

**TERMS AND CONDITIONS OF SALE AKZO NOBEL COATINGS LIMITED NEW ZEALAND**

1. **SCOPE: "AkzoNobel"** means the AkzoNobel entity identified above and any AkzoNobel affiliate, **"Buyer"** means the purchaser and any affiliate of the Buyer of Products and Services from AkzoNobel. **"Contract"** means the contract (in writing or otherwise) formed between AkzoNobel and Buyer for the supply of Products or Services when AkzoNobel accepts Buyer's order. Unless a product sales agreement has been signed by both parties to govern the supply of Products or Services, these Terms and Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice, or course of dealing. **"Products"** means any and all goods supplied by AkzoNobel to Buyer and **"Services"** means the services (if any) given by or on behalf of AkzoNobel. These Terms and Conditions and the Contract represent the entire agreement between AkzoNobel and the Buyer and supercedes and extinguishes all previous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
2. **OFFER / ACCEPTANCE: 2.1** A quotation from AkzoNobel does not constitute an offer but an invitation to Buyer to place an order. **2.2** The Contract comes into effect only when AkzoNobel accepts Buyer's order. Each individual accepted order shall constitute a separate Contract. AkzoNobel will give its acceptance or rejection within seven (7) days after AkzoNobel receives Buyer's order. Once accepted by AkzoNobel, Buyer's order may not be cancelled by Buyer without AkzoNobel's prior written agreement and subject to Buyer indemnifying AkzoNobel against all loss, costs and damages incurred by AkzoNobel as a result of the cancellation.
3. **DELIVERY / TRANSFER OF RISK: 3.1** Delivery terms shall be interpreted in accordance with the latest edition of INCOTERMS in force at the date of the Contract. Unless otherwise agreed by AkzoNobel in writing, the delivery term is EXW and risk of loss in the Products will transfer to Buyer upon AkzoNobel notifying Buyer that the Products are available at the premises notified by AkzoNobel. **3.2** Time of delivery or performance shall not be of the essence. Failure to deliver the Products and/or perform the Services on the specified date shall not entitle Buyer to claim any damages, losses or costs or to withdraw the order. **3.3** AkzoNobel may deliver in instalments. Any failure to deliver an instalment or any claim by Buyer in respect of an instalment will not entitle the Buyer to treat the whole order as repudiated. **3.4** Buyer is responsible for checking and signing for all deliveries and by signing the Buyer indicates that the delivery received is complete and in good condition. If the delivery is short or deemed to be damaged this must be immediately highlighted to the delivery company and to AkzoNobel. No Product returns will be accepted if not approved in advance by AkzoNobel in writing.
4. **QUANTITY VARIATIONS:** Buyer will pay for the quantity delivered and may not reject any delivery of Product on the grounds of variation of quantity where such variation is not more than 10% of the quantity ordered. Where an excess is over 10% of the quantity ordered, Buyer can choose to return to AkzoNobel, or pay for, the quantity over delivered. AkzoNobel shall supplement to Buyer if the delivered quantity is less than the quantity ordered except where such gap is caused by raw material scarcity or packaging constraints or Force Majeure, under which circumstances AkzoNobel is not obliged to supplement, and Buyer will pay for the quantity received.
