



COLOUR LIKE NO OTHER

**CRANFIELD COLOURS LIMITED**

**TERMS AND CONDITIONS OF SALE**

## **1. TERMS OF CONTRACT**

- 1.1 The interpretation provisions at the end of this document will apply.
- 1.2 Cranfield invites orders for Goods exclusively upon the Terms (which shall apply subject to any contrary provision expressly agreed in writing by Cranfield and the Customer). The Terms shall apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Terms.
- 1.3 All orders for Goods (whether written or not) constitute 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 are complete and accurate.
- 1.4 An order shall only be deemed to be accepted when Cranfield issues an Order Acknowledgement, at which point the Contract shall come into existence.
- 1.5 An order for Goods from a Customer (whether written or not), when accepted by Cranfield, shall give rise to a contractual obligation on the Customer to purchase and pay for those Goods, whether or not the Customer subsequently sends a purchase order to Cranfield.
- 1.6 Any samples, descriptive matter or advertising produced by Cranfield and any descriptions contained in Cranfield's online brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 1.7 A quotation for the Goods given by Cranfield shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

## **2. DELIVERY AND RISK**

- 2.1 For Goods ordered by Customers for delivery in the UK, Cranfield will arrange delivery and the Goods shall be delivered CPT (Incoterms 2010) to the delivery address specified by the Customer.
- 2.2 For Goods ordered by Customers for delivery outside the UK, except where otherwise discussed and agreed in writing by Cranfield and the Customer, those Goods shall be made available (to a carrier nominated by the Customer) on the following basis: FCA (Incoterms 2010), 44-47 Springvale Industrial Estate, Cwmbran NP44 5BB, United Kingdom.
- 2.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Cranfield 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 Cranfield with

adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 2.4 If the Customer fails to accept delivery of the Goods, then, except where such failure or delay is caused by a Force Majeure Event or Cranfield's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 09:00 am on the day on when delivery of the Goods was first attempted; and
  - (b) Cranfield may at its absolute discretion store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 2.5 Where Cranfield arranges delivery of the Goods to a Customer, risk in those Goods passes to the Customer at the time of first attempted delivery of those Goods at the Customer's address. Where a Customer arranges delivery of the Goods, risk in those Goods passes to the Customer when the Goods are first made available for collection by the Customer's carrier.
- 2.6 Title to Goods passes to the Customer when: (i) Goods are delivered to the Customer, where Cranfield arranges delivery of those Goods; or (ii) Goods are made available for collection by the Customer, where a Customer arranges delivery of the Goods.

### **3. QUALITY**

- 3.1 Cranfield warrants that on delivery, the Goods shall:
- (a) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - (b) be fit for any purpose held out by Cranfield.
- 3.2 Subject to clause 3.3, if:
- (a) the Customer gives notice in writing to Cranfield that some or all of the Goods do not comply with the warranty set out in clause 3.1;
  - (b) Cranfield is given a reasonable opportunity of examining such Goods; and
  - (c) the Customer (if asked to do so by Cranfield) returns such Goods to Cranfield's place of business at Cranfield's cost,

Cranfield shall (if it determines that the Goods do not comply with the warranty set out at clause 3.1) at its option replace the defective Goods, or refund the price of the defective Goods in full.

- 3.3 Cranfield shall not be liable for the Goods' failure to comply with the warranty set out in clause 3.1:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 3.2;
  - (b) the defect arises because the Customer failed to follow Cranfield's oral or written instructions as to the storage or use of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the Customer alters such Goods without the written consent of Cranfield; or
  - (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 3.4 Except as provided in this clause 3, Cranfield shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 3.1.
- 3.5 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.
- 3.6 These Terms shall apply to any replacement Goods supplied by Cranfield.

#### **4. PRICE AND PAYMENT**

- 4.1 The price of Goods shall be the price set out in in Cranfield's price list current at the date of dispatch of those Goods.
- 4.2 Cranfield may, by giving notice to the Customer at any time up to 30 Business Days before dispatch, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
  - (a) any factor beyond Cranfield's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
  - (c) any delay caused by any instructions of the Customer or failure of the Customer to give Cranfield adequate or accurate information or instructions.
- 4.3 The price of the Goods:
  - (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall (if applicable) additionally be liable to pay to Cranfield at the prevailing rate, subject to the receipt of a valid VAT invoice; and
  - (b) excludes the costs and charges of packaging and transport of the Goods, which shall (where delivery is arranged by Cranfield, and except where otherwise agreed in writing by the Customer and Cranfield) be invoiced to the Customer in addition.
- 4.4 Cranfield will invoice the Customer for Goods when they are dispatched.

