

## Terms and Conditions

### 1 DEFINITIONS

#### 1.1 In these Terms:

**"Accepted Order"** means an Order which has been accepted by FPC in writing.

**"CGA"** means the Consumer Guarantees Act 1993.

**"Customer"** means the person(s) or entity who places the Order and purchases the Goods.

**"Fireshield Applicator"** means a person that has completed FPC's training in relation to the application of FPC products to FPC's sole satisfaction and are registered with FPC as having completed such training.

**"Force Majeure Event"** means any act, event, non-happening, omission, or accident beyond FPC's reasonable control.

**"FPC"** means Fire Protection Coatings New Zealand Limited (NZBN: 9429048635929).

**"Goods"** means all products supplied or to be supplied by FPC to the Customer under these Terms as described in the Accepted Order.

**"GST"** means goods and services tax pursuant to the Goods and Services Tax Act 1985.

**"Indent Order"** means an order made by the Customer for Goods on an indent basis, in accordance with these Terms and the Indent Order Terms;

**"Indent Order Terms"** means the terms and conditions applying to Indent Orders.

**"PPSA"** means the Personal Property Securities Act 1999.

**"Order"** means an order for the Goods submitted to FPC by the Customer.

**"Technical Data Sheet"** means all documents issued by FPC and/or the relevant manufacturer of the Goods containing details of the safe supply, handling and use of the Goods, including but not limited to technical data sheets, safety data sheets, and application guides, which are provided by FPC upon request or provided on FPC's website, and updated from time to time.

**"Terms"** means these terms and conditions.

**"Working Day"** means a day other than a Saturday, Sunday or public holiday in New Zealand, when registered banks are open for business.

## 2 ORDERS AND ACCEPTANCE OF THESE TERMS

- 2.1 2.1 An Order constitutes an offer by the Customer to purchase goods in accordance with these Terms.
- 2.2 Unless otherwise expressly agreed in writing, these Terms and any invoice issued in relation to an Accepted Order contain the entire agreement between the Customer and FPC and supersede all prior conditions, terms, representations or warranties appearing in the Technical Data Sheet, catalogues or elsewhere. In the event of any conflict between these Terms and an invoice issued for an Accepted Order, the invoice will prevail to the extent of the inconsistency.
- 2.3 These Terms will apply to every agreement for the supply of Goods by FPC to the Customer. FPC may amend these terms from time to time and publish updated Terms on the FPC website at [www.fireshieldcoatings.com/nz/termsandconditions](http://www.fireshieldcoatings.com/nz/termsandconditions)). Orders made after the date of publication of the varied terms will be subject to the variation and the placing of the Order will be deemed to be acceptance of such varied terms.

## 3 CUSTOMER WARRANTIES

- 3.1 The Customer acknowledges that FPC strongly recommends that prior to placing an Order, the Customer first contacts FPC to discuss the Customer's requirements and to obtain a tailored specification and appropriate advice with respect to the Goods and the Customer's intended use of the Goods.
- 3.2 By placing an Order, the Customer warrants and represents that:
- a) it has read and understands all relevant Technical Data Sheets relating to the Goods;
  - b) it has obtained all necessary approvals, consents and authorisations required for use of the Goods;
  - c) it has the necessary expertise and experience to apply and use the Goods and that any person responsible for applying the Goods is a Fireshield Applicator;
  - d) it has identified the environmental controls required to apply the Goods and will ensure these requirements are met;
  - e) it understands and will comply with all quality assurance procedures required for the application of the Goods, including the use of products from other manufacturers to be used in conjunction with the Goods, and the quality assurance procedures specified by those manufacturers; and
  - f) it has obtained from FPC the most recent versions of all applicable Technical Data Sheets in relation to the Goods prior to placing the Order.
- 3.3 The Customer acknowledges that FPC relies on the warranties and representations contained in this clause 3 in FPC accepting an Order. To the maximum extent permitted by law, FPC shall not be liable for any claim that the Goods are not fit for purpose if:
- (a) the Customer places an Order without first consulting FPC; and/ or
  - (b) any representation or warranty made by the Customer proves to be incorrect or misleading.

