

**1. Interpretation**

1.1 In these Conditions, the following expressions have the following meaning:

- "Buyer" means the person who accepts the quotation of the Seller for the sale of the Goods and/or Services or whose order is accepted by the Seller
- "Buyer's Goods" means goods belonging to and supplied by the Buyer upon which the Seller will perform the Services in accordance with these Conditions
- "Conditions" means the standard Terms & Conditions set out in this document and includes any special terms and conditions agreed in writing between the Buyer & Seller.
- "Contract" means the contract for the purchase and sale of the goods and/or for the supply and acquisition of the Services.
- "EC" means European Community.
- "Goods" means the goods (or any installment) which the Seller is to supply in accordance with these conditions and, in clauses 5 & 6 of these conditions, any reference to the goods includes a reference to the buyers goods unless stated otherwise.
- "Price" means the price of the Goods and/or Services referred to in clause 4.1
- "Seller" means Plasma Coatings Ltd. (Reg. in England No 1032072)
- "Services" means the processing of the Buyer's Goods by the Seller in accordance with these Conditions.
- "VAT" means Value Added Tax.
- "Writing" includes telex, cable, facsimile E-mail, letter and comparable means of communication.

1.2 In these Conditions

- 1.2.1. any reference to any provision of a statute will be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.2.2. reference to any clause , sub-clause or schedule is to a clause or schedule of or to these Conditions;
- 1.2.3. clause headings are inserted for ease of reference only and will not affect the construction of these Conditions
- 1.2.4. words or phrases importing any gender include both other genders

**2. Basis of the sale**

- 2.1 The Seller will sell and the Buyer will purchase the Goods and/or the Seller will provide and the Buyer will acquire the Services in accordance with any written quotation of the Seller which is accepted by the Buyer, subject in either case to these Conditions which will govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2 No variation to these conditions will be binding unless agreed in Writing between the authorised representatives of the Buyer & Seller.
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods and/or services 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.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents as to the storage, application or use of the Goods or the Buyer's Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller will 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 will be subject to correction without any liability on the part of the Seller.

**3. Orders & Specifications**

- 3.1 No order for a new product and/or new service will be deemed to be accepted by the Seller until confirmed in Writing by the Seller authorised representative.
- 3.2 The Buyer will be responsible to the Seller:
  - 3.2.1 for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer
  - 3.2.2 for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms
  - 3.2.3 if the Goods and/or services are required to for a particular purpose, for ensuring that the terms of any order (including any available specification) are such that the particular purpose will be achieved.
- 3.3 The quantity, quality and description of and any specification for the Goods and/or Services will be those set out in the Sellers quotation (if accepted by the Buyer) or the Buyers Order (if accepted by the Seller).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Buyer's Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other intellectual property rights of any other person which results from the Seller's use of the Buyers specification.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods and/or Services:
  - 3.5.1 which are required to conform with any applicable statutory or EC requirements.
  - 3.5.2 where the Goods are to be supplied and/or the Services provided to the Seller's specification, which do not materially affect their quality or performance provided that such changes will only be made after consultation with the Buyer.
- 3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on the terms that the Buyer will indemnify the Seller in full against all loss, (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

**4. Price of the goods**

- 4.1 The price of the Goods and/or the charge for the Services will be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list at the date of acceptance of the order. All prices quoted are valid for 28 days only (unless stated otherwise on the published price list) after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery to increase the Price to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increases in the costs of labour, materials or other costs of manufacture, any changes in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions. The Buyer may by notice in writing to the Seller given within 14 days of the giving of the Seller's notice, elect either to proceed with the Contract at the increased price or to cancel such part of the contract as is affected by the increase.
- 4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, or as otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods and/or Buyer's Goods otherwise than at the Seller's premises, the buyer will be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.4 The Price is exclusive of any applicable VAT, which the buyer will be liable to pay to the Seller in addition to the Price.
- 4.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods and or Services but full credit will be given to the Buyer providing that they are returned undamaged to the Seller before payment of the Price is due.

