

Austin Hayes Ltd

General Terms and Conditions of Trading



In these Terms and Conditions the following definitions will apply:

"Company"	Austin Hayes Limited.
"Conditions"	these terms and conditions.
"Contract"	the agreement between the Company and the Customer for the supply of the Services incorporating these Conditions.
"Contract Documents"	these Conditions and the Order Acknowledgement.
"Contract Equipment"	the Customer's goods materials commodities or articles in respect of which the Services will be provided.
"Contract Price"	the price payable by the Customer for the provision of the Services.
"Customer"	the person or firm who purchases the Services from the Company.
"Goods"	has the meaning set out in clause 7 of these Conditions.
"Order"	the Customer's order for the supply of Services.
"Order Acknowledgement"	the Company's acknowledgement of the Order.
"Services"	the services supplied by the Company to the Customer pursuant to the Contract.

References to a 'person' means any legal or natural person.

1 General

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 Offer and Acceptance

- 2.1 Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 60 days from its date of issue. The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Company issues a written Order Acknowledgement accepting the Order (or, if no Order Acknowledgement is issued, when the Contract Equipment is accepted by the Company at its premises for the purposes of providing the Services in respect of such equipment) at which point and on which date the Contract shall come into existence. In the event of any conflict between the Contract Documents, the Order Acknowledgement shall prevail.
- 2.3 The Contract Documents constitute 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 the Company which is not set out in the Contract Documents.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Company and any illustrations or descriptions of the Services contained in the Company's catalogues or brochures are issued for the sole purpose of giving an approximate idea of the Services. They shall not form part of the Contract or have any contractual force.
- 2.5 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.6 No variation waiver or supplement to the Contract Documents shall be binding on the Company unless expressly authorised by a director of the Company in writing.
- 2.7 Tenders submitted by the Company shall remain open for acceptance for a period of 30 days from the date of the tender, unless in the tender some other period is specified or accepted.

3 Delivery

- 3.1 The Customer shall deliver the Contract Equipment to the Company's premises, and shall collect the Contract Equipment from such premises following completion of the Services on such date as may be agreed between the parties, or alternatively within 7 days of the Company notifying the Customer that the Contract Equipment is available for collection. The Customer shall be responsible for all costs incurred by it in respect of its obligations in this clause.
- 3.2 Any date given by the Company for completion of the Services and collection by the Customer of the Contract Equipment, is given as accurately as can be predicted but it is not of the essence of the Contract and the Customer shall not be entitled to refuse to collect the Contract Equipment or withhold any payment on account of any delay howsoever caused.
- 3.3 If Contract Equipment is found to have been damaged in transit or if the Contract Equipment has not been received within 7 days the agreed delivery date, the Company shall notify the Customer.

4 Price

- 4.1 The Contract Price and the description of the Services is referred to in the Order Acknowledgement and / or the quote submitted to the Customer. The Contract Price is Ex Works.
- 4.2 The Customer shall:
 - 4.2.1 ensure that the terms of the Order are complete and accurate;
 - 4.2.2 co-operate with the Company in all matters relating to the Services;
 - 4.2.3 comply with all applicable laws and regulations in respect of or related to the Contract;
 - 4.2.4 provide the Company with such information as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects.
- 4.3 If the Company'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**):
 - 4.3.1 the Company 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 the Company's performance of any of its obligations;
 - 4.3.2 the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 4.3; and
 - 4.3.3 the Customer shall reimburse the Company on written demand for any costs, expenses or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

- 4.4 The Contract Price does not include any packaging (which, if requested, shall be subject to a separate charge).

