

## Terms of Sale

### 1. Definitions and interpretation

#### 1.1 Definitions: In these terms, unless the context requires otherwise:

"**Agreement**" has the meaning given to that term in clause 2.1;

"**Nuralite**" means Nuralite Waterproofing Limited (or any of its related companies nominated by Nuralite Waterproofing Limited to assume obligations under these terms);

"**PPSA**" means the Personal Property and Securities Act 1999;

"**Products**" means products supplied by Nuralite to the Purchaser from time to time, and includes any incidental services provided by Nuralite in relation to those products; and

"**Purchaser**" means the person seeking to acquire Products from Nuralite. Where the Purchaser is more than one person, these terms will bind those persons jointly and severally.

### 2. Application

2.1 These terms shall apply to the supply of all Products by Nuralite to the Purchaser, and shall prevail over any other terms and conditions asserted by or on behalf of the Purchaser or any other person in respect of such supply. By submitting a Purchase Order for Products to Nuralite, the Purchaser accepts these terms, and each order accepted by Nuralite shall constitute a separate agreement ("**Agreement**").

2.2 Where the Purchaser is a licensed applicator of Nuralite, these terms are subject to the Licensed Applicator Agreement between the Purchaser and Nuralite.

### 3. Risk and title

3.1 Risk in the Products shall pass on delivery (as defined in clause 4.4 below). The Purchaser will have adequate insurance cover in place on and from delivery in respect of the Purchaser's interest as bailee of the Products and Nuralite's interest as owner of the Products.

3.2 Title to the Products shall not pass until Nuralite has received full payment for those Products. Where the Products are paid for in full before delivery, title shall pass on delivery.

3.3 The Purchaser shall ensure that it keeps the Products separate from other products, and is always able to identify the Products until those Products are either paid for in full by the Purchaser or sold by the Purchaser in the ordinary course of its business. The Purchaser must not sell any Products other than in the ordinary course of its business unless title in those Products has passed to the Purchaser.

3.4 Until title has passed to the Purchaser, Nuralite may, at any time enter the Purchaser's premises (or any other premises where Nuralite reasonably believes the Products may be) to view and

inspect them, and may repossess the Products. The Purchaser indemnifies Nuralite in respect of any costs or liabilities incurred by Nuralite in exercising its rights under this clause.

#### **4. Purchase Orders and Delivery**

- 4.1 Every Purchase Order shall be submitted by the Purchaser to Nuralite in writing in the format and manner required by Nuralite from time to time. Nuralite reserves the right to refuse any Purchase Order for Products, and to impose special terms and conditions where the Purchase Order for a Special Project (being a project involving: (i) more than NZ\$100,000 excl GST worth of Products; (ii) special Products to be imported especially for the project; or (iii) which Nuralite otherwise regards as a Special Project for any reason). No order shall be binding until accepted by Nuralite, which acceptance shall be given either by Nuralite confirming acceptance of the order in writing, or by Nuralite delivering the order.
- 4.2 The Purchaser cannot cancel or amend any Purchase Order that it has submitted without the written agreement of Nuralite.
- 4.3 Nuralite shall use reasonable commercial endeavours to ensure that the Products are delivered by the specified delivery date, or if there is no specified delivery date, within a reasonable time after the Products become available for delivery (subject to the Purchaser making any required pre-payments) but Nuralite shall not be liable for any failure or delay in delivery. In any event, the Purchaser may not cancel an order for Products solely on the grounds of late delivery.
- 4.4 The Products will be deemed to be delivered when the Products are: (a) delivered to the specified delivery address in cases where Nuralite agrees to deliver the Products via Nuralite's nominated carrier; or (b) in other cases, despatched from Nuralite's (or its agent's) premises (in which case loading is the Purchaser's responsibility and at the Purchaser's risk).
- 4.5 If the Purchaser is unable or refuses to take delivery of an order, the Purchaser shall be liable to Nuralite for all costs incurred by Nuralite arising from such non-delivery (including costs of storage and additional freight). For a Special Project the Purchaser will also be liable for the full purchase price of the Products in question.
- 4.6 The Purchaser must inspect the Products promptly following delivery. No claim by the Purchaser against the Supplier relating to the Products will be considered unless made within 7 days of delivery. No Products may be returned without the prior written agreement of the Supplier.
- 4.7 Where the Purchaser is responsible for the installation of the Products, the Supplier (if requested by the Supplier) will be allowed a reasonable opportunity to inspect and check the installation of the Products.
- 4.8 The Purchaser may not sell the Products for further on sale. The Purchaser and the Purchaser's workers shall apply the Products on the relevant building on site (the Purchaser agrees that it is not permitted to on-sell the Products to any person other than the owner or builder of the building at which the Products are installed). The Purchaser must install the Products correctly and in accordance with Nuralite technical documentation and: (a) use the Products only as part of a complete Nuralite system (without substituting any other person's products in place of Nuralite