#### 4 QUOTATIONS, PRICE, ORDERS AND ACCEPTANCE

- 4.1 Any price list or quotation that FPC may provide to the Customer are indicative only based on FPC's rates and cost of materials, transport and other costs at that time. FPC reserves the right to vary the prices at any time and the provision of a price list or quotation to the Customer does not constitute an offer by FPC to supply the Goods to the Customer.
- 4.2 When an Order is placed, FPC may first issue a written quotation to the Customer's nominated email address. The Customer must carefully check the quotation and confirm in writing that the quotation accurately reflects the Customer's requirements. FPC will only accept the Order once the Customer has provided written confirmation of the quote, at which point FPC will issue and invoice. Upon issue of the invoice, the Order becomes an Accepted Order.
- 4.3 Any quotation provided by FPC to the Customer is only valid for the period as stated in the quotation. A quotation provided by FPC does not constitute an offer by FPC. The Customer must place an Order for the quoted Goods, which constitutes an offer and will be subject to acceptance by FPC in writing. FPC reserves the right to reject any Order at its sole discretion.

#### 5 CANCELLATION

- 5.1 The Customer may not suspend, cancel or amend an Order or Accepted Order without FPC's prior agreement in writing. If FPC agrees to a suspension, cancellation or amendment of an Order or Accepted Order, FPC may adjust the price payable for the Goods to reflect any additional costs incurred or to be incurred by FPC as a result of the suspension, cancellation or amendment including but not limited to:
  - (a) Stock already ordered;
  - (b) Work in progress;
  - (c) Storage, handling or disposal costs;
  - (d) Additional labour, freight or procurement costs; and
  - (e) Unrecovered overheads or administrative costs.
- 5.2 The Customer acknowledges that any suspension, cancellation or amendment of an Order or an Accepted Order may also result in a revision to the delivery date or schedule, and FPC will not be liable for any delay arising from or in connection with such suspension, cancellation or amendment.
- 5.3 FPC will advise the Customer of any such additional costs and revised delivery timelines that may apply as a result of any requested suspension, cancellation or amendment of an Order or Accepted Order.

#### 6 RETURNS

- 6.1 Except as provided in this clause or clauses 10 or 11, the Customer is not entitled to return any Goods to FPC.
- 6.2 Where Goods have been delivered to or collected by the Customer, and the Customer wishes to return all or part of an Accepted Order, then the Customer may submit a request to FPC within 60 days of the date of delivery or collection (as the case may be). The acceptance of

such return request and any refund or credit for returned Goods is at the sole discretion of FPC, and subject to clauses 6.3 and 6.4 being satisfied.

- 6.3 To be eligible for return, the Customer must:
- (a) not have opened the Goods that they wish to return;
  - (b) have stored the Goods in accordance with the conditions specified in the relevant Technical Data Sheet; and
  - (c) return the Goods to FPC in their original packaging and at the Customer's own cost and risk within 14 days from the date that FPC provides its written approval of the return.
- 6.4 If FPC determines at its sole discretion that the Goods are fit for re-sale in an "as new" condition, and agrees to accept the return, then FPC shall refund the amount paid for the returned Goods less 20%, which shall constitute an administration fee payable to FPC to reflect handling and restocking costs. No delivery costs or costs of collection shall be refunded.

