

TERMS & CONDITIONS

1. SELLER'S TERMS & CONDITIONS PREVAIL & ACCEPTANCE OF QUOTATIONS

- 1.1 No conditions or stipulations in or attached to the Buyer's form of order which are inconsistent with the Seller's terms and conditions of sale or which purport to add to them or modify them in any way, shall have any effect, unless expressly accepted by the Seller in writing. In the absence of acceptance by the Seller in writing of such variations, the Buyer shall be deemed to have withdrawn or waived his said conditions or stipulation and to contract solely on the Seller's terms and conditions of sale. Only a Director of OMNOVA Wallcovering [UK] Ltd has authority to vary these terms and conditions of sale.
- 1.2 The Seller's quotation is subject to correction for errors or adjustments and should not be considered as an offer capable of acceptance by the Buyer and a contract shall not come into existence until the Seller has issued a written acknowledgement of the Buyer's order on its official acknowledgment of order form.

2. AVAILABILITY AND SUPPLY

- 2.1 Acceptance of the Buyer's order is subject to supplies being available and unsold. The Seller reserves the right to refuse at any time an order for goods or any part thereof to which these conditions apply on grounds of non-availability, and the Seller shall incur no liability thereof.
- 2.2 The Seller reserves the right to make instalment deliveries unless specified to the contrary in the contract documents and expressly agreed to by the Seller in writing.
- 2.3 Where instalment deliveries are made by the Seller, the Buyer shall accept and make payment for the goods on a pro-rata basis.
- 2.4 Delivery periods, except where otherwise stipulated, are effective from the date of receipt of the Buyer's official order in writing by the Seller, at the address of the Seller's branch which handles the Buyer's account.
- 2.5 The Seller will endeavour to comply with dates or period quoted to the Buyer for delivery of goods or for the supply of services but no such date or period shall be contractually binding on the Seller and the Buyer shall have no claim whatever against the Seller in the event of the Seller's failure or inability for whatever reason, to perform the contract by such date or within such period, unless specifically agreed to in writing by the Seller.
- 2.6 Delivery periods stated in quotations are those current at date of quotations and are subject to confirmation at the time of order.

3. PRICE

- 3.1 The price charged will be that ruling on the date of despatch and will be subject to the addition of Value Added Tax and any other Government duty or tax applicable.
- 3.2 All Price lists issued by the Seller are subject to amendment without prior notice to Buyers. Purchasers are, therefore, advised to ensure that prices are correct before placing a firm order.
- 3.3 All prices quoted or agreed by the Seller are dependent upon and liable to variation in accordance with:
 - 3.3.1 The performance of work not expressly covered by the contract specification, but necessary for the due provision of the goods and/or services contracted for.
 - 3.3.2 Mistakes and/or omissions in the contract specifications provided by the Buyer.
 - 3.3.3 Special expedition in the completion of a contract at the request of the Buyer.
 - 3.3.4 Other matters of any kind whatsoever outside the control of the Seller.

4. PAYMENTS/SETTLEMENT

- 4.1 The settlement terms offered by the Seller are subject to the receipt by the Seller of satisfactory credit references from the Buyer. The Seller reserves the right to vary his settlement terms if satisfactory references are not forthcoming.
- 4.2 Payment for goods must be received by the Seller no later than 30 days from the date of the invoice.
- 4.3 Contract prices, where settlement terms exceed 60 days, shall be subject to interest charges at the rate of two per cent per annum above Barclays Bank Base Rate for the period in excess of sixty days.
- 4.4 If the Buyer shall fail to pay to the Seller on the due date, any sum to the Seller, or if the Seller considers on reasonable grounds that the payer will be unable to pay or be prevented from paying for goods delivered, the Seller may suspend further deliveries, at the Seller's option in writing, require payment in advance for all or any further deliveries, or terminate the contract by written notice to the Buyer, without prejudice to the Seller's rights in respect of goods delivered. In the case of postponement of delivery for any of the foregoing reasons, the Buyer shall be liable for any increased costs incurred as a result of any such delay.
- 4.5 If the Buyer, being an incorporated company, shall have a Receiver appointed, or shall pass a resolution for winding-up [other than a winding-up for the purposes of or in connection with any amalgamation or reconstruction, the terms of which shall not be unreasonably withheld], or a Court shall make an order to that effect, or not being an incorporated company shall have a Receiving Order made against him or enter into any composition or arrangement with his creditors, then the Seller may, without prejudice to his other rights, terminate the contract by written notice.
- 4.6 The rights given by conditions 4.4 and 4.5 shall be without prejudice to any rights of either party to repudiate the contract under common law.
- 4.7 Where the goods are sent by route involving transit by water, the Seller is not required to give any notice to the Buyer to enable the Buyer to insure the goods during such transit.

