

Action Adhesives (Ireland) Limited – Terms & Conditions

1. **Definitions**
- 1.1 "Company" shall mean Action Adhesives (Ireland) Limited its successors and assigns or any person acting on behalf of and with the authority of Action Adhesives (Ireland) Limited.
- 1.2 "Customer" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall mean any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Company to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Company to the Customer.
- 1.5 "Services" shall mean all services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Company and the Customer subject to clause 3 of this contract.
2. **Acceptance**
- 2.1 Any instructions received by the Company from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of the Company.
- 2.4 The Customer undertakes to give the Company at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details.
- 2.5 All orders are subject to a variance of + or - 5% due to batch sizes.
3. **Price And Payment**
- 3.1 At the Company's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Company to the Customer in respect of Goods and/or Services supplied; or
 - (b) the Company's quoted Price (subject to clause 3.2) which shall be binding upon the Company provided that the Customer shall accept the Company's quotation in writing within thirty (30) days.
- 3.2 The Company reserves the right to change the Price in the event of a variation to the Company's quotation.
- 3.3 Any extra work required will be estimated by the Company and signed off by the Customer before commencement.
- 3.4 At the Company's sole discretion a deposit may be required.
- 3.5 Time for payment for the Goods and/or Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.6 At the Company's sole discretion;
 - (a) payment shall be due on delivery of the Goods and/or Services, or
 - (b) payment shall be due before delivery of the Goods and/or Services, or
 - (c) payment for approved Customers shall be made by instalments in accordance with the Company's payment schedule, or
 - (d) payment for approved Customer's shall be due thirty (30) from Invoice, a copy of which is posted to the Customer's address or address for notices.
- 3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and the Company.
- 3.8 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
4. **Delivery Of Goods**
- 4.1 At the Company's sole discretion delivery of the Goods and/or Services shall take place when the Customer takes possession of the Goods and/or Services at the Customer's address.
- 4.2 On receipt of a booking deposit the works will be scheduled by agreement between the Company and the Customer. Variations to start dates may occur, the Company will keep the Customer advised of any likely change to the agreed schedule. The Company accepts no responsibility whatsoever for any loss or damage caused due to a schedule change.
- 4.3 The costs of delivery are not included in the Price and shall be borne by the Customer.
- 4.4 The Customer shall make all arrangements necessary to take delivery of the Goods and/or Services whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods and/or Services as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.
- 4.5 Delivery of the Goods and/or Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 4.6 The Company may deliver the Goods and/or Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.7 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that;
 - (a) such discrepancy in quantity shall not exceed 5%, and
 - (b) the Price shall be adjusted pro rata to the discrepancy.
- 4.8 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 4.9 The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Goods (or any of them) promptly or at all.
5. **Risk**
- 5.1 If the Company retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
6. **Title**
- 6.1 It is the intention of the Company and agreed by the Customer that ownership of the Goods shall not pass until:
 - (a) the Customer has paid all amounts owing for the particular Goods, and
 - (b) the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer.
- 6.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until the Company shall have received payment and all other obligations of the Customer are met; and
 - (b) until such time as ownership of the Goods shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Goods or any of them to the Company. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and the Company shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (c) if the Customer fails to return the Goods to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
 - (d) the Customer is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Company; and
 - (e) the Customer shall not deal with the money of the Company in any way which may be adverse to the Company; and
 - (f) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company; and
 - (g) the Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
 - (h) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Company will be the owner of the end products.
7. **Customer's Disclaimer**
- 7.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Company and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
- 7.2 **Important Notice**
ACTION ADHESIVES (IRELAND) LIMITED MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. User is responsible for determining whether the Goods supplied by Action Adhesives (Ireland) Ltd is fit for a particular purpose and suitable for user's method of application. Please remember that many factors can affect the use and performance of the Goods in a particular application. The materials to be bonded with the Goods, the surface preparation of those materials, the Goods selected for use, the conditions in which the Goods are used, and the time and environmental conditions in which the Goods are expected to perform are among the many factors that can affect the use and performance of Goods supplied by the Company. Given the variety of factors that can affect the use and performance of Goods supplied by the Company, some of which are uniquely within the user's knowledge and control, it is essential that the user evaluate the Goods to determine whether it is fit for a particular purpose and suitable for the user's method of application.