products); and (b) use adequate and correct quantities of the Products to ensure a durable, waterproof system.

## **5. Price**

- 5.1 Subject to clause 6 (regarding quotes) and any special terms and conditions (e.g. in relation to a Special Project), the price payable for the Products shall be the price set out in Nuralite's applicable price list in force at the time the order is accepted by Nuralite, and if there is no current applicable price list, then the price shall be the price set out in the tax invoice issued by Nuralite to the Purchaser for the Products. Nuralite reserves the right to amend its price lists at any time and without notice.

Unless otherwise expressly stated, all prices exclude: (a) any applicable taxes (including GST), duties, or other similar charges imposed on or in relation to the Products ("**Taxes**"); (b) any freight, insurance and other charges arising from the delivery of the Products ("**Freight Costs**"); and (c) any items or matters that are expressly excluded from the price, all of which shall be paid by the Purchaser in addition to the price of the Products.

- 5.2 Nuralite shall issue the Purchaser a valid tax invoice for all Products supplied (plus any applicable Taxes and Freight Costs). Nuralite is not bound by any error or omission on any invoice or statement issued by it to the Purchaser.

## **6. Quotes**

- 6.1 A quote provided by Nuralite to the Purchaser (whether written or oral) is not an offer but is an invitation only for the Purchaser to place a Purchase Order based on that quote. Any quote is valid for 30 days (unless otherwise stated in the quote), after which period the quote shall expire.
- 6.2 If Nuralite provides a written quote to the Purchaser, the price of the Products shall be those stated in the quote and the relevant Agreement shall be deemed to include any other specific terms set out in that quote, provided that: (a) the Purchaser submits an order based on the quote within the stated time period; and (b) Nuralite accepts that Purchase Order under clause 4.1.
- 6.3 If there is any inconsistency or conflict between these terms and any quote or order, these terms shall prevail, and if there is any inconsistency or conflict between a quote and an order, the quote shall prevail.

## **7. Payment**

- 7.1 Unless otherwise agreed or specified by Nuralite, each tax invoice issued by Nuralite shall be paid no later than the 20<sup>th</sup> of the month following the date of invoice. Nuralite reserves the right to require full or partial payment before the Products are delivered (whether or not Nuralite has previously agreed to extend credit to the Purchaser).
- 7.2 The Purchaser may not deduct or withhold any amount (whether by set-off, counterclaim or otherwise) from any amount owing by the Purchaser to Nuralite, and shall make all payments under these terms by the due date in cleared funds paid into Nuralite's nominated bank account (as advised to the Purchaser from time to time).

- 7.3 Any payment received from the Purchaser may be applied by Nuralite to all or part of any amount owing to Nuralite as Nuralite sees fit, irrespective of whether that payment is intended by the Purchaser to be for particular Products or in connection with a particular invoice.
- 7.4 If there is any dispute about a tax invoice, the Purchaser shall pay the undisputed portion of that invoice by the due date, and work with Nuralite in good faith to promptly resolve the dispute.
- 7.5 Should the Purchaser fail to pay any amount due to Nuralite on the due date then: (a) Nuralite can suspend further supply and delivery of Products to the Purchaser; and (b) interest shall be paid to Nuralite by the Purchaser at the then base interest rate of Nuralite's nominated trading bank plus 5% calculated on a daily basis from the due date until the date of payment in full of the outstanding amount (so if Nuralite's nominated trading bank's base rate is 6%, then the interest payable under this clause will be 11%).
- 7.6 The Purchaser indemnifies Nuralite for all costs or expenses incurred by Nuralite in connection with the enforcement of Nuralite's rights under these terms (including solicitor and own client costs on a full indemnity basis), including in respect of any debt recovery undertaken against the Purchaser by or on behalf of Nuralite.

