

Mipa Coatings Pty Ltd – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Mipa Coatings" means Mipa Coatings Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Mipa Coatings Pty Ltd.</p> <p>1.2 "Customer" means the person acting on behalf of and with the authority of the Customer requesting Mipa Coatings Pty Ltd to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:</p> <p>(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and</p> <p>(b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and</p> <p>(c) includes the Customer's executors, administrators, successors and permitted assigns.</p> <p>1.3 "Goods" means all Goods or Services supplied by Mipa Coatings Pty Ltd to the Customer at the Customer's request from time to time (where the context so permits the terms "Goods" or "Services" may be used for the other).</p> <p>1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Mipa Coatings Pty Ltd and the Customer in accordance with clause 5 below.</p> <p>1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).</p> <p>2. Acceptance</p> <p>2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.</p> <p>2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and Mipa Coatings Pty Ltd.</p> <p>2.3 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Mipa Coatings Pty Ltd and it has been approved with a credit limit established for the account.</p> <p>2.4 In the event that the supply of Goods exceeds the Customer's credit limit and/or the account exceeds the payment terms, Mipa Coatings Pty Ltd reserves the right to refuse delivery.</p> <p>2.5 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Mipa Coatings Pty Ltd reserves the right to vary the Price with alternative Goods as per clause 5.2.</p> <p>2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>3. Errors and Omissions</p> <p>3.1 The Customer acknowledges and accepts that Mipa Coatings Pty Ltd shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):</p> <p>(a) resulting from an inadvertent mistake made by Mipa Coatings Pty Ltd in the formation and/or administration of this contract; and/or</p> <p>(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Mipa Coatings Pty Ltd in respect of the Services.</p> <p>3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or misconduct of Mipa Coatings Pty Ltd, the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.</p> <p>4. Change in Control</p> <p>4.1 The Customer shall give Mipa Coatings Pty Ltd not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Mipa Coatings Pty Ltd as a result of the Customer's failure to comply with this clause.</p> <p>5. Price and Payment</p> <p>5.1 All Mipa Coatings Pty Ltd sole discretion, the Price shall be either:</p> <p>(a) as indicated on any invoice provided by Mipa Coatings Pty Ltd to the Customer; or</p> <p>(b) the Price as at the date of delivery of the Goods according to Mipa Australia's current price list; or</p> <p>(c) Mipa Coatings Pty Ltd quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>5.2 Mipa Coatings Pty Ltd reserves the right to change the Price if a variation to Mipa Coatings Pty Ltd quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to Mipa Coatings Pty Ltd in the cost of taxes, levies, materials and labour) will be charged for on the basis of Mipa Coatings Pty Ltd quotation and will be detailed in writing, and shown as variations on Mipa Coatings Pty Ltd invoice. The Customer shall be required to respond to any variation submitted Mipa Coatings Pty Ltd within ten (10) working days. Failure to do so will entitle Mipa Coatings Pty Ltd to the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.</p> <p>5.3 All Mipa Coatings Pty Ltd sole discretion, a non-refundable deposit may be required.</p> <p>5.4 Time for payment for the Goods being in the essence, the Price will be payable by the Customer when the Goods are delivered by Mipa Coatings Pty Ltd, which may be:</p> <p>(a) on delivery of the Goods;</p> <p>(b) before delivery of the Goods;</p> <p>(c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;</p> <p>(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Mipa Coatings Pty Ltd.</p> <p>5.5 Payment may be made by cash, cheque, bank cheque, electronic/online banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Mipa Coatings Pty Ltd.</p> <p>5.6 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 Mipa Coatings Pty Ltd nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>5.7 Unless otherwise stated, the Price does not include GST. In addition to the Price the Customer must pay Mipa Coatings Pty Ltd an amount equal to any GST Mipa Coatings Pty Ltd must pay for any supply by Mipa Coatings Pty Ltd under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p> <p>5.8 If the account is overdue Mipa Coatings Pty Ltd reserves the right to charge the account holder interest for the outstanding amounts. This will be according to market rate. This will be for the duration of the account being overdue.