

# Conditions of Sale



## Interpretation

**"Buyer"** means the person, firm or company who purchases the Products from Seller.

**"Seller"** means the company issuing the invoice in respect of the Products.

**"Conditions"** means these Conditions of Sale as amended from time to time.

**"Contract"** means any contract between Seller and Buyer for the sale and purchase of the Products, incorporating these Conditions.

**"Products"** means any products agreed in the Contract to be supplied to Buyer by the Seller company (including any part or parts of them).

**"Order"** means each individual purchase order whether delivered in one or several instalments.

## 1. Basis of the sale

1.1 If any or more provisions of these Conditions are found to be contrary to the statutory law, then such provisions shall be modified as least as possible to be found enforceable and such modification shall in no way affect the validity of the other provisions of these Conditions.

1.2 The Contract between Seller and Buyer shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which Buyer purports to apply under any purchase order, confirmation of order, specification, or any other document)

1.3 No terms or conditions endorsed on, delivered with or contained in Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

1.4 These Conditions apply to all sales made by Seller. Any variation to these Conditions and any representations about the Products shall have no effect unless expressly agreed in writing and signed by Seller. Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Seller which is not expressly provided in the Contract.

1.5 Each order or acceptance of a quotation for Products by Buyer from Seller shall be deemed to be an offer by Buyer to buy Products subject to these Conditions.

1.6 No order placed by Buyer shall be deemed to be accepted by Seller until a written acknowledgement of order is issued by Seller or (if earlier) Seller delivers the Products to Buyer.

1.7 Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

1.8 Any quotation is given on the basis that no Contract shall come into existence until Seller issues an acknowledgement of order to Buyer. Any quotation is valid for a period of 30 days only from its date, provided that Seller has not previously withdrawn it.

1.9 If Seller provides technical services/coating advisors, such as technical sales support, technical training, observing application, the assistance will be given to the best of their ability and knowledge. Technical services/coating advising is solely advisory and Buyer remains fully responsible for the services execution and results, including but not limited to application of the Product and surface preparation. Any

such advice or assistance is subject to the provisions of Article 11.

## **2. Orders and Specifications**

2.1 The quantity and description of the Products shall be as set out in Seller's quotation or its written acknowledgement of Buyer's order.

2.2 All samples, drawings, descriptions, specifications and advertising issued by Seller and any descriptions or illustrations contained in Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Contract, and this is not a sale by sample.

2.3 Seller reserves the right to make changes in the specification of the Products, if required for compliance with any local safety, statutory or regulatory requirements, considering the location where the Products are to be supplied. Such changes will be informed to Buyer and shall not materially affect the quality or performance of the Products.

2.4 Seller is currently limited to supply of some raw materials employed in the production of certain Products. Production volumes may be affected if supply shortages continue. Consequently, any products and/or quantities and the timing of delivery of such ordered products shall be subject to Seller's prior approval.

2.5 Seller shall not be liable for any expenses, delays, claims for damages and compensation, direct or indirect, caused by the said shortage of raw materials in Article 2.4 above.

## **3. Cancellation and Cancellation Fee**

3.1 Orders accepted by Seller cannot be cancelled by Buyer prior to delivery, with exception of orders for standard products and colours, which may be cancelled by written agreement with Seller upon the condition that Buyer indemnifies Seller by paying a cancellation fee of 10 -ten- percent of the gross sales value of the cancelled part of the Order.

3.2 If Buyer has to accept the cancellation of an order from its own customer, Buyer may, prior to delivery, proportionally cancel its order(s) for standard products and colours related to that particular customer upon paying a cancellation fee to the Seller of 5 -five- percent of the gross sales value of the cancelled order(s).

3.3 Nothing in Articles 3.1 and 3.2 is intended to be a penalty payment and any sums set out are genuine pre-estimates of the losses that would be suffered by Seller in the event of cancellation of the order.

## **4. Returns**

4.1 All sales are final and no refund or credit will be offered for Products returned after shipment or dispatch from Seller, unless Seller, at his own discretion, has agreed otherwise in writing, prior to return and the returned Products arrive in good re-sellable condition, in Seller's opinion. Prices subject to refund or credit shall be fixed by Seller. Freight and handling fees will be covered by Buyer if Seller agrees with any return.

