

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 11.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

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

Coating: an industrial coating applied to any Goods by Marcote as part of the Services.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.7.

Contract: the contract between Marcote and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from Marcote.

Deliverables: the deliverables set out in the Order.

Delivery Location: has the meaning set out in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 13.1.

Goods: the goods (or any part of them) set out in the Order or which has been provided to Marcote by the Customer for application of a Coating.

Goods Specification: any specification for the Goods, including any relevant plans or drawings which are agreed in writing by the Customer and Marcote.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world

Marcote: Marcote (UK) Limited registered in England and Wales with company number 04334738.

Order: the Customer's order for the supply of Goods and/or Services, as set out the Customer's purchase order form or the Customer's written acceptance of Marcote's quotation as the case may be.

Services: the services, including the Deliverables, supplied by Marcote to the Customer as set out in the Service Specification below.

Service Specification: the description or specification for the Services provided in writing by Marcote to the Customer.

1.2 **Construction.** In these Conditions, the following rules apply :

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

(b) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(c) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(d) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when Marcote issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Marcote which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by Marcote and any descriptions of the Goods or illustrations or descriptions of the Services contained in Marcote's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by Marcote shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

3.1 The Goods are described in the Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify Marcote against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Marcote in connection with any claim made against Marcote for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Marcote's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 Marcote reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4. DELIVERY OF GOODS

4.1 Marcote shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Marcote reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 Marcote 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 Marcote notifies the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Marcote shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Marcote with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 Whilst Marcote uses reputable carriers, it cannot be held liable if such carrier fails to deliver the Goods as this is beyond the reasonable control of Marcote. Marcote shall use reasonable endeavours to provide information to the Customer in respect of the location of the Goods. Marcote shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide Marcote with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.6 If the Customer fails to accept or take delivery of the Goods within 3 Business Days of Marcote notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Marcote's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 2 Business Day following the day on which Marcote notified the Customer that the Goods were ready; and

(b) Marcote shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 Marcote may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.8 Standard carriage insurance shall be provided for any Goods, transported by Marcote (or its carriers) to the Customer, **up to a maximum value of £65.00**. Any goods exceeding £65.00 shall not be insured by Marcote.

4.9 The Customer shall arrange, either with Marcote or with an independent adviser, carriage insurance for any Goods, to be

transported by Marcote (or its carriers), which exceed the value of £65.00.

5. QUALITY OF GOODS AND COATINGS

5.1 This warranty shall only apply to Goods manufactured by Marcote. Marcote warrants that on delivery the Goods shall:

(a) Conform in all material respects with their description and any applicable Goods Specification;

(b) be free from material defects in design, material and workmanship; and

(c) be fit for any purpose held out by Marcote.

5.2 Marcote warrants that on delivery that any Coating shall:

(a) Conform in all material respects with their description;

(b) be free from material defects in design, material and workmanship; and

(c) be fit for any purpose held out by Marcote.

5.3 Subject to clause 5.4, if:

(a) the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1 or that some or all of the Coatings do not comply with the warranty set out in clause 5.2;

(b) Marcote is given a reasonable opportunity of examining such Goods and/or Coatings; and

(c) the Customer (if asked to do so by Marcote) returns such Goods to Marcote's place of business at the Customer's cost,

Marcote shall, at its option, repair, replace or rework the defective Goods or Coatings, or refund the price of the defective Goods (where manufactured by Marcote) or price of the Coating applied to the Goods in full.

5.4 Marcote shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 or the Coatings failure to comply with the warranty in clause 5.2 if:

(a) the Customer makes any further use of such Goods and/or Coating after giving a notice in accordance with clause 5.3;

(b) the defect arises because the Customer failed to follow Marcote's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods and/or Coating or (if there are none) good trade practice;

(c) the defect arises as a result of Marcote following any drawing, design or Goods Specification supplied by the Customer;

(d) the Customer alters or repairs such Goods and/or Coating without the written consent of Marcote;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

- (f) the Goods and/or Coating differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.5 Except as provided in this clause 5, Marcote shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1 or the Coating's failure to comply with the warranty set out in clause 5.2.

5.6 The terms of these Conditions shall apply to any repaired or replacement Goods or Coatings supplied by Marcote under clause 5.3.

5.7 The express warranties in clause 5.1 or clause 5.2 shall apply to the exclusion of all other warranties that may be implied by law, custom and practice or otherwise.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery (where the Goods are delivered directly by Marcote) or upon handing to the carrier for delivery and accordingly, **it is the Customer's responsibility to ensure that the Goods are adequately insured in the event that they are worth more than £65.**

6.2 Title to the Goods shall not pass to the Customer until Marcote receives payment in full (in cash or cleared funds) for the Goods and any other goods that Marcote has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Marcote's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Marcote's behalf from the date of delivery.

7. SUPPLY OF SERVICES

7.1 Marcote shall provide the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 Marcote shall use all reasonable endeavours to meet any performance dates for the Services specified, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 Marcote warrants to the Customer that the Services will be provided using reasonable care and skill.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;

(b) co-operate with Marcote in all matters relating to the Services;

(c) provide Marcote with such information and materials as Marcote may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;

8.2 If Marcote's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) Marcote shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Marcote's performance of any of its obligations; and

(b) Marcote shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Marcote's failure or delay to perform any of its obligations as set out in this clause 8.2.

9. CHARGES AND PAYMENT

9.1 The price for Goods and Services shall be the price set out in the Order or, if no price is quoted, the price set out in Marcote's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.

9.2 In respect of Goods, Marcote shall invoice the Customer on or at any time after completion of delivery. In respect of Services, Marcote shall invoice the Customer on monthly in arrears.

9.3 The Customer shall pay each invoice submitted by Marcote:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by Marcote, and

time for payment shall be of the essence of the Contract.

9.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**).

9.5 If the Customer fails to make any payment due to Marcote under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster Bank Plc base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

9.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. Marcote may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Marcote to the Customer.

10. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 10 shall survive termination of the Contract.

11. LIMITATION OF LIABILITY:

11.1 Nothing in these Conditions shall limit or exclude Marcote's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

11.2 Subject to clause 11.1:

- (a) Marcote shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) Marcote's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the cost of the Goods and/or Services in relation

11.3 The terms implied by sections 12 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

11.4 This clause 11 shall survive termination of the Contract.

12. TERMINATION

12.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (e) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (f) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (h) the other party's financial position deteriorates to such an extent that in Marcote's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (i) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

12.2 Without limiting its other rights or remedies, Marcote may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

12.3 Without limiting its other rights or remedies, Marcote may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Marcote if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(i), or Marcote reasonably believes that the Customer is about to become subject to any of them.

12.4 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Marcote all of Marcote's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet

been submitted, Marcote shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall return all of Marcote's materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then Marcote may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

(c) the accrued rights and remedies of the parties as at termination shall not be affected, 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; and

(d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13. FORCE MAJEURE

13.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Marcote including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Marcote or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

13.2 Marcote shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

13.3 If the Force Majeure Event prevents Marcote from providing any of the Services and/or Goods for more than 4 weeks, Marcote shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

14. GENERAL

14.1 **Assignment.** Marcote may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party. The Customer shall not, without the prior written consent of Marcote, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

14.2 **Notices.** Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, or email. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission. The provisions of this clause shall not apply to the

service of any proceedings or other documents in any legal action

14.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract. If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its 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.

14.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

14.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by Marcote.

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

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