

**TERMS AND CONDITIONS OF SALE OF PRESERVATION PAINTS LIMITED  
HEREINAFTER CALLED “PPL”**

**1. Formation of Contract**

- 1.1 These Terms and Conditions of Business contain the entire agreement in connection with products and/or services and may only be modified or supplemented by separate written agreement between PPL and the Purchaser (hereinafter referred to as “You”). All other terms and conditions, express or implied (whether by statute or common law), present or historic (including any statements made in any brochure, website or advertising literature of PPL) are excluded, save in the case of fraud. Unless expressly and specifically agreed in writing to the contrary by an authorised representative of PPL, PPL will only contract with You on these Terms and Conditions of Business and shall not be bound by any of Your purchasing conditions (or any other terms and conditions put forward by You) unless specifically agreed in writing by a Director of PPL.
- 1.2 In these Terms and Conditions of Business, terms defined in the 2010 edition of Incoterms have, unless otherwise, specified, the same meaning.
- 1.3 Unless otherwise specified:
- “ PPL “ means PPL Paints Limited registered under company number 8434419 and all of its subsidiary and associate companies
  - “ You “ means the person/company buying the Products or, if agent for another, that person and the other jointly and severally (in other words, the Purchaser)
  - “ the Products “ means the products and any part of them described in PPL’s quotation and includes their packaging and any replacement products.
  - “ Specification “ means that specification (if any) included in PPL’s written quotation or any other written specification supplied by the Company.
  - “Sales Order Confirmation” means PPL’s Sales Order Confirmation form detailing and confirming Your order.
- 1.4 Any order based on or resulting from any quotation or tender by PPL is deemed to incorporate these Terms and Conditions of Business and no variation or modification of, or substitution for, these Terms and Conditions of Business (even if included or referred to in the document accepting any tender or placing any order) shall be of any effect unless specifically accepted in writing by a Director of PPL.
- 1.5 In relation to the Products, the current specification, technical data, health and safety data, weights and instructions for application supplied by PPL constitute a guide only, do not form part of the contract for the supply of the Products and are not binding upon PPL.
- 1.6 All prices, quotations, offers and tenders are made and all orders are accepted subject to the following Conditions. Except as otherwise provided in these Conditions, all other terms, conditions or warranties whatsoever are excluded from any contract between PPL and You or any variation thereof unless expressly accepted in writing by a company director or other authorised representative of PPL.

- 1.7 Quotations given by PPL do not constitute offers and to effect a binding contract an order must be placed by You and accepted by PPL. Until a binding contract is made, PPL may withdraw or amend a quotation as it sees fit.
- 1.8 In order to avoid duplication of orders, all documents sent by You to PPL that are confirmations of orders previously placed shall indicate that fact.
- 1.9 Where You order non-standard goods which have to be specifically manufactured or produced to your unique requirements You shall accept the supply of a quantity whether more or less within 10% of the stipulated amounts. In such circumstances the invoice value of the goods shall be subject to a corresponding adjustment.
- 1.10 In the absence of a specific contract the giving of an order by You to PPL for any product shall constitute unqualified acceptance by You that if PPL accepts the order sale supply or delivery of such goods then the order will be governed solely by these conditions of sale.
- 1.11 Prices are quoted by PPL on the basis of the limitations of liability set out in these Conditions. For the possibility of PPL accepting more extensive liability see Condition 22.
- 1.12 No contract to which these Conditions apply shall be a sale by sample unless PPL expressly so agrees in writing.

## **2. Prices**

- 2.1 PPL reserves the right to vary prices and payment dates at any time. Prices quoted in foreign currency may be adjusted at any time in relation to variations in the appropriate exchange rate. Unless otherwise agreed in writing, all prices are quoted net ex works from PPL's premises and are exclusive of VAT and duties.

