

TERMS & CONDITIONS OF TRADE NK COATINGS LTD dated 18 May 2022

1. DEFINITIONS

In these Conditions unless the context otherwise requires, the following words and expressions shall have the meanings set against them.
1.1 The term "the Company" shall mean N.K. Coatings Limited.
1.2 The term "the Customer" shall mean the person, firm or company who places an Order with the Company for the work and charges the cost to their Account.
1.3 The term "Account" shall mean a credit or charge account opened by the Customer having completed a Credit Account Application Form subject to these Conditions and thereafter maintained by the Customer with the Company.
1.4 The term "quotation" shall mean the tender, offer or quotation given by the Company to the Customer in respect of the work.
1.5 The term "Order" shall mean any purchase order raised or issued by the Customer to the Company on foot of the quotation, to include any specified requirements of the Customer and shall be deemed to include the Customer's express acceptance of these Terms and Conditions of Trade ("these Conditions").
1.6 The term "Customer's materials" shall mean the goods or materials to be supplied by the Customer or on his behalf to the Company for the work.
1.7 The term "the Contract" shall mean the contract between the Company and the Customer consisting of the Company's quotation, these Conditions and the Customer's Order accepting the quotation, but not any terms and conditions of business, trade or purchase, other than these Conditions, incorporated in or referred to in the Customer's Order.
1.8 The term "date for completion" shall mean the firm date for completion of the work, if any, stated as such in the quotation.
1.9 The term "contract price" shall mean the sum stated in the quotation to be paid by the Customer to the Company for the work, together with such other sums as may be payable to the Company under these Conditions.

2. APPLICATION OF CONDITIONS

2.1 These Conditions and the quotation supersede any other terms and conditions including any terms or conditions, or descriptions, or statements as to the quality of the work or its suitability for any purpose appearing in any advertisements, catalogues, or other literature relating to same and override and exclude other terms and conditions, descriptions and statements as to quality or for completion of the work stipulated or referred to by the Customer whether in the Customer's Order or otherwise.
2.2 No representative or agent of the Company has any authority to agree any terms or make any representations that are inconsistent with these Conditions or the quotation. The Company will not be bound by any statements made by any person purporting to act on behalf of the Company in relation to these Conditions or the quotation or any statements as to the quality or suitability of the work or any date for completion thereof unless any such statement is specifically confirmed in writing by a duly authorised officer of the Company and annexed to the Contract.

3. THE ACCOUNT

3.1 The Credit Account Application Form completed by the Customer shall be deemed to form part of these Conditions. Credit will only be granted at the Company's discretion and any Customer's Order on a Credit Account shall not be processed until a satisfactory credit status has been confirmed.
3.2 The Company reserves the right to cancel a Customer's Credit Account if, in the sole opinion of the Company, the Customer is not complying with the Terms of Payment hereinafter set out.

4. PAYMENT

4.1 The Company will invoice the Customer for the work at such intervals as the Company at its sole discretion shall determine and will normally send to the Customer a monthly Statement of invoices and amounts charged to the Account.
4.2 Payment of the contract price shall be due within 30 days of the date of the Company's invoice ("the due date"). Time for payment shall run from the date of the invoice.
4.3 If payment in full has not been made by the due date the Customer shall owe interest on the amount outstanding from date of invoice or date of default (where Clause 4.4 below applies and no interest has yet been raised) until date of payment at the rate of 2% per calendar month (or such other rate as the Company may notify), where part of a month shall be deemed a whole month.
4.4 If any payment made to the Account by cheque is not honoured on due presentation in the ordinary course of business, same shall constitute a breach of contract by the Customer whereupon the entire Account shall immediately become due (whether due or not and whether or not invoiced) and the provisions of Clause 6 hereof shall apply.
4.5 The Company shall not be obliged to complete any work under the Contract or undertake any further work on any other Customer's Order placed with the Company until payment has been received in full of any amounts outstanding, and payment has been made by the Customer in advance for any completed work not yet released or collected without thereby incurring any liability whatsoever to the Customer.