## 7 PRICING AND PAYMENT

- 7.1 The price for the Goods is:
- (a) as indicated on any quotation issued by FPC to the Customer, provided the Customer submits an Order for the Goods contained in FPC's quotation within the timeframe specified on the quote, and FPC accepts such Order; or
  - (b) if no quotation has been issued, as indicated on invoices issued by FPC to the Customer in respect of the Goods supplied.
- 7.2 If the Customer requests a variation to an Order or Accepted Order (including for any alteration in quantity, sizes, specification, complexity of work or delivery), the Customer acknowledges such variation may result in an increase of the price.
- 7.3 Unless otherwise stated in writing, all prices specified in any quotation, invoice or statement are expressed to be exclusive of GST (and other taxes and duties (if any)), freight, handling and other expenses and such taxes, freight, handling and other expenses are payable by the Customer in addition to the Price.
- 7.4 FPC accepts payment of invoices by MasterCard or Visa, however an additional transaction fee of 2.5% of the invoiced amount will be payable by the Customer for all payments made by credit card. This fee is non-refundable.
- 7.5 Unless otherwise agreed in writing by FPC, the Customer must pay FPC's invoices in full without deduction or set off in cleared funds on or before the 20<sup>th</sup> day of the month following the date of invoice.
- 7.6 FPC may vary the Customer's terms of payment or credit limit at any time by written notice. FPC may also require full payment in cash prior to delivery of the Goods.
- 7.7 If any amount owing to FPC is overdue, the Customer will be in default under these Terms and without prejudice to any other rights that FPC may have at law or under these Terms:
- (a) all amounts then outstanding will become immediately due and payable;

- (b) interest will accrue on the amounts outstanding at the rate of 3% above the commercial overdraft rate charged by FPC's bank at the time of default, calculated on a daily basis from the due date for payment until payment is received by FPC in full, and payable monthly. Interest may be capitalised by FPC on a monthly basis;
- (c) FPC may cancel, suspend or defer the further supply of the Goods to the Customer; and
- (d) the Customer indemnifies FPC against, and must pay FPC on demand, all losses, costs or damages suffered or incurred by FPC (including legal fees on a solicitor / own client basis and any collection costs incurred) arising out of or in connection with the Customer's breach of these Terms.

## 8 DISPATCH & DELIVERY

- 8.1 The Customer acknowledges and agrees that dispatch and delivery times provided by FPC are estimates only. FPC will use reasonable endeavours to ensure that Goods are dispatched or delivered (as the case may be) within any time stipulated in an Quote or Accepted Order, or if no time is stipulated, within a reasonable time from the order being accepted, however FPC makes no guarantees or representations as to the date of dispatch or delivery of the Goods, and shall not be liable for any delay in dispatch or delivery, including any costs incurred by the Customer due to such delays. Time is not of the essence in relation to delivery.
- 8.2 Late delivery of an Accepted Order does not entitle the Customer to:
- (a) refuse to take delivery of the Accepted Order;
  - (b) claim damages; or
  - (c) terminate this agreement.
- 8.3 FPC may deliver the Goods by instalments. Each instalment shall be deemed to be a separate contract. Any delay in dispatch or delivery of any instalment will not entitle the Customer to cancel the relevant Accepted Order or any instalments remaining to be delivered. In the event that the Customer breaches these Terms in respect of any instalment, FPC may treat the default as a breach of contract relating to each other instalment.
- 8.4 If the Customer fails to accept delivery of the Goods at the time that FPC notifies the Customer that the Accepted Order is due and ready for delivery or within 24 hours of FPC notifying the Customer that the Accepted Order is ready for collection, then FPC may elect to, at its sole discretion:
- (a) store the Goods at its own premises; or
  - (b) arrange for suitable storage by a third party until the goods can be delivered to the Customer.

The Customer shall bear all risk and cost associated with such storage and re-delivery, including any additional handling, insurance and transportation costs. This clause 8.4 is in addition to and not in substitution of any other loss or damage for which the Customer may become liable due to its failure to take delivery at the appropriate date.

- 8.5 In the event that clause 8.4 applies, the Goods are deemed to have been delivered when FPC was willing to deliver them.

FPC accepts no liability for off-loading the Goods from the delivery vehicle to FPC's or its third party storage provider's premises, and the Customer shall keep FPC indemnified from and against all claims whatever arising from such off-loading.

## 9 TITLE AND RISK

9.1 Title in the Goods shall pass to the Customer only upon FPC receiving payment for the Goods in full (and together with all other moneys owing by the Customer to FPC relating to the Goods). Until full payment is received by FPC, the Customer must (unless otherwise instructed in writing by FPC):

- (a) hold the Goods as FPC's bailee and FPC may, without prior notice, enter upon any land or premises where FPC believes the Goods are kept in order to inspect the Goods;
- (b) keep the Goods in a good and secure condition;
- (c) store the Goods separately and clearly marked as Goods belonging to FPC;
- (d) keep the Goods fully insured to their full replacement value against all risks; and/or
- (e) not encumber the Goods in any way.