## **3. Terms of Payment**

- 3.1 In respect of credit customers, payment is due within 30 days from the date of invoice unless otherwise agreed in writing by PPL. Without prejudice to any other remedy, PPL may charge interest under the provisions of the Late Payment of Commercial Debts (Interest) Act 1998. If PPL considers that your creditworthiness has deteriorated after the date of the contract, PPL shall be entitled to require payment prior to delivery.
- 3.2 PPL shall be entitled to submit its invoice with its delivery note or at any time afterwards, except that where delivery has been postponed at your request or by your default, PPL may submit its invoice at any time after the goods are ready for delivery or would have been ready in the ordinary course but for your request or default.
- 3.3 Where goods are delivered by instalments PPL may invoice each instalment separately, and You shall pay such invoices in accordance with these Conditions.
- 3.4 No disputes arising under the contract nor delays, otherwise than due to default by PPL, shall interfere with prompt payment in full by You.
- 3.5 In the event of default in payment by you, PPL shall be entitled, without prejudice to any other right or remedy, to do all or any of the following:

- 3.5.1 to suspend all further deliveries under the contract and under any other contract or contracts between PPL and You then current, without notice;
  - 3.5.2 to charge interest on any amount outstanding at the rate of 2% per annum above the Bank of England base rate, charged as a separate, continuing obligation not merging with any judgment;
  - 3.5.3 to serve notice on You requiring immediate payment for all goods supplied by PPL under this and all other contracts with You whether or not payment is otherwise due or invoiced; and
  - 3.5.4 to sue for the price of the goods notwithstanding that title has not passed to the You.
- 3.7 The uniform law on international sales shall not apply to these terms and conditions. The terms of payment shall be as specified in writing by PPL.
- 3.8 All payments shall be made without abatement, deduction, counterclaim or set-off of any kind.
- 3.9 PPL shall be entitled at any time to require from You, satisfactory or supplementary security for performance of your obligations under any contract with PPL. Refusal or failure to furnish such security or supplementary security will entitle PPL to suspend delivery or further deliveries to You until such security is furnished or to cancel/rescind any or all contracts with You in so far as they are not fulfilled, without incurring any liability whatsoever
- 3.10 In addition to its other rights hereunder, PPL shall also be entitled to recover all expenses incurred by PPL in collecting or attempting to collect outstanding amounts. Such expenses shall include, but not be limited to, fees of collection agencies, lawyers and accountants.

#### **4. Delivery**

- 4.1 Delivery or despatch dates quoted are given or accepted by PPL in good faith, but not guaranteed unless stated to be “guaranteed” in writing.
- 4.2 Delivery shall be to such place as PPL may agree or as You reasonably specify prior to delivery. If no place of delivery is agreed, delivery shall be ex-works PPL’s factory premises in Collyhurst, Manchester, England.
- 4.3 Where PPL agrees to deliver the Products other than ex-works, You are responsible for unloading the Products unless otherwise agreed. PPL reserves the right to deliver by instalments
- 4.4 PPL shall use its reasonable endeavours to deliver the Products within the time specified, but accepts no liability for any expenses, loss or damage whatsoever, suffered by You or third parties as a result of failure, for whatever reason, to deliver within the time so specified (even if caused by PPL’s negligence).
- 4.5 The date for delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from You.
- 4.6 It is specifically agreed that time shall not be of the essence of the contract and that You shall not be entitled to cancel or rescind the contract solely on the basis of late or incomplete delivery.
- 4.7 Failure by You to take delivery of or to make payment in respect of any one or more instalments of goods delivered in accordance with the contract shall

entitle PPL to treat the contract as repudiated by You either in whole or in part.