5. TERMINATION

5.1 The Customer may terminate and close the Account by giving written notice of termination to the Company, but such termination shall only be effective upon the payment of all liabilities of the Customer on the Account under these Terms and Conditions of Trade.
5.2 The Company may terminate and close the Account by giving 30 days' notice to the Customer (except in case of Default - see Clause 6 below). On termination by the Company, the Customer will remain liable for all work performed by the Company and for payment of all liabilities on the Account before or after termination, together with all interest, charges and costs incurred in connection therewith.

6. DEFAULT

6.1 If the Customer fails to make payment of any sum charged to the Account for which work has been performed by the Company by the due date or in breach of any of the Conditions he shall be deemed to have committed a breach of contract and the Company may, at its sole option and without prior notice (but giving the Customer notice thereof as soon as practicable thereafter), either terminate the Account and demand immediate payment of all sums due pursuant to Clauses 4.4 and 4.5 above or suspend all work until the Account has been paid in full and/or at the sole option of the Company until satisfactory alternative arrangements have been entered into by the Customer for continued operation of the Account.
6.2 Under no circumstances shall the Company incur any liability whatsoever to the Customer as a result of the implementation of the provisions of Clause 6.1 above.
6.3 All debt recovery costs and expenses, together with VAT thereon where applicable, incurred by the Company arising from or in connection with the collection of any amount which has not been paid by the due date or not paid in full (whether or not proceedings shall have been commenced, and whether or not costs of those proceedings are awarded against the Customer) shall be recoverable in full from the Customer on a full indemnity basis as a debt. Same shall be debited to the Customer's Account and shall form part of the Company's claim in any proceedings. Any payment received from the Customer or made in respect of any security shall be applied first in payment of all such charges, costs and expenses; secondly in payment of all interest due under these Terms and Conditions of Trade; and thirdly towards payment for all work performed by the Company.
6.4 The Account shall be secured by any administrative, legal and other costs and expenses on a full indemnity basis, incurred by the Company in connection with any action taken by the Company to enforce any provision of the Contract or by reason of any default or any breach of these Conditions by the Customer.

7. STORAGE

7.1 The Company may, on request, agree to store materials for the Customer provided such storage facilities are available at its premises. Where materials are stored by the Company for the Customer for a period exceeding 7 days the Company reserves the right to impose a service charge on the Customer on a weekly basis.
7.2 Subject to the foregoing sub-clause, where the Customer refuses or neglects to take or to accept delivery of the completed materials, the Company shall be under no obligation to store or safe-guard the same and shall not be under any liability to the Customer for any deterioration in the materials arising from the date of completion of the work or when delivery or collection was offered, whichever is the later and the date of actual delivery to or collection by the Customer.

8. CARRIAGE, DELIVERY, ACCEPTANCE AND RISK

8.1 Carriage may be supplied either by the Customer or by the Company depending upon the Contract.
8.2.1 Where the Company provides carriage it will accept the risk in the Customer's materials whilst in its possession from the time of collection until they have been delivered back to the Customer.
8.2.2 Where the Customer provides carriage the risk in the Customer's materials shall pass to the Company from the time of acceptance of delivery by the Customer or himself as they are loaded onto the Customer's transport for dispatch. Delivery to the Customer will be affected upon completion of loading.
8.2.3 Where the Customer provides carriage all loading will be carried out under the instruction of the driver of the vehicle, who for the purposes of this sub-clause, shall be the servant and agent of the Customer.
8.3.1 Subject to clause 8.2.1, the Company shall inspect the materials immediately on their receipt and shall be deemed to have accepted the work and the materials unless within 3 working days after the day of receipt the Customer shall have notified the Company that the materials are rejected on the grounds that the work performed by the Company is not in accordance with the Contract.
8.3.2 If the Customer notifies the Company to this effect then the Company and/or its agent shall be given the opportunity to inspect the materials and to enter the premises of the Customer in order to facilitate such inspection and, if the Company acting reasonably is satisfied that the work on the materials is not in accordance with the Contract for a reason for which the Company is responsible, it shall carry out remedial work on same.
8.3.3 At the Customer's request the Customer shall return the materials which are considered not to be in accordance with the Contract to the Company and following completion of the remedial work uplift and re-deliver same at the Customer's expense unless the Company otherwise determines.
8.3.4 The obligations of the Company under sub-clauses 8.3.2 and 8.3.3 above shall be in full satisfaction of the Company's liability, and shall not be liable whether in contract or in tort, including but not limited to negligence, or otherwise for any damage or loss whatsoever suffered by the Customer arising out of or attributable to such defects.
8.3.5 Under no circumstances shall the Company incur any liability for missing product if they have not been specifically detailed on the customer's order, which includes product description, dimensions and quantity.