5. **PRICE AND PAYMENT: 5.1** Unless otherwise agreed by the parties, the price for the Products and the Services will be the price quoted by AkzoNobel. All prices are exclusive of Goods and Services Tax (GST) and any other tax that may apply in respect of the Products and Services. **5.2** AkzoNobel will issue invoices to Buyer for all Products and Services and for applicable GST. Buyer shall pay invoices (including GST) within 30 days from the invoice date ("Payment Term"), unless otherwise agreed between the Parties in writing, in the currency and to the address and the bank account number of AkzoNobel as stated on the invoice. If the last day of the Payment Term is not a business day, Buyer shall pay at the latest on the last business day within the Payment Term. **5.3** Time for payment of the invoices is of the essence. Buyer must make payments free and clear and may not withhold payment of any amount due to AkzoNobel by way of set-off, counterclaim or similar deduction. **5.4** Upon demand Buyer will immediately reimburse AkzoNobel for any and all costs including fees for collection agencies and attorneys incurred or expended by AkzoNobel to collect any overdue amounts from Buyer. **5.5** Except in respect of the disputed portion (if any) of an invoice, if Buyer fails to pay on time, AkzoNobel may, either (i) terminate the Contract if Buyer fails to pay within seven (7) days of written demand from AkzoNobel, or (ii) suspend deliveries until Buyer pays. **5.6** Any failure to pay on due date will automatically and without formalities incur interest at the percent per annum rate equal to the official cash rate most recently published by the Monetary Policy Committee of New Zealand at the relevant time plus 5% per annum on all unpaid sums, until payment in full is received as required under this Agreement. The interest period will run from the due date for payment until receipt by AkzoNobel of the full amount due.
6. **RETENTION OF TITLE: 6.1** Risk in the Products will pass to Buyer in accordance with clause 3. **6.2** Title to the Products will only pass to Buyer once AkzoNobel has received payment in full for the Products and for all other products supplied by AkzoNobel to Buyer. **6.3** Until title in the relevant Products passes to Buyer, it must hold the Products as bailee for AkzoNobel, store the Products separately, clearly mark the Products as belonging to AkzoNobel and fully insure the Products against any loss or damage. **6.4** Buyer may only sell or otherwise deal with the Products or permit the Products to be processed, commingled or become an accession or fixture in the ordinary course of Buyer's ordinary trading. This authority ceases if AkzoNobel exercises its rights of termination or suspension under clause 5 or 12 of these Terms and Conditions. **6.5 Buyer grants to AkzoNobel (under this clause 6) a purchase money security interest in the Products and any proceeds of the Products ("PMSI") to secure the purchase price of the Products.** Buyer acknowledges that each Contract constitutes a security agreement as defined by the PPSA. This security interest granted to AkzoNobel pursuant to this clause 6 shall be a continuing security interest and shall remain in full force and effect until all amounts owing by Buyer to AkzoNobel, have been fully satisfied or performed. **6.6** Buyer agrees not to do or permit anything to be done that may result in the PMSI granted to AkzoNobel ranking in priority behind any other security interest. Buyer will take such further steps (including obtaining consents, supplying information, signing forms or executing documents) which may be required by AkzoNobel to take further or better security under the PPSA in respect of the Products and proceeds of sale of the Products or to maintain the effectiveness or priority of any security interest. **6.7** If Buyer is in breach of its obligations under the Contract, to the extent permitted by Law, AkzoNobel may (without prejudice to any other rights): (a) seize, remove or repossess the Products; (b) enter any premises for this purpose without prior notice; and (c) appoint any person as a receiver in respect of any collateral the subject of a security interest. **6.8** Buyer indemnifies AkzoNobel for any costs or claims in connection with the actions referred to above. Buyer agrees to give AkzoNobel not less than 14 days' prior written notice of any proposed change to the Buyer's name. **CONTRACTING OUT OF PPSA 6.9** Buyer waives its rights to receive a copy of any verification statements under the PPSA and agrees that as between AkzoNobel and Buyer (a) Buyer will have no rights under (or by reference to) 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA; and (b) where AkzoNobel has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply. The security interest granted to AkzoNobel pursuant to this clause 6 shall be a continuing security interest and shall remain in full force and effect until all amounts owing by the Buyer to AkzoNobel, and all obligations owed by the Buyer to AkzoNobel, have been fully satisfied or performed. **6.12** Buyer consents to AkzoNobel effecting a registration on the Personal Property Securities Register established under the PPSA (in any manner it considers appropriate) in relation to any security interest arising under or in connection with these Terms and Conditions. **6.13** The cost of registering a financing statement will be paid by Buyer and may be debited against its trading account. PPSA means the Personal Property Securities Act 1999. **6.14** The following terms have the meaning given to them in the PPSA: "accession"; "financing statement"; "proceeds"; "purchase money security interest"; "security agreement"; "security interest"; "verification statement".
