

Terms and Conditions

1. INTERPRETATION

1.1 In these Terms, the following definitions apply.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Company: Wilsons Underlays Ltd, Thornhill Road, Dewsbury, WF12 9QF Company no. 10184002

Contract: the contract between the Company and the Customer for the sale and purchase Of the Goods in accordance with these Terms.

Customer: the person or firm who purchases the Goods from the Company

Force Majeure Event: has the meaning given in clause 15.

Goods: the goods (or any part of them) set out in the Order.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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.

Manufacturer Warranty: any manufacturer warranty that may attach to the Goods as confirmed in writing by the Company from time to time.

Order: the Customer's Order for the Goods as set out overleaf.

Specification: any technical specification for the Goods including any related plans and drawings that is agreed between the Customer and the Company.

Terms: the terms and conditions set out in this document as amended from time to time in accordance with clause 16.6.

1.2 In these Terms, the rules of construction in this clause apply.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a party includes its personal representative's successors or permitted assigns.

1.5 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted.

1.6 Any phrase introduced by 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.

1.7 A reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 These Terms 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 the Goods in accordance with these Terms. The Customer is responsible for ensuring that the terms of the Order and any applicable specification are complete and accurate.

2.3 The Order shall be deemed to be accepted when the Company acknowledges such Order or where an Order is not acknowledged when the Company endeavours to fulfil the Order, 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 Company which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained within the Company's catalogues or brochures 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 Company shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of Issue.

3. GOODS

3.1 To the extent that the Goods are to be provided in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Company 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 reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Specification. This clause 3.1 shall survive termination of the Contract.

3.2 Any samples, drawings, images, descriptive matter, specifications or advertising produced by the Company and any descriptions contained in the Company's catalogues, websites or brochures are produced for the sole purpose of giving an approximate idea of the goods described in them. The typical properties listed are the result of extensive research or laboratory tests, but since Wilsons Underlays has no control over the end use of each material, we cannot guarantee these results are obtained in practice. The Company cannot accept any liability for any inconsistency with such images, illustrations or data specifications. They shall not form part of the Contract or have any contractual force and cannot be relied upon by the Customer.

3.3 All weights are approximate only. Due to the manufacture of some Goods, the colour and consistency may vary. The Company reserves the right to supply replacement Goods to the extent that Goods ordered are not in stock or otherwise not available.

The Company shall notify you of any such replacement Goods as soon as reasonably practicable and the Customer shall be entitled to reject the Goods and shall be entitled to terminate the Contract.

3.4 The Company reserves the right to amend the Specification of the Goods if required by any applicable statutory or regulatory requirements.

3.5 Should any of the Goods ordered by the Customer become unavailable for whatever reason, the Company shall notify the Customer as soon as reasonably practicable and shall suggest alternative Goods as similar as possible to those Goods set out in the Order. Within that notice the Company shall provide the Customer with the option to terminate or vary the Order.

4. DELIVERY

4.1 The Company 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 agreed between the Company and the Customer, or as indicated by the Company.

4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company 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 Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.4 If the Customer fails to accept delivery of the Goods within three Business Days of the Company notifying the Customer that the Goods they have attempted to deliver then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract.

4.4.1 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 Company notified the Customer that the Goods were ready: and

4.4.2 The Company shall store the Goods until delivery is reorganised, and charge the Customer for all related costs and expenses (including insurance)

4.5 If 10 Business Days after the day on which the Company notified the Customer that the Goods were ready and the Customer has not accepted delivery of the Goods, the Company may resell or otherwise dispose of part or all of the Goods.

4.6 The Customer shall not be entitled to reject the Goods if the Company delivers up to and including five % 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.

