

Joseph Ash Ltd

Terms of Trading

1 PRICES AND CONTRACT

1.1 The following definitions will apply in these Terms of Trading:
"Coatings" galvanizing, and/or any chemical, electrical or metallurgical coating process.
"Contract" any contract between the Customer and the Company for the sale of Goods and/or provision of Services, incorporating these Terms of Trading.

3.7 "Customer/You" means the person, firm or company who has placed an order for Services and or Goods from the Company.
"Delivery Point" means the Company's trading address from time to time or such other address as the Company may specify to the Customer in advance.

"Excluded Products" any Products which are unsafe or not appropriate to be given a Coating.
"Goods" any goods we may supply to you including Processed Products

"the Company/We" shall mean Joseph Ash Limited.
"Order Confirmation" the documentation or order confirmation issued by the Company setting out the price and the services to be provided and forming part of the Contract.
"Processed Products" Products in respect of which we have or will have undertaken Services

"Products" items delivered to us by or on behalf of the Customer for us to apply Coatings.
"Relevant Products" Products title to which has passed to the Company under clause 6.2 and Processed Products.
"Services" the services set out in the Order Confirmation including the preparation of Products for Coatings and the application of Coatings to Products.
"Terms of Trading" means the standard terms and conditions of contract set out in this document.

1.2 The price ("the Price") for the Services (and any Goods) is stated in the Order Confirmation and excludes delivery, taxes duties and any other special packaging (unless otherwise stated). VAT, taxes and duties will be charged in addition at the rate applying at the time of delivery.

1.3 Any quotation or estimate or contract made by the Company is given subject to these Terms of Trading. Without prejudice to the Company's right not to accept an order, quotations will be valid for 7 days from date of issue, unless otherwise stated.

1.4 Unless otherwise stated, the Price quoted is an illustrative estimate only and the price charged will be the Company price current at the time of delivery as set out in the Order Confirmation.

1.5 At any time before applying the Coatings the Company may adjust the Price to reflect any increase in its costs of supplying the Services and/or Goods

1.6 The Contract will be subject to these Terms of Trading to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever).

1.7 No amendments to these Terms of Trading shall be effective effect unless expressly agreed in writing by the Company and included in the Order Confirmation.

1.8 Any quotation is not an offer. All orders by the Customer for the Goods or Services if accepted will be accepted subject to these Terms of Trading. All other terms conditions and/or warranties whatsoever are excluded from the Contract or any variation thereof unless expressly accepted by the Company in writing

1.9 If, subsequent to this Contract, any other contract for goods or services is concluded between the Customer by letter, email, fax, text or orally, or by any combination of these, without express reference to these Terms of Trading, it shall be a term of such a contract that these Terms of Trading apply to such contract.

1.10 Any statement or representation by the Company its employees or agents upon which the Customer wishes to rely must be set out in writing and included in the Order Confirmation. Any statement or representation which is not so confirmed in writing is followed or acted upon entirely at the Customer's own risk. For the avoidance of doubt illustrations, weights, measures, performance capabilities, application suitability information and other data set out in the sales literature of the Company are statements of opinion and are provided for information only and form no part of the Contract.

1.11 The Contract is between the Company and the Customer as principals; neither the benefit nor the burden is assignable by the Customer without the Company's prior consent in writing; the Contract may be assigned or sub-contracted by the Company.

1.12 No Contract may be cancelled by the Customer except with the agreement in writing of the Company and the Customer shall indemnify the Company in full against all loss (including loss of profit, costs (including all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

2 OBLIGATIONS OF THE CUSTOMER AND CONDITION OF PRODUCTS DELIVERED TO US FOR COATING

2.1 It is a condition of this Contract that the Customer ensures that the Products are fit and proper for the application of the Coatings in a safe and effective manner and the Customer confirms that the Customer is aware of the processes which the Company will administer to the Products as part of the Services.

2.2 The Company will have no liability for any loss damage delay or other liability whatsoever in relation to Products and the related Processed Products to the extent that the condition in clause 2.1 is not fully complied with.

2.3 The Company notwithstanding clause 2.1 above will have the right to reject Products presented for coating if the Company considers the Products are not fit to be so processed and in addition the Company will if it so chooses; modify, drill, suspend or otherwise adapt the Products in order for them to be subject to Coating and all such activities will be at the risk and expense of the Customer and any such additional activities be chargeable and added to the Price.

