

ENGINEERED PERFORMANCE COATINGS LTD
STANDARD TERMS & CONDITIONS OF SALE

1 INTERPRETATION

1.1 In these Conditions, the following definitions apply:

"Business Day"	a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;
"CIP"	Carriage and Insurance Paid as defined in Incoterms;
"Completed Goods"	Goods or Free Issue Goods which have had Services performed upon them by EPC and are ready for delivery.
"Conditions"	these terms and conditions as amended from time to time in accordance with clause 15.8;
"Contract"	the contract between EPC and the Customer for the supply of Goods and/or Services in accordance with the Order and these Conditions.
"Customer"	the person, company or firm who purchases the Goods and/or Services from EPC;
"Deliverables"	the deliverables set out in the Order;
"EXW"	Ex Works as defined in Incoterms;
"Force Majeure Event"	has the meaning given to it in clause 15.1.1;
"Free Issue Goods"	parts, components or any other item provided by the Customer to EPC for Services to be performed upon or Goods added to;
"EPC"	Engineered Performance Coatings Limited registered in England and Wales with company number 07009531;
"EPC Materials"	has the meaning set out in clause 8.1.6;
"EPC Premises"	B2/B3 The Laurels Business Park, Heol Y Rhosog, Wentloog, Cardiff, CF3 2EW
"Goods"	the goods (or any part of them) which are to be manufactured by EPC as set out in the Order;
"Goods Specification"	any specification for the Goods, including any relevant plans or drawings as set out in the Order;
"Incoterms"	Incoterms 2010 published by the International Chamber of Commerce;
"Intellectual Property Rights"	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
"Order"	the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's acceptance of EPC's quotation in any form as the

	case may be;
"Services"	the services, including the Deliverables, supplied by EPC to the Customer as set out in the Order; and
"Services Specification"	the description or specification for the Services as set out in the Order.

1.2 In these Conditions, the following rules of interpretation apply:

1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

2 BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted at the earlier of:

2.2.1 EPC issuing written acceptance of the Order; and

2.2.2 EPC doing any act consistent with fulfilling the Order at which point the Contract shall come into existence.

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of EPC which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by EPC and any descriptions of the Goods or illustrations or descriptions of the Services contained in EPC's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing and the Customer hereby agrees that in placing the Order it waives all and any such terms.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3 GOODS

To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify EPC against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by EPC in connection with any claim made against EPC for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with EPC's use of the Goods Specification. This clause 3 shall survive termination of the Contract.

4 DELIVERY

4.1 The Completed Goods shall be accompanied by a delivery note with adequate details of the Order which may include the date of the Order, any relevant Customer and EPC reference numbers, the type and quantity of the Goods, the part number of the Goods (if applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Completed Goods remaining to be delivered.

4.2 If EPC requires the Customer to return any packaging material to EPC, it shall state this clearly on the delivery note. The Customer shall make any such packaging materials available for collection at such times as EPC shall reasonably request.

4.3 Unless expressly agreed otherwise by EPC, delivery of all Completed Goods shall be EXW at EPC Premises.

4.4 If EPC has agreed to arrange delivery to the Customer's premises or another agreed location, delivery shall be CIP with delivery taking place at EPC Premises and the destination for carriage shall be as agreed with the Customer.

4.5 Any dates quoted for delivery of the Completed Goods are approximate only, and the time of delivery is not of the essence. EPC shall not be liable for any delay in delivery of the Completed Goods that is caused by a Force Majeure Event or the Customer's failure to provide EPC with adequate delivery instructions or any other instructions that are relevant to the supply of the Completed Goods.

4.6 For EXW delivery, if the Customer fails to accept or take delivery of the Completed Goods within two (2) Business Days of EPC notifying the Customer that the Completed Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by EPC's failure to comply with its obligations under the Contract in respect of the Completed Goods:

4.6.1 delivery of the Completed Goods shall be deemed to have been completed at 9.00 am on the second (2) Business Day following the day on which EPC notified the Customer that the Completed Goods were ready; and

4.6.2 EPC shall store the Completed Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 EPC may deliver the Completed Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5 QUALITY OF GOODS AND SERVICES

5.1 EPC warrants that on delivery the Goods will conform in all material respects with the description and any applicable Goods Specification.

