

## TERMS AND CONDITIONS OF SALE

### SCOPE AND DEFINITIONS:

Unless otherwise expressly agreed in writing, these Terms and Conditions contain the entire agreement between the parties and supersede all prior conditions appearing in catalogues or elsewhere and override any representations, terms, conditions or warranties stipulated, incorporated or referred to by the Customer. All contracts for the sale of Goods by Fire Protection Coatings New Zealand Limited (**FPC**) to the Customer shall be subject to these Terms and Conditions (as amended from time to time by FPC and appearing on the FPC website at <https://fireshieldcoatings.com/assets/Uploads/Terms-of-Sale-Fireshield-Final-131020.pdf>)

In these Terms and Conditions:

- **“Customer”** means the FPC customer as indicated on the Order
- **“Goods”** means all products supplied by FPC to the Customer under these Terms and Conditions as described in any Order or other commercial document evidencing sale.
- **“Order”** means an order for the Goods submitted to FPC either [online through the Site] or by email or phone
- **“Technical Data Sheet”** means all documents issued by FPC or the relevant manufacturer of the Goods containing details of the safe supply, handling and use of the Goods, including but not limited to technical data sheets, safety data sheets, and application guides;

### 1. QUOTATIONS, ORDERS AND ACCEPTANCE

- Unless otherwise agreed in writing, prices are based on FPC's rates and costs as at the date of quotation of materials, transport, and other costs. Prices may be increased by the amount of any increase in the cost to FPC of any such item or any other factors (including but not limited to any change in currency exchange rates and/or international or domestic freight rates) affecting FPC's cost of supply, production, or delivery of the Goods.
- Without limiting the generality of the foregoing, any alteration in quantity, sizes, specification, complexity of work or delivery may necessitate an adjustment of price by FPC.
- Orders must be in writing. No binding contract shall exist until the Customer's order has been accepted in writing by FPC.
- For all Orders placed by telephone or email, FPC shall send the Customer a written Order. Customer shall carefully check the Order to ensure that the Products set out on the Order accurately reflect Customer's requirements. If there are any changes required to the Order, Customer shall notify FPC by email within 1 hour of receipt of the Order, and FPC shall amend the Order accordingly which may include an amendment to the Price. If Customer does not notify FPC of any change to the Order within 1 hour of receipt, then Customer shall be deemed to have accepted the terms of the Order and these Terms and Conditions.
- FPC strongly recommends that the Customer first contacts FPC to discuss Customer's requirements and to obtain a tailored specification and appropriate advice. Notwithstanding any other provision of these Terms and Conditions, FPC reserves the right to reject any Order for its fire protection products at its sole discretion. By placing an Order for FPC Goods, the Customer warrants and represents that (i) it has read and understood the relevant Technical Data Sheet; (ii) has all necessary approvals from all relevant authorities for use of the FPC product; and (iii) has the necessary expertise and experience to apply and use the FPC product. Customer acknowledges that such confirmation shall be relied upon by FPC in relation to the agreement between FPC and the Customer.
- A Customer will not suspend, cancel or amend an Order without FPC's prior agreement in writing and the Customer shall be liable for all costs incurred by FPC in relation to such suspension, cancellation or amendment, including but not restricted to purchases, stocks, work in progress, or unrecovered overheads consequent upon the suspension, cancellation or amendment of any order agreed to by FPC.
- If, FPC agrees as a gesture of goodwill or otherwise to a cancellation of an Order by a Customer, the Customer must (i) not have opened the Goods; (ii) obtain prior written approval of FPC; and (iii) within 14 days of date of delivery or collection as the case may be, return the Goods to FPC in the original packaging and at the Customer's own cost and risk. If FPC determines at its sole discretion that the Goods are fit for re-sale as new, FPC shall refund the amount paid for the returned Products less a 20% administration fee. No delivery costs or costs of collection shall be refunded.

## 2. DESCRIPTION OF THE GOODS AND TECHNICAL DATA SHEETS

- a) Customer agrees that before placing an Order, Customer has read and understood the most up to date Technical Data Sheet for the Goods. FPC will either provide a copy of the Technical Data Sheet on request or include a link to the Technical Data Sheet on FPC website.
- b) All Goods are subject to availability. FPC will notify the Customer if all or part of an Order is out of stock, and the Customer can either cancel the Goods that are out of stock and FPC shall refund Customer accordingly, or Customer can select alternative Goods, subject to any appropriate adjustment to the fee.
- c) FPC ALWAYS recommends a trial area is coated to ensure the Goods meets the Customer's requirements before use of all of the Product ordered.