5 Payment Terms

- 5.1 The Company may, in its discretion, open an account for the Customer and grant credit (in such amount as may be notified to the Customer by the Company). For the avoidance of doubt, the Company may withdraw credit at any time if the Customer is in breach of these Conditions or if the Company's funders withdraw or reduce the Company's credit facility. The Company may refuse to grant credit in its absolute discretion.
- 5.2 The Company may invoice the Customer on or at any time after completion of the Services.
- 5.3 Credit accounts are due for payment by the end of the month in which the Company's invoice is dated unless otherwise agreed by the Company and set out in the terms of the Customer's credit account.
- 5.4 Customers without credit accounts shall pay each invoice submitted by the Company prior to collection by the Customer of the Contract Equipment (unless the Company otherwise agrees, whether by notice in writing or by permitting the Customer to collect the Contract Equipment) or (if earlier, or if the Company permits collection of the Contract Equipment prior to payment of the invoice) within 30 days of the date of the invoice.
- 5.5 All Customers shall pay the Company's invoices in cleared funds to a bank account nominated in writing by the Company. Time for payment shall be of the essence of the Contract.
- 5.6 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**). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 5.7 If the Customer fails to make any payment due to the Company under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the applicable rate of interest from time to time under the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment, and shall be compounded monthly. The Customer shall pay the interest together with the overdue amount.
- 5.8 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. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.
- 5.9 The Company reserves the right to increase the Contract Price, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Contract to the Company that is due to any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs).
- 5.10 When Services are provided over a period in respect of several consignments, each delivered separately, each consignment will be invoiced as delivered and each month's invoice will be treated as a separate account and be payable accordingly.

6 Delay Suspension and Cancellation

- 6.1 Where there is a delay caused or requested by the Customer to a pre-arranged schedule for the provision of the Services, the Company reserves the right to make an additional charge for all expenses incurred either directly or indirectly as a result of such delay. At its option the Company shall be entitled to treat such a delay as a suspension of the Contract in which case the remaining sub clauses of this Clause 6 shall apply.
- 6.2 In the event of the Contract being suspended pursuant to Clause 6.1 the Company shall be entitled without prejudice to any other remedy of the Company to invoice the Customer for the work completed and to make a charge for losses incurred either directly or indirectly or otherwise as a result of such suspension.
- 6.3 If the Company (acting reasonably) have not been able to resume the Services within a reasonable period the Company shall be entitled to terminate the Contract on notice to the Customer.
- 6.4 The Company shall be entitled to insist as a condition of the resumption of the Contract after any suspension on all outstanding amounts due to the Company being paid in full and in default the Company shall be entitled to terminate the Contract on notice to the Customer.
- 6.5 Where the Contract is cancelled or suspended under the terms of this Clause 6 the Customer shall indemnify the Company in respect of any losses or expenses incurred by the Company whatsoever and howsoever existing including but without limitation to any of the following: wages, materials, transport or storage costs or loss of profit without prejudice to any other rights the Company may have against the Customer under these Conditions or otherwise.

7 Goods

- 7.1 The Company may sell certain goods or parts ("**Goods**") to the Customer as part of the provision of the Services. The Company warrants that on delivery the Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and be fit for any purpose held out by the Company.
- 7.2 The Company shall not be liable for the Goods' failure to comply with the warranty in clause 7.1 if:
 - 7.2.1 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 7.2.2 the defect arises as a result of the Company following any drawing, design or specifications, or information which is incorrect, supplied by the Customer;
 - 7.2.3 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

8 Delayed Collection

- 8.1 If for any reason the Customer does not collect the Contract Equipment when the Contract Equipment is ready for collection the Company may arrange storage and the Customer shall be liable to the Company for the reasonable costs to effect such storage. This provision is without prejudice to any other right which the Company may have. The Company shall allow for 7 days from when the Contract Equipment is due and ready for collection before the Customer shall be liable for storage charges.

9 Lien

- 9.1 The Company will have a first and paramount lien on the Contract Equipment in the possession of the Company in respect of all sums due or owing to the Company in connection with the provision of the Services
- 9.2 Notwithstanding the lien specified in Clause 9.1 if the Customer has not paid the Contract Price and collected the Contract Equipment within 60 days of the later of (i) the due date for payment of the Contract Price and (ii) the Company notifying the Customer that the Contract Equipment is available for collection, the Company reserves the right to sell transfer or otherwise dispose of the Contract Equipment at its absolute discretion and retain the proceeds thereof in order to recover its costs and outstanding invoices (and any remaining proceeds shall be remitted to the Customer).

10 Title & Risk

- 10.1 Risk in the Contract Equipment passes to the Company upon receipt at its premises from the Customer, and shall remain with the Company until the agreed time for collection of the Contract Equipment by the Customer, at which time risk in the Contract Equipment shall pass back to the Customer (whether or not the Customer actually collects the Contract Equipment on such date).
- 10.2 Title to the Contract Equipment shall remain with the Customer at all times, subject only to the Company's lien in accordance with clause 9 of these Conditions.