5.2 Subject to clause 5.3, if:

5.2.1 the Customer gives notice in writing within 14 days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1; and

5.2.2 EPC is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by EPC) returns such Goods to EPC's place of business at the Customer's cost, EPC shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 EPC shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;

5.3.2 the defect arises because the Customer failed to follow EPC's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

5.3.3 the defect arises as a result of EPC following any drawing, design or Goods Specification supplied by the Customer;

5.3.4 the Customer alters or repairs such Goods without the written consent of EPC; and

5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

5.4 Except as provided in this clause 5, EPC shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 EPC shall provide the Services to the Customer in accordance with the Order in all material respects.

5.6 EPC warrants to the Customer that the Services will be provided using reasonable care and skill.

6 TITLE AND RISK IN GOODS

6.1 The risk in the Goods shall pass in accordance with the relevant Incoterm specified in clause 4.

6.2 Title to the Goods shall not pass to the Customer until EPC has received payment in full (in cash or cleared funds) for:

6.2.1 the Goods; and

6.2.2 any other goods or Services that EPC has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 hold the Goods on a fiduciary basis as EPC's bailee;

6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as EPC's property;

6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on EPC's behalf from the date of delivery;

6.3.5 notify EPC immediately if it becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.4; and

6.3.6 give EPC such information relating to the Goods as EPC may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.4, or EPC reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy EPC may have, EPC may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

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SERVICES PERFORMED ON FREE ISSUE GOODS

7.1 This clause 7 relates to Services performed on Free Issue Goods.

7.2 The Customer is responsible for delivery of the Free Issue Goods to the address specified by EPC. The Customer shall ensure that the Free Issue Goods are properly and securely packaged suitable for them to be stored at EPC Premises pending performance of the Services. The Customer is also responsible for providing suitable packaging for return of Free Issue Goods.

7.3 EPC is under no obligations to inspect Free Issue Goods delivered to it and EPC will perform the Services on the Free Issue Goods as delivered to it.

7.4 It is the Customer's responsibility to ensure that any Services Specification is correct and accurate in all respects. EPC shall in no way be liable for any loss or damage howsoever arising in relation to the Free Issue Goods where the Services Specification has been complied with.

7.5 If the Services are to be performed on Free Issue Goods in accordance with a Services Specification supplied by the Customer, the Customer shall indemnify EPC against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by EPC in connection with any claim made against EPC for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with EPC's use of the Services Specification and the Free Issue Goods. This clause 7.5 shall survive termination of the Contract.

7.6 Whilst EPC will take reasonable care in relation to the Free Issue Goods, the Free Issue Goods remain at the risk of the Customer and the Customer shall ensure that they continue to be covered by the Customer's insurances notwithstanding that the Free Issue Goods may be located at EPC Premises.

7.7 Until EPC has received payment in full for any Services performed to Free Issue Goods, EPC shall have a lien over any Free Issue Goods stored at the EPC Premises and EPC shall be entitled to retain them until full payment is made.

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CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

8.1.1 ensure that the terms of the Order (including specifically the Goods Specification and/or the Services Specification) are complete and accurate;

8.1.2 co-operate with EPC in all matters relating to the Services;

8.1.3 provide EPC, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by EPC to provide the Services;

8.1.4 provide EPC with such information and materials as EPC may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;

8.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and

8.1.6 (if applicable) keep and maintain all materials, equipment, documents and other property of EPC ("**EPC Materials**") at the Customer's premises in safe custody at its own risk, maintain the EPC Materials in good condition until returned to EPC, and not dispose of or use the EPC Materials other than in accordance with EPC's written instructions or authorisation.

8.2 If EPC's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

- 8.2.1** EPC shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays EPC's performance of any of its obligations;
- 8.2.2** EPC shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from EPC's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- 8.2.3** the Customer shall reimburse EPC on written demand for any costs or losses sustained or incurred by EPC arising directly or indirectly from the Customer Default.