## 3. DISPATCH & DELIVERY

- a) Dispatch and delivery times are estimates only. FPC shall use reasonable endeavours to ensure that Goods are dispatched and delivered within any time stipulated, or if no time is stipulated, within a reasonable time from the acceptance of an Order, but FPC shall not be liable for any delay in dispatch or delivery.
- b) Where Goods are delivered by instalments, each instalment shall be deemed for such purpose to be the subject of a separate contract and any delay in dispatch or delivery of any instalment shall not entitle the Customer to cancel the relevant Order or any instalments remaining to be delivered. In the event that the Customer breaches these Terms and Conditions in respect of any instalment, FPC may treat the default as a breach of contract relating to each other instalment.
- c) If the Customer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery, FPC may either store the Goods at its own premises or arrange for suitable storage by a third party until actual delivery and the Customer shall be liable to FPC for the costs of such storage, including any additional handling, insurance and transport costs. This provision shall be in addition to and not in substitution of any other loss or damage for which the Customer may become liable due to its failure to take delivery at the appropriate date.
- d) FPC reserves the right to apply delivery charges to all deliveries into the Customer's premises or to site or other location specified by the Customer. FPC may also apply additional freight charges for deliveries outside the city from which the Goods are dispatched or by alternative means of transport.
- e) Risk of any loss, damage or deterioration in the Goods ordered shall pass to the Customer as soon as the Goods are delivered into the Customer's premises or to site or other location specified by the Customer or, where Goods are collected, as soon as the Goods have been loaded on the Customer's vehicle or the Customer's contractor's vehicle.
- f) FPC accepts no liability for off-loading the Goods from the delivery vehicle and the Customer shall keep FPC indemnified from and against all claims whatever arising from such off-loading.
- g) FPC reserves the right to dispatch the Goods by the most suitable form of transport and to pack the Goods in the most suitable manner.

## 4. PAYMENT

- a) Subject to b), the Customer shall pay FPC for Goods purchased and services rendered inclusive of freight, handling and other expenses without deduction or set off within 30 days of the date of invoice (time being of the essence).
- b) If at any time any amount is overdue, all amounts then outstanding shall become immediately due and payable.
- c) FPC accepts payment of accounts by MasterCard or Visa however an additional transaction fee of 5% will be payable for all credit card transactions..
- d) The Customer shall pay interest at the rate of 5% per month or part month calculated on a daily basis in respect of any amount which may be overdue from the due date for payment until paid in full and such amount, together with all interest, shall be recoverable from the Customer as a liquidated debt.
- e) The Customer shall pay all costs incurred by FPC in the collection of any amounts that may be overdue including the fees of any agent or solicitor engaged by FPC (which shall also bear interest as above).
- f) FPC reserves the right to vary the terms of payment and total value of credit allowed by notice in writing to the Customer at any time and to require payment in cash in full prior to delivery should the credit worthiness of the Customer at any time in FPC's opinion become unsatisfactory.

## 5. TITLE

- a) Property in the Goods shall pass to the Customer only upon FPC receiving payment for the Goods (and all other moneys owing by the Customer to FPC) and until payment is received the Customer shall (unless instructed in writing to the contrary by FPC):
  - i. Keep the Goods in a good and secure condition;
  - ii. store the Goods so that they are clearly identifiable as Goods belonging to FPC;
  - iii. Keep the Goods fully insured to their full replacement value against all risks; and
  - iv. Not encumber the Goods in any way.

## 6. PPSA

- a) The Customer acknowledges that FPC holds a “security interest” in the Goods and any proceeds of the sale of the Goods pursuant to Section 17 of the Personal Property Securities Act 1999 (PPSA) and that FPC may register a financing statement in respect of the Goods and any sale proceeds in accordance with the provisions of the PPSA.
- b) The Customer shall provide all information, execute or arrange for the execution of all documents and do all other things that FPC may require to ensure that FPC has a perfected first ranking security interest in the Goods under the PPSA. The Customer shall immediately upon request by FPC, procure from any person considered by FPC to be relevant to its security position such agreements and waivers as FPC may at any time require.
- c) The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by FPC under the PPSA and agrees that as between FPC and the Customer, the Customer shall have no rights under or by reference to sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA and where FPC has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.

## 7. LOSS IN TRANSIT AND SHORT DELIVERY

- a) If the Customer establishes to the satisfaction of FPC that Goods have been damaged, destroyed or otherwise lost in transit or short delivered (where FPC has agreed to deliver the Goods into the Customer’s premises or to site or other location specified by the Customer), or were not handed over to the Customer or the Customer’s carrier complete and without shortage (where the Goods are collected), FPC will at its discretion, replace the damaged, destroyed or missing Goods free of charge or credit the Customer with the value of them, provided that the Customer shall have given to FPC written notification (otherwise than on the carrier’s delivery document) of such damage, destruction, loss or shortage as follows:
  - i. Within seven days of delivery of the Goods in the case of damage or loss of some (but not all) of the Goods or shortage of Goods.
  - ii. Within 28 days of the dispatch of the Goods where all of the Goods are lost.
- c) FPC shall be permitted a reasonable opportunity to inspect any damaged Goods and to investigate any loss.
- d) The Customer’s notice shall state whether any damaged Goods have been salvaged by the Customer and upon FPC replacing the Goods or crediting the Customer as above any salvaged Goods shall be available to and at the disposal of FPC. Failure by the Customer to state whether or not any Goods have been salvaged shall relieve FPC from all liability or obligation under this clause 6. Replacement Goods are covered by these Terms and Conditions.