- 4.8 PPL will endeavour to comply with reasonable requests by You for any postponement of delivery of the goods, but shall be under no obligation to do so. Where delivery is postponed, otherwise than due to default by PPL, then without prejudice to all other rights and remedies available to PPL, You shall pay all costs and expenses, including a reasonable charge for storage and transportation, so occasioned.
- 4.9 If PPL delivers to You a quantity of Products of up to 10% more or less than the quantity accepted by PPL, You shall not be entitled to object to or reject the Products or any of them by reason of the surplus or shortfall and shall pay for such Products at the pro rata contract rate.
- 4.10 You shall inspect all goods on delivery and unless You take the following actions You will be deemed to have accepted the delivery in full contractual satisfaction of the order:
  - 4.10.1. You shall endorse carrier's note indicating why the delivery is not accepted in full satisfaction of the order;
  - 4.10.2. You shall advise PPL immediately by telephone and confirm details of why the delivery is not accepted in full satisfaction of the order in writing to PPL;
  - 4.10.3. You shall send full particulars of any delivery problem to PPL in writing within 5 days of the delivery;
  - 4.10.4. In the case of complete non-delivery of a consignment You shall advise PPL within 5 days after the date of the invoice.
  - 4.10.5. You shall be bound to pay for all goods notwithstanding any alleged non-delivery or shortage of goods if the foregoing conditions have not been complied with.
- 4.11. Any inspection and/or testing of the Products that You require shall take place at PPL's factory in Collyhurst, and unless written notice is delivered to PPL within 5 days after such inspection and/or testing You shall be deemed to have accepted the quality of the Products and their compliance with the contract.

## **5. Packing**

- 5.1. Unless otherwise agreed in writing, the price of cylinders, drums, carboys, tank wagons and other containers, when charged for separately, will be credited if the items are returned to PPL's works within 120 days of the date of invoice, carriage paid and in good Condition.
- 5.2. Unless otherwise agreed in writing, You shall be responsible for the disposal of all packaging materials and packaging waste at its cost and shall indemnify PPL in respect of any loss (howsoever arising) to PPL as a result of You failing to carry out your obligations under this Condition in whole or in part.

## **6. Risk and Title**

- 6.1. Risk shall pass to You so that You are responsible for all loss, damage or deterioration to the goods at the time when the goods arrive at the designated

place of delivery; or in all other circumstances, at the time when the goods leave the premises of PPL.

- 6.2. Without prejudice to Clause 6.1 above, goods for export shall be at your risk from the time of collection by the Freight Carrier from PPL's premises.
- 6.3. PPL shall retain ownership of the Products until:
  - 6.3.1. PPL has received payment in full for the Products and of all other sums which are or become due to PPL from You on any account; or
  - 6.3.2. the Products are mixed, processed or used so that they lose their identity or are irrecoverably incorporated in, mixed with or applied to other goods;
- 6.4. Until ownership passes to the You, You shall:
  - 6.4.1. hold the Products on a fiduciary basis as PPL's bailee;
  - 6.4.2. maintain the Products in satisfactory condition and keep them insured against all usual risks to the full replacement value;
  - 6.4.3. sell, use or part with possession with the Products only in the ordinary course of trading and any sale of the Products shall be at full market value and shall be a sale of PPL's property with You acting as principal;
  - 6.4.4. where reasonably possible, store the Products separately from all other goods belonging to You or any third party and keep them clearly identified as PPL's property; and
  - 6.4.5. not destroy, deface or obscure any identifying mark or packaging on or relating to the Products.
- 6.5. PPL shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from PPL.
- 6.6. At any time when the price for the Products or part thereof remains unpaid, PPL shall be entitled to call upon You to return the Products and You irrevocably permit PPL by its servants or agents upon request to enter upon any premises where the Products are or may be stored and recover the Products for its own use. You shall not be entitled to make any claim against PPL in respect of such entry or recovery. The right of PPL shall operate at all times and in particular when You are unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any statutory modification or re-enactment thereof, or if You, being an individual, shall commit an act of bankruptcy or be adjudicated bankrupt and his property become vested in the Official Receiver or any other party, or ( if You are a company) if any resolution or petition to wind up PPL's business is passed or presented or an Order is made by the Court for the winding up of PPL or if a Receiver or Liquidator is otherwise appointed and this clause and these Terms and Conditions of Business shall be binding upon any such Official Receiver or Liquidator or other party in whom your assets shall from time to time become vested. In any of the circumstances described in this clause, PPL's permission for You to sell or use the products shall terminate.
- 6.7. If the law of the territory in which the Products are situated does not permit the retention of title or recovery of Products as provided herein but allows other protective rights then this contract reserves such rights and You grant such rights to PPL and undertake to take such further action to protect PPL's rights as may be appropriate.

