



YOU CAN'T BUY A BETTER PAINT FOR LESS!™

Terms & Conditions of Sale



CONDITIONS OF SALE

1. ENTIRE AGREEMENT

- 1.1 The Customer agrees that (a) this Agreement represents the entire Agreement between the Customer and Mylaw Chemical and Coatings (Pty) Ltd (hereinafter called MCAC) and that no alterations or additions to this Agreement may be effected unless agreed to by both parties, reduced to writing and signed by the Customer and a duly authorised representative of MCAC; (b) this Agreement will govern all future contractual relationships between the parties; (c) this Agreement is applicable to all existing debts and future debts between the parties; (d) this Agreement is final and binding and is not subject to any suspensive or resolutive terms or conditions; (e) any conflicting conditions stipulated by the Customer are expressly excluded; (f) these terms supersede all previous conditions of Agreement without prejudice to any securities or guarantees held by MCAC and (g) these terms apply to all subcontractors of MCAC.
- 1.2 Each provision of this Agreement is severable from the other provisions. Should any provision be found to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall nevertheless remain binding and continue with full force and effect.

2. APPLICABILITY

- 2.1 This Agreement only becomes final and binding on receipt and acceptance of this offer by MCAC at its business address as appears on the face of the document to which these terms and conditions are attached ("the Business Address").
- 2.2 Any order only becomes final and binding on receipt and acceptance of such order by MCAC at its Business Address.

3. SURETYSHIP

- 3.1 In the event that the signatory hereto is a member or shareholder of the Customer, or a partner if the Customer is a partnership, the signatory hereby binds himself / herself in his / her personal capacity as surety and co-principal debtor jointly and severally for the full amount due to MCAC and agrees that these Standard Conditions will apply in the exact same way to him / her.

4. LIABILITY

- 4.1 The Customer agrees that neither MCAC nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Customer.
- 4.2 It is the sole responsibility of the Customer to determine that the goods or services ordered are intended for the purposes of use.

5. QUOTATIONS

- 5.1 All quotations will remain valid for a period of 30 days from the date of the quotation or until the date of issue of a new Price List, whichever occurs first. In the event of a change in the Price List before the expiry of the 30 day period, MCAC shall immediately advise the Customer of the change and a new quotation shall be provided to the Customer by MCAC, which shall remain valid for the remaining portion of the 30 day period.
- 5.2 All quotations are subject to the availability of the goods or services and subject to correction of good faith errors by MCAC and any price quoted shall be subject to variation up to the time of delivery in relation to any fluctuations of the cost price of the goods or Forex fluctuations, both of which are beyond MCAC control. In such event, the provisions of clause 5.1 above will apply.
- 5.3 If the Customer disputes the amount of increase, the amount of the increase may be certified by any independent auditor and such certificate shall be final and binding on the Customer.
- 5.4 Notwithstanding the provisions of clause 1 above, all orders or agreed variations to orders, shall be binding and subject to these Standard Conditions of Agreement and may not be revoked by the Customer, except if in terms of the Consumer Protection Act, No 68 of 2008, as amended.

6. DELIVERY AND ACCEPTANCE

- 6.1 MCAC shall be entitled to invoice each delivery / performance actually made separately.
- 6.2 Except where otherwise agreed, delivery of goods and/or services shall take place at the Business Address of the Customer. Delivery by MCAC is deemed to have been made to the Customer upon receipt by MCAC of a delivery note, invoice or waybill, whether the original or a copy, signed by the Customer, or on behalf of a Customer. It is specifically agreed that any third party designated by the Customer to transport the goods shall accept delivery of the goods on behalf of the Customer. A delivery note, invoice or waybill signed as aforesaid shall constitute proof that the Customer has examined the goods for the purposes of ascertaining that the Customer is satisfied that the goods (a) are of a type and quality reasonably contemplated in the order (b) in the event that the order was made solely on the basis of the description and/or sample, correspond in all material aspects and characteristics based on the description or on a reasonable examination of the sample, as the case may be.

RISK OF GOODS

- 6.3 The risk of damage to, destruction or theft of goods shall pass to the Customer on despatch. Loading of goods at the premises of MCAC will be the responsibility of the Customer and should the Customer insist that the employees of MCAC load the goods, it will be at the risk of the Customer and MCAC will not be liable for any damage to Customer's own goods that have to be handled and processed by MCAC. Where MCAC has agreed to deliver the goods by its own vehicles at the Customer's place of business, unloading shall be carried out by the Customer's employees at the sole risk of the Customer, who shall be responsible for all damage of whatsoever nature caused as a result of or during such unloading. If such unloading is effected by MCAC employees or if MCAC employees assist in such unloading, at the request of the Customer or otherwise, such unloading shall never the less be at the sole risk of the Customer who shall be responsible for all damages of whatsoever nature caused as a result of or during such unloading. In this regard MCAC is authorised to utilize the services of a third party to transport the goods to the Customer on the terms it deems fit. For purposes of clause 6.3, the time of despatch shall be when the goods are collected by the third party for delivery to the Customer.
- 6.4 Delivery and performance times quoted are merely estimates and are not binding on MCAC.
- 6.5 MCAC shall be entitled in its sole discretion to split the delivery / performance of the goods and/or services ordered in the quantities and on the dates it decides. Provided that such split delivery / performance is carried out on the agreed date and at the agreed time as between MCAC and the Customer, or otherwise within a reasonable time after the order has been placed.
- 6.6 The Customer indemnifies MCAC against any claims against MCAC that may arise from such agreement in clause 6.3.

