

The Purchaser's attention is drawn in particular to the provisions of clause 9 (Limitation of Liability).

1. INTERPRETATION

(i) The following definitions apply to these Conditions:

Business Day means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Company means John Newton & Company Limited t/a Newton Waterproofing Systems (registered in England and Wales with company number 00221080).

Conditions means the terms and conditions set out in this document as amended from time to time in accordance with clause 12(iii).

Contract means the contract between the Company and the Purchaser for the sale and purchase of the Goods in accordance with these Conditions.

Delivery Location has the meaning given in clause 4(i).

Force Majeure Event means an event, circumstance or cause beyond a party's reasonable control.

Goods means the goods (or any part of them) set out in the Order.

Order means the Purchaser's order for the Goods, as set out in the Purchaser's purchase order form, the Purchaser's order via the Company's website, email or telephone or the Purchaser's written acceptance of the Company's quotation, as the case may be.

Purchaser means the person or firm who purchases the Goods from the Company.

Specification means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Purchaser and the Company.

(ii) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(iii) A reference to a party includes its personal representatives, successors and permitted assigns.

(iv) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

(v) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(vi) A reference to **writing** or **written** includes email.

2. BASIS OF CONTRACT

(i) These Conditions apply to the Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

(ii) The Order constitutes an offer by the Purchaser to purchase the Goods in accordance with these Conditions.

(iii) The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.

(iv) Any samples, drawings, designs and specification sheets, advice, recommendations, estimates of quantities, provided to the Purchaser or other descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force unless expressly confirmed in writing by the Company to the Customer.

3. GOODS

The Company reserves the right to change the Goods or amend the Specification if required by any applicable statutory or regulatory requirement, and the Company shall notify the Purchaser in any such event.

4. DELIVERY

(i) The Company shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Company notifies the Purchaser that the Goods are ready. The Company will notify the Purchaser in advance of the delivery date.

(ii) Delivery is completed on the completion of the arrival of the Goods at the Delivery Location.

(iii) All times and dates of deliveries quoted are estimates only and time of delivery is not of the essence. The Company shall not be liable for the Purchaser's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. The Company reserves the right at any time to cancel any existing Order by reason of unavailability of the applicable Good(s).

(iv) The Purchaser undertakes to provide a safe and convenient route for vehicles to arrive at the Delivery Location. The delivery driver has the right to refuse to deliver over a route which in their opinion it is not safe or convenient for the vehicle to arrive at the Delivery Location and in such an event the Company shall not be liable to the Purchaser for any delay in delivery.

(v) The Purchaser will ensure that a representative of the Purchaser is present at the Delivery Location to accept delivery of the Goods and sign the delivery note. If, for whatever reason, the delivery note is not signed, delivery of the Goods shall still be deemed completed and, unless the Purchaser notifies the Company in accordance with clause 5, the Goods would be deemed to have been received in good condition. The Purchaser at its own expense will be responsible for the proper unloading of the Goods and the Company shall not be liable for any damage to the Goods while they are being unloaded.

(vi) If the Purchaser fails to be present at the Delivery Location to take delivery of the Goods then either:

(a) the Goods will be left at a safe location at the Delivery Location and delivery of the Goods shall be deemed to have been completed; or
(b) the Company shall store the Goods until the rescheduled delivery takes place and will charge the Purchaser for all related costs and expenses (including insurance) and a redelivery fee.

5. ACCEPTANCE

All Goods must be examined at the time of delivery and any loss or damage (including to the packaging) be recorded on the delivery note. The delivery note will be final and conclusive proof that the Purchaser has received the materials in good order and condition. Claims for short delivery or damage of materials must be noted on the delivery note. If a delivery note is not signed the Purchaser must notify the Company within 24 hours in writing of the notified delivery date of any goods that are incorrect, lost, damaged or missing. Packaging materials and damaged goods must be retained for inspection.

6. TITLE AND RISK

- (i) The Goods shall be at the risk of the Purchaser following delivery and notwithstanding delivery, title in the Goods shall not pass to the Purchaser until the Purchaser has made payment in full (in cash or cleared funds) for the Goods and any other sums owing to the Company.
- (ii) At any time before title to the Goods passes to the Purchaser, the Company may require the Purchaser to deliver up the Goods in its possession and if the Purchaser fails to do so promptly the Company shall have the right to enter any premises of the Purchaser or any third party where the Goods are stored in order to recover the Goods.
- (iii) Until title to the Goods passes, the Purchaser shall store the Goods separately from all other goods held by the Purchaser or mark them so that they can at all times be identified as property of the Company and maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.

