

HARDIDE STANDARD CONDITIONS FOR WORK AND SERVICES



ADVANCED SURFACE COATING TECHNOLOGY

<p>1. General</p> <p>1.1 All orders for goods and/or services (the "Goods") to be supplied by Hardide Coatings Limited (hereinafter referred to as "Hardide") are subject to these conditions of sale and the placing of an order by a buyer (the "Buyer") will constitute acceptance of these conditions.</p> <p>1.2 These conditions may not be modified or varied except by written amendment signed by a director of Hardide, and Hardide will not be deemed to accept any other conditions nor waive any of these conditions by failing to object to provisions contained in any purchase order or other communication from the Buyer. Any terms and conditions preferred by Buyer, whether prior to acceptance of the order or at any future time, are not accepted by Hardide.</p> <p>2. Quotations</p> <p>2.1 Quotations from Hardide are open for such time as may be specified in each such quotation and provided it is not withdrawn by Hardide in such period it remains capable of acceptance. No binding contract will be created by the acceptance by the Buyer of Hardide's quotation until notice of such acceptance has been given in a purchase order and Hardide has indicated to the Buyer in writing its acceptance of such order.</p> <p>2.2 If the Buyer places an order with Hardide without requesting a quotation or before such a quotation has been provided, all deliveries carried out in satisfaction of such order will be subject to these conditions.</p> <p>3. Orders</p> <p>3.1 A Buyer requiring Goods from a quality assured source, or certificates of conformity, must specify its requirements in writing at the time of placing the order.</p> <p>3.2 Hardide reserves the right to refuse to accept any cancellation of an order unless notification in writing is given to Hardide and accepted in writing by Hardide. In the event of any cancellation the Buyer must pay any expenses incurred by Hardide.</p> <p>3.3 Each order will form the subject of a separate contract or, if delivery is to be made by way of instalments as referred to in Clause 4.5, a series of contracts.</p> <p>3.4 Where the Buyer supplies goods to Hardide for coating or other processing by Hardide ("Buyer Goods") the Buyer must notify Hardide in writing in advance of their delivery of the description and quantity of Buyer Goods to be supplied and their estimated delivery date at Hardide.</p> <p>3.5 All Buyer Goods are supplied to Hardide at the Buyer's risk and the Buyer must adequately insure them against loss or damage while in transit and while in Hardide's possession.</p> <p>4. Credit and Settlement Terms</p> <p>4.1 Any contract will be subject to Hardide being satisfied as to the Buyer's creditworthiness and without prejudice to the generality of the foregoing, Hardide may in its absolute discretion refrain from delivering the Goods and / or Buyer Goods if, having regard to inquiries made or information otherwise known to it, it has reasonable grounds to believe that the Buyer's creditworthiness is in question or that its ability to make payment is in reasonable doubt. In such case, Hardide will request that payment is received before Goods and / or Buyer Goods are delivered.</p> <p>4.2 For so long as any account remains unpaid, Hardide shall have an absolute right of lien upon any of Buyer's property, including Buyer Goods, that may be in its possession or under its control and Hardide may enforce such lien, by selling such property and recovering monies owed to it from the proceeds of sale, whenever and to the extent that any payment is three months overdue without previous notice to you.</p> <p>4.3 Invoices are payable within 30 days of the date of invoice. If the Buyer has exceeded these credit terms, Hardide reserves the right to refuse further credit and demand immediate payment of all monies outstanding.</p> <p>4.4 Hardide, at its discretion, reserves the right to charge interest on invoices outstanding beyond the time specified in Clause 4.3. The rate of interest will be at the rate implied by the Late Payment of Commercial Debts (Interest) Act 1998. Hardide may exercise this right in addition to other rights it may have.</p> <p>4.5 Where the contract is to be or may be fulfilled in separate instalments deliveries or parts, payment for each such instalment delivery or part will be made as if the same constituted a separate contract. Failure by the Buyer to pay for an instalment in accordance with this clause will entitle Hardide, without prejudice to its other rights and remedies to suspend further deliveries of Goods and / or Buyer Goods under any other contract to the Buyer, pending payment by the Buyer.</p> <p>5. Prices</p> <p>5.1 The prices given in Hardide's quotations or acknowledgements include only such work and services as specified therein. If any additional work is required by the contract, Hardide will notify Buyer and agree both the additional work and its cost, which shall be added to the contract price and paid for accordingly, and all such additional work shall be carried out subject to these conditions.</p> <p>5.2 Unless otherwise agreed in writing between Hardide and the Buyer, all prices are given by the Company on an Ex-Works basis and where Hardide agrees to deliver the Goods and / or Buyer Goods other than Ex-Works, the Buyer shall be liable to pay Hardide's charges for transport, packaging and insurance.</p> <p>5.3 In the event of termination, variation or suspension of a contract on the Buyer's instruction or by lack of instruction, the contract price will be adjusted to reflect the additional costs incurred by Hardide.