9. GALVANISING

9.1 QUALITY
9.1.1 All Customer's materials are galvanised to the requirements of BS EN ISO 1461:2009 or any subsequent modification or amendment of such specification.
9.1.2 Any steelwork that requires CE Marking must be confirmed in writing upon submission of work to NK Coatings; without written confirmation the CE Marking Procedure will not be implemented. Failure to provide the necessary paperwork/information for CE Marking when requested will result in delayed processing.
9.1.3 Unless otherwise specified, the work shall be inspected under a PGI-1 inspection according to the National Structural Steelwork Specification; this entails a visual inspection of 100% of all surfaces with special attention to areas around welded connection and joints.

10. WARNING TO CUSTOMER

10.1 Whilst every care is taken by the Company during processing, the Company excludes liability for processing Customer's material which is, for any reason, unsuitable for hot dip galvanising. If in any doubt the Customer should seek the advice of the Company prior to entering into the Contract.
10.2 Without prejudice to the foregoing sub-clause, THE CUSTOMER'S ATTENTION is specifically drawn to the following in respect of which the Company excludes liability:
10.2.1 The hot dip process involves dipping pre-cleaned material into molten zinc at approximately 440° - 460° C. Material may be subject to warping and distortion during processing due to the release of rolling and/or fabricating stresses.
10.2.2 Closed sections or any assembled material must NEVER be inspected in respect thereof as the materials to be galvanised. Customers should note that advice from the Company is available BEFORE any material is assembled by the Customer.
10.2.3 Notwithstanding anything to the contrary which may appear herein it is a fundamental condition of the Contract that it is the sole responsibility of the Customer to ensure that all the Customer's materials for galvanising are adequately vented before delivery to the Company. The Customer shall indemnify the Company against all losses, costs, damages and expenses arising out of the death or injury to any person or the loss or damage to any physical property, including the Company's plant, but excluding the Customer's materials, and for all consequential loss sustained by the Company or its agents in any actions, claims, demands or proceedings in respect thereof where same are caused by reason of the failure of the Customer, its servants or agents, to observe this condition.
10.2.4 All welding slag on Customer's materials should be cleaned off by the Customer prior to delivery to the Company's works.
10.2.5 There must be adequate clearance on threads in materials to allow for the thickness of the zinc coating in the galvanising process.

11. POWDER COATING

11.1 QUALITY AND FITNESS
11.1.1 All materials shall, where possible, and subject to Clause 12.3 below, be pre-treated and coated in accordance with BS EN 12206:2004 for aluminium or BS EN 13438:2013 for galvanised or sherardised steel.
11.2 COLOUR
11.2.1 All customers must specify colours using RAL/BS numbers and gloss level on the Order. If the RAL/BS number is to match existing material the manufacturer of powder must be specified.

12. WARNING TO CUSTOMER

12.1 All Customer's materials are pre-treated and coated on the condition that the Company shall not be liable for any loss or damage or indirect or consequential loss arising from pre-existing defective workmanship or materials. Re-coating of Customer's materials shall only be carried out on the express instructions of the Customer who shall carry sole responsibility for any defects in the finished article.
12.2 Powder coating of materials which cannot, either due to their construction or otherwise, be pre-treated in accordance with BS 12206:2004 for aluminium or BS EN 13438:2013 for galvanised or sherardised steel, shall only be carried out on the express instructions of the Customer who shall carry sole responsibility for any defects in the finished article.

13. INSPECTION

13.1 The Company will permit the Customer on request to inspect the work during normal working hours and on reasonable notice as follows:
13.1.1 Of galvanised Customer's materials at the Company's premises prior to dispatch.
13.1.2 In respect of Powder Coating, at all stages of pre-treatment and coating.
13.1.3 In respect of all other processes, upon completion of the work.
13.1.4 If such inspection is carried out by the Customer it shall be deemed to be final and no claim shall be entertained thereafter by the Company in respect of the work.
13.2 The Customer shall not be entitled to make any claim against the Company in respect of any defect found in or arising out of the work unless the Company shall first have been given the opportunity of inspecting the said work and of agreeing in writing that any remedial work required shall be undertaken at its own expense.