7. COPYRIGHTS

- 7.1 The Customer acknowledges all copyrights and shall not duplicate copyrighted material and that each infringement attempt shall immediately render the full prevailing price payable to MCAC.
- 7.2 The Customer shall indemnify MCAC against any claims, costs and expenses arising out of the infringement of copyright, patent, trademark or design supplied by the Customer.

8. WARRANTIES, GUARANTEES AND DECLARATIONS

- 8.1 In addition to the warranties (if any) given by the producer or importer, MCAC warrants that the goods are reasonably suited for the purposes for which they are generally intended (to the extent that this has been communicated to MCAC), are of good quality, in good working order and free of any defects, will be usable and durable for a reasonable period of time (having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply), and comply with any applicable standards set under the Standards Act, No 29 of 1993, as amended or any other public regulation.
- 8.2 The Customer may, within 10 days after delivery of the goods to him/her, return the goods to MCAC if the goods do not comply with the provisions of clause 8.1 hereof. Such return shall be at MCAC's risk and expense, and the Customer shall indicate whether he/she requires MCAC to repair or replace the failed, unsafe or defective goods, or to refund to the Customer the price paid by the Customer for the goods.
- 8.3 MCAC shall not accept the Customer's election to return the goods if: (a) MCAC expressly informed the Customer that the particular goods were ordered in a specific condition, or the Customer knowingly acted in a manner consistent with accepting the goods in that condition, (b) after having been supplied to, or at the direction of the Customer, the goods have been partially or entirely disassembled, physically altered, permanently installed, affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property.

9. LIABILITY

- 9.1 Under no circumstances shall MCAC be liable for any consequential damages including loss of profits or for any delictual liability of any nature whatsoever whether caused negligently or innocently.
- 9.2 Under no circumstances shall MCAC be liable for any damage arising from any misuse, abuse or neglect of the goods or services.

10. PAYMENTS

- 10.1 The Customer agrees that the amount contained in a Tax Invoice issued by MCAC shall be due and payable unconditionally (a) cash on order; or (b) if the Customer is a Credit Approved Customer, within 30 days from the end of the month in which a Tax Invoice has been issued by MCAC.
- 10.2 The Customer agrees to pay the amount on the Tax Invoice at the Business Address or by EFT into MCAC's banking account as indicated on the document to which these terms and conditions are attached.

- 10.3 The risk of payment by cheque through the post rests with the Customer.
- 10.4 The Customer has no right to withhold payment for any reason whatsoever and agrees that no extension of payment of any nature shall be extended to the Customer and any such extension will not be applicable or enforceable unless agreed to by MCAC, reduced to writing and signed by the Customer and a duly authorised representative of MCAC.
- 10.5 The Customer is not entitled to set off any amount due to the Customer by MCAC against this debt.
- 10.6 All discounts shall be forfeited if payment in full is not made on the due date.
- 10.7 All goods supplied by MCAC remain the property of MCAC until such goods have been fully paid for whether such goods are attached to other property or not.

11. CERTIFICATE

- 11.1 The Customer agrees that the amount due and payable to MCAC may be determined and proven by a certificate issued and signed by any manager or member of MCAC, whose authority need not be proven or by any independent auditor. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Customer.
- 11.2 Any printout of computer evidence tendered by any party shall be admissible evidence and no party shall object to the admissibility of such evidence purely on grounds that such evidence is computer evidence or that the requirements of the Electronic Communications and Transactions Act 25 of 2002 have not been met.