4.7 The Company may deliver the Goods by instalments with the consent of the Customer, 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

- 5.1** The Company warrants that the Goods shall on delivery;
- 5.1.1** conform in all material respects with their description;
- 5.1.2** be free from material defects in design, material and workmanship; and 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2** Any Goods supplied by the Company to the Customer shall be subject to the terms of any applicable Manufacturer Warranty 5.3 Subject to clause 5.4. if;
- 5.3.1** the Customer gives notice in writing to the Company within a reasonable time of discovery that some or all of the Goods do not comply with the warranties set out in clause 5.1, and in any event within three Business Days of delivery; and
- 5.3.2** the Company is given a reasonable opportunity of examining such Goods prior to any remedial or additional works are carried out by or on behalf of the Customer; the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.4** The Company shall have no liability to the Customer in respect of the Goods, should the Customer not comply with the terms of clause 5.3.
- 5.5** The Company shall not be liable for the Goods' failure to comply with the warranties set out in Clauses 5.1 or 5.2 in any of the following events;
- 5.5.1** the Customer makes any further use of such Goods after giving notice in accordance with clause 5.3.
- 5.5.2** the defect arises because the Customer failed to follow the Company's oral or written instructions as to the installation, use and maintenance of the Goods;
- 5.5.3** the defect arises as a result of the Company following any drawing, design or Specification supplied by the Customer.
- 5.5.4** the Customer alters, repairs or replaces such Goods without the written consent of the Company;
- 5.5.5** the defect arises as a result of fair wear and tear, wilful or accidental damage, negligence, or abnormal storage or working conditions; or
- 5.5.6** the Goods differ from their description or the Specification as a result of Changes made to ensure they comply with any applicable statutory or regulatory requirements.
- 5.6** Except as provided in this clause 5, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranties set out in clauses 5.1.
- 5.7** 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.
- 5.8** These Terms shall apply to any repaired or replacement Goods supplied by the Company.
- 5.9** Any warranty or guarantee given under these Terms shall not be applicable outside the United Kingdom, unless otherwise specifically agreed.

6. TITLE AND RISK

- 6.1** The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2** Notwithstanding delivery and the passing of risk in the Goods, title and property in the Goods, including full legal and beneficial ownership, shall not pass to the Customer until the Company has received in cash or cleared funds payment in full for all Goods delivered to the Customer under this and all other contracts between the Company and the Customer for which payment of the full price of the Goods

thereunder has not been paid. Payment of the full price of the Goods shall include the amount of any interest or other sum payable under the terms of this and all other contracts between the Company and the Customer under which the Goods were delivered.

- 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 the Company's bailee;
- 6.3.2** maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; 6.3.3 notify the Company immediately if it becomes subject to any of the events listed in clause 10.2: and
- 6.3.4** give the Company such information relating to the Goods as the Company may require from time to time.
- 6.4** If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10.2. or the Company 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 Company may have, the Company 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.

7. PRICE AND PAYMENT

- 7.1** The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Company's published price list in force as at the date of delivery.
- 7.2** The Company may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to;
- 7.2.1** any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 7.2.2** any request by the Customer to change the delivery date(s), quantities or types Of Goods ordered, or the Specification: or 7.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.
- 7.3** The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.4** The price for the Goods shall be paid in full and cleared funds on or before delivery unless the Customer has a credit account with the Company. Unless otherwise agreed in writing when the Customer has an account, payment shall be made by the 20th day of the month following the date of invoice. The Company may at any time at its absolute discretion, close a Customer's account and any balances due, shall be payable immediately by the Customer.
- 7.5** The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.6** Payment must be made to the bank account nominated in writing by the Company. Time of payment is of the essence.
- 7.7** If the Customer fails to make any payment due to the Company under the Contract by the due date for payment (due date), then the Customer shall pay interest on the overdue amount at the statutory rate and the Company

shall be entitled to recover any administrative costs it incurs in connection with the recovery of any overdue amounts from the Customer.

- 7.8** 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 Company in order to justify withholding payment of any such amount in whole or in part. The Company 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 Company to the Customer.

