



## TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Terms and Conditions of Sale we use the following words with the following meanings (unless otherwise stated):

**The Company** means Surface Matter Limited registered in England and Wales (Company No. 08703548) whose registered office is 29 Westgate Street, London E8 3RL, United Kingdom;

**Contract** means the contract for sale and purchase of the Goods and supply of the Services made between the Company and the Purchaser to which these Conditions apply;

**Goods** means the goods, materials and/or other items and any Services to be supplied pursuant to the Contract;

**The Purchaser** means the person, firm or company to be supplied with the goods and services by the Company;

**Purchaser's Order** means the request by The Purchaser to The Company for the provision of particular products; and

**Services** means the services to be supplied pursuant to the Contract.

- 1.2 Headings are inserted for convenience only and shall not affect the interpretation or construction of these Conditions.

- 1.3 A reference to any statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes and subordinate legislation made pursuant to it.

### 2. SCOPE

- 2.1 These Conditions apply to all sales of Goods and supplies of Services by The Company and shall prevail over any terms or conditions referred to in the Purchaser's Order or in correspondence or elsewhere unless specifically agreed to in writing by The Company and expressed to form part of the Contract and any conditions or stipulations to the contrary are hereby excluded or extinguished.

- 2.2 The giving by The Purchaser of any delivery instruction or the acceptance by The Purchaser of delivery of the Goods shall constitute unqualified acceptance by The Purchaser of these Conditions.

- 2.3 It is The Purchaser's responsibility to ensure that all information supplied by it is complete and accurate. The Purchaser shall ensure that the Purchaser's Order and the particular Goods meet its particular requirements.

- 2.4 Nothing in this Contract shall create or be deemed to create a partnership or an agency between The Company and The Purchaser.

### 3. QUOTATION

A quotation by The Company does not constitute an offer and The Company reserves the right to withdraw or amend the same at any time prior to The Company's acceptance of The Purchaser's Order.

### 4. PRICES

- 4.1 Unless the prices quoted are stated to be fixed the prices payable for the Goods or Services shall be those charged by The Company at the time of despatch or supply of the Services so that The Company shall have the right at any time to revise quoted prices to take account of increases in cost including (without limitation) costs of raw materials or labour and any variation in exchange rates.

- 4.2 Quoted prices for the Goods are ex-works and exclusive of Value Added Tax and other duty levy or tax assessed against the Goods or Services by any Government or other authority.

### 5. TERMS OF PAYMENT

- 5.1 Payment of invoices shall, unless otherwise agreed in writing, be made in full without any deduction or set off within 30 days of the date of invoice.

- 5.2 Any extension of credit allowed to The Purchaser may be changed or withdrawn at any time.

- 5.3 The Company may claim interest upon late payments in accordance with the law and further recover from The Purchaser all reasonable costs incurred in recovering late payments.

- 5.4 If in the opinion of The Company the creditworthiness of The Purchaser shall have deteriorated prior to the delivery The Company may require full or partial payment of the price prior to delivery or the provision of security for payment by The Purchaser in a form acceptable to The Company.

### 6. DELIVERY

- 6.1 Delivery or performance dates mentioned in any quotation or acceptance form or elsewhere are approximate only and not of any contractual effect, and time for delivery shall not be made of the essence by notice. The Company shall not be under any liability to The Purchaser in respect of any delay in delivery howsoever arising.

- 6.2 If delivery of the Products is delayed or obstructed through Customer's default or breach of this Contract or if Customer unreasonably declines or delays in accepting or taking delivery or receipt of the Products, then The Company may without prejudice or any other right or remedy available to it do any or all of the following; (a) charge a reasonable storage or re-delivery fee; (b) sell the Goods for The Company's account; and (c) cancel this Contract as regards any Goods that remain to be delivered or performed.

- 6.3 Unless otherwise specified delivery shall be ex-works so that the Goods shall be deemed to have been delivered and the risk therein to have passed to The Purchaser upon The Company notifying The Purchaser that the Goods are available for collection.

- 6.4 In any case where Goods are sold CIF or FOB or on the basis of any other international trade term the meaning of such terms contained in the latest Incoterms shall apply as if expressly incorporated herein except insofar as any part of the same may be inconsistent with any of the provisions contained in these Conditions.

- 6.5 In the case of any sale of Goods FOB The Company shall be under no obligation to give The Purchaser the notice specified in section 32(3) of the Sale of Goods Act 1979.

- 6.6 Partial delivery or performance shall be permitted in one or more instalments. The Company shall treat each instalment as a separate contract.

- 6.7 If the Contract involves more than one delivery and any default is made in payment The Company shall have the right to suspend all or any further deliveries pending payment or to terminate the Contract in its entirety by notice in writing to The Purchaser.

### 7. EXPORT

The Purchaser represents and warrants that it will not violate U.S., E.U., or other applicable local country export-related laws with respect to the Goods.

### 8. TITLE

The Goods sold under this Contract will remain the property of the Company until they are paid for in full.

### 9. VARIATIONS

The Company shall be deemed to have fulfilled its contractual obligations in respect of any delivery though the quantity may be up to ten per cent more or less than the quantity specified in the Contract and in such event The Purchaser shall pay for the actual quantity delivered.

### 10. SPECIFICATIONS BY THE PURCHASER

The Purchaser shall indemnify and keep indemnified The Company against all claims, costs, damages and expenses incurred by The Company or for which The Company may become liable as a direct or indirect result of the carrying out of any work required to be done on or to the Goods in accordance with the requirements of specifications of The Purchaser involving any infringement or claim or infringement of any intellectual property right vested in another person, firm or company.