2.4 The Company will have no liability whatsoever for any loss or damage to the Products nor the inability of the Processed Products to be assembled or re-assembled or to be joined to any other item as a result of the Coating. Thus it is the Customer's responsibility to ensure that the Products when the Coating has been applied will be fit for the Customer's own purpose.

2.5 The Customer will fully indemnify the Company in relation to any liability that the Company may incur as a result of any breach of clause 2.1 and for any damage or change that may be incurred to the Processed Products as a result of the activities of the Company under sub-clause 2.3 above.

3 DELIVERY AND RISK

3.1 All delivery times quoted are estimates only.
3.2 If the Company fails to deliver the Services and/or the Processed Products by the expiry of 14 days from any estimated delivery date in the Order Confirmation (or if no date is stated 14 days after the expiry of a reasonable time within which the Services should have been effected in respect of the Products) the Customer may, by informing the Company in writing, cancel the Contract, however the Customer may not cancel if the Company reserves such notice after commencement of the Services.

3.3 If the Customer accepts delivery of the Processed Products, it will be on the basis that it has no claim against Company for any delay.
3.4 The Company may deliver the Processed Products and Services in installments. Each installment is to be treated as a separate contract incorporating these Terms of Trading.

3.5 The Company may decline to deliver if:
3.5.1 it believes that it would be unsafe, unlawful or unreasonably difficult to do so; or
3.5.2 the delivery premises (or the access to them) are unsuitable for its vehicle(s).

3.6 If for any reason the Customer fails to collect the Processed Products on any collection date notified by the Company to the Customer ("Collection Date") then the Company may store the

Processed Products for 14 days entirely at the risk of the Customer. The Customer is responsible for insuring the Products and Processed Products against all other risks at a suitable level while the same are in the Company's custody. After the 14 days the Company will charge the Customer a daily rate for storage, unless otherwise agreed by the Company in writing.

3.7 If the Processed Products or Products are not collected from the Company within 28 days of the Collection Date then clause 3.8 shall apply.

3.8 If clause 3.7 or 5.6 applies then the Company will be entitled to sell such Processed Products and/or Products as it sees fit where title to the same is vested in the Company. Further to the extent that title to the Processed Products is vested in the Customer and not in the Company, then the Customer hereby irrevocably appoints the Company as its agent to effect a sale of such Products and/or Processed Products at such price as the Company deems fit and the Customer shall keep the Company fully indemnified against all liabilities whatsoever arising from such sale including implied warranties and conditions in favour of any buyer thereof and the Company shall deduct from the proceeds of sale and keep for itself the full amount owed to the Company in respect of such Processed Products.

4 RISK

4.1 The Products and the Processed Products are at the Customer's risk at all times.
4.2 Delivery shall take place either:
4.2.1 at the Company's premises (if the Customer is collecting them or arranging carriage); or
4.2.2 at the Customer's premises or address specified by the Customer to the Company (if the Company is arranging carriage).

4.3 The Customer must inspect and sign for the Processed Products on delivery. If any Processed Products are damaged the Customer must indicate this on the delivery note at point of delivery. If Processed Products are not delivered, the Customer must write to the Company within 14 days of delivery or the expected delivery time. The Customer must give the Company (and any carrier) a reasonable opportunity to inspect the damaged Processed Products.

5 PAYMENT TERMS

5.1 The Customer is to pay the Company in cash or in cleared funds prior to delivery, unless the Customer has an approved credit account.
5.2 If the Customer has an approved credit account, payment is due no later than 30 days after the beginning of the month following the month of delivery or invoice (whichever is the earlier) unless otherwise agreed in writing however the Customer must note that until paid for the Processed products are the property of the Company and clause 6 applies.

5.3 Without Prejudice to clause 6 if the Customer fails to pay the Company in full on the due date, the Company may:
5.3.1 suspend or cancel future deliveries or provision of Goods or Services;
5.3.2 cancel any discount offered to the Customer;
5.3.3 charge interest at the rate set under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998 (the "Act");

(a) calculated (on a daily basis) from the date of our invoice until payment;
(b) compounded on the first day of each month; and
(c) before and after any judgment (unless a court orders otherwise);

5.3.4 claim fixed sum compensation from the Company under s. 5A of the Act to cover the Company's credit control overhead costs; and
5.3.5 recover the cost of taking legal action to require the Customer to pay.