7. WARRANTY

Except as otherwise expressly set out in any applicable warranty provided in respect of the Goods supplied, the Company shall not be liable for defects caused to the Goods which occur after delivery due to unsatisfactory handling, storage under unsuitable conditions or workmanship, or any other reason. All statements, technical information and recommendations contained in the Company's literature are based on tests the Company believe to be reliable, but the accuracy or completeness thereof is not guaranteed, and the following is made in lieu of all warranties, express or implied. The Company shall not be liable for any injury, loss or damage, direct or indirect or consequential, arising out of the incorrect use of or the misuse of the Goods. Before using the Goods, the Purchaser shall determine the suitability of the Goods for its intended use. The Purchaser assumes all risk and liability, whatsoever in connection therewith. No statement or recommendation as to suitability or fitness of purpose shall have any force or effect unless in an agreement signed by a director of the Company. The Purchaser must confirm fitness for purpose of the Goods ordered for themselves.

8 RETURNS

No credit will be allowed for Goods unless they are returned to the Company's warehouse in good condition, carriage paid and within one month of the invoice date. Any credit will be subject to a 15% restocking charge.

9. LIMITATION OF LIABILITY

- (i) The restrictions on liability in this clause 9 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- (ii) Nothing in the Contract limits any liability which cannot legally be limited, including liability for: (a) death or personal injury caused by negligence; (b) fraud or fraudulent misrepresentation; (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or (d) defective products under the Consumer Protection Act 1987.
- (iii) Subject to clause 9(i), the Company's total liability to the Purchaser shall not exceed the price of the Goods.
- (iv) Subject to clause 9(i), the following types of loss are wholly excluded: (a) loss of profits; (b) loss of sales or business; (c) loss of agreements or contracts; (d) loss of anticipated savings; (e) loss of use or corruption of software, data or information; (f) loss of or damage to goodwill; and (g) indirect or consequential loss.
- (v) This clause 9 shall survive termination of the Contract.

10. PRICE AND PAYMENT TERM

- (i) The price of the Goods shall be the price set out in the Order. The price of the Goods excludes amounts in respect of value added tax (VAT), which the Purchaser shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice and excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Purchaser.
- (ii) The Company may, by giving notice to the Purchaser at any time before delivery, increase the price for the Goods to reflect any increase in the cost of the Goods that is due to any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs).
- (iii) Payment is due at the date of Order in cash or cleared funds or shall be due within 30 days of the invoice date if a credit account has been approved by the Company, unless extended credit terms have been previously agreed in writing. Where part of any account becomes overdue, the whole of the account, whether due or not, becomes payable immediately. The Company reserves the right to charge interest at a rate of 5% above the Bank of England base rate for overdue balances. Should the Bank of England base rate be below 0% then the company reserves the right to charge 5% interest on outstanding balances. Furthermore, the Company's will pursue all outstanding debts at any time after the date on which they become due.

11. TERMINATION

- (i) Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Purchaser if:
- (a) the Purchaser commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the Purchaser takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the Purchaser suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Purchaser's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- (ii) Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Purchaser and the Company if the Purchaser becomes subject to any of the events listed in clause 11(i)(b) to 11(i)(d), or the Company reasonably believes that the Purchaser is about to become subject to any of them, or if the Purchaser fails to pay any amount due under this Contract on the due date for payment.
- (iii) Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Purchaser if the Purchaser fails to pay any amount due under the Contract on the due date for payment.

(iv) On termination of the Contract for any reason the Purchaser shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Purchaser immediately on receipt.

(v) Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

(vi) Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12. FORCE MAJEURE

The Company shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

13. GENERAL

(i) **Assignment and other dealings.** The Company may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract. The Purchaser may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

(ii) **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, advice, statement, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any agreement, promise, advice, statement, understanding, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.

(iii) **Variation.** The Company reserves the right to alter the Conditions without prior notice and any variations will form part of the Contract.

(iv) **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

(v) **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 13(v) the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

(iv) **Notices.** Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be: (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or (b) sent by email to the address specified in the Order or as communicated between the parties. Any notice or communication shall be deemed to have been received: (A) if delivered by hand, at the time the notice is left at the proper address; (B) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or (C) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 13(iv), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

(v) **Third Party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

(vi) **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

(vii) **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.