7. **WARRANTY / BUYER'S RIGHTS: 7.1** AkzoNobel warrants to Buyer that at the time of delivery the Products conform to AkzoNobel's standard Product specifications or such other specifications as AkzoNobel and Buyer have expressly agreed to in writing (the "Specifications") (the "Warranty"). **TO THE EXTENT PERMITTED BY LAW, THIS WARRANTY IS THE SOLE WARRANTY GIVEN BY AKZONOBEL. AKZONOBEL MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, THE APPLICATION OR USE THEREOF, OR OTHERWISE. THIS WARRANTY IS IN SUBSTITUTION FOR ANY OTHER WARRANTIES OR CONDITIONS WHICH WOULD OTHERWISE APPLY UNDER CONTRACT OR AT LAW, INCLUDING SPECIFICALLY ANY IMPLIED TERMS, CONDITIONS OR WARRANTIES OF QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, EACH OF WHICH IS SPECIFICALLY DISCLAIMED. IF PRODUCTS OR SERVICES ARE BEING SUPPLIED FOR THE PURPOSES OF A BUSINESS, BUYER AND AKZONOBEL AGREE THAT THEY ARE "IN TRADE" AND THAT THE CONSUMER GUARANTEES ACT 1993 AND SECTIONS 9, 12A AND 13 OF THE FAIR TRADING ACT 1986 WILL NOT APPLY TO THE SUPPLY OF PRODUCTS OR SERVICES OR AS BETWEEN THE PARTIES, AND THAT IT IS FAIR AND REASONABLE TO EXCLUDE THEIR APPLICATION. HOWEVER, AKZONOBEL DOES NOT SEEK TO EXCLUDE, RESTRICT OR MODIFY STATUTORY "CONSUMER GUARANTEES" (SHOULD THEY APPLY) EXCEPT TO THE EXTENT PERMITTED BY LAW. 7.2** In the event Products do not comply with the Warranty or an applicable Consumer Guarantee, AkzoNobel will (at its own option where permitted by law) repair or replace such Products or refund the Price of the Products and, having done so, will have no further liability. **7.3** Buyer must notify AkzoNobel of any claim that Products do not comply with the Warranty within seven (7) days after Buyer becomes aware of such claim but in any event no later than thirty (30) days after delivery of the Product to Buyer. **7.4** Buyer's failure to notify AkzoNobel of a claim in accordance with section 7.3 will constitute a waiver by Buyer of such claim. **7.5 To the extent permitted by law,** AkzoNobel makes no warranty of any kind with respect to any Services provided or alleged to be provided to Buyer or any other party and shall have no liability with respect to such Services. **7.6** It is a strict condition of this warranty that Buyer shall take all reasonable steps to mitigate the effect of any loss or damage suffered by Buyer in respect of which a claim is made. **7.7** The Buyer acknowledges that (i) AkzoNobel develops, produces and markets Products for commercial use only, and (ii) the Products are of a kind which are not ordinarily used for personal, domestic or household use or consumption.
8. **LIMITATION OF LIABILITY: 8.1** AkzoNobel shall not be liable for any loss or damage caused by Buyer's failure to exercise effective quality control or the failure to store, use or otherwise handle the Products as advised or in accordance with instructions provided by AkzoNobel or industry standards. **8.2 TO THE EXTENT PERMITTED BY LAW, AKZONOBEL SHALL NOT BE LIABLE WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE FOR ANY LOSS OF PROFIT, LOSS OF BUSINESS, DIMINUTION IN VALUE, OR DEPLETION OF GOODWILL OR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGE. AKZONOBEL'S AGGREGATE LIABILITY TO BUYER IN RESPECT OF ALL LOSSES ARISING UNDER OR IN CONNECTION WITH THE CONTRACT IS LIMITED TO THE PRICE OF THE PRODUCTS OR SERVICES SUPPLIED UNDER THE CONTRACT, OR EUR 200,000, WHICHEVER IS THE LOWER. 8.3** Nothing in this section excludes, restricts or modifies AkzoNobel's liability for any matter in respect of which it is unlawful for AkzoNobel to exclude or restrict its liability. **8.4** Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of AkzoNobel which is not set out in the Contract. However, nothing in this section will exclude or limit AkzoNobel's liability for fraudulent misrepresentation.
