These conditions shall be deemed to be incorporated in all agreements from time to time entered into between the Supplier and the Buyer which provides for the sale of any goods by the Supplier to the Buyer. These conditions shall apply in place of and prevail over any terms or conditions contained or referred to in the Buyer's order or in correspondence or elsewhere or implied by trade custom, practice or course of dealing unless specifically agreed to be in writing by the supplier and any purported provision to the contrary are hereby excluded and extinguished.

**3 Offers and Supply of information**

- 3.1 The Suppliers catalogues, price lists and quotations do not constitute offers made by the Supplier unless they are expressed to be fixed quotations remaining open for a specified period and the Supplier reserves the right to withdraw or revise the same at any time prior to the Order Acknowledgement.
- 3.2 No offer, obligation or agreement relating to the sale of the paint is binding on the Supplier unless set out in The Agreement for sale or in any amendment or addition thereto duly agreed in writing by the Supplier.

**4 VAT**

- 4.1 Unless otherwise specified VAT and any other tax or duty payable by the Buyer shall be added to the price.

**5 Payment Terms**

- 5.1 Unless otherwise agreed or specified by the Supplier in writing the Buyer shall make payment of the price within thirty days from date of invoice.
- 5.2 In the event of any payment becoming overdue and without prejudice to any other right the Supplier may have, the Supplier shall be entitled to charge interest at the rate of 4% (four per centum) over National Westminster Bank plc base rate to run from due date for payment thereof until receipt by the Supplier of the full amount whether before or after Judgement.
- 5.3 Time shall be the essence in the performance of The Agreement for Sale in relation to the payment either of each instalment of the price of goods or in relation to each invoice.
- 5.4 The Supplier reserves the right to suspend deliveries or cancel any allowance of further credit in the event of any payment not being made when due or if the Supplier at its discretion at any time considers the financial circumstances of the Buyer has ceased to justify the terms allowed or if the Buyer or any associate company thereof is in default of any contract with the Supplier or any associated company thereof.

**6 Delivery**

- 6.1 Unless otherwise expressly provided in the Order Acknowledgement delivery of any goods shall constitute delivery thereof to the Buyer from point in time immediately preceding loading the goods which shall be at the Buyer's risk.
- 6.2 Any period or date for delivery stated in the Agreement for Sale is intended as an estimate only and is not a contractual commitment and the Supplier shall not be liable for any damage or losses arising out of the delay.

**7 Passing of Property**

- 7.1 The goods shall remain the property of the Supplier as legal and equitable owner and no property in or title to the goods shall pass to the Buyer until their full price has been duly paid to the Supplier. Until payment in full the buyer shall store the goods in such a way as to enable them to be identified as the property of the Supplier and shall not sell or encumber the goods in any way. Failure to pay the price for the goods when due shall without prejudice to any other remedies the Supplier may have entitle the Supplier to re-possess the goods or so much thereof as the Supplier may determine from any premises where they may be. For the purpose of re-possessing the goods or any part thereof the Buyer hereby grants an irrevocable licence to the Supplier its employers or agents to enter upon such premises and the Buyer shall pay to the Supplier the cost of removal and transport of the goods or any part thereof.

**8 Warranties**

- 8.1 The Supplier warrants the goods against any defects for 28 days from date of delivery to the Buyer ("the Warranty Period").
- 8.2 The Supplier's obligation under this warranty is limited to at its option replacing or refunding the cost of the goods or parts thereof which are delivered with or develop defects under normal and proper use within the warranty period and does not extend to any consumable item.
- 8.3 In the event of the Buyer becoming aware of a defect in the goods during the warranty period the Buyer shall promptly deliver to the Supplier within the warranty period with written particulars of such defect and use its best endeavours to provide the Supplier with all necessary access and other reasonable facilities and all information and particulars required to enable the Supplier to ascertain or verify the nature or cause of the defect claimed and to carry out its warranty obligations.
- 8.4 The Supplier shall be under no obligation whatsoever to replace or make good any loss or damage or defect which results from incorrect use or from normal wear and tear, accident, abnormal conditions of storage or any act of neglect or default of the Buyer or any third party.
- 8.5 The above warranties are given in lieu of and replace, exclude and extinguishes all and every condition, warranty innominate term or representation whatsoever whether express or implied by statute, common law, trade usage, custom or otherwise in respect of the quality, fitness for purpose, merchantable, description of the goods or otherwise.

**9 Limitation of Damages**

- 9.1 Save as provided in the warranty set out in condition 8 the Supplier shall be under no liability to the Buyer for any damages or losses, direct or indirect, resulting from defects in the use of the goods or from any act or default of the Supplier whether negligent or otherwise.
- 9.2 The Supplier shall have no liability for any indirect or consequential losses or expenses suffered by the Buyer, however caused, including but not limited to the loss of anticipated profits, goodwill, reputation, business receipts or contracts, or losses or expenses resulting from third party claims.
- 9.3 Subject to conditions 8 and 9 the Supplier's aggregate liability to the Buyer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the costs of the goods which gives rise to such liability in respect of any occurrence or series of occurrences.

**10 Force Majeure**

- 10.1 The Supplier shall have no liability in respect of any failure or delay in fulfilling of the Supplier's obligations to the extent that fulfillment thereof is prevented, frustrated, impeded and/or delayed or rendered uneconomic as a consequence of any circumstances or event beyond the Suppliers reasonable control including without prejudice to the generality of the foregoing:
- 10.1.1 Compliance of any order, regulation, request or control of any national local authority, government department or other competent authority of any country whether or not legally enforceable; or
- 10.1.2 Any delays in or cancellation of deliveries or provision of services by third parties or shortage of the paint or any defects with the paint and the Paint Mixing Machine; or
- 10.1.3 Any strikes, lock-outs or trade disputes whether involving Supplier's employees or the manufacturer's employees or others, fire, explosion, accident, break-down of plant or machinery, calamity or civil disturbance, action of the elements, national calamity, war, riot or act of God; or
- 10.1.4 Failure in whole or in part of any energy supply.
- 10.2 The Supplier undertakes, however, to make every reasonable endeavour within its power to overcome difficulties arising in connection therewith.

**11 Miscellaneous**

- 11.1 The rights of the Supplier shall not be prejudiced or restricted by any indulgence or forbearance extended to the Buyer waiver or any breach shall operate as a waiver of any subsequent breach.
- 11.2 The headings of these Conditions of Sale do not form part of the conditions and shall not affect the interpretation thereof.
- 11.3 If any of these conditions of sale or any part is held to be invalid for any purpose shall be for that purpose deemed to have been admitted but shall not prejudice the effectiveness of the rest of the conditions of sale.
- 11.4 Any notice hereunder shall be deemed to have been given if delivered by hand or sent by pre-paid first class post or telex or facsimile to the part concerned at its last known address and deemed to have been received on the date of despatch is delivered by hand or sent by telex or facsimile and on the third day after posting if sent by post.
- 11.5 The formation and construction and performance of the Agreement for Sale shall be governed in all respects by English law.