**5. Terms for payment**

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller will be entitled to invoice the Buyer for the Price on or at any time after delivery of the Goods, unless the Goods are to be collected by the buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event, the Seller will be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 The Buyer will pay the Price without any deduction within an agreed number of days (normally 30 days) of the date of the Seller's invoice and the Seller will be entitled to recover the price notwithstanding that delivery may not have taken place and the property in the in the goods may not have passed to the Buyer. receipts for payment will be issued only upon request.
- 5.3 The time for payment of the Price is of the essence of the Contract.
- 5.4 If the Buyer fails to make any payment on the due date, without prejudice to any other right or remedy available to the Seller, the seller will be entitled to:
  - 5.4.1 cancel the Contract and/or suspend any further deliveries to the Buyer;
  - 5.4.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied or services provided under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);
  - 5.4.3 terminate immediately any credit arrangements existing between the Buyer and the Seller whether in respect of the Goods and/or Services or of any goods supplied and/or services provided under any other Contract between the Buyer and Seller;
  - 5.4.4 recover immediately from the buyer all and any sums outstanding from the Buyer to the Seller on any account whatsoever and
  - 5.4.5 charge the Buyer interest (both before and after any judgment) on the amount outstanding (including but not limited to all sums due under clause 5.4.4.), at the rate of 3% per annum above Bank base rate from time to time until payment in full is made ( a part of a month being treated as a full month for the purpose of calculating interest.)

**6. Delivery**

- 6.1 Delivery of the Goods and/or services will be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or if some other place for delivery is agreed by the Seller, by the Seller delivering Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are made in good faith only and accordingly:
  - 6.2.1 The Seller will not be liable for any delay in delivery of the goods due to any cause beyond the Sellers reasonable control.
  - 6.2.2 Time for delivery will not be of the essence of the Contract unless previously agreed by the Seller in writing.
  - 6.2.4 The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving notice to the Buyer.
- 6.3 Where the Goods are to be delivered in installments, each delivery will constitute a separate contract and failure by the Seller to deliver any one or more of these instalments in accordance with these conditions or any claim by the Buyer will not entitle the Buyer to treat the contract as a whole as repudiated.
- 6.4 This Clause 6.4 applies to sales and purchases of Goods and not to the provision and acquisition of services and accordingly any reference in it to Goods does not include "Buyers Goods".
  - 6.4.1 (i) Where delivery of the Goods is to be made by the Seller in Bulk, the Seller reserves the right to deliver up to 3 percent more or 3 percent less than the quantity ordered (on a dry weight basis) without any adjustment in the price, and the quantity so delivered will be deemed to be the quantity ordered.
  - 6.4.1 (ii) In the case where there may be moisture present the price will be based upon a dry weight basis, and the percent moisture permitted and tolerances will be agreed between the Seller and Buyer in writing.
  - 6.4.2 If the Seller fails to deliver the goods (or any installment) 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 will be limited to the excess (if any) of the cost to the Buyer of similar goods to replace those not delivered over the price of the Goods.
- 6.5 This clause 6.5 applies to a Contract for the provision and acquisition of Services and not to a Contract for the sale and purchase of Goods:
  - 6.5.1 The Buyer will at its own cost deliver the Buyer's Goods to the Seller at the Seller's premises in order to enable the Seller to provide the Services.
  - 6.5.2 Time of delivery of the Buyer's Goods by the Buyer under clause 6.5.1 will be of the essence of the contract.
  - 6.5.3 If the Buyer fails to deliver the Buyer's Goods to the Seller at the time stated for delivery, without prejudice to any other remedy the Seller may have under these Conditions:
    - 6.5.3.1 The Seller may cancel the Contract immediately and
    - 6.5.3.2 The Buyer will indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of that cancellation.
  - 6.5.4 If, having provided the Services, the Seller fails to deliver the Buyer's Goods (or any installment) 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 Buyer may collect the Buyer's goods from the Seller's premises at any reasonable time during normal working hours after the date when delivery was due and the Seller's liability will be limited to the aggregate of the reasonable cost of collecting the Buyer's Goods and the excess (if any) of the cost to the Buyer of acquiring a similar service in place of the Services not provided by the Seller.
- 6.6 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 prejudice to any other right or remedy available to the Seller, the Seller may:
  - 6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 6.6.2 in the case of Goods other than the Buyer's Goods, 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.