9 CHARGES AND PAYMENT

- 9.1** The price for Goods and/or Services shall be the price set out in the Order. The price is exclusive of all VAT and costs and charges of packaging. The payment obligation for insurance and transport of the Completed Goods shall be in accordance with the relevant Incoterm specified in clause 4.
- 9.2** EPC reserves the right to:
- 9.2.1** increase the price of the Goods and or Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods and/or Services to EPC that is due to:
- (a)** any factor beyond the control of EPC (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); before commencement of work on Goods or Services;
 - (b)** any request by the Customer to change the delivery date(s), quantities or types of Goods or Services ordered, or the Goods Specification or Services Specification; or
 - (c)** any delay caused by any instructions of the Customer in respect of the Goods and/or Services or failure of the Customer to give EPC adequate or accurate information or instructions in respect of the Goods and/or Services.
- 9.3** EPC shall usually invoice the Customer on or at any time after completion of delivery.
- 9.4** The Customer shall pay each invoice submitted by EPC:
- 9.4.1** within 30 days of the end of the calendar month in which the invoice is issued; and
- 9.4.2** in full and in cleared funds to a bank account nominated in writing by EPC, and time for payment shall be of the essence of the Contract.
- 9.5** Notwithstanding clauses 9.3 and 9.4 above, EPC reserves the right to require the Customer to pay for Goods and/or Services in advance of delivery.
- 9.6** Without limiting any other right or remedy of EPC, if the Customer fails to make any payment due to EPC under the Contract by the due date for payment ("**Due Date**"), EPC shall have the right to charge interest on the overdue amount at the rate of 4% per cent per annum above the then current Royal Bank of Scotland's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 9.7** The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against EPC in order to justify withholding payment of any such amount in whole or in part. EPC may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by EPC to the Customer.

10 INTELLECTUAL PROPERTY RIGHTS

- 10.1** All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by EPC.
- 10.2** All EPC Materials are the exclusive property of EPC.

11 CONFIDENTIALITY

A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the

Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.

12 LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1 Nothing in these Conditions shall limit or exclude EPC's liability for:

- 12.1.1** death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 12.1.2** fraud or fraudulent misrepresentation;
- 12.1.3** breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- 12.1.4** breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).

12.2 Subject to clause 12.1:

- 12.2.1** EPC shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 12.2.2** EPC's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price stated in the Order.

12.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

13 TERMINATION

13.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 13.1.1** the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;
- 13.1.2** the other party suspends, threatens to suspend or ceases or threatens to cease to carry on, all or substantially the whole of its business;
- 13.1.3** the other party becomes subject to an event of insolvency, being (without limitation) a petition or application for winding-up, bankruptcy, liquidation (other than as part of a solvent reconstruction), appointment of a receiver or administrator or any such analogous procedures in any jurisdiction; or
- 13.1.4** the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.2 Without limiting its other rights or remedies, EPC may terminate the Contract:

- 13.2.1** by giving the Customer 3 months' written notice;
- 13.2.2** with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

13.3 Without limiting its other rights or remedies, EPC shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and EPC if:

- 13.3.1** the Customer fails to make pay any amount due under this Contract on the due date for payment; or
- 13.3.2** the Customer becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.4 or EPC reasonably believes that the Customer is about to become subject to any of them.

14 CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

14.1 the Customer shall immediately pay to EPC all of EPC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, EPC shall submit an invoice, which shall be payable by the Customer immediately on receipt;

14.2 the Customer shall return all of EPC Materials and any **Deliverables** which have not been fully paid for. If the Customer fails to do so, then EPC may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

14.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

14.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15 GENERAL

15.1 Force majeure:

15.1.1 For the purposes of this Contract, "**Force Majeure Event**" means an event beyond the reasonable control of EPC including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of EPC or any other person), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

15.1.2 EPC shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

15.1.3 If the Force Majeure Event prevents EPC from providing any of the Services and/or Goods for more than 12 weeks, EPC, without limiting its other rights or remedies, has the right to terminate this Contract immediately by giving written notice to the Customer.

15.2 Assignment and subcontracting:

15.2.1 EPC may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

15.2.2 The Customer shall not, without the prior written consent of EPC, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.3 Notices:

15.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax or e-mail.

15.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission. Notices by email are only deemed received when expressly acknowledged by the recipient, not including by any automatically generated receipt note or response. The acknowledgement need not contain any response to the matter raised in the notice. Allowance of the service of notices by email is for mutual convenience and modern business practice and neither EPC nor the Customer shall subvert that purpose by withholding or delaying the sending of a receipt. Emailed notices shall be posted or faxed if not acknowledged within 24 hours of being sent

15.3.3 This clause 15.3 shall not apply to the service of any proceedings or other documents in any legal action.

15.4 Waiver and cumulative remedies:

15.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

15.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

15.5 Severance:

15.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

15.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

15.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

15.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by EPC.

15.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.