

# CONDITIONS OF BUSINESS

## 1. GENERAL

In these conditions, Atlas Coating Ltd. is called "the Company" and any individual firm, company, or other party with whom the Company contracts is called "the Customer".

"Equipment" means all plant, machinery, apparatus, materials and articles to be supplied by the Company and/or its Sub-Contractors and forming a permanent part of the Company's work.

"Work" means the installation, erection, supervision, design, manufacture, commissioning, repair, rectification, improvement or maintenance of Equipment and/or structures whether or not supplied installed and/or erected by the Company or its Sub-Contractors.

2. (a) Any quotation given by the Company is an invitation to the Customer to make an offer only and no order of the Customer placed with the Company in pursuance of a quotation or otherwise shall be binding on the Company unless and until it is accepted in writing by the Company.
- (b) Any contract for Work or for the supply of Equipment, howsoever made, between the Company and the Customer (hereinafter called "the Contract") shall incorporate and be subject to these Conditions according to their provisions; the only terms of Contract shall be those contained expressly or by reference in the Company's acceptance of Order and any representation or warranty, written or orally made or given prior to the Contract is hereby expressly excluded. In the event of the Customer seeking to incorporate special conditions into the Contract, such special conditions shall not apply unless they are accepted and agreed by the Company in writing.
- (c) In the event that no quotation or written acceptance of order is given by the Company and the Company has received an order from the Customer, and provided that the Customer shall have notice of these conditions, in such circumstances all Equipment is supplied and all Work is done subject to these Conditions. Any conditions to which the Customer's order is said to be subject shall only be binding insofar as they are not at variance with these Conditions.

## 3. PRICES

Unless otherwise provided in the Contract:

- (a) The price of Equipment does not include the cost of carriage to the contracted place of delivery by the means most convenient to the Company nor the cost of off-loading which shall be arranged by the Customer and performed at his risk and expense.

## 4. RISK

- (a) The risk in respect of all Equipment supplied under the Contract shall pass to the Customer upon the Equipment being delivered to the Customer as provided in the Contract or in accordance with the Customer's delivery instructions but notwithstanding such delivery the property in such Equipment shall not pass to the Customer except as provided in Condition 5. The Company shall not be liable for any damage or loss occurring after the Equipment has been delivered to the Customer as aforesaid.
- (b) If the contracted place of delivery is other than at the Company's Works and damage or loss occurs to Equipment before delivery thereof to the Customer in accordance with sub-paragraph (a) above, the Company undertakes to replace or (at its discretion) to repair free of charge any Equipment damaged or lost in transit to the contracted place of delivery in which event the time of delivery of the damaged or lost Equipment shall be extended for such period as the Company shall reasonably require for such replacement or repair.
- (c) Conditions precedent to the Company's undertaking to repair or replace under sub-paragraph (b) above are:-
  - (i) that the Customer shall have given written notice of such damage or loss with reasonable particulars thereof to the Company and to the carrier if other than the Company within 3 days of the receipt of the Equipment (including total loss) and
  - (ii) that the Customer, if requested by the Company to do so, shall have returned at the Customer's own cost in the case of damaged Equipment such Equipment to the Company's Works within one month of receipt thereof.
- (d) Save as expressly provided in this Condition, the Company shall not have any liability whatsoever for or in connection with any damage to or loss of the Equipment in transit to the contracted place of delivery.
- (e) Where the Equipment is not manufactured by the Company and is delivered direct to the Customer by, or collected by the Customer from, the manufacturer the Company shall not be liable for any loss or damage to Equipment whatsoever or whensoever occurring.

## 5. PROPERTY

Until the price of the Work done or Equipment supplied in respect of this or any other Contract between the Company and the Customer shall have been paid or satisfied in full:-