- 6.8. The power of sale granted to You shall automatically cease on the happening of any event or default which would cause PPL reasonably to consider that its title to the goods may adversely affect and You shall notify PPL forthwith of the happening of any such event or default.

## **7. Cancellation and Returns**

- 7.1. Cancellation will only be agreed to by PPL on condition that all costs and expenses incurred by PPL up to the time of cancellation and all loss of profits and other loss or damage resulting to PPL by reason of such cancellation will be paid forthwith by You to PPL.
- 7.2. Goods returned to PPL without PPL's written consent will under no circumstances be accepted for credit.
- 7.3. PPL are under no obligation to accept returned goods. Any goods returned by You or anybody acting on your behalf will remain at your risk and, for the avoidance of doubt, PPL accepts no liability of any description in respect of any returned goods.
- 7.4. Returns can only be accepted if:
- 7.4.1. this has previously been agreed with PPL;
  - 7.4.2. a returns number has been issued to You and;
  - 7.4.3. the Products are accompanied by PPL's documentation.
- Failure to comply with these conditions may result in You being invoiced for the disposal costs of any returned items.

## **8. Variations**

- 8.1. No variations to the goods required by You shall be binding on PPL unless agreed by PPL and You in writing, including, as part of such agreement, any change to the contract price arising in consequence of the variation to the goods.
- 8.2. If PPL shall vary the goods in accordance with your requirements, without agreement having been reached as to a consequential change in the contract price, the price shall be varied by reference to the extra costs incurred by PPL in making the variation plus an appropriate profit margin.
- 8.3. If PPL agrees to any such variation any dates quoted for delivery shall be extended accordingly.
- 8.4. PPL reserves the right to under or over deliver the quantity of goods ordered by up to 10% and You shall pay for the quantity actually delivered.

## **9. Quality/Specification/Warranty**

- 9.1. PPL warrants that the Products will correspond with the Specification, or any specification of yours that is expressly agreed in writing by PPL, but otherwise PPL does not warrant that the Products are fit for any particular purpose or an intended use by You and You shall satisfy yourself that Products are so fit.
- 9.2. Notwithstanding that a sample of the Products may have been exhibited to and inspected by You, it is hereby declared that such sample was so exhibited and inspected solely to enable You to judge for itself the quality of the bulk and not so as to constitute a sale by sample under this contract. You shall take the

Products at its own risk as to their corresponding with the said sample or as to their quality, condition or sufficiency for any purpose.

- 9.3. Whilst PPL makes every effort to ensure that product consistency and Colour reproduction is as accurate as possible, slight variations will occur from batch to batch.
- 9.4. Recommendations or suggestions relating to the use of the Products made by PPL, whether contained in PPL's technical literature, or given in response to specific enquiry or otherwise, are based on the most up to date and reliable data available to PPL. However, since the Products are often supplied for uses outside of the scope of PPL's knowledge or expertise, since variations in environment, changes in procedures or use, or extrapolation of data may cause unsatisfactory results and since Products and information are intended for use by purchasers having skill and know-how in the industry in relation to such Products and information, it is expressly agreed that it is Your sole responsibility to satisfy yourself as to the suitability of the Products for the particular use proposed and it shall be deemed that You have so satisfied yourself and accepted any resulting risk.
- 9.5. Without prejudice to the above PPL reserves the right to alter the composition of the goods supplied to conform to applicable standards or laws or otherwise within reasonable limits having regard to the nature of the goods and the purpose for which they are to be applied.
- 9.6. PPL reserves the right to refuse to accept at its own discretion any repeat orders for specialised Goods made specifically to your requirements.
- 9.7. PPL's obligations for product variation or for any defect notified are limited at PPL's option, to the replacement of the Products or relevant portion of them, or to a refund of a portion of the purchase price paid by You. Any refund will be paid to You when the defective Products are returned to PPL. If PPL complies with this clause it shall have no further liability for a breach under the product warranty in respect of such Products.
- 9.8. Wherever appropriate PPL will endeavour to assist You with technical advice and specifications but You shall at all times be responsible for ordering the correct product or specification and deciding upon fitness for purpose of the product.
- 9.9. Any illustrations performance details examples of applications specifications and colours and all technical data in such literature are based on experience and upon trials under test conditions and are provided for general guidance only. No such information or data shall form part of the contract unless You have complied with the conditions laid out in Clause 1.6 above.
- 9.10. In the event of the condition of the goods being such as might or would (subject to these conditions) entitle You to claim damages to repudiate the contract or to reject the goods You shall not then do so but shall first ask PPL to supply satisfactory substitute goods and PPL shall thereupon be entitled at its option to supply satisfactory substitute goods free of cost and within a reasonable time or to repay the price of the Goods in respect of which the complaint is made.
- 9.11. If PPL do so supply satisfactory substitute goods or effect repayment then You shall be bound to accept such substitute goods or repayment and PPL shall be under no liability in respect of any loss or damage whatsoever arising from the