5.4 If the Customer has an approved credit account, the Company may withdraw it or reduce the credit limit or bring forward the due date for payment. The Company may do any of those at any time on notice to the Customer.

5.5 The Customer does not have the right to set off any money it may claim from the Company against anything the Customer may owe the Company.

5.6 The Company has no say on any of the Customer's property in the Company's possession including any Products and Processed Products which are not the property of the Company and if the Customer is in breach of its payment obligations to the Company under this Contract then the Company shall have the right to sell the same under clause 3.8.

5.7 The Customer is to indemnify the Company in full and hold the Company harmless from all expenses and liabilities it may incur directly or indirectly including financing costs and including legal costs on a full indemnity basis) following any breach by the Customer of any of its obligations under these Terms of Trading.

5.8 Time for payment of amounts due to the Company shall be of the essence of the Contract.
5.9 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

6 TITLE

6.1 The Customer covenants and warrants that it has full title to all Products at the point of delivery to the Company.
6.2 In consideration of the Company agreeing to apply the Services to the Products, the Company shall transfer to the Customer the full title to all Products to the Company upon delivery of the Products to the Company

6.3 Title to Products that have become Processed Products and any returned Products will pass to the Customer in accordance with clause 6.4 but no warranties nor conditions are given by the Company nor will be implied as to the description, quality fitness for purpose or otherwise except to transfer title to the Processed Products on the basis that the Customer effectively transferred title to the Company as part of the Processed Products under clause 6.1 and without prejudice to clause 7

6.4 Full legal, beneficial and equitable title to and property in the Relevant Products and the Processed Products shall remain vested in the Company (even though the Products/Processed Products may have been delivered to the Customer and risk is with the Customer) until:
6.4.1 payment in full, in cash or cleared funds, for all the Processed Products and Services relating thereto that are the subject of this Contract has been received by the Company; or
6.4.2 all other monies payable by the Customer to the Company on any other account or under the Contract or any other contract between the Customer and the Company has been received by the Company.

6.5 Until full legal, beneficial and equitable title to and property in the Relevant Products passes to the Customer:
6.5.1 The Customer shall hold the Relevant Products on a fiduciary basis as the Company's bailee;
6.5.2 The Customer must store them so that they are clearly identifiable as the property of the Company;
6.5.3 The Customer must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for the Company;

6.5.4 the Customer may use the Relevant Products and sell them in the ordinary course of its business, but not if:
(a) the Customer revokes that right (by informing the Company in writing); or
(b) the Customer ceases to pay its debts when they fall due or become insolvent or enter any insolvency process such as administration, liquidation or receivership ("Become Insolvent").

6.6 The Company may repossess the Relevant Products delivered to the Customer at any time on demand until title passes to the Customer and the Company must be allowed to remove the Relevant Products from the Customer's premises. The Customer shall procure that the Company shall also be able to recover the Relevant Products from such third parties to whom the Relevant Products have been on-sold.

6.7 The Customer provides its permission to enter any premises

where the Relevant Products may be stored:
6.7.1 at any time, to inspect them; and
6.7.2 to remove them, using reasonable force if necessary.

6.8 Despite the Company's retention of title in the Relevant Products, it has the right to take legal proceedings to recover the Price should the Customer not make payment to the Company by the due date.

6.9 Without prejudice to clause 6.6 the Customer's right to possession of the Relevant Products shall terminate immediately if:
6.9.1 the Customer 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 (being a body corporate) 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 the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed by a petition creditor for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

6.9.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or

6.9.3 the Customer encumbers or attempts to encumber or in any way changes attempts to charge any of the Relevant Products.

6.10 The Customer is not the Company's agent. The Customer has no authority to make any contract on behalf of the Company or in its name.

7 WARRANTIES

7.1 The Company warrants (subject to clause 7.2) that the Services as applied to the Processed Products
7.1.1 comply with their description in the Order Confirmation; and
7.1.2 have been or will be effected with reasonable care and skill using reasonable materials, and such Services are free from material defects at the time of being effected.

7.2 Whilst the Company takes all reasonable care during the execution of the Services in respect of the Processed Products, it cannot accept any liability relating to:
7.2.1 distortion, buckling, fracture or change in physical or mechanical properties of the Products or Processed Products; or
7.2.2 applying the Services to Products that are unsuitable for hot dip galvanizing; or
7.2.3 applying the Services to Products received in an assembled condition (unless instructed in writing and included in the Order Confirmation) that the Products are to be disassembled prior to effecting the Services thereto;

7.2.4 lack of free movement of moveable parts incorporated into Processed Products arising from the application of the Coating or otherwise; or
7.2.5 drilling of Products by the Company to allow venting or drainage or suspension or otherwise to facilitate the execution of the Services.