- (a) Such Equipment shall remain the property of the Company (notwithstanding the delivery of the same and the passing of the risk therein).
- (b) The Company may at any time recover and re-sell such Equipment (if in the Customer's possession) if any of the events specified in Condition 14 hereof shall occur and/or if any sum owed by the Customer to the Company under any Contract is not paid on the due date and for this purpose the Company its servants or agents together with appropriate transport may enter upon the Customer's premises where such Equipment is situated.
- (c) The Customer shall possess all Equipment supplied in respect of this Contract as bailee of and in trust for the Company and if the Company so requires the Customer shall store such Equipment for the Company in a proper manner without charge to the Company and so that it is identified as belonging to the Company.
- (d) The Customer has the right to dispose of the Equipment in the ordinary course of its business for the account of the Company and to pass good title therein to its customer being a bona fide purchase for value without notice of the Company's rights, but the Customer's right of re-sale shall automatically cease upon the occurrence of any of the events referred to in sub-paragraph (b) above.
- (e) In the event of any such disposal by the Customer the proceeds of sale shall be held by the Customer in trust for the Company but the Customer shall be entitled to retain for himself therefrom any excess over the amount outstanding under this or any other contract. In addition the Company is entitled to recover directly from the Customer's customer any such proceeds of sale unpaid by such customer provided that the Company shall return to the Customer any monies recovered in excess of the amount then owed by the Customer to the Company (the Company being entitled to deduct from such excess the costs and expenses incurred by it in the recovery of such monies).
- (f) Nothing in this Condition 5 shall:-
  - (i) entitle the Customer to return the Equipment or to delay payment thereof; or
  - (ii) constitute or be deemed to have constituted the Customer as the agent of the Company otherwise than for the purposes of this Condition 5; or
  - (iii) render the Company liable to any third party for any representation or warranty made or given by the Customer to any third party in relation to the Equipment unless the Company shall have authorised the Customer so to do in writing.

## 6. DELIVERY

- (a) The Company shall use its best endeavours to comply with any date or dates for despatch or delivery of Equipment on completion of Work (as the case may be) as stated in the Contract, but unless the Contract otherwise expressly provides, such date or dates shall constitute only statements of expectation and shall not be binding. The Customer shall accordingly accept delivery of Equipment when tendered and Work when completed.
- (b) If notwithstanding that the Company has used its best endeavours, the Company fails to despatch or deliver Equipment or to complete Work by such date or dates, such failure shall not constitute a breach of the Contract and the Customer shall not be entitled to treat the Contract as thereby repudiated or to rescind it or any related contract in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting therefrom or withhold payment of any monies which would otherwise be due to the Company in accordance with the Contract.
- (c) If the Company shall be prevented or hindered from supplying Equipment or any part thereof or from completing Work in accordance with the Contract by any circumstances beyond its reasonable control further performance of the Contract shall be suspended for so long as the Company is so prevented or hindered, provided that in the event that the performance of the Contract shall be suspended for more than six consecutive calendar months the Customer shall be entitled by notice in writing to the Company forthwith to terminate the Contract or to cancel any outstanding part thereof and in such circumstances the Customer shall pay at the Contract rate for all Equipment supplied or all Work done by the Company to the actual date of such termination. The Company shall not have any liability to the Customer for any direct or consequential loss or damage suffered by the Customer as a result of the Company's inability to perform its obligations under the Contract in the aforementioned circumstances.
- (d) If the Company shall be prevented or hindered from supplying the Equipment or any part thereof or from completing Work in accordance with the Contract by reason of any industrial action involving the Customer or its employees or any third party and the Company incurs additional costs and/or expenses as a result thereof, the Customer shall reimburse the Company in full for such additional costs and/or expenses and a certificate of the Company's auditor certifying the amount thereof shall be conclusive and binding upon the Customer and the Company.
- (e) If no time for delivery or completion is specified in the Contract the Customer shall be bound by accept Equipment and/or Work when the same are ready for delivery by the Company or is completed (as the case may be) but the Company shall be under no obligation to deliver or complete the same until the expiry of a reasonable time from the date of the Contract.
- (f) When expedited delivery or completion is agreed to by the Company and necessitates overtime or other additional costs the Customer shall reimburse the Company for the amount of such overtime payments or other costs. Where postponement of delivery or completion is agreed by the Company the Customer shall, if required by the Company, pay all costs and expenses (including a reasonable charge for storage of Equipment) occasioned thereby but Equipment and/or Work shall be held at the Customer's risk as from the time of postponement.
- (g) Should Work be suspended at the request of or delayed through any default of the Customer for a period of fourteen days or more, the Company shall then be entitled to payment at the Contract rate for Work already carried out, Equipment specially ordered and any other additional costs thereby incurred including storage, and a certificate of the Company's auditors certifying such amounts shall be conclusive and binding on the Customer and the Company.