## 8. DEFECTIVE GOODS

- a) Without limiting the obligations of FPC at law:
  - i. It is the responsibility of the Customer to inspect the Goods as soon as practicable after delivery having due regard to the nature of the Goods and their intended application.
  - ii. The Customer must give notice in writing to FPC of any Goods alleged by the Customer to be defective, within 30 days of delivery of the Goods (time being of the essence).
  - iii. The Customer shall not assert any claim that any of the Goods are defective after the Goods are used or otherwise altered or if the Customer is in default of any of its obligations under these Terms and Conditions.
  - iv. In no case shall any claim exceed the invoice value of the Goods in respect of which that claim is made. Only one claim may be made with respect to any particular Goods and that claim must clearly identify the specific transaction number to which the allegedly defective Goods relate.
  - v. FPC reserves the right to inspect the Goods subject to any claim. Any Goods in the custody of FPC for investigation shall be at the risk of the Customer and no liability shall attach to FPC its servants or agents for any damage occasioned to the Goods howsoever arising.
  - vi. Where FPC accepts a claim, FPC will at its discretion either replace the defective Goods free of charge (by delivering the Goods to the original delivery point) or credit the price of the defective Goods to the account of the Customer.

**REPLACEMENT OF GOODS OR ISSUING OF CREDIT BY FPC IN ACCORDANCE WITH THIS CLAUSE SHALL BE FPC’S SOLE LIABILITY IN RELATION TO ANY DEFECT.**

## 9. GOODS AND SERVICES TAX

All amounts specified in any quotation, invoice or statement are expressed to be exclusive of GST and GST shall be payable in addition to the amounts specified in accordance with the Goods and Services Tax Act 1985.

#### 10. DEFAULT

If the Customer commits any default whether under these Terms and Conditions or any other contract between FPC and the Customer, FPC will be entitled to withhold further deliveries or cancel any contract without prejudice to any other rights or remedies that FPC may have in respect of such default.

#### 11. LIEN

In addition to any lien to which FPC may by statute or otherwise be entitled, FPC shall be entitled to a general lien over Goods belonging to the FPC in the Customer's possession ( even though such Goods or some of them may have been paid for) for any amounts owing to FPC by the Customer.

#### 12. RETURNABLE MATERIALS

Ownership of pallets, blocks, gluts, packing cases or other containers except cardboard cartons (Returnable Materials) remains with FPC. The Customer must return such materials to FPC at the earliest opportunity. The Customer shall be responsible for the care and safety of such materials whilst on the Customers premises or job site or other location or in the Customer's possession or control. The cost of replacement or repair of any returnable materials lost or damaged whilst in the possession or control of the Customer shall be for the Customer's account.

#### 13. LIABILITY

- a) Save for any warranties or conditions contained in these Terms and Conditions or otherwise conferred in writing by FPC on the Customer in relation to particular Goods sold by FPC, FPC makes no representation and gives no assurance, condition or warranty of any kind to the Customer (including any assurance, condition or warranty implied by law or custom to the extent that the assurance, condition or warranty can be excluded) in relation to the Goods and accepts no liability for any assurance, condition, warranty, representation, statement or term not expressly set out in these Terms and Conditions.
- b) The Customer specifically acknowledges that it is acquiring the Goods and services for business purposes and the provisions of the Consumer Guarantees Act 1993 are hereby excluded.
- c) Without limiting paragraph a) above, no warranty is given or to be implied as to the life or wear of the Goods supplied or that they will be suitable for any particular purpose or for use under specific conditions, notwithstanding that such purposes or conditions may be known or made known to FPC.
- d) Whilst FPC manufactures its products in accordance with specific European and ISO manufacturing standards (**Standards**), which are available on request, it is the Customer's responsibility to ensure that the Goods are satisfactory for the Customer's requirements.
- e) All Goods are manufactured subject to manufacturing tolerances. FPC does not warrant that all Goods produced will comply exactly with the specification in every respect and the Customer agrees to accept the Goods provided that the variations from FPC's specification do not exceed reasonable commercial limits.
- f) If any model or sample of the Goods is shown to the Customer, such model or sample is shown to illustrate the general type and quality of the Goods and is not a representation that the Goods will conform exactly to the model or sample.
- g) Any description of Goods contained in any document pursuant to these Terms and Conditions is given by way of identification only and use of such description shall not constitute a contract of sale by description.
- h) Notwithstanding anything else contained in these Terms and Conditions, to the maximum extent permitted by law, the liability of FPC in respect of any claim for loss, damage or injury arising from breach of any of FPC's contractual obligations, negligence or otherwise howsoever shall not in the aggregate exceed the price paid in respect of the Goods or services to which the claim relates and under no circumstances will FPC be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Customer or its servants, agents and/or contractors.