9.2 Risk of any loss, damage or deterioration in the Goods shall pass to the Customer on delivery in accordance with clause **Error! Reference source not found.**

9.3 Delivery of the Goods will be made at FPC's premises when the Goods are collected by the Customer (or on the Customer's behalf) or, where FPC agree to deliver the Goods, on the unloading of the Goods at the Customer's premises.

## 10 DAMAGE, LOSS IN TRANSIT AND SHORT DELIVERY

10.1 If the Goods:

- (a) have been damaged, destroyed or otherwise lost in transit; or
- (b) are short delivered (where FPC has agreed to deliver the Goods into the Customer's premises or to a site or other location specified by the Customer); or
- (c) were not handed over to the Customer or the Customer's carrier complete and without shortage (where the Goods are collected),

then, the Customer must provide FPC with written notification (**Notice**) (otherwise than on the carrier's delivery document) of such damage, destruction, loss or shortage as follows:

- (d) within seven days of delivery of the Goods in the case of damage or loss of some (but not all) of the Goods or shortage of Goods.
- (e) within 14 days of the dispatch of the Goods where all of the Goods are lost.

10.2 Subject to clause 10.3 below, FPC may at its sole discretion, elect to either replace the damaged, destroyed or missing Goods or credit the Customer's account with FPC and/or refund the Customer with the value of such Goods. FPC's liability under this clause is limited to the replacement or credit of the Goods.

- 10.3 If the Goods have been damaged in transit, the Notice shall state whether any damaged Goods have been salvaged by the Customer, and if required, the Customer will make available any salvaged Goods to FPC. Failure by the Customer to provide this information or make salvaged Goods available may result in the claim being declined to the extent FPC is prejudiced in assessing the claim
- 10.4 FPC shall be permitted a reasonable opportunity to inspect any damaged Goods and to investigate any loss prior to providing any options to the Customer stated in this clause 10.
- 10.5 These Terms apply to any replacement Goods supplied by FPC.

## 11 DEFECTIVE GOODS

- 11.1 Without limiting the obligations of FPC at law:
- (a) it is the responsibility of the Customer to inspect the Goods as soon as practicable after delivery having due regard to the nature of the Goods and their intended application; and
  - (b) the Customer must give notice in writing to FPC of any Goods alleged by the Customer to be defective, within 5 Working Days of delivery of the Goods (time being of the essence).
- 11.2 The Customer is deemed to have accepted the Goods if the Customer fails to give notice to FPC in accordance with clause 11.1(b).
- 11.3 FPC reserves the right to inspect the Goods subject to any claim. Any Goods in possession of FPC for investigation shall remain at the risk of the Customer and FPC shall not be liable for any damage to the Goods that may occur, unless the damage is a result of FPC's direct negligence.
- 11.4 If the Customer rejects the Goods under clause 11.1 and FPC accepts the rejection, then FPC's liability is limited to either (at its sole discretion) replacing the defective Goods free of charge by delivering the Goods to the original delivery point or crediting the price paid for the defective Goods to the account of the Customer. FPC will not be liable for any costs associated with removal, reinstallation, or application of the Goods
- 11.5 FPC will not be liable for the Goods being defective, and the Customer may not assert any claim that any of the Goods are defective:
- (a) if the Customer is in default of any of any of its obligations under these Terms;
  - (b) if the defect arises because the Customer fails to follow FPC's instructions including but not limited to instructions for the storage, use or maintenance of the Goods;
  - (c) if the Customer alters the Goods without FPC's written consent;
  - (d) if the Customer uses the goods in a way that is not intended or specified by FPC, including but not limited to incorrect surface preparation, environmental conditions, or use inconsistent with the Technical Data Sheet;
- 11.6 Where FPC elects to replace the Goods under clause 11.4, it will do so within a reasonable timeframe but will not be liable to the Customer for any delay in doing so.

