

**AIK MOH PAINTS & CHEMICALS PTE LTD**  
**TERMS AND CONDITIONS OF SALE (2013 EDITION)**

**1. Interpretation**

1.1 In these Terms:-

“Buyer” means the person who accepts the Seller’s quotation for the sale of the Goods or whose purchase order for the Goods is accepted by the Seller;

“Contract” means the contract between the Seller and the Buyer for the sale and purchase of the Goods, comprising:-

- (i) the Sellers’ quotation (including documents (if any) incorporated by express reference on the face of the quotation) and the acceptance thereof by the Buyer; or
- (ii) the Buyer’s purchase order and the Seller’s acceptance thereof; and
- (iii) these Terms; and
- (iv) any written agreement pursuant to Clause 2.2.1;

“Goods” means the goods which the Seller is to supply in accordance with these Terms;

“Party” means the Seller or the Buyer and “Parties” means both of them;

“Seller” means Aik Moh Paints & Chemicals Pte Ltd (UEN number 198000410H) and having its place of business at 20 Tuas Street, Singapore 638457;

“Terms” means the standard terms of sale set out in this document and, unless the context otherwise requires, includes any special terms expressly agreed in writing between the Seller and the Buyer;

1.2 A reference in these Terms to a provision of a statute and any regulations made in pursuance thereof as from time to time amended or re-enacted, whether before, on or after the date of the Contract, so far as such amendment or re-enactment applies or is capable of applying to any transaction entered into prior to completion of the Contract, so far as liability thereunder may exist or may arise, shall be construed as a reference to that provision or regulation as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall be ignored in construing these Terms and shall not affect their interpretation.

1.4 Words (including words defined in the Contract) importing the singular also include the plural and vice-versa where the context so requires.

## **2. Basis of Sale**

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Contract.
- 2.2 In the event of any inconsistency between these Terms and other documents forming part of the Contract, the following order of priority shall apply:
  - 2.2.1 Any written agreement between the Parties where the Parties agree that any of the provisions in these Terms should be superseded with an express reference to this Clause 2.2;
  - 2.2.2 The Seller's quotation and documents (if any) incorporated by express reference on the face of the quotation;
  - 2.2.3 These Terms; and
  - 2.2.4 The Buyer's purchase order.
- 2.2 No variation to these Terms shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 2.3 The Seller's employees or agents are not authorized to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract, the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted on entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## **3. Terms of Payment**

- 3.1 The Buyer shall pay the price of the Goods within 30 days of the date of the Seller's invoice [or otherwise stated in writing]. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only on request.
- 3.2 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:
  - 3.2.1 cancel the contract or suspend any further deliveries to the Buyer;

3.2.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

3.2.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of [8] per cent per annum, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

#### **4. Delivery**

4.1 Delivery of the Goods shall be made by the Seller delivering the Goods to such address as may be agreed in writing between the Buyer and the Seller.

4.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.

4.3 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

4.4 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may:

4.4.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

4.4.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

#### **5. Risk and Property**

5.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

5.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Buyer

until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

- 5.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer may resell or use the Goods in the ordinary course of its business.
- 5.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 5.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

## **6. Warranties and liability**

- 6.1 Subject to the following provisions, the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship up to the date of expiry stated in the Certificate of Analysis (COA).
- 6.2 The above warranty is given by the Seller subject to the following conditions:
  - 6.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any design or specification supplied by the Buyer;
  - 6.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
  - 6.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
  - 6.2.4 the above warranty does not extend to packing, packaging, parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

- 6.3 Subject as expressly provided in these Terms, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Consumer Protection (Fair Trading) Act (Chapter 52A) and the Unfair Contract Terms Act (Chapter 396)), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 6.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Protection (Fair Trading) Act (Chapter 52A)) the statutory rights of the Buyer are not affected by these Terms.
- 6.5 A claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 6.6 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may replace the Goods free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), in which case the Seller shall have no further liability to the Buyer.
- 6.7 Except in respect of death or personal injury caused by the Seller's negligence, or liability for defective products under the Consumer Protection (Fair Trading) Act (Chapter 52A), the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.
- 6.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 6.8.1 Act of God, explosion, flood, tempest, fire or accident;

- 6.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 6.8.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 6.8.4 import or export regulations or embargoes;
- 6.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 6.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 6.8.7 power failure or breakdown in machinery.

## **7. General**

- 7.1 The Buyer shall not assign any of its rights or obligations under the Contract without the prior written consent of the Seller, such consent to be signed by its authorized representatives. Any attempted delegation or assignment shall be void. The Seller may attach conditions to the giving of its consent.
- 7.2 The Seller may assign any of its rights (including receivables) under the Contract without the prior written consent of the Buyer.
- 7.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision. If the Seller delays, targets or chooses not to enforce its right under the Contract, it shall not affect its right to do so at a later date.
- 7.4 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part such provision shall be construed, limited or if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability and the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected but shall remain in full force and effect.
- 7.5 The Contract is the entire agreement between the Parties and may not be changed unless agreed in writing by properly authorised representatives of the Parties. The Contract shall supersede any other express or implied, written or oral terms, arrangements, customs or practices.
- 7.6 The Parties do not intend that any term of the Contract should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act (Chapter 53B of Singapore) or otherwise, by any person who is not a party to the Contract.

## **8. Governing Law**

- 8.1 The Contract shall be governed by and construed in accordance with the laws of Singapore.

**9. Arbitration**

- 9.1 Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this clause.
- 9.2 The Tribunal shall consist of 1 arbitrator to be appointed by the Chairman of the Singapore International Arbitration Centre.
- 9.3 The language of the arbitration shall be English.