</p> <p>5.9 In addition, if the account holder refuses to pay or can't pay, Mipa Coatings Pty Ltd reserves the right to use a debt collector to chase the account holder. Mipa Coatings will pass on the debt collectors fee to the account holder.</p> <p>6. Delivery of Goods</p> <p>6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:</p> <p>(a) the Customer or the Customer's nominated carrier takes possession of the Goods at Mipa Coatings Pty Ltd address; or</p> <p>(b) Mipa Coatings Pty Ltd or Mipa Coatings Pty Ltd nominated carrier delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.</p> <p>6.2 All Mipa Coatings Pty Ltd sole discretion, the cost of delivery is either included in the Price. Any time specified in the Price for delivery of the Goods is an estimate only.</p> <p>6.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. Mipa Coatings Pty Ltd will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. In the event that the Customer is unable to take delivery of the Goods as arranged then Mipa Coatings Pty Ltd shall be entitled to charge a reschedule fee. The Customer agrees that to the maximum extent permitted by law, Mipa Coatings Pty Ltd will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders.</p> <p>6.4 Mipa Coatings Pty Ltd may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>7. Risk</p> <p>7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.</p> <p>7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Mipa Coatings Pty Ltd is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Mipa Coatings Pty Ltd is sufficient evidence of Mipa Coatings Pty Ltd rights to receive the insurance proceeds without the need for any person dealing with Mipa Coatings Pty Ltd to make further enquiries.</p> <p>7.3 If the Customer requests Mipa Coatings Pty Ltd to leave Goods outside Mipa Coatings Pty Ltd premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.</p> <p>8. Online Ordering</p> <p>8.1 The Customer acknowledges and agrees that:</p> <p>(a) Mipa Coatings Pty Ltd does not guarantee the website's performance or availability of any of its Goods; and</p> <p>(b) online orders may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and</p> <p>(c) there are inherent hazards in electronic distribution and as such Mipa Coatings Pty Ltd cannot warrant against delays or errors in transmitting data between the customer and Mipa Coatings Pty Ltd. The Customer agrees that to the maximum extent permitted by law, Mipa Coatings Pty Ltd will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders.</p> <p>8.2 Mipa Coatings Pty Ltd reserves the right to terminate the Customer's order in the event that Mipa Coatings Pty Ltd learns that the Customer has provided false or misleading information, interfered with other users or the administration of Mipa Coatings Pty Ltd Services, or violated these terms and conditions.</p> <p>9. Title</p> <p>9.1 Mipa Coatings Pty Ltd and the Customer agree that ownership of the Goods shall not pass until:</p> <p>(a) the Customer has paid Mipa Coatings Pty Ltd all amounts owing to Mipa Coatings Pty Ltd; and</p> <p>(b) the Customer has met all of its other obligations to Mipa Coatings Pty Ltd.</p> <p>9.2 Receipt by Mipa Coatings Pty Ltd 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.</p> <p>9.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 9.1:</p>	<p>(a) the Customer is only a bailee of the Goods and must return the Goods to Mipa Coatings Pty Ltd on request.</p> <p>(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Mipa Coatings Pty Ltd and must pay to Mipa Coatings Pty Ltd the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.</p> <p>(c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Mipa Coatings Pty Ltd and must pay or deliver the proceeds to Mipa Coatings Pty Ltd on demand.</p> <p>(d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Mipa Coatings Pty Ltd and must pay or return the resulting product to Mipa Coatings Pty Ltd as to its direct.</p> <p>(e) the Customer irrevocably authorises Mipa Coatings Pty Ltd to enter any premises where Mipa Coatings Pty Ltd believes the Goods are kept and recover possession of the Goods.</p> <p>(f) Mipa Coatings Pty Ltd may recover possession of any Goods in transit whether or not delivery has occurred.</p> <p>(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Mipa Coatings Pty Ltd.</p> <p>(h) Mipa Coatings Pty Ltd may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.</p> <p>10. Personal Property Securities Act 2009 ("PPSA")</p> <p>10.1 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Mipa Coatings Pty Ltd and it has been approved with a credit limit established for the account.</p> <p>10.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to Mipa Coatings Pty Ltd for Services – that have previously been supplied and that will be supplied in the future by Mipa Coatings Pty Ltd to the Customer.