4.2 The following Products shall not be accepted for return: (i) tinted products, except if in standard colours by Jotun Brazil; (ii) MTO products, i.e., manufactured at Buyer's request; (iii) damaged cans; (iv) products with less than 45 days to expire.

4.3 Buyer is hereby aware of variation in production in + / - 10 - ten - percent for MTO products and hereby pre-approves their acceptance in the events of any excess or shortage within the abovementioned

percentage.

## **5. Price of the Products**

5.1 All orders will be invoiced at Seller's prices previously agreed with Buyer. Delivery costs are not included in the price, unless expressly agreed otherwise in writing. The packaging is included in the price and is not returnable, unless otherwise determined by applicable law.

Any special packaging requirements will incur an additional non-refundable charge.

5.2 The Buyer is responsible for all taxes on sale or use, taxes on industrialized products or any other applicable taxes or charges.

5.3 If the Buyer changes the specifications of his purchase order between the date of request for proposal and the date of confirmation of purchase by the Seller and such change has impacts on the taxation applicable to the purchase and sale of the Products, the price of the Products may be modified to reflect the change in incident taxes.

5.4 Products ordered in excess to those specified in the Contract are subject to Seller's regular prices.

## **6. Terms of Payment**

6.1 Buyer shall pay the price of the Products, including any applicable value added tax within 30 days of the date of Seller's invoice.

6.2 Buyer shall pay the total amount of the order in USD, unless otherwise agreed in writing.

6.3 If Buyer fails to make any payment, in full or in part, on the due date, then, without prejudice to any other right or remedy available to Seller, including Article 8 and 9 below, Seller shall be entitled to charge Buyer interest on overdue payments, at the rate of 1% per month, applicable pro rata.

6.4 Without any prejudice to the interests on overdue payments set forth in article 6.3 herein, if Buyer fails to make any payment, in full or in part, on the due date, and has already utilized the Products corresponding to such overdue payments, a penalty equivalent to 20 – twenty – percent of the overdue amount shall be applicable.

6.5 Buyer shall be responsible for obtaining any licenses or exchange control consents necessary for the importation and use of, as well as payment for the Products ordered, in the event of exportation carried out by Jotun Brazil, and Buyer shall not be discharged from its contractual obligation toward Seller, regardless of total or partial failure to obtain such license or consent.

## **7. Delivery, delay and failure to take delivery**

7.1 Unless otherwise agreed in writing, deliveries shall be made Ex-Works at Jotun Factory or Brokers or by CIF [place indicated by Buyer] (depending on the total amount of the Order, as informed by Seller), in Seller's standard packaging, including transport packaging, if Seller finds necessary.

7.2 If an Order is to be delivered in instalments, each instalment shall constitute a separate Contract delivery with regard to this Article 7.2 and 7.3. Failure by Seller to deliver any instalment in accordance with these Conditions, or any claim by Buyer in respect of any partial deliveries shall not affect any other delivery.

7.3 Buyer is only entitled to cancel the Order or an instalment if delivery is delayed by more than 30 – thirty- calendar days from agreed date of delivery. Buyer is only entitled to claim compensation for delay

if it is caused by an error or by negligence on behalf of Seller or its subcontractors, and the Order or instalment is cancelled as a result of the delay. Compensation may only be claimed for documented loss as a result of the delay and shall be limited to 10 – ten – percent of the Order price or the price related to the delayed instalment.

## **8. Retention of Title**

8.1 The Products are at the risk of the Buyer from the time of delivery according to agreed Incoterm. However, ownership of the Products shall not pass to Buyer until Seller has received in full all sums due to him in respect of: (i) the Products; and (ii) all other sums which are, or which become due to Seller from Buyer on any account.

8.2 Until ownership of the Products has passed to Buyer, Buyer shall: (i) hold the Products on a fiduciary basis as Seller's bailee; (ii) store the Products (at no cost to Seller) separately from all other goods of Buyer or any third party in such a way that they remain readily identifiable as Seller's property; (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and (iv) maintain the Products in satisfactory condition and keep them insured on Seller's behalf for their full price against all risks.