11 Warranty and Limitation of Liability

- 11.1 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.
- 11.2 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.
- 11.3 Nothing in these Conditions shall limit or exclude the Company's liability for:
- 11.3.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 11.3.2 fraud or fraudulent misrepresentation; or
- 11.3.3 any other liability that cannot be excluded by law.
- 11.4 Subject to clause 11.3 above:
- 11.4.1 the Company 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
- 11.4.2 the Company'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 a sum equal to 200% of the Contract Price.
- 11.5 The terms implied by sections 13 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.
- 11.6 The Customer acknowledges that it alone is responsible for the specification for the Services, and that the Customer is obliged to comply with any directions of the Company as to the maintenance and life-span of any coating applied to the Contract Equipment. The Company shall not be liable for any costs or losses incurred by the Customer for any failure by it to comply with the aforesaid provisions, or for costs or losses arising from any use by the Customer of the Customer Equipment in environments different to those disclosed (prior to performance of the Services) to the Company by the Customer.
- 11.7 The Company shall not be liable for any loss or damage (including consequential loss) in anyway suffered by the Customer or any other person or firm whatsoever (on the grounds of negligence or otherwise) by reason of the fact that the Company may have inspected advised or approved any plans, data or information supplied by or on behalf of the Customer in connection with the supply of the Contract Equipment and/or Service and the Customer shall at all times keep the Company indemnified against any losses claims damages charges and expenses or loss or damage to property belonging to any firm or person its sub-contractors or their respective employees in connection with the supply of the Contract Equipment.
- 11.8 The Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's possession of, or provision of Services in respect of, the Contract Equipment, or for the use of any specification for the Services provided by or on behalf of the Customer (unless such allegation relates exclusively to the Company's Services themselves infringing such rights).

12 Termination & Force Majeure

- 12.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party (the "**Breaching Party**") if
- 12.1.1 the Breaching Party commits a material breach of any term of this agreement which, in the case of a breach capable of being remedied, shall not have been remedied within fifteen (15) days of a written request to do so from the non-breaching party; or
- 12.1.2 the Breaching Party convenes a meeting of its creditors or makes or proposes any arrangement or composition with, or any assignment for the benefit of its creditors; or
- 12.1.3 an order is made by a court of competent jurisdiction or a resolution is passed for the dissolution, winding-up or administration of the Breaching Party (other than due to a solvent restructuring); or
- 12.1.4 if a trustee, receiver, administrator or other similar officer is appointed in respect of all or any part of the Breaching Party's business; or
- 12.1.5 the Breaching Party is or becomes unable to pay its debts within the meaning of s.123 of the Insolvency Act 1986.
- 12.1.6 an event analogous to any of the foregoing clauses 12.1.2 to 12.1.5 inclusive occurs in any jurisdiction.
- 12.2 Without limiting its other rights or remedies, the Company 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, the Company may suspend the supply of Services 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 12.1.2 to clause 12.1.5, or the Company reasonably believes that the Customer is about to become subject to any of them.
- 12.4 On termination of the Contract for any reason:

- 12.4.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 12.4.2 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
- 12.4.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 12.5 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Company. The Company 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. If the Force Majeure Event prevents the Company from providing any of the Services for more than 30 days, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

13 Notice

- 13.1 Any notice or other communication which either party is required by the Contract to serve on the other party shall be sufficiently served if sent to the other party at its registered office address either (a) by hand; (b) by registered post or special or recorded delivery or (c) by facsimile or electronic mail transmission confirmed by registered post or special or recorded delivery within 72 hours of transmission.
- 13.2 Notices are deemed to have been served as follows: delivered by hand; on the day when they are actually received, sent by post, special or recorded delivery; two working days after posting, sent by facsimile or electronic mail; on the day of transmission if transmitted before 16.00 hours on a working day, but otherwise 09.00 hours on the following working day, provided in each case that the required confirmation is sent.

14 General

- 14.1 The Company 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 the Company, 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 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.
- 14.3 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.
- 14.4 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.
- 14.5 A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 14.6 The Contract 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. 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).