9. **INDEMNIFICATION: 9.1** Buyer will indemnify, hold harmless and defend AkzoNobel and its affiliates and each of its and their respective directors, officers, employees, agents, successors and assigns (each an "Indemnified Party") from and against any and all third party claims including all losses, damages, liabilities, penalties, costs or expenses of any kind (including attorneys' fees) (collectively, "Losses") incurred by an Indemnified Party as a result of such claims arising out of or related to: (a) Buyer's or any of its or its affiliates' directors', officers', employees', contractors' or agents' (each a "Related Party") negligence or willful misconduct; (b) Buyer's breach of the Contract; (c) Buyer's or its agent's failure to exercise effective quality control or failure to store, use or otherwise handle the Products in accordance with instructions provided by AkzoNobel or industry standards; or (d) breach of a relevant law by the Buyer or a Related Party to the extent that the breach is a result of an act, default or omission of, or any representation made by, the Buyer or Related Party without the authority or consent of AkzoNobel. **9.2** The provisions of this section will survive any termination of the relationship between AkzoNobel and Buyer. This indemnity does not apply to any loss, cost or other liability to the extent it arises due to a failure of AkzoNobel to take reasonable steps to mitigate the loss, cost or other liability.
10. **FORCE MAJEURE: 10.1** AkzoNobel will not be liable for failure to perform its obligations, if hindered or prevented from so doing, directly or indirectly, by war (declared or undeclared), military coup, national emergency, epidemic or pandemic, terrorist attack, sanctions, inadequate transportation facilities, equipment failure, AkzoNobel's inability to secure supplies or energy for the manufacture of the Products and/or performance of the Services on terms and conditions that are acceptable to AkzoNobel, natural disaster, labour dispute, government restraint, cyberattack, any third party criminal act, or vandalism which affects AkzoNobel's ability to supply, or any other cause beyond the reasonable control of AkzoNobel (each a "Force Majeure"). **10.2** AkzoNobel shall have no obligation to procure or supply any products from any other sources in place of the Products and may allocate its available supply of Products among its buyers, affiliates and their customers, and resellers on whatever basis AkzoNobel may deem fit. **10.3** In the event the duration of an event of Force Majeure exceeds three (3) months or is reasonably expected to exceed three (3) months AkzoNobel is entitled to withdraw from any obligation it may have to supply the Products and Services to Buyer without Buyer having any right to compensation.
11. **COMPLIANCE WITH LAWS: 11.1** Buyer shall, and shall procure that its officers, employees, counterparties, resellers, sub-contractors and any other persons shall comply with all applicable laws, and not take any actions that would cause AkzoNobel to be (or alleged to be) in violation of the applicable laws, provided that such laws are applicable to the relevant transaction under these terms and conditions. Buyer, at its own expense, shall obtain and maintain all certifications, authorisations, licenses and permits necessary to conduct its business and perform its obligations. **11.3** Buyer shall adhere to the Business Partner Code of Conduct as currently published on AkzoNobel's website at <https://www.akzonobel.com> in connection with all transactions involving AkzoNobel or any of its affiliates. **11.4** Buyer hereby indemnifies AkzoNobel in full and on demand against all losses, damages, liabilities, claims, actions and proceedings which AkzoNobel or any of its affiliates may incur as a result of any breach by Buyer of this section 11.