## 7. PAYMENT

- (a) If the Contract does not include Work by the Company then, unless the Contract otherwise provides the Contract price for Equipment shall be payable net cash on the despatch date of such Equipment by the Company, or as notified by the company in writing as part of any credit account payment terms.
- (b) In the event of any Equipment being delivered or any Work being completed at the Customer's request by instalments, then each instalment shall be deemed to be the subject of a separate Contract and these Conditions shall apply to each Contract mutatis mutandis. The Company shall in addition be entitled to request payment for any instalment of Equipment so delivered or Work so completed in accordance with the provision of sub-paragraph (a) above and failure to pay within the relevant period specified shall entitle the Company to suspend deliveries of Equipment or completion of Work pending payment without prejudice to any other remedy available to the Company.
- (c) Unless the Contract otherwise provides the Customer shall pay the Company for all Work carried out by the Company on a day-work basis within 7 days of the date of the Company's invoice for such Work.
- (d) The Company shall be entitled to interest on any part of the Contract price not paid by its due date from that date until payment at the rate of 5 per cent above the Base Rate of the Bank of England prevailing from time to time during such period.

## 8. CONTRACTS FOR WORK

If the Contract is for or includes Work to be done by the Company then, unless the Contract otherwise provides, the following additional provision shall apply thereto:-

- (a) The Company shall be obliged to carry out such Work only during normal working hours. If the Customer requests that overtime be worked and the Company agrees thereto such overtime shall be paid for by the Customer at the rate current in the trade and locality concerned and a certificate of the Company's auditors certifying the amount payable for such overtime shall be conclusive and binding on the Customer and the Company.