initial delivery of the defective goods or from the delay before the substitute goods are delivered or the repayment is effected.

## 10. Defective Products

- 10.1. You shall inspect the Products immediately on their arrival and shall, within 5 working days of delivery/collection, give notice in writing to the Customer Services Department of PPL of any matter or thing by reason of which You allege that the Products are not in accordance with the contract. If You fail to give such notice the Products shall be deemed to be in all respects in accordance with the contract and You shall be bound to accept and pay for the same accordingly.
- 10.2. No claim for defects will be allowed:
  - 10.2.1. after the expiration of the applicable shelf life of the Products, or one year from the delivery date whichever is earlier; or
  - 10.2.2. unless PPL is given a reasonable opportunity, within 30 days after receiving notice of the defect, or accessing any relevant site and conducting an initial examination of the Products and those products to which the Products have been applied.
- 10.3. PPL's obligations under the warranty or for any defect notified in accordance with clauses 10.1 or 10.2 (defective products section) are limited, at PPL's option, to the replacement of the Products or relevant portion of them, or to a refund of three times the purchase price paid by You. Any refund will be paid to You when the defective Products are returned to PPL. If PPL complies with this clause it shall have no further liability for a breach under the product warranty in respect of such Products.
- 10.4. Defects in any instalment delivery shall not be a ground for cancellation of the remainder of the contract
- 10.5. Where the Products contain a latent defect which You could not reasonably be expected to discover upon arrival of the Products, You may make a claim under the warranty by notifying PPL in writing of such claim within 5 working days of the date of discovery of the defect or (if earlier) within 5 working days of the date on which You ought to have discovered the defect.
- 10.6. The claim must be sent within 60 days of the date of delivery of the goods.
- 10.7. PPL shall not be liable to You by reason of any representation, or any implied warranty, condition or other term, or any statutory duty or duty at common law, or under the express or implied terms of the contract, or in tort (including negligence) or otherwise, for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential or other claims for consequential compensation whatsoever ( and whether caused by the negligence of PPL, its employees or agents or otherwise ) which arise out of or in connection with the supply of the Products or their use or resale by You or in connection with any recommendations or suggestions or services provided with the Products, except as expressly provided in these Terms and Conditions of Business
- 10.8. You shall not be entitled to claim in respect of any defects to the extent that the same are caused by:

- 10.8.1. the goods not having been applied in a good and workmanlike manner in accordance with standard trade practice and strictly in observance of all instructions provided individually by PPL to You or contained in PPL's official Data Sheet, or other technical literature in respect of the goods including particularly all instructions relating to storage, surface preparation and application. PPL's Data Sheet and technical literature is available on request; or
- 10.8.2. the goods having been subjected either before or after application to any treatment not specifically authorised in writing by PPL; or
- 10.8.3. fair wear and tear or damage due to accident, neglect or misuse.
- 10.8.4. any representations, advice or assistance given or omitted to be given in connection with the Products, services or the Specification or the contract, other than services specifically charged for by PPL. Where PPL has specifically charged for services, and in the absence of any other written agreement, PPL shall provide the services with reasonable care and skill and liability for failure, subject to clause 11.4 (below), shall be limited to a refund of the fee charged for those services;
- 10.8.5. the supervision or quality control (or lack thereof) by or on behalf of any third party.
- 10.8.6. if You or any third party continue to apply the Products after giving PPL notice of any defect.
- 10.9. PPL shall not be liable for (and You shall indemnify PPL against claims arising from) loss or damage suffered by reason of use of the goods after You become aware of a defect or after circumstances have occurred which should reasonably have indicated to You the existence of a defect.
- 10.10. PPL may inspect the goods or the structure to which the goods have been applied (if applicable) at any time within 15 days of receiving a written complaint or 28 days where the goods or structure are situated outside the United Kingdom and You, if so required by PPL, shall take all steps necessary to enable it to do so.

## **11. Limitations of Liability**

- 11.1 You shall indemnify PPL against all damage or injury to any person or loss of or damage to any property and against all actions, demands, costs, charges, expenses or other loss suffered or incurred by PPL arising in whole or in part from any of the following:
  - 11.1.1. mixing the Products with any other goods or complying with any specification or other instruction from You relating to the Products;
  - 11.1.2. the use or dealings in the Products by or on your behalf
  - 11.1.3. any claims that any patent, trademark, copy right, design right, know-how or other intellectual property right of any third party has been infringed through the manufacture, sale or use of the Products or any materials provided with them or performance of any services ( save to the extent that the same have been supplied in accordance with the Specifications or are registered trade marks of PPL ); and

11.1.4. any act, omission, negligence, and/or breach of these Terms and Conditions of Business or otherwise through the default of You.

11.2 Each party shall promptly notify the other of any relevant claim under this contract and shall comply with the other's reasonable requirements to minimise and/or avoid further liability. In the case of an intellectual property rights infringement claim relating to any of PPL's intellectual property rights, You shall allow PPL conduct of any action and/or settlement negotiations, on reasonable terms, and in the case of any claim in respect of which You are required to indemnify PPL, PPL shall allow You conduct of any action and/or settlement negotiations on reasonable terms.

11.3 Nothing in these Terms and Conditions of Business excludes or limits the liability of PPL;

11.3.1 for death or personal injury caused by PPL's negligence;

11.3.2 under section 2(3) Consumer Protection Act 1987;

11.3.3 for any matter which it would be illegal for PPL to exclude its liability; or

11.3.4 for fraud or fraudulent misrepresentation.

11.4. Except as provided under clause 11.3 (above), PPL's total aggregate liability in contract, misrepresentation or otherwise, in connection with the Products, Specification or services or the contract is limited to the contract price of the Products sold. However in the event of tort (including negligence or breach of statutory duty), PPL's total aggregate liability in connection with the Products, Specification or services or the contract is limited to 3 times the contract price of the Products sold.

11.5. PPL shall not be liable to the Purchaser for loss of profit, revenue, contracts, anticipated savings or any indirect or consequential loss.

## **12. Force Majeure**

12.1 If during the currency of any contract agreement or order entered into between PPL and You PPL is delayed or hindered in or prevented from performing any or all of its obligations hereunder by war road blocks rail blocks strikes whether official or unofficial lock-out picketing or blocking (secondary or otherwise) or any action which could reasonably be described as in the furtherance of or in any way related to an industrial dispute or grievance riots civil commotions epidemic fire explosions accident flood plant breakdown or any other cause (whether or not of the same nature as the foregoing) beyond the reasonable control of PPL then PPL shall not in consequence thereof be under any liability in contract relation to the contract agreement or order and PPL may if it deems so desirable upon giving notice to You partially or wholly suspend deliveries of any goods or preferments of any works during the continuance of such causes and the Delivery Date or Dates shall be correspondingly extended.