8.3 Buyer's right to possession of the Products shall terminate immediately if: (i) Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of Buyer or notice of intention to appoint an administrator is given by Buyer or its directors or by a qualifying floating charge holder or a resolution is passed or a petition presented to any court for the winding-up of Buyer or for the granting of an administration order in respect of Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of Buyer; or (ii) Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between Seller and Buyer, or is unable to pay its debts or Buyer ceases to trade; or (iii) Buyer encumbers, pledges or in any other way charges any of the Products.

8.4 Seller shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from Seller.

8.5 Buyer grants Seller, its agents and employees an irrevocable license at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where Buyer's right to possession has terminated, to recover them.

8.6 On termination of the Contract, howsoever caused, Seller's (but not Buyer's) rights contained in this Article 8 shall remain in effect.

## **9. Security of Payment**

9.1 If at any time Buyer; (i) fails to take delivery; or (ii) exceeds its credit limits; or (iii) is overdue with

payments; or (iv) suspends its payments to Seller; or (v) enter into insolvency; as described in Article 8, or (vi) if, in Seller's sole and reasonable opinion, it appears that Buyer for any reason will have difficulties in collecting its outstanding amounts, then Seller may at its own discretion and without liability or prejudice to its other rights and remedies under the Contract, dispose of the Products in transit and suspend or cancel further deliveries under the Contract or require advance payment or satisfactory security for payment in the form of an on demand guarantee from a first class national bank. The said bank needs to be approved by Seller at Seller's sole discretion.

## **10. Warranties and Liabilities**

10.1 Seller warrants that the Products correspond with their specification at time of delivery according to provisions in this Article 10. This warranty is given by Seller subject to the following conditions, for which Seller has no liability:

- a) in respect of any defect in the Products arising from any drawing, design or specification supplied by Buyer;
- b) in respect of any defect arising from fair wear and tear, damage, negligence, abnormal working conditions, storage, application and handling failure on Buyer's side, or failure to follow Seller's instructions (whether oral or in writing) or the Technical Bulletin;
- c) if the Products are not used in accordance with the specification and/or their respective Technical Data Sheets and Safety Data Sheets
- d) if the total price for the Products delivered has not been paid by the due date for payment;
- e) for parts, materials or equipment not manufactured by the Seller, in respect of which Buyer shall only be entitled to the benefit of any such warranty or guarantee as given by the manufacturer to Seller.

10.2 Buyer shall examine the Products upon delivery. Claims from Buyer which is based on any defect in quality, volume, weight or condition of the Products or their failure to correspond with specifications shall be notified to Seller in writing within 14 days from (i) date of delivery or (ii) (where the defect or failure was not apparent on reasonable inspection) the date the defect or failure was or ought to have been discovered. If Buyer fails to notify Seller accordingly, Buyer shall be treated as having waived all claims connected with the matter which should have been notified.

10.3 No action whatsoever may be brought against Seller in connection with the Products unless written notification is received by Seller within twelve -12- months after the delivery.

10.4 Buyer has the burden of proof that the damage, loss or cost is caused by defective Products and is a result of having followed Seller's instructions or any other of the conditions named in this article.

10.5 Where any valid claim is notified to Seller in accordance with these conditions, Seller shall at its sole discretion: (i) replace the Products (or the part in question) free of charge, or (ii) repair the Products as appropriate. The terms of these Conditions shall apply to any repaired or replacement Products supplied by the Seller on this term.

## **11. Seller's limitation of liability under the Contract**

11.1 The following provisions set out the entire financial liability of Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to Buyer in respect of: (i) any breach of these

Conditions; and (ii) any defects related to or use made or resale by Buyer of any of the Products or any product incorporating the Products; and (iii) any representation, statement or tortious act or omission, including negligence arising under or in connection with the Contract, and (iv) any other Buyer's behavior in connection with the Contract.