14. CONTRACT PRICE

14.1 The price stated in the quotation is ex works, exclusive of Value Added Tax (VAT), and is applicable for a period of 30 days from the date of the quotation unless otherwise noted on quotation. VAT, where applicable, shall be added to the contract price as a strictly net extra charge.
14.2 A minimum charge is applicable to any one Contract; such charge is liable to fluctuation but is available on request.
14.3 If the Customer fails to make payment for the works in accordance with these Conditions or commits any other breach of these Conditions or if any distress or execution shall be levied upon any of the Customer's goods or if the Customer offers to make or makes any arrangement with its creditors or commits an act of insolvency or if any petition in bankruptcy is presented against the Customer or the Customer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Customer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Customer's business or assets or if the Customer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the works shall become payable immediately (whether or not then due or payable). The Company may in its absolute discretion and without prejudice to any other rights which it may have suspend all work for the Customer and/or terminate the Contract without liability upon its part and/or exercise its rights under clause 5.

15. DELAYED COMPLETION

15.1 If the Company shall have included in the quotation a firm date or period for completion of the work then the following provisions of this clause shall take effect. Otherwise any date or period for completion shall be considered as indicative only and not contractually binding on the Company.
15.2 The date for completion shall only constitute a warranty and not a condition of the Contract, time shall not be considered to be of the essence and the Customer shall not have the right to reject the materials or terminate the Contract by reason of any delay in completion.
15.3 If the Company is delayed in the performance of the Contract by any act or default of the Customer or any industrial dispute or any circumstance beyond the Company's reasonable control, then the date for completion shall be extended by such period as may be reasonable.
15.4 If the Company shall fail to complete the work by the date for completion or any extended date under Clause 15.3 above, then the Company shall be liable to the Customer as liquidated damages such sum as may be specified in the quotation, or if no sum is so specified, at the rate of 0.5% of the value of the work on the materials delayed for each week of delay up to a maximum of 5% of the contract price of the work on materials delayed, unless it can reasonably be concluded from the circumstances that the Customer has suffered no loss.
15.5 The payment of the Company of such liquidated damages shall be in full satisfaction of the Company's liability for delay and to the exclusion of any other remedy of the Customer for the Company's delay.

16. LIMITATION OF LIABILITY

16.1 The Company's obligations and liabilities of the Company in respect of the quality of the work or its fitness for purpose are limited to those which are expressly stated herein. All conditions, warranties and intermediate terms relating to the description of the work, its quality and fitness for purpose implied by common law, statute, or otherwise are hereby to the fullest extent permitted by law excluded from the contract.
16.2 The Company shall not be liable for any indirect or consequential loss or damage, loss of profit, loss of business, depletion of goodwill, costs or expenses, loss of use or production or of contracts which the Customer may suffer arising out of any breach by the Company of its obligations under the Contract and whether the same be due to the negligence of the Company its servants or agents or not.
16.3 The Company shall be liable to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any of the Customer's materials or instructions supplied by the Customer which are defective, incomplete, incorrect, inaccurate, illegible or arising out of their late arrival or non-arrival or any other fault of the Customer or from any failure by the Customer to comply with or observe the requirements set out in the Care, Cleaning and Maintenance requirements as provided herein which are incorporated herein and form part of these Terms and Conditions or the conditions or the requirements set out in the powder manufacturer's manual.
16.4 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or the Customer's statutory rights as a consumer (if the Customer is contracting as a consumer).
16.5 The Customer's attention is drawn to the provisions of condition 16.5: The Customer's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the amount payable by the Customer under the Contract and subject to that overall limit to the part of any loss suffered which is proportionate to its responsibility.

17. FORCE MAJEURE

Neither party shall be liable to the other for its failure to perform any of its obligations under the Contract to the extent that such failure is a result of circumstances beyond its reasonable control, provided that the other party is notified in writing of such circumstances by the party affected as soon as they become aware of their occurrence.

18. SET-OFF

The Customer shall not be entitled to withhold payment of any amount payable to the Company under the Contract because of any dispute or claim by the Customer in respect of any fault of the Company or defect in the goods or by reason of any alleged breach of contract nor shall the Customer be entitled to set-off against any amount payable to the Company under the Contract monies which are not then presently payable by the Company to the Customer or in respect of which the Company disputes liability.