## **8. Personal Property and Securities Act 1999**

- 8.1 The Purchaser grants Nuralite a security interest in the Products (and proceeds of the Products) as security for all amounts owing under these terms and for the performance by the Purchaser of its obligations under any Agreement.
- 8.2 The Purchaser acknowledges receipt of a copy of these terms and waives any right it may have to receive from Nuralite a copy of any financing statement, verification statement or financing change statement that is registered, issued or received in relation to any Products supplied under these terms. The Purchaser shall immediately notify Nuralite in writing of any change of name of the Purchaser.
- 8.3 The Purchaser will do all things reasonably requested by Nuralite for Nuralite to perfect its security interest in the Products, including if applicable, to register a purchase money security interest on the Personal Property and Securities Register.
- 8.4 To the extent that part 9 of the PPSA applies to any security interest created under these terms, the Purchaser agrees that sections 114(1)(a), 133 and 134 of the PPSA will not apply on the enforcement by Nuralite of its rights in respect of any such security interest. The Purchaser also waives any rights it may have under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA on such enforcement.
- 8.5 The terms "security interest", "financing statement", "verification statement", "financing change statement" and "purchase money security interest" have the meanings set out in the PPSA.

## **9. Warranties and liability**

- 9.1 On application from the Purchaser only (which must be in the correct form), and subject to Nuralite having received payment in full, Nuralite will supply a site specific Nuralite Materials Performance Warranty for the relevant Products for the relevant period from completion of installation. The

Nuralite Materials Performance Warranty has specific conditions attached to it. These conditions may be reviewed from time to time.

- 9.2 Except as expressly provided in clause 9.1, all representations or warranties (statutory, express or implied), except any which may not lawfully be excluded, are expressly excluded, including without prejudice to the generality of the foregoing, any implied warranties of merchantability and fitness for a particular purpose.
- 9.3 The Purchaser acknowledges and agrees that if it is acquiring the Products for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 (the "**CGA**") will not apply to such supply. However, nothing in these terms will affect any rights that a person who is a 'consumer' for the purposes of the CGA may have under the CGA.
- 9.4 Subject to clause 9.3:
- (a) Nuralite shall not be liable under these terms or any Agreement to the Purchaser or to any third party, whether in tort (including negligence), contract, breach of statutory duty or equity or otherwise, for any indirect or consequential loss or damage (including loss of profit, revenue, anticipated savings, reputation or opportunity);
  - (b) Nuralite shall not be liable to the Purchaser or to any third party in any way where Nuralite has either failed to meet any delivery date, or cancels or suspends the supply of Products to the Purchaser pursuant to these terms; and
  - (c) without limiting the foregoing, the maximum aggregate liability of Nuralite to the Purchaser and to any third party under an order to which these terms or any Agreement apply, whether such liability arises in tort (including negligence), contract, breach of statutory duty or equity or otherwise, is limited to an amount equal to the aggregate of all amounts actually paid to Nuralite by or on behalf of the Purchaser in respect of the relevant order or Agreement.

## **10. Privacy Act 1993**

- 10.1 The Purchaser hereby authorises Nuralite to collect and retain information about the Purchaser from any third party (including from any trade reference or credit reporting agency), for the purposes of:
- (a) assessing the Purchaser's credit worthiness and determining whether or not to extend (or continue to extend) any credit to the Purchaser;
  - (b) responding to requests received by Nuralite for information about the Purchaser's credit worthiness; and
  - (c) sending the Purchaser marketing, promotional or other material relating to any Products or services that Nuralite may provide from time to time.
- 10.2 Nuralite acknowledges that under the Privacy Act 1993, individuals have rights of access to, and correction of, their personal information held by Nuralite.