5. RE-SALE

- 5.1 The Buyer shall not, without the Seller's prior written permission:
 - 5.1.1 Export those goods to which these Conditions apply or supply them for export to any territory which is not within the European Economic Community [E.E.C.] or
 - 5.1.2 Advertise, canvass or otherwise attempt to sell them in or for export to any territory which is not within the E.E.C. or
 - 5.1.3 Sell the said goods to any third party within the United Kingdom whose dealings and other activities relating to the said goods would constitute a breach of paragraphs 5.1.1 and 5.1.2 hereof if such dealings and other activities had been carried out by the Buyer.
- 5.2 In those instances where the Seller has given the Buyer his prior written permission as above in para 5.1. United Kingdom customers purchasing the Seller's goods for export must furnish proof to the Seller of export within 60 days of taking delivery. Where such evidence is not available, the Seller reserves the right, in accordance with Customs Notice 703 [1975] to charge V.A.T. at the appropriate rate.

6. FRUSTRATION/FORCE MAJEURE

- 6.1 The Seller shall have the right to cancel or delay delivery or reduce the amount delivered or be released from all liability under any contract existing between the Seller and the Buyer if it is prevented from or hindered in or delayed in delivering by normal route or means of delivery the goods of the description covered by the Buyer's Order through any circumstance beyond its reasonable control, including but not limited to:
 - 6.1.1 Act of God, strike, lockout, or other labour dispute, fire, flood or drought, anomalous working conditions, accidents to machinery, delays en route.
 - 6.1.2 The effect of any statute, rule, regulation, order, directive, or recommendation issued by any Government, Government Department or other competent authority including restrictions of export and other licenses.
 - 6.1.3 The non-availability of suitable materials or labour or of necessary power or other services.
 - 6.1.4 Any other contingency whatsoever beyond the Seller's control, including war, to be sufficient excuse for any delay or non-fulfilment traceable to any of these causes.
 - 6.1.5 if the Seller delays or reduces an Order, the Buyer shall, upon prior written notice to the Seller of such its intention, have the right to purchase elsewhere at its own risk and cost such quantities of goods as may be necessary to cover current requirements, and irrespective of whether or not the Buyer makes any such arrangements as aforesaid, the Seller shall be under no liability arising out of its failure to deliver.

- 6.2 The Buyer shall pay extra charges to cover extra costs incurred by the seller, in the event of:
- 6.2.1 The Buyer or its agents failing or refusing to take immediate delivery of goods tendered for delivery, as per the contract, or delivery being abortive for any other reason not being due to the fault of the Seller and as a result whereof such goods have to be re-delivered.
- 6.2.2 Goods ordered by the Buyer having to be stored or held by the Seller beyond the date on which the Buyer or its agents were notified of their readiness for delivery or beyond the date when they were first tendered for delivery, whether at the request of the Buyer or its agents or by reason of lack of adequate instructions or information from the Buyer or its agents or by reason of any other matters outside the control of the Seller. Nor shall the Buyer, where delivery is delayed at the Buyer's request, have the right to reject the goods for reasons due to the delay suffered.
- 6.2.3 Where delivery of the goods has been prevented or delayed by reason of any of the matters referred to in 6.2.1 and/or 6.2.2 above, the price of such goods, of the balance thereof except where otherwise stipulated, shall become due and payable no later than 30 days following the date when such goods were first tendered for delivery or first notified to the Buyer by the Seller as being ready for delivery, whichever shall be the earlier.

7. QUALITY AND PURPOSE

7.1 Quality

Goods supplied are warranted to accord with the specification, or if there is no such specification, to be within normal limits of manufactured quality. Except so far as may be expressly guaranteed in the written terms of the contract between the Seller and the Buyer, or where such exclusion is prevented by law, the Seller makes no representation and gives no warranty, excepting that our adhesives under normal circumstances are guaranteed to give good adhesion and prove suitable for use with our wallcoverings providing our hanging instructions are followed explicitly, that goods offered or contracted for will be suitable for or capable of use in combination or conjunction with any goods supplied by the Seller or anyone else.

7.2 Purpose

- 7.2.1 Illustration and descriptions of goods given in advertisements or printed literature are for information only and shall form no part of the terms of the contract. Any recommendations or suggestion relating to the use of the goods made by the Seller, either in technical literature or in response to a specific enquiry or otherwise is given in good faith, but it is for the Buyer to satisfy itself of the suitability of the goods for its own purpose. Accordingly, the Seller gives no warranty as to the fitness of the goods for any particular purpose and any implied warranty or condition [statutory or otherwise] is excluded except in so far as such exclusion is prevented by law.
- 7.2.2 Weights, dimensions and descriptions of the goods given by the Seller for any purpose are stated in good faith but are approximate only and shall not form part of the contract nor bind the Seller in any way.
- 7.2.3 Tests which under the terms of contract between the Seller and the Buyer are to be made on-site [the Seller's premises] will be at the Buyer's expense, unless otherwise agreed to in writing by the Seller.
- 7.2.4 The Seller reserves the right to withdraw or amend the specification of any goods [including any pattern] to which these conditions apply, without notice to the Buyer.