## 7. Risk and property

7.1 In the case of a Contract for the sale and purchase of Goods:

- 7.1.1 Risk of damage to or loss of the Goods will pass to the Buyer:
  - 7.1.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
  - 7.1.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time when the Seller has tendered delivery of the Goods.
- 7.1.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, the property in the Goods will 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 VAT and all other sums outstanding from the Seller to the Buyer for which payment is then due.
- 7.1.3 Until such time as the property in the Goods passes to the Buyer, the buyer will hold the Goods as the Seller's fiduciary agent and bailee, but will be entitled to resell or use the Goods in the ordinary course of its business.
- 7.1.4 Until such time as the property in the Goods passes to the Buyer (and provided that the Goods are still in existence and have not been resold), the Seller will be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith:
  - 7.1.4.1 the Seller, its servants or Agents may enter upon any premises owned occupied or controlled by the Buyer where the Goods are stored and repossess the Goods.
  - 7.1.4.2 the Buyer grants a licence to the Seller its servants or agents to enter any premises referred to in clause 7.1.4.1 for the purposes referred to in that clause.
- 7.1.5 The Buyer will 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 Seller does so, all moneys owing by the Buyer to the Seller will (without prejudice to any other right or remedy of the Seller become due and payable immediately.
- 7.2 In the case of a Contract for the provision and acquisition of Services:
  - 7.2.1 risk of damage to or loss of the Buyer's Goods will at all times remain with the Buyer which will maintain at its own cost a comprehensive policy of insurance to cover the risk of any loss of or damage to the buyer's Goods whilst on the Seller's premises
  - 7.2.2 The property in the Buyer's Goods will at all times remain vested in the Buyer.

## 8. Warranties and liability

- 8.1 Subject to the conditions set out below, the Seller warrants that the Goods and/or Services will correspond with their specification at the time of delivery and will be free from defects in material and workmanship.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
  - 8.2.1 the Seller will be under no liability in respect of any defect in the Goods and/or the Services arising from any drawing, design or specification supplied by the Buyer;
  - 8.2.2 the Seller will be under no liability in respect of any defect arising from wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), or misuse or alteration or repair of the Goods or any Buyer's Goods upon which the Seller has carried out the Services without the Seller's approval;
  - 8.2.3 the Seller will be under no liability under the above warranty (or any other warranty, condition or Guarantee) if the total price of the Goods has not been paid by the due date for payment;
  - 8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer is only entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.3 Subject as expressly provided in these conditions, and except where the Goods are sold and/or the Services provided to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 Where the Goods are sold and/or the Services are provided under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 8.5 No claim which is based on any defect in the quality or condition of the Goods and/or Services or their failure to correspond with specification may be brought against the Seller :
  - 8.5.1 unless the Buyer:
    - 8.5.1.1 (whether or not delivery is refused by the Buyer) gives notice of the claim in writing to the Seller and
    - 8.5.1.2 at his own expense returns the Goods and/or Buyer's Goods (as the case may be) for inspection of the defect within 14 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.
  - 8.5.2 If any machining or other process is applied to the Goods and/or the Seller's goods (as the case may be) before the Seller has had the opportunity to inspect the alleged defect and if the Buyer fails to comply with this clause 8.5, the Buyer will not be entitled to reject the Goods and the Seller will have no liability for such defect or failure, and the Buyer will be bound to pay for the Price as if the Goods had been delivered and/or the Services provided in accordance with the Contract.
- 8.6 Where any valid claim in respect of any of the Goods and/or the Services which is based on any defect in the quality or condition of the Goods and/or the Services or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller will refund to the Buyer the cost of returning the Goods and/or the Seller's Goods (as the case may be) to the Seller under clause 8.5.1.2 and:
  - 8.6.1 In the case of the Goods, the Seller will be entitled to replace the Goods (or part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the Price (or a proportionate part of the Price), but the Seller will have no further liability to the Buyer.
  - 8.6.2 In the case of the Services, the Seller will be entitled to reprocess the Buyer's Goods which were the Subject of defective Services so that they meet the specification or, at the Seller's sole discretion, refund to the Buyer the Price (or a proportionate part of the Price), but the Seller will have no further liability to the Buyer.
- 8.7 Except in the respect of death or personal injury caused by the Seller's negligence, the Seller will 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 any indirect, special or consequential loss or damage (whether for loss of Profit or otherwise), 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 and/or the provision of the Services or the use or resale of the Goods or of the Buyer's Goods in respect of which the Services were provided by the Buyer, and the entire liability of the Seller under or in connection with the Contract will not exceed the price except as expressly provided in these Conditions.
- 8.8 The Seller will not be liable to the buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or failure to perform, any of the Seller's obligations in relation to the Goods and/or the Services, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following will be regarded as causes beyond the Seller's reasonable control:
  - 8.8.1 Act of God, explosion, flood, tempest, fire, or accident;
  - 8.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 8.8.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 8.8.4 import or export regulations or embargoes;
  - 8.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
  - 8.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - 8.8.7 electrical power supply failure or breakdown in machinery.