11.7 Provided that the Customer has provided FPC written notice pursuant to clause 11.1(b), if any dispute arises between the parties as to whether the Goods are defective or not, then the dispute will be determined by an independent AMPP registered inspector to be appointed by mutual agreement. If the parties cannot agree on the expert, either party may request for an expert to be appointed by the Arbitrators' and Mediators' Institute of New Zealand. The costs of the expert will be borne by the unsuccessful party. The chosen expert must determine the procedures to enable them to determine the dispute.

## 12 LIABILITY

12.1 FPC's maximum aggregate liability to the Customer (whether arising in contract, tort (including negligence) or otherwise) will be strictly limited to:

- (a) in respect of defective Products rejected by the Customer under clause 11.1(b), replacement of the Goods or refund of the price paid for the Goods as set out in clause 11.4; and
- (b) in respect of any other loss, damage or injury arising out of or in connection with these Terms (including any breach by FPC of these Terms however arising), an amount not exceeding the value of the Goods (exclusive of GST) supplied by FPC to the Customer in the 6 month period preceding the event giving rise to the claim.

12.2 To the maximum extent permitted by law, FPC will not be liable to the Customer (whether arising in contract, tort (including negligence) or otherwise) for any:

- (a) act or omission of third parties, including any third party engaged by FPC to supply, provide or transport the Goods (or any part thereof);
- (b) special, indirect or consequential loss arising under or in connection with these Terms, including (but not limited to) any loss of profits, loss of business, loss of contract, or any liquidated damages payable by the Customer;
- (c) loss, cost or expense suffered or incurred by the Customer relating to labour, remediation, removal and re-application costs, or any costs associated with the use, handling or application of the Goods.

12.3 To the maximum extent permitted by law, all other conditions, warranties, guarantees, representations, or conditions in relation to the Goods that are not set out in these Terms and the Technical Data Sheet applicable to the Goods are expressly excluded.

12.4 The Customer acknowledges that FPC has no control over the manner in which the Goods are stored, handled, mixed, applied or used by the Customer, and therefore FPC:

- (a) accepts no responsibility or liability in respect of those matters; and
- (b) gives no warranty or guarantee in relation to the application or use of the Goods, surface preparation or site conditions, workmanship or installation.

## 13 CONSUMER GUARANTEES ACT

13.1 The parties agree that:

- (a) the Goods are supplied and acquired in trade;

- (b) FPC and the Customer are both in trade and agree to contract out of the provisions of the CGA; and
- (c) it is fair and reasonable that they are bound by this clause.

## 14 PPSA

### 14.1 The Customer acknowledges and agrees that:

- (a) these Terms constitute a security agreement for the purposes of the PPSA; and
- (b) it grants FPC security interest (as defined by the PPSA) in the Goods that have been supplied and that will be supplied by FPC in the future and any proceeds of those Goods.

14.2 The Customer shall provide all information, execute and/or arrange for the execution of all documents and do all other things that FPC may require to ensure that FPC has a perfected first ranking security interest in the Goods (including by registration of a financing statement on the Personal Property Securities Register. The Customer will, immediately upon request by FPC, procure from any person considered by FPC to be relevant to its security position, such agreements and waivers as FPC may at any time require.

14.3 FPC and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply.

14.4 The Customer waives its rights to receive a verification statement in accordance with section 148 of the PPSA;

14.5 The Buyer waives its rights as debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.

14.6 Where FPC has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.

## 15 LIEN

In addition to any right of lien to which FPC may be entitled to at law, FPC shall be entitled to exercise a general lien over all items in its possession belonging to the Customer until the Customer has paid in full for all Goods supplied by FPC. FPC may in its sole discretion sell any item that is subject to a lien after giving the Customer 14 days written notice of its intention to do so, provided that FPC shall pay to the Customer any surplus proceeds that are realised by it from a sale of any such items after discharging in full all monies outstanding to FPC in respect of unpaid Goods and all reasonable costs of sale incurred by FPC.

## 16 INFORMATION AND PRIVACY

16.1 FPC may collect, use, hold and disclose personal information about the Customer. If the Customer is an organisation, this may include collecting, using, holding and disclosing personal information about the Customer's personnel.