</p> <p>5.4 Where a price per unit has been quoted and the Buyer requires a smaller number of units to be delivered than that quoted, Hardide reserves the right to adjust the prices quoted. In such case, Hardide will notify the Buyer in advance and obtain Buyer's agreement.</p> <p>6. Delivery and Invoicing</p> <p>6.1 "Delivery" means Hardide making the Goods and / or Buyer Goods available to the Buyer on an Ex-Works basis. Any Delivery date given by Hardide in a quotation or order acceptance is given in good faith as an estimated Delivery date but will not amount to any contractual obligation to deliver when stated. Hardide will not be liable for any loss including (but not limited to) loss of profit, costs, damages, charges or expenses caused directly or indirectly by any delay in the Delivery of the Goods and / or Buyer Goods (even if caused by Hardide's negligence) nor, unless any delay exceeds 180 days, will such delay entitle the Buyer to terminate or rescind the contract. Notwithstanding, Hardide will in all circumstances use reasonable endeavours to deliver the Goods and / or Buyer Goods on or before the Delivery date stated.</p> <p>6.2 Hardide will invoice Buyer upon Delivery, regardless of whether the Goods and / or Buyer Goods are collected or otherwise transported to the Buyer.</p> <p>6.3 Failure by Hardide to deliver any one or more (but not all) instalments in accordance with this contract will not entitle the Buyer to treat this contract as repudiated.</p> <p>6.4 Hardide will inform Buyer when Goods and / or Buyer Goods are available for Delivery and it is Buyer's responsibility to collect the Goods and / or Buyer Goods or provide instructions for the transport of the Goods and / or Buyer Goods to the Buyer. Hardide will load the Goods and / or Buyer Goods on to the Buyer's collection vehicle or other transport vehicle as instructed by Buyer.</p>	<p>6.5 If the Buyer fails to arrange for the collection of the Goods and / or Buyer Goods, or fails to provide any instructions or authorisation required to enable the Goods and / or Buyer Goods to be transported to the Buyer, without prejudice to its other rights Hardide may:-</p> <p>6.5.1 store the Goods and / or Buyer Goods until the Goods and / or Buyer Goods are collected or instructions for their transport received, and charge the Buyer for all related costs and expenses (including without limitation storage and insurance); and/or</p> <p>6.5.2 following written notice to the Buyer, and allowing at least seven days from the date of that notice, sell any of the Goods and / or Buyer Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price agreed with the Buyer.</p> <p>6.6 Buyer hereby represents and warrants that it is and will remain in compliance with the requirements of all applicable export laws and regulations including, but not limited to, the US Export Administration Regulations and International Traffic in Arms Regulations. Such requirements include but are not limited to obtaining all required authorisations or licenses for the export or re-export of any controlled item, product, article, commodity, software or technology. Without limiting the generality of the foregoing, Buyer hereby represents and warrants that it has not been and is not currently debarred, suspended or otherwise prohibited or restricted from exporting, re-exporting, receiving, purchasing, processing or otherwise obtaining any item, product, article, commodity, software or technology regulated by any agency of the United States or any other state. Buyer agrees to indemnify and hold harmless Hardide from any costs, penalties or other losses caused by or related to any violation or breach of the warranties contained in this provision.</p> <p>7. Passing of Title/Risk</p> <p>7.1 Risk of damage or loss of the Goods and / or Buyer Goods will pass to the Buyer upon Delivery.</p> <p>7.2 Title to any coating or other materials supplied or applied by Hardide to Buyer Goods will transfer to Buyer on Delivery. For all other Goods Hardide retains title to the Goods and ownership will not pass to the Buyer until Hardide receives payment in full (in cash or cleared funds) for those Goods and for all other sums that are due to Hardide from the Buyer on any account. Until title to Goods has passed to the Buyer, the Buyer shall store those Goods separately from all other goods held by the Buyer so that they remain readily identifiable as Hardide's property. While title to Goods remains with Hardide, Hardide reserves the right to enter the Buyer's premises for the purpose of repossessing Goods the title of which has not passed to the Buyer.</p> <p>8. Loss or Damage in Transit</p> <p>8.1 For Clauses 6.1 and 7.1, risk passes to the Buyer upon Delivery. Hardide shall be under no liability for any loss or damage in transit unless due to negligence on our part or that of our servants or agents and then only if notice is received in writing of such loss or damage is received by us within 8 days after the Goods and / or Buyer Goods have been received by the Buyer.</p> <p>9. Standards</p> <p>9.1 Unless otherwise agreed in writing the quality and finish of work shall be such as will provide a reasonable service in compliance with the generally recognised standards in the trade for the class of work, type, quality and finish of the product concerned.