- (b) If Work is to be done by the Company at the premises of the Customer or at his request at the premises of any other person then the Customer undertakes to provide or to procure the provision of-
- (i) proper and safe storage and protection of all Equipment, Work, tools, plant and other equipment and materials on site and the Customer shall until completion of the Contract insure the same in the joint names of the Company and the Customer against all possible risks.
  - (ii) free and safe access to the site and to the point at which Work is to be executed.
  - (iii) all facilities and services necessary to enable such Work to be carried out safely and expeditiously including but without prejudice to the generality of the foregoing cranes, lifting tackle, scaffolding, etc.
  - (iv) if such Work includes the erection or installation of any plant machinery, apparatus or other articles, all builders, masons and joiners work, electrical wiring, foundations, cutting away and making good required and the ready availability of all plant and necessary equipment so as to permit such plant, machinery, apparatus or other articles to be tested forthwith on completion of such Work.
- (c) The Customer shall pay to the Company the amount of any expenses incurred by the Company by reason of any breach by the Customer of any of his undertakings in sub-paragraph (b) above (but without prejudice to the Company's right to recover further damages therefor) and a certificate of the Company's auditors certifying such amount shall be conclusive and binding upon the Company and the Customer.
- (d) Equipment shall be deemed to have been accepted by the Customer when Work is completed (or on satisfactory completion of tests on site if such tests are expressly provided for in the Contract) or one calendar month after Equipment has been put into commercial use whichever may be the earlier, provided that in any case Equipment supplied and Work done shall be deemed completed one calendar month after notice has been given in writing to the Customer to that effect unless in the meantime tests have been made showing to the reasonable satisfaction of the Company that such have not been completed. Acceptance shall not be delayed on account of additions omissions or defects which do not materially affect the commercial use of the Equipment supplied and/or Work done.
- (e) Where it is found necessary for the Company its servants or agents to work above and in the vicinity of the Customer its servants or agents, the Customer shall accept full responsibility for any injury or damage to persons or property which may occur and shall indemnify the Company in respect of all loss, damages, costs, claims and expense whatsoever arising out of such injury or damage.
- 9. WARRANTIES**
- (a) The Company will make good by repair or correction or at the Company's option by replacement or renewal, defects which under proper storage and use, appear in Equipment or Work within seven days (or as agreed by the Company in writing) after such Equipment has been delivered or Work completed and are shown to the Company's reasonable satisfaction to arise solely from faulty material or workmanship provided always in the case of defective Equipment that any such Equipment is promptly returned by the Customer at his own expense to the Company's Works. In the case of Equipment not of the Company's manufacture, the Customer's rights shall be limited to the benefit of any guarantee given to the Company by the manufacturer.
- (b) The foregoing undertaking shall be in lieu of any warranties and conditions whether express or implied by statute common law or otherwise howsoever, which warranties and conditions are hereby expressly excluded.
- (c) Save as aforesaid (and save in respect of death or personal injury resulting from the negligence of the Company its servants or agents) the Company shall not be liable for any claim or claims direct or indirect, consequential or incidental injury loss or damage made by Customer against the Company whether in contract or in tort (including negligence on the part of the Company its servants or agents) arising out of or in connection with any defects in Equipment supplied or Work done or any act, omission, neglect or default (whether or not the same constitutes a fundamental breach of the Contract or breach of a fundamental term thereof) of the Company its servants or agents in the performance of the Contract.
- (d) Without prejudice to the generality of the foregoing nothing herein contained shall operate to exclude any warranty or condition implied by the Unfair Contract Terms Act 1977 in the event of the Customer dealing as a "consumer" as defined by Section 12 of the said Act.
- (e) The Company shall not be responsible for any inaccuracies in any drawings, bills of quantities, specifications or other information supplied by the Customer and unless the design of Equipment and/or Work has been wholly prepared by the Company, or unless responsibility for such design has been expressly accepted by the Company in writing, the Company shall not be liable for any loss damage claim cost or expense suffered or incurred by the Customer as a result thereof.
- 10. GENERAL**
- (a) (i) The Company shall be entitled to reject any plant, machinery, apparatus, materials, equipment or other articles supplied or specified by the Customer which the Company in its judgement considers unsuitable. Additional costs incurred by the Company if such are judged to be unsuitable, will be charged to the Customer.
- (ii) Quantities of such supplied by the Customer shall be adequate to cover normal spoilage.
- (b) The Customer represents and warrants to the Company that no Equipment made specifically to the Customer's specifications and designs by the Company will infringe any patent copyright registered design or any other proprietary right of any third party and the Customer further undertakes to indemnify the Company and keep the Company fully and effectually indemnified against all actions, proceedings, costs, claims and expenses whatsoever in respect of any infringement by the Company of any patent, copyright, design, trademark or other proprietary right in the execution and performance of the Contract and such indemnity shall extend to any amount paid by the Company (upon legal advice) in settlement of any claim out of court.
- (c) If Equipment or Work forming part of the Contract is to be supplied or done by persons nominated by the Customer (hereinafter called "Nominated Sub-Contractors") the Customer shall indemnify the Company against all loss damage penalties costs claims or expense of whatsoever nature suffered or incurred by the Company arising out of or in connection with Equipment supplied or to be supplied or Work done or to be done by such Nominated Sub-Contractors.
- 11. CUSTOMERS PROPERTY**
- All property supplied to the Company by or on behalf of the Customer which is held by the Company for the purposes of the Contract or in transit to or from the Customer shall be deemed to be entirely at the Customer's risk and the Company shall not be liable for any loss of or damage to such property whilst in the possession of the Company or in transit as aforesaid. In no circumstances whatsoever will the Company be liable for any consequential loss or damage arising therefrom. The Customer shall insure all such property for all risks.
- 12. LIEN**
- Without prejudice to any other remedies which the Company may have, the Company shall in respect of all debts due and payable by the Customer to the Company have a general lien on all goods and property belonging to the Customer in its possession, custody or control (whether worked on or not) and shall be entitled upon the expiration of fourteen days notice to the Customer, to dispose of such goods or property as it thinks fit and to apply any proceeds of sale thereof towards the payment of such debts.
- 13. HEALTH AND SAFETY**
- The attention of the Customer is drawn to the provision of Section 6 of The Health and Safety at Work Etc. Act, 1974. The Company will make available upon written request such information on the design, construction and installation of Equipment as is in its possession to ensure that so far as is reasonably practicable they are safe and without risk to health when properly used. Such information may also be found in the relevant British Standard Specifications, codes of practice and regulations, catalogues and product leaflets produced by the manufacturers or may be obtained by specific request from the manufacturers concerned.
- 14. INSOLVENCY AND BREACH OF CONTRACT**
- In the event that:-
- (a) The Customer shall commit any breach of Contract and fail to remedy such breach (if capable of remedy) within a period of thirty days from receipt of a notice in writing from the Company requesting such remedy, or
  - (b) Any distress or execution is levied upon any of the goods or property of the Customer, or
  - (c) The Customer offers to make arrangements with or for the benefit of its creditors or commits any act of bankruptcy or, being a limited company has a Receiver appointed of the whole or any part of its undertaking property or assets, or
  - (d) An order is made or a resolution is passed or analogous proceedings are taken for the winding up of the Customer (save for the purpose of reconstruction or amalgamation without insolvency and previously approved in writing by the Company).
- The Company shall thereupon be entitled without prejudice to its other rights hereunder forthwith to suspend all Work and/or further deliveries of Equipment until the default has been made good or to determine the Contract or any unfulfilled part thereof or at the Company's option to make partial deliveries. Notwithstanding any such termination the Customer shall pay to the Company at the Contract rate for all Work done and Equipment supplied up to and including the date of termination.
- 15. SEVERANCE**
- If at any time any one or more of the provisions of these Conditions becomes invalid, illegal or unenforceable in any respect under any law the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- 16. LAW**
- These conditions and each and every Contract made pursuant thereto shall be governed by and construed in all respects in accordance with the Laws