12. BREACH AND TERMINATION

- 12.1 The Customer agrees that interest rate shall be a variable interest rate calculated at the maximum legal interest rate prescribed by the National Credit Act 34 of 2005 if that Act is applicable, or at double the repo-rate as declared by the Reserve Bank from time to time if that Act is not applicable, on any monies past due date to MCAC and that interest shall be calculated daily and compounded monthly from the date of acceptance of the order.
- 12.2 The Customer agrees that if an account is not settled in full (a) against order; or (b) within the period agreed in clause 10.1 above in the case of a Credit Approved Customer; MCAC is: (i) entitled to immediately institute action against the Customer at the sole expense of the Customer; or (ii) to cancel the Agreement and take possession of any goods delivered to the Customer and claim damages. These remedies are without prejudice to any other right MCAC may be entitled to in terms of this Agreement or in law. MCAC reserves its right to stop supply immediately on cancellation or on non-payment.
- 12.3 A Credit Approved Customer will forthwith lose this approval when payment is not made according to the conditions of clause 10.1, and all amounts then outstanding shall immediately become due owing and payable.
- 12.4 MCAC shall be entitled to withdraw credit facilities at any time within its sole discretion.
- 12.5 In the event of cancellation, the Customer shall be liable to pay (a) the difference between the selling price and the value of the goods at the time of repossession and (b) all other costs incurred in the repossession of the goods. The value of repossessed or retained pledged goods shall be deemed to be the value placed on them by any sworn valuator after such repossession, and such valuation shall be conclusive proof of the value. If the goods are not recovered for any reason whatsoever, the value shall be deemed to be nil.
- 12.6 In the event of cancellation of the Agreement by MCAC, it shall be entitled to repossess any goods that have been delivered to the Customer and remains unpaid by the due date.
- 12.7 Any order is subject to cancellation by MCAC due to acts of God or any circumstance beyond the control of MCAC, including (without restricting this clause to these instances): inability to secure labour, power, materials or supplies, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.
- 12.8 Any order is subject to cancellation by MCAC if the Customer breaches any term of this Agreement or makes any attempt of compromise, liquidation, sequestration, termination or judgement is recorded against the Customer or any of its principals.
- 12.9 The Customer agrees that MCAC will be immediately and irrevocably released from any contractual damages and penalty obligations should any event in clause 12.7 or 12.8 occur.

13. COSTS, SECURITY AND ESTOPPEL

- 13.1 The Customer shall be liable to MCAC for all legal expenses on the attorney-and-own-client scale incurred by MCAC in the event of (a) any default by the Customer or (b) any litigation in regard to the validity and enforceability of this Agreement. The Customer shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs, for any form of security that MCAC may demand.
- 13.2 The Customer agrees that MCAC will not be required to furnish security in terms of Rule 62 of the Rules of Court of the Magistrate's Courts or in terms of Rule 47 of the Law of the Supreme Court 59 of 1959.
- 13.3 The Customer agrees that no indulgence whatsoever by MCAC will affect the terms of this Agreement or any of the rights of MCAC and such indulgence shall not constitute a waiver by MCAC in respect of any of its rights herein. Under no circumstances will MCAC be estopped from exercising any of its rights in terms of this Agreement.

14. APPLICABLE LAW

- 14.1 This Agreement and its interpretation are subject to South African law. The Customer hereby consents that MCAC shall have the right to institute any legal action in either the Magistrate's Court or any Supreme Court in the Republic of South Africa at its sole discretion. These South African courts shall have exclusive jurisdiction in any litigation between the parties arising from whatsoever source.
- 14.2 If the National Credit Act 34 of 2005 is applicable the following clauses shall not be applicable to this Agreement: clause 4.1, clause 14.1 and clause 18.1.

15. DOCUMENTS PRESENTED

- 15.1 Any document shall be deemed duly presented to and accepted by the Customer (i) within 5 days of prepaid registered mail to any of the Customer's business or postal addresses or to the personal address of any director, member or owner of the Customer; or (ii) within 24 hours of being faxed to any of the Customer's fax numbers or any director, member's or owner's fax numbers; or (iii) on being delivered by hand to the Customer or any director, member or owner of the Customer; or (iv) within 48 hours if sent by overnight courier or (v) within 7 days of being sent by surface mail; or (vi) within 24 hours of being e-mailed to any e-mail address provided by the Customer.

16. DOMICILIUM CITANDI ET EXECUTANDI

- 16.1 The Customer chooses its address for any notification or service of legal documents or processes as the business address or the physical addresses (domicilium citandi et executandi) of any Director (in the case of a company), Member (in the case of a close corporation) or of the Partner(s) (in the case of a partnership) as completed on the Customer Information Sheet or Credit Application Form, whichever applies to the Customer.
- 16.2 The Customer undertakes to inform MCAC in writing within 7 days of any change of Director, Member, Shareholder or Partner or address or 14 days prior to selling or alienating the Customer's business and failure to do so will constitute a material breach of this Agreement. Upon receipt of such written notification, MCAC reserves the right, at its sole discretion, to withdraw any credit facility advanced to the Customer.

17. PERSONAL INFORMATION OF CUSTOMER

- 17.1 The Customer hereby consents to the storage and use by MCAC of the personal information that it has provided to MCAC for establishing its credit rating and to MCAC disclosing such information to credit control companies, banks and other institutions involved in rating credit. The Customer agrees that MCAC will not be held liable for the good faith disclosure of any of this information to such third parties and that no further specific consent needs to be obtained for the transfer of such information to a specific third party.
- 17.2 The Customer hereby consents that MCAC can provide personal information of the Customer to third parties, if the Customer has indicated MCAC as a trade reference to third parties and the Customer agrees that MCAC will not be liable for the good faith disclosure of any of this information to such third parties.

18. CREDIT FACILITY

- 18.1 The Customer hereby agrees that the credit facility is a variable credit facility and that MCAC shall be entitled to increase its credit limit from time to time.
- 18.2 The Customer agrees to the Standard Rates of MCAC for any goods or services rendered, which rates may be obtained on request.



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