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### 11. LIABILITY

- 11.1 The Company shall not be liable for any visible defects or non-conformities and/or for any shortage in the quantity delivered unless a claim in writing shall have been received by The Company from The Purchaser within 2 days of delivery of the Goods. Where liability for any shortage is accepted by The Company, The Company's only obligation shall be to make good such shortage.
- 11.2 The Company warrants that (subject to the other provisions of these Conditions) the Goods will be free from material defects in material in accordance with the specifications provided by the manufacturer of the Goods.
- 11.3 The Company will perform the Services with reasonable skill and care.
- 11.4 The warranties in Condition 11.2 do not cover wear and tear and shall not apply to Goods which have been subjected to misuse or abuse, neglect, accident, damage, improper storage, improper installation or maintenance.
- 11.5 Subject to Condition 11.4, if the Goods do not comply with the warranties in Condition 11.2 The Company shall at its option replace or repair such Goods free of charge or refund the price of such Goods provided that, if The Company so requests, The Purchaser shall, at The Purchaser's expense, return the Goods or the part of such Goods which is defective to The Company.
- 11.6 The Company shall not be liable to The Purchaser for loss of profit, loss of business or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract, whether such loss or claim was foreseeable or in the contemplation of the parties and whether arising in or caused by breach of contract, tort (including negligence and breach of statutory duty), indemnity or otherwise.
- 11.7 Subject to the foregoing all conditions, warranties, representations and other terms expressed or implied by statute, common law or otherwise (save for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, hereby excluded.
- 11.8 Nothing in these Terms and Conditions of Sale excludes or limits the liability of The Company (a) for death or personal injury caused by The Company's negligence; or (b) for any matter which it would be illegal for The Company to exclude or attempt to exclude its liability; or (c) for fraud or fraudulent misrepresentation.

### 12. LICENCES AND CONSENTS

- 12.1 The Contract is conditional upon the obtaining of all licences or consents necessary for its performance (other than for the importation of the Goods by The Purchaser) in which connection The Purchaser shall sign all such forms and documents and render such other assistance to The Company as may be necessary.
- 12.2 The Purchaser shall obtain at its own expense any licence or consent required for the importation of the Goods by The Purchaser and if necessary or so required, shall produce evidence of the same to The Company on demand.

### 13. PURCHASER-OWNED MATERIALS

Title and risk of loss to Purchaser-owned materials that are in The Company's possession shall remain with The Purchaser. The Company shall not be liable for any loss or damage to Purchaser-owned materials stored by The Company unless caused solely by The Company's negligence. Payment by The Company for such loss or damage shall be limited to the direct manufacturing cost of The Purchaser-owned materials (if it is manufactured by The Purchaser or its affiliates), or the replacement cost (if it was purchased from a third party), in either instance less the salvage value. The Purchaser shall be responsible for insuring its materials against all loss or damage not caused solely by The Company's negligence. The Company assumes no liability for loss or damage to Purchaser-owned materials caused by any force majeure circumstance (as defined in Condition 14 below).

### 14. FORCE MAJEURE

The Company shall not be liable to The Purchaser for any loss or damage which may be suffered by The Purchaser as a direct or indirect result of the supply of the Goods or Services by The Company being prevented, hindered or delayed by reason of any circumstances beyond its reasonable control including any act of God, actions or omissions of third parties, restrictions on imports or exports, insurrection, riot, imposition of sanctions, embargo, national emergencies, terrorism, nuclear, chemical or biological contamination, piracy, arrests, epidemic, fire, explosion, storm, flood, adverse weather conditions, loss at sea, earthquake, natural disaster, accident, collapse of building structures, breakdown of plant machinery or vehicles, failure or problems with public utility supplies, strike, lock-out, trade dispute or labour disturbances, difficulty in obtaining workmen, material or transport or other circumstances whatsoever outside the control of The Company affecting the provision of the Goods or of raw materials therefor by The Company's usual source of supply or the manufacture of the Goods by The Company's normal means or the delivery of the Goods by The Company's normal route or means of delivery.

### 15. TERMINATION

If The Purchaser enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him or (being a company) it passes a resolution or the Court makes an order that The Purchaser be wound up (otherwise than for the purpose of amalgamation or reconstruction) or if a receiver, administrator or administrative receiver is appointed of any of the assets or undertaking of The Purchaser or if circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court to make a winding-up order or if The Purchaser takes or suffers any similar action in consequence of debt or commits any breach of any part of this or any other contract between The Company and The Purchaser The Company may stop any Goods in transit and suspend further deliveries and by notice in writing to The Purchaser may immediately terminate the Contract without prejudice to the provisions of Condition 5.3 and to existing claim.

### 16. NOTICES

Any notice required to be given hereunder in writing shall be deemed to have been duly given if sent by prepaid first-class post or recorded delivery addressed to the party concerned at its principal place of business or last known address.

### 17. SEVERANCE

If any Condition of the Contract (or part of any Condition) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that Condition or part-Condition shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other Conditions shall not be affected.

### 18. GOVERNING LAW

The Contract shall be governed by and construed and interpreted in accordance with the laws of England and for the purposes of settlement of any disputes arising out of or in connection with the Contract the parties hereby submit themselves to the exclusive jurisdiction of the English Courts.