</p> <p>9.2 Hardide shall accept no liability under Clause 9.1 (whether any defect is apparent on inspection or not) unless a written claim is made within 14 days of the receipt of the Goods and / or Buyer Goods stating the alleged defect in standard or quality of work or finish whereby the Goods and / or Buyer Goods are not in accordance with the contract, and the articles exhibiting the defect or defects complained of are forwarded to Hardide for inspection within the said period, and Hardide is given the opportunity to remedy any such defect or defects. Our liability hereunder (if any) shall in all cases be limited in accordance with the provisions of Clauses 12 and 15 hereof.</p> <p>9.3 Notwithstanding any standard and/or special tests carried out by Hardide pursuant to Clause 10 of these conditions, it is the Buyer's responsibility to ensure that the Goods and / or Buyer Goods are suitable for and have been appropriately tested for its needs. To the fullest extent permissible by law, Hardide expressly disclaims all warranties that the Goods and / or Buyer Goods shall be suitable or fit for their intended purpose.</p> <p>10. Tests</p> <p>10.1 Hardide's products and work are carefully inspected and where applicable submitted to standard tests before despatch. Special tests not identified in Hardide's order acceptance will be charged for after agreement has been sought from Buyer. In the case of destructive tests such as hardness and adhesion, provision of agreed suitable test pieces will be the Buyer's responsibility unless otherwise agreed.</p> <p>11. Performance</p> <p>11.1 Hardide will accept no liability for failure to attain any performance figures quoted by us unless we have specifically guaranteed them in the contract. If the performance figures obtained on any test provided for in the contract are outside the acceptance limits specified therein, Buyer will be entitled to reject the Goods and / or Buyer Goods, but before rejecting the Goods and / or Buyer Goods and claiming within the provisions of Clause 12, Buyer will give Hardide reasonable time and opportunity to rectify their performance. Buyer assumes responsibility that processes stipulated by it are sufficient and suitable for Buyer's purpose save insofar as your stipulations are in accordance with our advice.</p> <p>12. Defects</p> <p>12.1 Hardide shall be under no liability howsoever arising in respect of any defect appearing in any Goods and / or Buyer Goods as long as the Goods and / or Buyer Goods are manufactured in accordance with the contract and in particular with any agreed specification, nor which is due or partly due to the material of which the Goods and / or Buyer Goods are made, their design or method of manufacture, or any process or treatment applied thereto by any person other than Hardide.</p> <p>12.2 Hardide undertakes to make good free of charge any defects which, under proper use, appear in Goods and / or Buyer Goods, components or parts the subject of the contract which are due to faulty materials, workmanship or design (other than materials or workmanship or design provided or specified by Buyer) provided there has been no maltreatment thereto and provided that we are notified in writing within 14 days after such defects appear and the defective parts are returned to Hardide for rectification.</p> <p>12.3 This undertaking shall be accepted by Buyer in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of such Goods and / or Buyer Goods, components and parts or as to the manner in which work is done and save as provided in this clause Hardide shall be under no liability, whether for breach of contract or of statutory duty, in tort (including but not limited to negligence) or otherwise in respect of any defect therein or for any service or advice in relation thereto or for any injury (other than death or personal injury caused by negligence on our part as defined in the Unfair Contract Terms act, 1977) or for any loss or damage resulting from such defects or from any work done in connection therewith.</p> <p>12.4 The Buyer shall store all Goods and / or Buyer Goods in accordance with good industry practice and all reasonable directions of Hardide. In particular, but without limitation to the foregoing, Buyer shall ensure that Goods and / or Buyer Goods are not stored in damp conditions which may cause deterioration of the Goods and / or Buyer Goods.</p>	<p>So far as permissible by law, Hardide shall have no liability howsoever arising to the Buyer for any loss or deterioration in the quality, condition or performance of the Goods and / or Buyer Goods occurring as a direct or indirect result of the Buyer's breach of this clause.</p> <p>13. Rejects</p> <p>13.1 Within the requirements of AS9100 any reject components will be quarantined and positively marked. Buyer will be notified as to their disposition. Unless written permission to ship to Buyer is received within 3 working weeks the parts will either be scrapped off at Hardide's premises or returned to Buyer rendered unusable.</p> <p>14. Confidential Information</p> <p>14.1 All information of any kind and in any form which relates in any way to the business or products of Hardide, including but not limited to specifications, drawings, technical descriptions and details of processes, which is (1) disclosed directly or indirectly by Hardide to the Buyer or (2) otherwise comes to the attention of the Buyer as a result of having entered into any contract for the supply of the Goods and / or Buyer Goods, is the confidential information of Hardide and will remain the property of Hardide. Buyer shall keep this information confidential and shall not disclose it to any third party without Hardide's prior written consent.</p> <p>14.2 The Buyer hereby indemnifies Hardide against any and all claims arising from any infringement by the Goods and / or Buyer Goods of any intellectual property of any third party.