8. INSTALLATION AND MAINTENANCE

- 8.1** The Customer shall be responsible (at its own cost) for installation of the Goods and the Company shall have no responsibility to the Customer in respect of installation.
- 8.2** The Customer must install the Goods in accordance with the Company's instructions using all applicable adhesives, tools and equipment. The Customer acknowledges that failure to install the Goods in accordance with the Company's instructions will invalidate the warranty as set out in clause 5.2 above and the Company shall have no liability whatsoever to the Customer (or any other third party) as a result of the Customer's failure to comply with the provisions of this clause.
- 8.3** The Customer acknowledges that the Company is the supplier of the Goods only and therefore cannot accept any responsibility for any loss, cost, damage or expenses relating to the installation of the Goods. The Customer shall be responsible for ensuring that the Goods are maintained properly and in accordance with any instructions of the Company and any applicable Manufacturer Warranty. Failure to do so could invalidate the warranties in clause 5.1 and/or the benefit of any Manufacturer Warranty that the Customer may have

10. TERMINATION

- 10.1** If the Customer becomes subject to any of the events listed in clause 10.2, or the Company 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 Company, the Company may cancel or suspend any further deliveries under the Contract or under any other contract between the Customer and the Company without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 10.2** For the purposes of clause 10.1, the relevant events are; 10.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts (or as having no reasonable prospect of so doing, in either case) within the meaning of section 123 of the Insolvency Act 1986;
- 10.2.2** the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than where these events take place for the sole purpose of a scheme for a solvent amalgamation or the solvent reconstruction of the Customer;
- 10.2.3** a petition is filed, a notice is given, a resolution is passed, or an order made, for or in connection with the winding up of the Customer (other than for the sole purpose of a scheme for a solvent amalgamation or solvent reconstruction);
- 10.2.4** the Customer is the subject of a bankruptcy petition or order;

10.2.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within (14) days.

10.2.6 an application is made to court, or an order made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer.

10.2.7 a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver.

10.2.8 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets.

10.2.9 any event occurs, or proceeding 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 clause 10.2.1 to clause 10.2.8 (inclusive);

10.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;

10.2.11 the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy, and

10.2.12 (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.

10.3 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.

11. EFFECTS OF TERMINATION

On termination of the Contract for any reason;

11.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest in respect of Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice which shall be payable by customer immediately on receipt.

11.2 the Customer shall return all of the Company's Goods which have not been fully paid for if the Customer fails to so then the Company 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

11.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or 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 11.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect

12. LIMITATION OF LIABILITY

12.1 Nothing in these terms shall limit or exclude the Company's liability for;

12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

12.1.2 fraud or fraudulent misrepresentation;

12.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;

12.1.4 any matter in respect of which it would be unlawful for the Company to exclude or restrict liability;

12.2 Subject to clause 12.1 the Company shall under no circumstances whatever be liable to the Customer whether in contract, or (including negligence), breach of statutory duty, or otherwise, for

12.2.1 any loss of profit sales, business or revenue;

12.2.2 loss or corruption of data, information or software;

12.2.3 loss of business opportunity;

12.2.4 loss of anticipated savings;

12.2.5 loss of goodwill, or

12.2.6 any indirect or consequential loss arising under or in connection with the Contract

12.3 Subject to clauses 12.1 and 12.2 the Company's liability in respect of all losses (whether in contract, or (including negligence) breach of statutory duty, or otherwise) is limited to £15,000 and the Customer is responsible for making its own arrangements for insurance of any excess loss,

13. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights in or arising out of or in connection with the Goods shall be owned by the Company. The Customer acknowledges that, in respect of any third party intellectual property rights, the customers use of any such Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Customer.

14. CONFIDENTIALITY

The Customer, its employees, agents or subcontractors 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 Customer, its employees, agents or subcontractors by the Company, its employees, agents or subcontractors, and any other confidential information concerning the company's business or its products which the Customer may obtain. The Customer 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 Customers 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 Customer. This clause 13 shall survive termination of the Contract.

15. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse

weather conditions or default of suppliers or subcontractors.

16. GENERAL

16.1 Assignment and subcontracting.

16.1.1 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.1.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or under the Contract without the prior written consent of the Company.

16.2 Notices.

16.2.1 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 its principal place of business (in any other case) 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.

16.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.2.1 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 couriers delivery receipt is signed or, if sent by fax or e-mail, the next business day after transmission.

16.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

16.3 Severance.

16.3.1 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

16.3.2 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.

16.4 Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be 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.

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

16.6 Variation. Except as set out in these Terms, 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 Company.
16.7 Governing law and jurisdiction. 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 English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.