## 9. Indemnity

- 9.1 If any claim is made against the Buyer that the Goods and/or the Services infringe or that the use or resale of the Goods or the Buyer's Goods in respect of which the Services were provided infringes the patent, copyright, design, trade mark or other industrial property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Seller will indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the buyer in settlement of the claim, provided that:
  - 9.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;
  - 9.1.2 the Buyer will give the seller all reasonable assistance for the purposes of any such proceedings or negotiations;
  - 9.1.3 except pursuant to a final award, the Buyer will not pay or accept any such claim, or compromise any such proceedings without the consent of the seller (such consent not to be unreasonably withheld or delayed);
  - 9.1.4 the Buyer will do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity will not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer will use his best endeavours to do);
  - 9.1.5 the Seller will be entitled to the benefit of, and the Buyer will accordingly account to the seller for, all damages and costs awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (such consent will not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
  - 9.1.6 without prejudice to any duty of the Buyer at common law, the Seller will be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the buyer under this clause.

## 10. Insolvency of the Buyer

- 10.1 This clause applies if:
  - 10.1.1 the buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
  - 10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
  - 10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
  - 10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the buyer and notifies the Buyer accordingly.
- 10.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller will be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for, the Price will become immediately due and payable notwithstanding any previous agreement to the contrary.

## 11. Export Terms

- 11.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms will have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter will prevail.
- 11.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 will (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 11.3 The Buyer will be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of Destination and for the payment of any duties on them.
- 11.4 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods will be delivered FOB the air or sea port of shipment and the Seller will be under no obligation to give notice under section 32 (3) of the Sale of Goods Act 1979.
- 11.5 The Buyer will be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller will have no liability for any claim in respect of defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 11.6 Payment of all amounts due to the Seller will be made in advance of Delivery or, if the seller has agreed in Writing on or before acceptance of the Buyer's order to waive this requirement, by such method as may be specified in that waiver.
- 11.7 The buyer undertakes not to offer the Goods for resale in any country notified by the Seller to the Buyer at or before the time the Buyer's order is placed, or to sell the goods to any person if the Buyer knows or has reason to believe that the person intends to resell the goods in any such country.

## 12. General

- 12.1 Any notice required or permitted to be given by either party to the other under these Conditions must be in Writing addressed to the that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.2 No waiver by the Seller of any breach of the Contract by the Buyer will be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question will not be affected.
- 12.4 The Contract will be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.