8. **Defects/Returns**
- 8.1 The Customer shall inspect the Goods and/or Services of completion and shall within five (5) days notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote to the Company in writing'. The Customer shall afford the Company an opportunity to inspect the Goods and/or Services within a reasonable time following delivery if the Customer believes the Goods and/or Services are defective in any way. If the Customer shall fail to comply with these provisions the Goods and/or Services shall be presumed to be free from any defect or damage. For defective Goods and/or Services, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods and/or Services or repairing the Goods and/or Services.
- 8.2 No Goods shall be accepted for return except in accordance with 9.1 and at the Company's sole discretion may apply a re-stocking fee of 50%.
9. **Warranty**
- 9.1 LIMITATIONS OF REMEDIES AND LIABILITY
If the Goods supplied by the Company are proved to be defective, THE EXCLUSIVE REMEDY, AT THE COMPANY'S OPTION, SHALL BE TO REFUND THE PURCHASE PRICE OF OR TO REPAIR OR REPLACE THE DEFECTIVE GOODS. The Company shall not otherwise be liable for loss or damages, whether direct, indirect, special, incidental, or consequential, regardless of the legal theory asserted, including, but not limited to, contract, negligence, warranty, or strict liability.
10. **Sale of Goods Act 1893 and Sale of Goods and Supply of Services Act 1980**
- 10.1 This agreement is subject to the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).
- 10.2 Notwithstanding clause 11.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1893 (in particular sections 12-15), or the Sale of Goods and Supply of Services Act 1980, or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts laws or legislation.
- 10.3 In particular where the Customer buys Goods as a consumer the provisions of Clauses 8, 9 and 10 above shall be subject to any laws or legislation governing the rights of consumers.
11. **Intellectual Property**
- 11.1 Where the Company has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings shall remain vested in the Company, and shall only be used by the Customer at the Company's discretion.
- 11.2 The Customer warrants that all designs or instructions to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order.
12. **Default & Consequences Of Default**
- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 12.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.
- 12.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.
- 12.4 If any account remains overdue after thirty (30) days then an amount of the greater of €20.00 or 10.00% of the amount overdue (up to a maximum of €200) shall be levied for administration fees which sum shall become immediately due and payable.
- 12.5 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
13. **Cancellation**
- 13.1 The Company may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods and/or Services are delivered by giving written notice. On giving such notice the Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 The Customer may cancel delivery of the Goods and/or Services up to two (2) days from the date of acceptance of the Company's quotation.
- 13.3 In the event that the Customer cancels delivery of Goods and/or Services the Customer shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.
14. **Data Protection Act 1988 & Data Protection Act 2003**
- 14.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Company to:
 - (a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
 - (b) to disclose information about the Customer, whether collected by the Company from the Customer directly or obtained by the Company from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing (whether before or after judgement) a default by the Customer on publicly accessible credit reporting databases.
- 14.2 Where the Customer is an individual the authorities under (clause 16.1) are authorities or consents for the purposes of the Data Protection Act 1988 & Data Protection Act 2003.
- 14.3 The Customer shall have the right to request the Company for a copy of the information about the Customer retained by the Company and the right to request the Company to correct any incorrect information about the Customer held by the Company.
15. **General**
- 15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Ireland and are subject to the jurisdiction of the courts of Ireland.
- 15.3 The Company shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions.
- 15.4 In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price of the Goods.
- 15.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Company.
- 15.6 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 15.7 The Company reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change. Except where the Company supplies further Goods to the Customer and the Customer accepts such Goods, the Customer shall be under no obligation to accept such changes.
- 15.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 15.9 Storage. Many adhesives are subject to damage caused by improper storage conditions and the Company does not accept any responsibility when products are not stored in accordance with the Company's storage recommendations as stated in the Product Specifications.
- 15.10 Note of Caution. It is recommended that Customers take adequate precautions in the handling of chemicals and adhesives in respect of proper ventilation, excessive exposure to skin and to observe local and environmental regulations regarding the storage, use and disposal of hazardous materials. The company do not accept any liability whatsoever as a result from the use or misuse of the company's products, however arising by the customer.