#### 14. FORCE MAJEURE

Force Majeure Event means an event or circumstance which is beyond a party or parties' reasonable control and not reasonably foreseeable when entering into this Agreement, including (without limitation): any act of God, fire, flood, earthquake, pandemic, military action, state or government act or direction, change in any law or regulation, war, riot or act of terrorism, natural disaster, industrial or national labour strikes or other labour disputes (other than labour disputes directly affecting one of the parties), or any other cause beyond the affected party's reasonable control.

- a) FPC will not be liable for any non-performance of its obligations under these Terms and Conditions due primarily to a Force Majeure Event.
- b) FPC shall use its reasonable endeavours to remove such cause(s) of non-performance and shall resume performance without delay when such cause(s) are removed. For the purposes of these Terms and Conditions the term "force majeure" any act of God, fire, flood, earthquake, pandemic, military action, state or government act or direction, change in any law or regulation, war, riot or act of terrorism, natural disaster, industrial or national labour strikes or other labour disputes, difficulty in procuring suitable materials, goods or substances required in the manufacture of the Goods and any other circumstances, whether similar or dissimilar, beyond the reasonable control of FPC.

#### 15. INTELLECTUAL PROPERTY AND CYBER SECURITY

- a) Intellectual Property: The sale and purchase of the Goods does not confer on the Customer any license or rights in any intellectual property which is the property of FPC.
- b) Cyber security: Each party must have and enforce measures to protect its computer systems and information as are reasonably prudent in light of the importance of the systems and the commercial sensitivity of the information involved.

#### 16. ASSIGNMENT

The Customer shall not be entitled to assign any of its rights or obligations under these Terms and Conditions or any contract between FPC and the Customer without the prior written consent of FPC. Any change in the effective control of the Customer shall be deemed to be an assignment for the purposes of this clause.

#### 17. DISPUTE RESOLUTION

The parties agree that they will use good faith efforts to resolve any dispute regarding these Terms and Conditions for the Goods by negotiation. If a dispute cannot be resolved by negotiation, either party can refer the dispute to mediation in accordance with the under Arbitrators' and Mediators' Institute of New Zealand Mediation Protocol. The mediator will be selected by the President of the Arbitrators' and Mediators' Institute of New Zealand unless both parties agree on another mediator.

#### 18. JURISDICTION

These Terms and Conditions and any contract between FPC and the Customer shall be governed by the laws of New Zealand and the parties irrevocably submit to the jurisdiction of the courts of New Zealand.

#### 19. NO WAIVER

Failure by FPC to insist upon strict performance of any of these Terms and Conditions shall not be deemed a waiver thereof or of any rights FPC may have, and shall not constitute a waiver of any subsequent breach of any of these Terms and Conditions.

#### 20. ILLEGALITY OR INVALIDITY

If any provision of any contract between FPC and the Customer shall be determined by any Court or tribunal to be illegal, invalid, void or voidable, the legality of the remainder of such contract shall not be affected and the illegal, void or voidable provision shall be deemed deleted from such contract and the remainder of the contract shall continue in full force and effect.

#### 21. WEBSITE

FPC has made all reasonable efforts to ensure that all information provided on FPC's website is accurate at the time of inclusion but makes no representation or warranties, express or implied, except as imposed by law, regarding the information provided on the website, including any hypertext links or any other items used either directly or indirectly from the website and reserves the right to make changes or corrections at any time without notice. FPC takes no responsibility for and does not endorse, sponsor or recommend the contents, accuracy or performance of any linked sites. FPC accepts no responsibility for any inaccuracies or omissions in the website and any decisions based on information contained in the website are solely the responsibility of the Customer. FPC accepts no liability for any direct, indirect, special, consequential or other losses or damages arising out of access to, or the use of the website or any information contained in the website.

#### 22. NOTICES:

- a) All notices, demands and other communications (Notices) relating to these Terms and Conditions and any contract between FPC and the Customer shall be given or served by:
  - i) Prepaid post to the address of the addressee stated in this document;
  - ii) Prepaid post to the registered address of the addressee;
  - iii) Facsimile to the facsimile number of the addressee stated in this document; or
  - iv) Email to the email address of the addressee stated by the Customer in this document, or to such other address, facsimile number or e-mail address as may be notified by the addressee in writing to the other party from time to time.
- b) Any Notice shall be deemed to have been received by the addressee on the date of delivery or faxing, or when posted, on the third working day after posting