11.2 Due the matter of proportionality between the value of the Products, Seller's margins and the potential loss or damage that may occur, Seller's total liability in law, contract, equity, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 100% (one hundred percent) of the agreed price of the individual reference Order.

11.3 Seller shall only be liable to Buyer for direct damages arising from the Contract.

11.4 Seller shall not be liable for any damage to property caused by the Products after delivery. Nor shall Seller be liable for damage to goods and property manufactured by Buyer including goods and property belonging to any third party.

11.5 The Buyer will indemnify and hold harmless Seller for any third-party claim, related to such loss and damage, including but not limited to claims for loss, damage or expenses which may be brought against Seller in so far as the same arise by reason of, caused by or are related to the Products, its application or any repair. This indemnity shall apply to all third-party claims of whatsoever nature and howsoever arising except for claims relating to death or personal injury directly arising due to gross negligence on the part of the Seller.

11.6 Seller shall take reasonable care when providing any services to Buyer but for the avoidance of any doubt any services provided, including but not limited to technical services and coating advisory, to Buyer by Seller will be subject to the provisions of this Article 11.

## **12. Force Majeure**

12.1 Neither Seller nor Buyer shall be liable or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of their obligations in relation to the Contract, if the delay or failure (i) was due to any cause beyond its control that (ii) could not reasonably be expected when concluding the Contract and (iii) cannot reasonably be avoided or overcome. Without prejudice to the generality of the foregoing, the following shall always be regarded as causes beyond Seller's or Buyer's reasonable control: Acts of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, terrorism, civil disturbance or requisition; acts, restrictions, regulations, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes.

12.2 Any delay in compliance or failure to comply with any obligations under this Agreement, caused by Covid-19 or any other pandemic that may occur, cannot and should not be considered a breach of the contract and Jotun cannot, in any way, be held responsible for any direct or indirect consequences.

## **13. Intellectual Property Rights**

13.1 Buyer does not acquire any property rights in any intangible assets such as know-how and ideas including patents, patent applications, drawings, designs, trademarks, internet domain names, software and technical information, as well as any copyright relating thereto, whether registered or not which may

have been made available to him or may have been generated as a result of the Contract) and Seller or Jotun Brazil (as applicable) remains the exclusive owner of any such intellectual property rights relating to the Products.

#### **14. Termination**

14.1 Either party may terminate a Contract in the event of a material breach by the other party or in the event of the insolvency of the other party as such insolvency is described in Article 8.

#### **15. General**

15.1 Seller is a member of the Jotun Network of Companies and may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of the Network provided that any act or omission of any such other member shall be deemed to be the act or omission of Seller only.

15.2 Each right or remedy of Seller and Buyer under the Contract is without prejudice to any other right or remedy, whether under the Contract or otherwise.

15.3 No waiver by Seller or Buyer of any breach or default under the Contract, including these Conditions, shall be deemed or considered as a waiver of subsequent breaches or defaults of the same or any other provision and shall in no way affect the other terms of the Contract.

15.4 Buyer's rights and obligations under the Contract may not be assigned or transferred to any third party without the written consent of Seller, which may not be unreasonably withheld.

15.5 Except as set out in these Conditions, any variation to the Contract shall only be binding when agreed in writing by the parties.

15.6 Nothing in the Contract is intended to constitute a partnership or joint venture of any kind between the parties. No party shall have authority to act as agent for, or bind, the other party in any way.

#### **16. Notices**

16.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party's address and/or e-mail.

#### **17. Governing law and disputes**

17.1 Unless otherwise agreed in writing, this Contract shall be governed by the substantive laws of Brazil and 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 under the Rules of the International Chamber of Commerce - ICC, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three. In cases where neither the claim nor any counterclaim exceeds the sum of USD \$50,000 (or such other sum as the parties may agree) the number of arbitrators shall be one and the reference shall be decided by the sole arbitrator on the basis of the written submissions only without an oral hearing. The seat, or legal place, of arbitration shall be the City of Rio de Janeiro, State of Rio de Janeiro, Brazil. The language to be used in the arbitration shall be Portuguese. The proceedings and awards shall be confidential.