12. **TERMINATION: 12.1** Any accepted order shall not create any obligation on AkzoNobel in respect of any future orders. **12.2** AkzoNobel shall be entitled to immediately terminate/suspend the Contract (a) in accordance with clause 5.5; or (b) if Buyer undergoes a change of control in its shares or ownership. **12.3** On termination of the Contract for whatever reason; (a) all amounts invoiced by AkzoNobel to Buyer, whether or not due for payment, shall become due immediately, (b) Products supplied or committed to in manufacture but not yet invoiced shall be immediately invoiced and become owing, (c) AkzoNobel's permission for Buyer to sell, convert or process the Products set out in section 6 shall terminate immediately and (d) AkzoNobel may (without prejudice to any of its other rights) exercise its rights under clause 6.7. **12.4** Under no circumstances will Buyer be entitled to any form of fee or compensation arising from termination. Upon termination or expiry Buyer will return to AkzoNobel all confidential information (as defined below), whether in written or electronic format, supplied by AkzoNobel and will make no further use of the same.
13. **LAW AND DISPUTE RESOLUTION: 13.1** These Terms and Conditions, the Contract and all disputes between AkzoNobel and Buyer are governed by the laws of the State or Country (as applicable) where AkzoNobel's address is located (as indicated on the top of each page of these Terms and Conditions), excluding the United Nations Convention of Contracts for the International Sale of Goods and any choice of law rules that direct the application of the law of any other jurisdiction. **13.2** Any disputes between AkzoNobel and Buyer that the parties are unable to resolve by agreement will be resolved exclusively in the courts having jurisdiction over the subject matter of the dispute located in the city in which AkzoNobel's address is located (or if no such courts exist in such city in such courts as are located closest to such city) and those courts having appellate level review over the decisions and rulings of such courts. AkzoNobel and Buyer consent to the jurisdiction and venue of such courts.
14. **MISCELLANEOUS: 14.1** These Terms and Conditions, the Contract and any other terms agreed by AkzoNobel and Buyer are highly confidential and contain commercially sensitive information (in particular, the price list, rebate details and payment terms). AkzoNobel and Buyer each undertake to keep confidential and not to disclose to any third party these Terms and Conditions or any other confidential information in any form directly or indirectly belonging or relating to the other or its affiliates without the prior written consent of the other party, save that either party may disclose such information if required to do so by law, Court order, regulation or any governmental authority. Where required to make such disclosure, the party being required to make the disclosure shall consult with the other party to agree the scope of such disclosure. **14.2** AkzoNobel owns all intellectual property rights in the Products and Services and Buyer agrees that these rights may not be used in any way without AkzoNobel's prior written consent. Buyer agrees to indemnify AkzoNobel for any damages, losses and legal fees whether direct or indirect that AkzoNobel suffers or reasonably incurs as a result of any infringement caused by Buyer of AkzoNobel's intellectual property rights in the Products and Services. **14.3** If any provision of these Terms and Conditions, the Contract or other terms agreed between AkzoNobel and Buyer is invalid, illegal or unenforceable, in whole or in part, in any jurisdiction, this will not affect any other provision or invalidate or make unenforceable such provision in any other jurisdiction and AkzoNobel and Buyer will negotiate in good faith to modify these Terms and Conditions or other terms agreed to effect the original intent of AkzoNobel and Buyer as closely as possible. **14.4** All notices will be in writing and deemed given (a) when delivered by hand or an internationally recognized commercial courier; (b) on the third (3) Business Day (being a day other than a weekend day or public holiday in the country in which AkzoNobel's address (as indicated above) is located) after postage, if sent by first class mail, postage prepaid (return receipt requested, if available); or (c) on the date sent by e-mail (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient. Notices must be sent to the respective parties at the address or email address of the contact person as notified from time to time. **14.5** Any contract under these Terms and Conditions of Sale may not be assigned by either Party without the other Party's prior written consent. **14.6** No term in the Contract shall be enforceable by any party which is not a party to it. **14.7** Subject to section 7.4, the failure or delay by either party to exercise a right or remedy provided by the Contract or by law does not constitute a waiver of that right or remedy or of any other rights and remedies. **14.8** No variation of these Terms and Conditions or the Contract shall be binding unless agreed in writing between the parties.