16.2 The Customer authorises FPC to collect, retain, use and disclose information provided by the Customer for the purpose of carrying out credit checks, deciding whether to continue to make any goods or services available to the Customer, debt collection, marketing and general administrative and business purposes.

- 16.3 The Customer authorises FPC to obtain credit reports and other information about the Customer from any third party for this purpose. FPC may also source information about a Customer from publicly available sources.
- 16.4 If FPC holds personal information about a Customer, the Customer has the right to access and request a correction of this information as set out in the Privacy Act 2020. FPC will handle personal information in accordance with the Privacy Act 2020.

## 17 INTELLECTUAL PROPERTY

- 17.1 The sale and purchase of the Goods does not confer on the Customer any license or rights in any intellectual property in the Goods.
- 17.2 Where FPC has provided designs and/or specifications to the Customer in relation to the Customer's purchase of the Goods, then any intellectual property rights in those designs and/or specifications will vest in FPC. Under no circumstances may such designs and/or specifications be used without the prior written approval of FPC.

## 18 DISPUTE RESOLUTION

- 18.1 Except for any dispute as to whether any Goods are defective that is to be resolved in accordance with clause 11.7, if any other dispute arises between the parties in relation to these Terms (the **Dispute**), then a party may serve written notice on the other party:
- (a) specifying reasonable details of the nature of the Dispute;
  - (b) designating the person with authority to negotiate and settle the matter or issue specified in the notice on behalf of the issuer of the notice; and
  - (c) requiring the recipient of the notice to enter into negotiations with the issuer of the notice to resolve the matter or issue specified in that notice and, for that purpose, to appoint a representative with authority to negotiate a settlement.

(the **Dispute Notice**).

Upon receipt of a Dispute Notice, the recipient must also designate a person with authority to negotiate and settle the matter or issue, and the parties will enter into negotiations in good faith to endeavour to resolve the Dispute within 14 days of receipt of the Dispute Notice.

- 18.2 If a Dispute is not resolved by negotiation under clause 18.1 within the timeframe set out in that clause, either party may refer the dispute to mediation by notice in writing. Any mediation must be conducted in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc (**AMINZ**), or any other mediation agreement agreed by the parties and the mediator. The mediation must be conducted by a mediator and at a fee agreed by the parties. Failing agreement by the parties as to appointment of a mediator within seven days of reference to mediation as set out above, the mediator will be selected and his/her fee determined by the President for the time being of AMINZ (or any suitable replacement organisation).
- 18.3 If the parties have attended a mediation and have not reached a resolution of the dispute, neither party is obliged to continue any attempt at mediation under this clause, and either party may then commence such legal proceedings as they think fit in relation to the dispute.

- 18.4 If either party refuses to attend a mediation as set down by the mediator the other party may then commence such legal proceedings as it thinks fit in relation to the dispute.
- 18.5 Neither party may commence arbitration or litigation until the requirements of this clause 18 have been exhausted. However, nothing in this clause restricts or limits the right of either party to seek urgent injunctive relief, or limits or restricts FPC's rights to terminate these Terms.

## 19 GENERAL

### 19.1 **Assignment:**

- (a) The Customer is not entitled to assign any of its rights or obligations under these Terms or any contract between FPC and the Customer without the prior written consent of FPC. If the Customer is a entity, any change in the legal or beneficial ownership of its shares or those of its holding company, or the issue of new capital which results in a change in the effective management or control of the Customer shall be deemed to be an assignment for the purposes of this clause.
- (b) FPC may assign any of its rights under these Terms without the Customer's consent.

19.2 **Jurisdiction:** These Terms and any contract between FPC and the Customer shall be governed by the laws of New Zealand and the parties irrevocably submit to the jurisdiction of the courts of New Zealand.

19.3 **No Waiver:** The failure by either party to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.

19.4 **Illegality or Invalidity:** If any provision of these Terms are determined by any Court or tribunal to be illegal, invalid, void or voidable, that provision must be read down to the extent necessary to make it valid and enforceable. If it cannot be read down in that way, then the illegal, void or voidable provision shall be deemed deleted from the Terms and the remaining Terms shall continue in full force and effect.