## 11. Default by Purchaser

11.1 If the Purchaser: (i) suffers an insolvency event (defined below); or (ii) breaches any of these terms or any of its obligations under an Agreement and such breach is unable to be remedied or remains unremedied 5 days after notice of the breach is given; then all money which would become payable by the Purchaser to Nuralite at a later date on any account shall become immediately due and payable without the requirement of any further notice to the Purchaser, and Nuralite may, without prejudice to any other remedy available to Nuralite:

- (a) immediately suspend or terminate any order or Agreement by giving written notice to the Purchaser;
- (b) require Nuralite to promptly return all Product in its possession or control that has not been paid for; and
- (c) exercise any and all remedies afforded to a secured party by Part 9 of the PPSA and enter onto and into any property owned, occupied or used by the Purchaser without notice in order to inspect, search for and remove any Products that are in the possession of the Purchaser.

11.2 For the purposes of clause 11.1 above, "**insolvency event**" means in relation to the Purchaser, where the Purchaser suspends or ceases to conduct its principal business or threatens to do so; becomes or is presumed to be bankrupt; becomes or is presumed to be insolvent; makes or proposes to make any assignment, arrangement, compromise or composition with, or for the benefit of, any of its creditors; has any of its assets subject to any form of seizure or execution; has a receiver, liquidator, administrator, statutory manager or any similar insolvency administrator appointed; is removed from the Register of Companies; or suffers any analogous event.

11.3 Where Nuralite exercises its rights under clause 11.1(c):

- (a) Nuralite shall not be liable to the Purchaser or any third party for any harm, loss or damage caused by the exercise of its rights under that clause; and
- (b) Nuralite shall be entitled to dispose of the Products, including being entitled to resell any or all of the Products and apply the proceeds in or towards payment of all monies owing to Nuralite by the Purchaser, and the Purchaser shall indemnify Nuralite for any loss in revenue incurred by Nuralite on realisation, as calculated by deducting the net proceeds of such sale from the price at which the relevant Products were bought by the Purchaser (the net proceeds of sale being calculated as the proceeds of sale less the costs of recovering and reselling the Product under this clause 11).

## 12. General

12.1 **True and correct:** The Purchaser warrants that any information provided by it to Nuralite in respect of any application for a credit or trading account submitted by the Purchaser is true and correct, and agrees to notify Nuralite if any such information ceases to be true and correct.

12.2 **Force Majeure:** Nuralite shall not be liable for any breach of an Agreement to the extent such breach is due to a Force Majeure Event, provided that Nuralite uses reasonable endeavours to mitigate the effect of the Force Majeure Event and resumes full performance of the Agreement as

soon as reasonably practicable. "**Force Majeure Event**" means a circumstance beyond the reasonable control of Nuralite such as an Act of God and failure or delays of unrelated third parties.

- 12.3 **Assignment:** The Purchaser may not assign or transfer any of its rights or obligations in respect of any Agreement to which these terms apply without the prior written consent of Nuralite. A change in the effective management or control of the Purchaser shall be deemed to be an assignment for the purposes of this clause 12.3.
- 12.4 **Amendments:** These terms may be amended by Nuralite from time to time by notice in writing to the Purchaser.
- 12.5 **Remedies cumulative:** The rights and remedies provided in these terms are cumulative and not exclusive of any rights or remedies provided by these terms, any additional terms and condition that apply (e.g. in relation to Special Projects or under any other agreement between Nuralite and the Purchaser) or according to law.
- 12.6 **Severance:** If any provision of these terms or of any order is illegal, invalid or unenforceable, that provision shall be read down to the extent necessary to make it legal, valid and enforceable.
- 12.7 **Waiver:** A waiver of a right under these terms is ineffective unless it is in writing.
- 12.8 **Governing law:** These terms and all Agreements are governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts in relation to any dispute arising out of or in connection with these terms or any Agreement.