7.3 Without prejudice to Clauses 6.3 and 7.1 above, the Company gives no other warranty (and excludes any warranty, term or condition that would otherwise be implied) as to the description and quality of the Services and the Processed Products or their fitness for any purpose.

7.4 If the Customer believes that the Company have delivered Services and/or Processed Products that are defective in materials or workmanship by the Company, it must:
7.4.1 inform the Company (in writing), with full details, as soon as possible; and
7.4.2 allow to the Company investigate (including access to the Customer's premises and to the Processed Products).

7.5 If the Customer establishes to the Company's reasonable satisfaction that there is a failure to comply with the warranty in clause 7.1 then as the Customer's exclusive remedy the Company shall at the Customer's sole option and in its sole discretion and within a reasonable time;
7.5.1 repair or make good such defect or failure free of charge (including reasonable costs of transportation of any goods or materials to and from the Customer's UK location for that purpose);

7.5.2 re-perform such Services if appropriate but the Customer will bear all costs of transport, removal and reinstatement;
7.5.3 refund that amount of the Price as relates to application of the Services which do not comply with clause 7.1

7.6 The Company shall not be liable for a breach of the warranty set out in Clause 7.1.1 if:
7.6.1 the Customer makes any further use of such Processed Products after giving such notice;
7.6.2 the defect arises because the Customer failed to properly store, install, commission, use or maintain the Processed Products in accordance with any instructions oral or written from the Company and in accordance with good trade practice; or
7.6.3 the Customer alters or repairs such Processed Products without the written consent of the Company.

7.6.4 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract (except as set out in clause 6.3, 7.1 and 7.8).

7.6.5 subject, in every case, to the remaining provisions of this Clause 7, the Company's liability under this Contract shall in no event exceed the Price and performance of any one of options in clause 7.5 shall constitute an entire discharge of the Company's liability in respect of any failure to comply with its obligation under this Contract.

7.7 Subject to Clause 7.5 and 7.8:
7.7.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution, breach of statutory duty or otherwise, arising out of or in connection with the performance or contemplated performance of this Contract shall be limited in the aggregate, to the lower of:
(a) the total Price payable under this Contract; or
(b) £2,000 per complete Processed Product that is the subject of a valid claim under this Contract; and
(c) the cost of the Product that has been damaged as originally delivered to the Company but excluding any profit or central overhead element.

7.7.2 The Company shall not be liable to the Customer for any pure economic loss, loss of profit, loss of use, loss of business, loss of opportunity, loss of reputation, loss of anticipated savings, loss of use of money, depletion of goodwill, liability to the Customer's clients, nor otherwise, in each case whether direct, indirect or consequential, nor any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

7.8 Notwithstanding anything to the contrary nothing in these Terms of Trading shall restrict or limit the Company's liability for death or personal injury resulting from its negligence, nor fraudulent misrepresentation.

7.9 The Company makes every effort to ensure the accuracy of its advice, recommendations and presentations but it cannot accept any liability for any loss or damage that arises out of the information supplied.

8 SPECIFICATION

8.1 If the Company delivers the Services and/or Processed

Products in accordance with the Customer's specifications and/or instructions, the Customer must ensure that:
8.1.1 the specifications or instructions are accurate and referred to clearly in the Order Confirmation;

8.1.2 Processed Products prepared in accordance with those specifications or instructions will be fit for the purpose for which the Customer intends to use them; and
8.1.3 the Customer's specifications or instructions will not result in the infringement of any intellectual property rights of a third party, or in the breach of any applicable laws or regulation. The Customer shall have responsibility for ensuring that it meets the requirements of all applicable laws and regulations affecting both the Products and the onward sale of the Processed Products including compliance with international import and export laws and regulations and shall indemnify the Company in respect of any violation of the same

8.2 The Company reserves the right;
8.2.1 to make any changes to the Services which are required to conform with any applicable safety or statutory requirements; and
8.2.2 to make without notice any minor modifications in its specifications to the extent that it deems necessary or desirable.