## **13. Intellectual Property**

13.1. You are not granted any licence to use or reproduce PPL's trade marks or other intellectual property rights, and You shall not (and shall ensure that its employees and directors shall not) use, exploit or adapt any such intellectual property rights or any Products or other materials to which they are applied or in

which they are incorporated except as may be expressly permitted in writing by a Director of PPL.

**14. Confidentiality**

14.1. Each party shall keep secret at all times (and shall procure that its employees do the same) any information of a confidential nature (including any trade secrets, proprietary techniques and know-how) obtained from the other by reason of this contract except if the information is already in the public domain, must be disclosed by law or which the receiving party can show was in its possession before disclosure by the other. Neither party shall use, copy or reproduce confidential information except for the purpose for which it was disclosed.

**15. Determination**

15.1. If You shall make default in or commit any breach of any of its obligations to PPL or if any distress or execution shall be levied upon You or your property or assets or if You shall make or offer to make any arrangements or composition with creditors or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against him, or if the You are a limited company and any resolution or petition to wind up such company's business shall be passed or presented otherwise than for reconstruction or amalgamation or if a receiver of such company's undertaking property or assets of any part thereof shall be appointed PPL shall have the right forthwith to determine any order then subsisting and upon written notice of such determination being posted by it to You any subsisting order shall be deemed to have been determined without prejudice to any claim or right PPL might otherwise make or exercise.

**16. Specials**

16.1. PPL does not guarantee the suitability of goods made specially to your requirements and differing from PPL's standard specifications even if the purpose for which the goods are required is known to PPL.

**17. Assignment**

17.1. The contract is entered into between PPL and You as principals and You shall not be entitled to assign the benefit or burden of it or of any interest in it without prior written consent of PPL. PPL shall be entitled to assign or sub-contract the whole or part of its obligations under the contract.

**18. Severability**

18.1. Each provision of this contract is severable and distinct from the others. The parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law. If in any particular case any of the clauses or sub-clauses of these Terms and Conditions of Business shall be held to be invalid or shall not apply to this contract, the other clauses and sub-clauses shall continue in full force and effect.

## **19. Guarantee**

- 19.1. In the event of the condition of the goods being such as might or would (subject to these Conditions) entitle You to claim damages, to repudiate the contract or to reject the goods, You shall not then do so, but shall first ask PPL to investigate the problem and, if necessary, supply satisfactory substitute goods and PPL shall thereupon be entitled at its option to supply satisfactory substitute goods free of cost and within a reasonable time or to repay the price of the goods in respect of which the complaint is made.
- 19.2. If PPL does so supply satisfactory goods or effect repayment pursuant to Condition 19.1, You shall be bound to accept such substituted goods or repayment and PPL shall be under no liability in respect of any loss or damage whatsoever arising from the initial delivery of the defective goods or from the delay before the substitute goods are delivered or the repayment is effected.

## **20. Waiver**

- 20.1. The waiver by PPL of any right or the failure by PPL to exercise any right or to insist on the strict performance of any provision of this contract shall not operate as a waiver of, or preclude any further exercise or enforcement of any other right or provision of this contract.

## **21. Exclusion of Liability**

- 21.1. PPL shall not be liable in respect of claims arising by reason of death or personal injury except in so far as the same are attributable to a failure by PPL to exercise reasonable care.
- 21.2. Under no circumstances whatsoever shall PPL be liable in contract, tort or otherwise for consequential or other indirect loss (including work required in connection with the removal of defective goods from the structure to which they have been applied, and the application of substitute goods), loss of profits, damage to property or wasted expenditure.
- 21.3. PPL its officers, employees and agents are not qualified to provide information, recommendations, assistance or advice regarding the manner of application of the goods and PPL has no insurance cover in respect of any such matters. Accordingly, You acknowledge that if you rely on information, recommendations, assistance or advice given by PPL its officers, employees or agents relating to the application of the goods (including by any inspector of PPL who may attend on site where the goods are being used) it shall do so entirely at your own risk. Subject only to Condition 21.1, PPL shall not be liable for any loss or damage suffered by You or any other person on account of any negligence, breach of contract, or breach of duty by PPL its officers, employees or agents in providing any such information, recommendations, assistance or advice.
- 21.4. Any liability to pay damages or losses as a result of breach of contract or negligence in respect of goods provided in connection with or arising out of the engagement set out in these Terms (or any variation or addition thereto) by PPL (whether in contract, negligence or otherwise) will in no circumstances exceed two million pounds (£2,000,000) in the aggregate in respect of all such goods. The limit will not apply to any liability which we cannot by law limit or exclude.