19. CANCELLATION

Cancellation of a Customer's Order will only be agreed by the Company on the condition that all costs and expenses incurred by the Company up to the time notice of cancellation is given together with all loss of profits and consequential loss and damage caused to the Company by reason of such cancellation will be paid forthwith by the Customer to the Company.

20. ASSIGNMENT AND SUB-CONTRACTING

It is hereby expressly agreed that the rights conferred by the Contract are restricted to the Company and the Customer are not capable of being assigned by either party and in particular that no Third Party of any class or description is to have any benefit arising under the provisions of the Contracts (Rights of Third Parties) Act 1999.

21. DATA PROTECTION

21.1 The Customer acknowledges that the Company may from time to time need to make searches about the Customer at credit reference agencies. The Company may use credit scoring methods to assess the Account application and to verify the identity of the Customer. Credit searches and other information which is provided to the Company and/or the credit reference agencies may also be used for identification purposes, debt tracing and the prevention of money laundering as well as the management of the Account.
21.2 Information about the Customer and the conduct of the Account may be put onto the Company's database to provide the Customer with the service applied for, for the purpose of fraud prevention, audit and debt collection. The Company may give credit reference agencies details of any non-payment following default and where no satisfactory proposal for payment is received.
21.3 By completing and signing the Credit Account Application Form the Customer acknowledges and agrees that the Company will be using and holding Data for the purposes set out above.

22. GENERAL

22.1 The Customer shall immediately notify the Company of any change in the Customer's address from that appearing in the Credit Account Application Form.
22.2 The Company may amend, vary or add to these Conditions giving notice in writing of such change to the Customer at the address appearing in the Credit Account Application Form or at such alternative address as may have been notified to the Company under Clause 22.1 above and same shall become effective 30 days from the giving of such notice.
22.3 These Conditions shall constitute the entire agreement and understanding between the parties with respect to all matters which are referred to and shall supersede any previous Terms and Conditions of Trade between the parties in relation to the matters referred to herein.
22.4 If any provision of these Conditions shall be prohibited by law or adjudged by a court to be unlawful, void or unenforceable such provision shall to the extent required be severed herefrom and rendered ineffective as far as possible without modifying the remaining provisions of these Conditions and shall not in any way affect any other circumstances of or the liability or enforcement of same.
22.5 For the avoidance of doubt, where the Customer is a partnership the term Customer shall refer to any of the partners as well as all of them, and each partner is responsible separately as well as together to the Company for all liability arising as a result of the use of the Account.

23. CASH SALES

23.1 Customers who do not have an Account goods are only accepted by the Company subject to these Conditions. Incoming goods are entered into the Company's Cash Sales Book. Payment is required upon acceptance of the goods by the Company at rates previously quoted by the Company to the Customer or, in the absence of any quotation, at the rate then prevailing for that category of work upon acceptance.
23.2 No payment shall be deemed to have been received until the Company has received cleared funds.

24. LAW AND JURISDICTION

24.1 These Terms and Conditions shall be governed by and construed in all respects in accordance with the laws of Northern Ireland.
24.2 In relation to any legal action or proceedings to enforce any provision of these Conditions or arising out of or in connection with these Conditions ("Proceedings") each of the parties irrevocably submits to the jurisdiction of the courts of Northern Ireland and waives any objection to Proceedings in such courts on the grounds of venue or on the grounds that the Proceedings have been brought in an inconvenient forum. It is hereby agreed by both parties that the place for performance of the obligation in question on foot of the contract shall be 4 Michelin Road, Malusk, Co. Antrim, BT6 4PT.
24.3 Where the Customer resides or carries on business outside Northern Ireland, the Customer hereby irrevocably agrees that any Proceedings issued out of the said courts may without prejudice to the rules of service of such courts be served by delivering same in an envelope addressed to the Customer at the address set out in the Credit Application Form or at such alternative address as may have been notified to the Company under Clause 22.1 above.
24.4 Any person signing the Credit Account Application Form warrants that he/she has read and fully understands these Conditions, and by operating the Account and placing any Order for the work accepts both for themselves and the Customer (where they are not one and the same) that these Conditions are reasonable in all respects.