

## TERMS & CONDITIONS

THE CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSE 8.

### 1. INTERPRETATION

**Definitions.** In these Conditions, the following definitions apply:  
**Business Day:** means Monday to Friday excluding Bank Holidays and the period from 23 December to 3 January. **Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 10.9. **Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions. **Customer:** the person or firm who purchases the Goods from the Supplier. **Goods:** shall mean a bitumen based protective liquid coating used for the purposes of protecting steel or other metals or for any other purpose at the Supplier's discretion. **Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form or e-mail or verbal instruction. **Supplier:** Tuffdip Limited (Company Number 07958890)

### 2. BASIS OF CONTRACT

- 2.1 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.
- 2.2 The Order constitutes an offer by the Customer to purchase such quantity of the Goods as set out in the Order in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order or advises the Customer of the expected date of delivery, at which point the Contract shall come into existence.
- 2.4 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 the Supplier which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's documentation or websites are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 14 Business Days from its date of issue.

### 3. DELIVERY

- 3.1 Any Order is accepted on the basis that, unless specified otherwise in the Order, there are no restrictions or obstacles to delivery by any size of lorry up to 44 tonnes total weight and the Customer will take delivery of the Goods on any Business Day at any time between 07.00 and 18.00 and will have facilities to offload pallets from the delivery lorry. Any costs (including redelivery) which arise as a result of the Order failing to specify exception to this paragraph will be payable by the Customer.
- 3.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time before the Supplier notifies the Customer that the Goods have been despatched. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 3.3 Any dates quoted for delivery are approximate only and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.4 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event (as defined in clause 10 or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods).
- 3.5 If the Customer fails to accept delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the

Goods have been despatched, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready for delivery and (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance). If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

- 3.6 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 3.7 The Supplier may deliver the 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.

### 4. QUALITY

- 4.1 The Supplier warrants that, on delivery, the Goods shall; (a) conform with their description, (b) be free from material defects in design, material and workmanship, (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and (d) be fit for any purpose held out by the Supplier.
- 4.2 Subject to clause 4.3, if; a) the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1, b) the Supplier is given a reasonable opportunity of examining such Goods and c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 4.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 4.1 in any of the following events; (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 4.2, (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, use and maintenance of the Goods or (if there are none) good trade practice regarding the same, (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer, (d) the Customer alters such Goods without the written consent of the Supplier, (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions or (f) the Goods differ from the description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 4.4 Except as provided in this clause 4, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.
- 4.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 4.6 These Conditions shall apply to any replacement Goods supplied by the Supplier.

### 5. TITLE AND RISK

- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for; (a) the Goods and (b) any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall; (a) hold the Goods on a fiduciary basis as the Supplier's bailee, (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property, (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods, (d)

- maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery, (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 7.2 and (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 7.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier 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.
- 6 PRICE AND PAYMENT**
- 6.1 The price of the Goods shall be the price set out in any advice to the Customer after receipt of the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 6.2 The price of the Goods is inclusive of value added tax. The cost of delivery may be charged separately.
- 6.3 The Supplier may invoice the Customer for the Goods on or at any time after despatch.
- 6.4 The Customer shall pay the invoice in full and in cleared funds within 30 days from the invoice date. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 6.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 6.6 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 the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 7 CUSTOMER'S INSOLVENCY OR INCAPACITY**
- 7.1 If the Customer becomes subject to any of the events listed in clause 7.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 7.2 For the purposes of clause 7.1, the relevant events are; (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due, (b) (being a company or LLP) an order is made, for or in connection with the winding up of the Customer, (c) (being an individual) the Customer is the subject of a bankruptcy petition or order, (d) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a)-(c) (inclusive) of this paragraph, (e) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business, (f) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy and (g) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 7.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

- 8 LIMITATION OF LIABILITY**
- 8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for; (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable), (b) fraud or fraudulent misrepresentation, (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or (d) defective products under the Consumer Protection Act 1987.
- 8.2 Subject to clause 8.1; (a) the Supplier 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 (b) the Supplier'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 total aggregate price of the Goods set out in the Order.
- 9 FORCE MAJEURE**
- The Supplier reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier (**Force Majeure Event**).
- 10 GENERAL**
- 10.1 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 10.2 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company or LLP) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
- 10.3 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 10.2; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; 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 or e-mail, one Business Day after transmission.
- 10.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 10.5 If any court or 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 to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 10.6 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.
- 10.7 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. 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.
- 10.8 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 10.9 Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.
- 10.10 The 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, the laws of England and Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.