## **22. Possibility of Higher Liability on Vendor**

22.1. The limitations on PPL's liability contained in these Conditions (in particular, without limitation, Condition 21) are determined by reference to the limitations of the standard insurance cover obtained by PPL. You shall be entitled to request PPL to accept more extensive liability and if PPL agrees, PPL will then quote a revised price taking account of any increased insurance premium which it is required to bear.

## **23. Insolvency**

23.1. If You shall become bankrupt or shall be deemed to be unable to pay its debts for the purposes of section 123 of the Insolvency Act 1986 or shall compound with its creditors or if a resolution shall be passed or proceedings shall be commenced for your administration or liquidation other than for a voluntary solvent winding up for the purposes of reconstruction or amalgamation), or if a receiver or manager shall be appointed of all or any part of its assets or undertaking, PPL shall be entitled to cancel the contract in whole or in part by giving written notice to You, without prejudice to any other right or remedy available to PPL.

## **24. Consumer Protection Act 1987 ("the Act") and other liability**

24.1. In circumstances in which PPL supplies goods to You for application by You or by a third party, then You shall indemnify, reimburse and compensate PPL for all losses and damages (including costs, expenses and charges for legal actions in which PPL may be involved) that PPL may incur, or have to bear, of any claim or claims that are made against PPL pursuant to the Act, or otherwise relating to the goods in circumstances where the goods are only rendered defective or otherwise only give rise to liability on PPL by reason of acts or omissions of You or a third party (including without limitation improper storage, handling or application) or are only rendered defective or give rise to liability by reason of instructions or warnings given by You. For the purposes of this Condition only, the word "defective" shall be interpreted in accordance with the definition of 'defect' contained in Part 1 of the Act.

24.2. You acknowledge that you are under a duty to pass on to your customers all instructions, information and warnings supplied to You by PPL with the goods.

## **25. Attendance on Site**

25.1. If PPL attends, or arranges for an attendance to be made, at your premises, or the premises of any third party, for any reason connected with the contract, You shall indemnify PPL in respect of all claims made, or proceedings taken, against PPL (and associated legal costs incurred by PPL) by any person, firm or company, including employees of PPL, or of You or of any contractor employed by You (or their personal representatives), whether in respect of death, personal injury or damage to property arising directly or indirectly from the attendance at such premises except only in so far as any claims in respect of death or personal injury are caused by a negligent act or omission on the part of PPL.

## **26. Termination**

26.1. PPL shall have the right in its absolute discretion and without assigning any reason therefore and notwithstanding any contract You may have made with a third party to terminate without notice any agreement to make supplies to any person or to refuse or limit the amount of credit to be given to any person and to withhold supplies to any person.

**27. Law**

27.1. The contract shall be governed and interpreted according to the laws of England and Wales and proceedings issued against PPL shall be subject to the jurisdiction of the courts of England and Wales only.

**THESE TERMS AND CONDITIONS GOVERN YOUR DEALINGS WITH PPL. PPL RESERVES THE RIGHT TO VARY THESE TERMS AND CONDITIONS FROM TIME TO TIME. ALL REASONABLE ENDEAVOURS WILL BE USED TO ENSURE THAT OUT OF DATE VERSIONS ARE REMOVED FROM CIRCULATION AND PPL WILL RELY ON AND YOU WILL BE BOUND BY THESE CURRENT TERMS AND CONDITIONS WHICH ARE ALWAYS AVAILABLE FOR INSPECTION ON REQUEST OR ON OUR WEBSITE [www.preservationspaints.com](http://www.preservationspaints.com)**