19.5 **Legislation:** Any reference to legislation in these Terms includes a reference to any amended or substitute legislation and any regulations enacted under that legislation.

19.6 **CCLA:** If any provision in these Terms are inconsistent with the Contract and Commercial Law Act 2017, the relevant provision in these Terms will prevail over the relevant part of the Contract and Commercial Law Act 2017, to the extent permitted by law.

19.7 **Force Majeure:** FPC will not be liable or responsible for any failure to perform, or delay in performance of, any of their obligations under these Terms that are caused by a Force Majeure Event. FPC's performance is deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period.

19.8 **Notices:** All notices, demands and other communications relating to these Terms and any contract between FPC and the Customer shall be given or served by:

- (a) Prepaid post to the address of the addressee stated in this document;
- (b) Prepaid post to the registered address of the addressee;



- (c) Email to the email address of the addressee stated by the Customer in this document, or to such other address, or e-mail address as may be notified by the addressee in writing to the other party from time to time.

Any notice shall be deemed to have been received by the addressee on the date of delivery, or when posted, on the third working day after posting. A notice by email is deemed to be received on the date of transmission unless the sender receives an undeliverable message from the recipient's email server.



## **Additional Terms and Conditions for Indent Orders**

These Indent Order Terms apply to all Indent Orders together with the Terms. To the extent of any inconsistency between the Terms and these Indent Order Terms, these Indent Order Terms will prevail.

### **1 Definitions**

Terms used in these Indent Order Terms have the same meaning given to them in the Terms. In addition, in these Indent Order Terms, unless context requires otherwise:

**Delivery Location** means either the location specified for delivery by the Customer in the Accepted Order, or where FPC has agreed to arrange for the Goods to be stored at its third-party storage facility, the address of that storage facility.

### **2 Indent Orders**

- 2.1 All Indent Orders are binding on the Customer as at the date and time that such Order is received by FPC.
- 2.2 Indent Orders are only be binding on FPC on the date and time that FPC provides the Customer with written acceptance of the relevant Indent Order. A quotation for an Indent Order does not constitute an offer by FPC.
- 2.3 The price of the Goods may increase between the date that the Customer makes its Order and FPC provides its written acceptance of the Order. FPC will notify the Customer of any price change prior to accepting the Order and requesting payment of the deposit.
- 2.4 FPC may amend any price stated in a quotation for an Indent Order at any time.

### **3 Payment Terms**

- 3.1 Unless otherwise agreement in writing by FPC, a deposit of 50% of the quoted price for the Indent Order Goods is payable on FPC's acceptance of the Indent Order. The deposit is non-refundable except where FPC cancels the Indent Order.
- 3.2 The Customer acknowledges and accepts that FPC may not place an order for the Goods with its manufacturer until payment of the deposit has been received.
- 3.3 Payment for the Goods must be made at least 5 days before the date on which the Goods are expected to arrive at the port applicable to the delivery location agreed in the Accepted Order. Failure to make payment within the timeframe may result in cancellation of the Indent Order and forfeiture of the deposit, or a delay in the delivery of the Goods.
- 3.4 If the Customer fails to pay the balance of the price for the Goods in accordance with clause 3.3, the Customer will be liable for, and indemnifies FPC against, any additional costs, losses or expenses incurred as a result of the Goods being held at the port, including storage, demurrage, handling or other associated charges.

### **4 Delivery**

- 4.1 Unless otherwise agreed in writing between FPC and the Customer, FPC will arrange carriage of the Goods to the Delivery Location and may arrange transit insurance. All costs associated with carriage, delivery, handling, storage and insurance are payable by the Customer.

- 4.2 Delivery is completed when the Goods are unloaded at the Delivery Location and the risk of loss of, or damage to the Goods will pass to the Customer on delivery.
- 4.3 Where the Delivery Location is a storage facility:
- (a) delivery into that facility constitutes delivery to the Customer for all purposes; and
  - (b) the Customer is responsible for all storage costs, risks, and any subsequent handling, transport, or collection of the Goods.