7.3 Limitation of Liability

The Seller's liability in respect of the quality or fitness of purpose of the goods supplied hereunder, shall not extend to the Buyer's loss of profits, increased cost of working or any other consequential financial losses.

8. OWNERSHIP OF GOODS

- 8.1 The legal and equitable title to the goods supplied under the contract will not pass to the Buyer until the price for the goods under the contract [and any other sums due from the Buyer to the Seller under this or any other contract] has been paid in full and until such payment the Buyer will hold the goods in a fiduciary capacity as bailee for the Seller.
- 8.2 Where the goods supplied are resold by the Buyer and at the time of such resale the property in such goods has not passed to the Buyer, the proceeds of such resales [or other assets into which such proceeds have been converted] will be held by the Buyer in the fiduciary capacity on trust for the Seller, and the Buyer will account to the Seller for the same to the extent necessary to pay the Seller for the goods supplied [and any other sums due to the Seller under this or any other contract].
- 8.3 Until such time as the legal and equitable title to the goods supplied has passed to the Buyer or until resale, whichever first happens, the Buyer will store the goods so that they are clearly identifiable as being the Seller's property.

9. NOTIFICATION OF LOSS OF, DAMAGE TO, OR NON-DELIVERY OF GOODS OR PACKAGES AND RETURN OF GOODS

- 9.1 The Buyer shall advise the carrier and the Seller in writing [otherwise than by writing on the carrier's consignment note or delivery document] within the following time limit. For loss from a package or from an unpacked consignment, or damage to any part of a consignment: Within 7 days of the date of delivery of the consignment or part consignment, followed by a valued claim in writing within 14 days after the commencement of transit. [In computation of time for the above, Saturday, Sunday and any public holiday shall not be included].
- 9.2 The Buyer shall have been deemed to have accepted the goods on expiry of seven days from delivery of the goods to the Buyer except where the Buyer has previously advised otherwise under Condition 9.1 above.
- 9.3 No goods may be returned unless authorised by the sales office, who will raise collection documentation. Goods may only be returned under the following conditions:
- 9.3.1 Advice Note number must be quoted.
- 9.3.2 The goods must be packed in such a way as to arrive back at the Seller's premises in a saleable condition.
- 9.3.3 Name, address of company and name of contact must be enclosed with the goods.
- 9.3.4 Reason for return must be documented, stating total quantity of material returned.

10. SUBSEQUENT PROCESSES

No liability can be accepted for any goods which have been subjected to any further process or manufacture after they have left the Seller's hands. The Seller shall not be bound in any way by any settlement between the Buyer and a subsequent owner of the goods, nor by any survey or award agreed between the Buyer and a subsequent owner unless the Seller has agreed in writing to be a party to such settlement, survey or award.

11. PROPERTY IN AND CONFIDENTIALITY OF INFORMATION SUPPLIED BY THE SELLER

The copyright in all specifications, designs or other written printed or graphic material supplied or made available for inspection by the Seller remains the property of the Seller and the Seller's suppliers or sub-contractors and shall not be divulged or used, save only for immediate and legitimate purposes by the Buyer without the express written consent of the Seller.

12. ASSIGNABILITY

This contract is made between the Seller and the Buyer as principals and is not assignable by the Buyer without the express written consent of the Seller.

13. DISPUTES, ARBITRATION AND GOVERNING LAW

If at any time any questions or differences whatsoever shall arise between the Buyer and the Seller out of or in relation to, or in connection with any contract between the Buyer and the Seller, whether during or after completion, either party may give to the other written notice of the existence of such questions, disputes or differences, and such matter shall be and hereby is referred to the arbitration of the London Court of Arbitration. Such reference shall it be deemed to be submission to arbitration within the meaning of the Arbitration Act 1960 or such statutory modification or re-enactment thereof as may be in force. No payment due by the Buyer to the Seller shall be withheld on account of such pending

14. COPYRIGHT – INFORMATION SUPPLIED BY THE BUYER

By placing an order, the buyer declares his right to reproduce all origination supplied in whatever form. The Buyer assumes absolute liability for any resulting violation of copyright, in any action brought by a third party and agrees to indemnify the Seller against any resulting loss or damage.