</p> <p>15. Limitations of Liability</p> <p>15.1 Nothing in these terms and conditions excludes or limits the liability of Hardide for death or personal injury caused by Hardide's negligence or fraudulent misrepresentation, or the conditions as to title implied by section 12 of the Sale of Goods Act 1979 as amended from time to time.</p> <p>15.2 Any quotation includes only such Goods and / or Buyer Goods, accessories and work in the quantities and to the specifications which are stated therein.</p> <p>15.3 Subject to Clauses 15.1 and 15.2 Hardide's total liability in contract tort (including negligence or breach of statutory duty) misrepresentation or otherwise, arising in connection with the performance of this contract will be limited to the price agreed for the Goods and / or Buyer Goods; Hardide will not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term, or any duty at law or under the express terms of this contract for any direct, indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation (whether caused by the negligence of Hardide, its employees, agents or subcontractor) which arise out of or in connection with this contract.</p> <p>16. Jigs or Tooling</p> <p>16.1 Any jigs or tools made by Hardide for the purpose of the contract shall remain Hardide's property notwithstanding that the cost thereof may be included in whole or in part in the contract price. All drawings and information relating to such tools and jigs remain Hardide's property and copyright and Buyer undertakes that he will not copy or make use of the same for the benefit of any third party without our prior written consent.</p> <p>17. Termination</p> <p>17.1 Without prejudice to any other rights or remedies under the contract either party may by written notice to the other, terminate the contract or (in the case of Hardide) suspend future deliveries if:</p> <p>17.1.1 the other fails to comply with any material obligation hereunder and such failure has not been remedied within ten days of written notification from the party requiring remedy;</p> <p>17.1.2 the Buyer fails to furnish Hardide with any information or instructions it requires to fulfil any order;</p> <p>17.1.3 any distress or execution is levied upon the Goods and / or Buyer Goods or if he makes or offers to make any arrangement with or for the benefit of his creditors or commits any act of bankruptcy or, being a limited company has a receiver appointed of its undertaking or assets or any part thereof or for the purposes of a reconstruction or amalgamation without solvency goes into liquidation or has an administrator or administrative receiver appointed.</p> <p>18. Legal Construction, Law and Jurisdiction</p> <p>18.1 These conditions and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter, or the formation of any contract incorporating them, shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that subject as provided in this clause, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these conditions or their subject matter, or the formation of any contract incorporating them. Nothing in this clause shall limit the right of Hardide to take proceedings against the Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.</p> <p>18.2 Any provision of this contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or part) will to the extent of such invalidity, voidance, unenforceability or unreasonableness be deemed severable and the other provisions of this contract and the remainder of such provisions will not be affected.</p> <p>18.3 Failure by Hardide to enforce or partially enforce any provision of this contract will not be construed as a waiver of any of its rights under this contract.</p> <p>19. Force Majeure</p> <p>19.1 Hardide will not be liable to the Buyer in any manner or be deemed to be in breach of this contract because of any delay in performing or any failure to perform any of Hardide's obligations under this contract if the delay or failure was due to any cause beyond Hardide's reasonable control.</p> <p>19.2 Without prejudice to the generality of Clause 19.1 the following will be included as causes beyond Hardide's reasonable control: Governmental actions, war or threat of war, national emergency, riot, civil disturbance, sabotage or requisition, act of God, fire, explosion, flood, epidemic or accident, import or export regulations or embargoes, labour disputes not including disputes involving Hardide's work-force, inability to obtain delay or obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour.</p> <p>20. General</p> <p>20.1 No term or provision of these conditions shall be enforceable by a third party (being any person other than the parties to this contract and their permitted successors).</p> <p>20.2 No waiver by either party of any breach of any of these conditions by the other party shall be deemed to constitute a waiver of any other breach, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy hereunder operate as a waiver thereof. A waiver granted by one party shall be binding only if in writing and signed by such party.</p> <p>20.3 Buyer may neither assign nor transfer its rights under the contract, by operation of law or otherwise, without the prior written consent of Hardide. Hardide's affiliated companies may participate in Hardide's performance under these conditions, and Hardide shall have the right to sub-contract its obligations under these conditions, provided that Hardide shall remain liable to Buyer for its obligations.</p>
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