- 4.5 The Customer shall pay each invoice submitted by Cranfield:
- (a) within 30 days of the date of the invoice (subject to any contrary arrangement agreed in writing by the Customer and Cranfield); and
  - (b) in full and in cleared funds to a bank account nominated in writing by Cranfield, and
  - (c) time for payment shall be of the essence of the Contract.
  - (d) Cranfield shall be entitled to despatch goods comprised in an order by one or more instalments and to issue an invoice in respect of each such instalment. Cranfield shall have no obligation to split invoices, whether to reflect a Customer's purchase order history or for any other reason.
- 4.6 If the Customer fails to make a payment due to Cranfield under the Contract by the due date, then the Customer shall pay statutory interest on the overdue amount together with compensation and costs, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest, compensation and costs together with the overdue amount.
- 4.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 4.8 If any amount due to Cranfield by a Customer is overdue Cranfield may at any time, without limiting any other rights or remedies it may have, withhold delivery of any Goods due to be delivered to the Customer until the overdue sum is paid in full by the Customer, together with any interest due thereon.

## **5. LIMITATION OF LIABILITY**

- 5.1 The restrictions on liability in this clause 5 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 5.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - (d) defective products under the Consumer Protection Act 1987.

- 5.3 Subject to clause 5.2, Cranfield's total liability to the Customer under the Contract (for failure to deliver Goods, in the event of a breach of any of the provisions incorporated into these Terms or otherwise) shall be limited to the amount (excluding VAT if applicable) paid by the Customer to Cranfield hereunder.
- 5.4 Subject to clause 5.2, the following types of loss are wholly excluded:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.
- 5.5 This clause 5 shall survive termination of the Contract.

## **6. TERMINATION**

- 6.1 Without limiting its other rights or remedies, Cranfield may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within five days of that party being notified in writing to do so;
  - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
  - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 6.2 Without limiting its other rights or remedies, Cranfield may suspend provision of the Goods under the Contract or any other contract between the Customer and Cranfield if the Customer becomes subject to any of the events listed in clause 6.1(b) to clause 6.1(d), or Cranfield reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

- 6.3 Without limiting its other rights or remedies, Cranfield may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 6.4 On termination of the Contract for any reason the Customer shall immediately pay to Cranfield all of Cranfield's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, Cranfield shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 6.5 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, 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.
- 6.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **7. FORCE MAJEURE**

Cranfield shall not be liable to the Customer for any inability to perform or delay in performing any of its obligations hereunder where such inability or delay as aforesaid is caused (directly or indirectly) by any Force Majeure Event including (but without limitation) any trade dispute, strike or lock-out involving its own employees or sub-contractors, or the employees or sub-contractors of a Customer or a carrier.

## **8. GENERAL**

### **8.1 Assignment and other dealings.**

- (a) Cranfield may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Cranfield.

### **8.2 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall

have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

- 8.3 **Variation.** No variation of the Contract shall be effective unless it is in writing and agreed to by the parties (or their authorised representatives).
- 8.4 **Waiver.** 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 8.5 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 8.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 8.6 **Notices.**
- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
    - (i) delivered by hand or by pre-paid first-class post at its principal place of business; or
    - (ii) sent by email to the address [hello@cranfield-colours.co.uk](mailto:hello@cranfield-colours.co.uk) in the case of a notice given to Cranfield, or to the email address specified by the Customer, in the case of a notice given to a Customer.
  - (b) Any notice shall be deemed to have been received
    - (i) if delivered by hand, at the time the notice is left at the proper address;
    - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9:00 am on the second working day after posting if the address is in the UK, or otherwise the 14<sup>th</sup> working day after posting.
    - (iii) if sent by email, at the time of receipt by the recipient's email server, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 8.6(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
  - (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 8.7 **Third party rights.**



- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
  - (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 8.8 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 8.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 9. **INTERPRETATION**
- 9.1 **Definitions:**

**Contract:** the contract between Cranfield and the Customer for the sale and purchase of the Goods in accordance with these Terms.

**Customer:** means the person, firm, company or other organisation in whose name an account with Cranfield is opened, any such person who places an order for Goods with Cranfield, or to whom Goods are delivered by Cranfield, and any other person, firm, company or other organisation who succeeds (in whole or in part) to the business or undertaking of a Customer.

**Force Majeure Event:** an event, circumstance, state of affairs or cause beyond a party's reasonable control.

**Goods:** means all products and any other goods ordered by and/or delivered to a Customer on behalf of Cranfield.

**Order Acknowledgement:** means Cranfield's written confirmation to a Customer, setting out which of the Goods requested by a Customer are available and are about to be shipped and (if relevant) which Goods are not available.

**Cranfield:** Cranfield Colours Limited (registered in England and Wales with company number 01266345).

**Terms:** means the terms and conditions set out in this document as amended from time to time in accordance with clause 8.3
- 9.2 **Interpretation**
  - (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email.

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