9 CANCELLATION

9.1 The Company may suspend or cancel the performance of its obligation under this Contract, by written notice if:
9.1.1 the Customer fails to pay the Company any money when due (under the order or otherwise);
9.1.2 the Customer the Company becomes insolvent;
9.1.3 the Customer the Company fails to comply with its obligations under the Contract

10 WAIVER AND VARIATIONS

10.1 Any waiver or variation of these Terms of Trading are only effective if:
10.1.1 made (or recorded) in writing;
10.1.2 signed by a duly authorized officer on behalf of each party; and
10.1.3 expressly stating an intention to vary these terms.

11 FORCE MAJEURE

11.1 If the Company is unable to perform its obligations to the Customer (or able to perform them only at unreasonable cost) because of circumstances beyond its reasonable control, it may cancel or suspend any of its obligations to the Customer, without liability.
11.2 Examples of those circumstances include act of God, accident, explosion, war, terrorism, fire, flood, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.

12 GENERAL

12.1 The Contract and any non-contractual obligations arising out of it in connection with it shall be governed and interpreted exclusively according to the Laws of England and Wales. The parties hereby agree to submit to the exclusive jurisdiction of the English and Welsh Courts.
12.2 The Company is a member of a group of companies whose holding company is Hill & Smith Holdings Plc and it may:
12.2.1 perform any of then Company's obligations and invoice the Customer through any of its group companies; and
12.2.2 treat a debt owed by you to a group Company as a debt owed to the Company

12.3 If the Customer is more than one person, each of you has joint and several obligations under this Contract
12.4 If any of these terms are void or unenforceable as drafted:
12.4.1 it will not affect the enforceability of any other of these terms; and
12.4.2 if it would be enforceable if amended, it will be treated as so amended.

12.5 The Company may treat the Customer as insolvent if:
12.5.1 the Customer is unable to pay its debts as they fall due; or
the Customer (or any item of its property) become the subject of:
(a) any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);
(b) any application or proposal for any formal insolvency procedure; or
(c) any application, procedure or proposal overseas with similar effect or purpose.

12.6 All brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between the Customer and the Company and the Customer should not rely on them in entering into any contract with unless specifically set out in the Order Confirmation

12.7 Any notice by either party which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.
12.8 Except as set out in clause 12.2 this Contract will create no right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) for any person not identified as the Customer or the Company

12.9 The only statements upon which the Customer may rely in making the Contract are those made in writing by someone who is an authorised representative of the Company and contained in or clearly referred to in the Order Confirmation.

13 COMPLIANCE

13.1 The Customer shall comply with all relevant anti-corruption legislation in connection with the Contract and the Company's business and shall immediately notify the Company if it discovers or suspects that any of its officers, directors, employees or representatives are acting or have acted in a way which violates such legislation.

13.2 The Customer acknowledges that the Company has a code of responsible business: The Hill & Smith Holdings PLC Code of Business Conduct ("HS Code of Conduct"). The HS Code of Conduct together with the Company's Anti Bribery and Corruption Policy ("HS ABC Policy") are available at www.hillandsmith.co.uk and the Customer shall, at all times, conduct, and procure that its officers, directors, employees and/or representatives conduct, business ethically and in accordance with the relevant provisions of the HS Code of Conduct and the HS ABC Policy. This clause shall apply whether or not the Customer is acting pursuant to the Contract or its relationship with the Company.

13.3 The Customer agrees that it must be able to demonstrate its compliance with the requirements referred to in this Clause 13 at the request of and to the satisfaction of the Company which includes, but is not limited to, the Company having the right to inspect any site involved in work for the Company. If the Customer fails to comply with this Clause 13, the Company shall be entitled, in its sole discretion, to terminate this Contract and any other agreements between the Customer and the Company without penalty to the Company, but with obligations for the Customer to remedy any damages suffered by the Company as a result of such termination.

14 MISCELLANEOUS

14.1 Any failure to exercise or any delay by the Company in exercising a right or remedy provided by this Contract or at law or in equity will not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. A waiver of a breach of any of the terms of the Contract or of a default under these Conditions will not constitute a waiver of any other breach or default and will not affect the other terms of the Contract.

14.2 The Customer shall not, without the written consent of the Company assign, transfer, mortgage, charge or deal with in any other manner with any of its rights under the Contract or purport to do the same.

14.3 The Company shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations under any Contract and shall for the avoidance of doubt be entitled to assign, any interest or rights that it has in relation to any Contract.

14.4 Headings appear for convenience only and shall not affect the construction of these Terms of Trading.