</p> <p>10.3 The Customer undertakes to:</p> <p>(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Mipa Coatings Pty Ltd may reasonably require to:</p> <p>(i) register a financing statement or financing change statement in relation to a security interest in the Personal Property Securities Register established by the PPSA; or</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, Mipa Coatings Pty Ltd for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of Mipa Coatings Pty Ltd;</p> <p>(d) not register, or otherwise create, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Mipa Coatings Pty Ltd;</p> <p>(e) immediately advise Mipa Australia of any material change in its business practices of the Customer which would result in a change in the nature of proceeds derived from such sales;</p> <p>10.4 Mipa Coatings Pty Ltd and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.</p> <p>10.5 The Customer waives their right to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</p> <p>10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>10.7 Unless otherwise agreed to in writing by Mipa Coatings Pty Ltd, the Customer waives their right to receive a verification statement in relation to section 157 of the PPSA.</p> <p>10.8 The Customer must unconditionally ratify any actions taken by Mipa Coatings Pty Ltd under clauses 10.3 to 10.5.</p> <p>10.9 Subject to any express provisions to the contrary (including those contained in this clause 10) the Customer's obligations in intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>11. Security and Charge</p> <p>11.1 In consideration of Mipa Coatings Pty Ltd agreeing to supply the Goods, the Customer charges all of its present and future interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>11.2 The Customer irrevocably appoints Mipa Coatings Pty Ltd from and against all Mipa Coatings Pty Ltd costs and disbursements including legal costs on a solicitor and own client basis limited in exercising Mipa Coatings Pty Ltd rights under this clause.</p> <p>11.3 The Customer irrevocably appoints Mipa Coatings Pty Ltd and each director of Mipa Coatings Pty Ltd as the Customer's authorised agent to execute all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.</p> <p>12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>12.1 The Customer must inspect the Goods on delivery and must within five (5) days of delivery notify Mipa Coatings Pty Ltd in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow Mipa Coatings Pty Ltd to inspect the Goods.</p> <p>12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the implied guarantee of fitness for purpose under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).</p> <p>12.3 Mipa Coatings Pty Ltd acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Mipa Coatings Pty Ltd makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Mipa Coatings Pty Ltd liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>12.5 If the Customer is not a consumer within the meaning of the CCA, Mipa Coatings Pty Ltd liability is limited to the extent permitted by section 6A of Schedule 2.</p> <p>12.6 If Mipa Coatings Pty Ltd is required to replace the Goods under this clause or the CCA, but is unable to do so, Mipa Coatings Pty Ltd may refund any money the Customer has paid for the Goods.</p> <p>12.7 If the Customer is not a consumer within the meaning of the CCA, Mipa Coatings Pty Ltd liability for any defect or damage to the Goods is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Customer by Mipa Coatings Pty Ltd at Mipa Coatings Pty Ltd's sole discretion;</p> <p>(b) limited to any warranty to which Mipa Coatings Pty Ltd is entitled, if Mipa Coatings Pty Ltd did not manufacture the Goods;</p> <p>(c) otherwise negated absolutely.</p> <p>12.8 Subject to this clause 12, returns will only be accepted provided that:</p> <p>(a) the Customer has complied with the provisions of clause 12.1; and</p> <p>(b) Mipa Coatings Pty Ltd has agreed that the Goods are defective; and</p> <p>(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.</p> <p>12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, Mipa Coatings Pty Ltd shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Customer failing to properly maintain or store any Goods;</p> <p>(b) the Customer using the Goods for any purpose other than that for which they were designed;</p> <p>(c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) the Customer failing to follow any instructions or guidelines provided by Mipa Australia;</p> <p>(e) fair wear and tear, any accident, or act of God.</p> <p>12.10 Notwithstanding anything contained in this clause if Mipa Coatings Pty Ltd is required by a law to accept a return then Mipa Coatings Pty Ltd will only accept a return on the conditions imposed by that law.</p> <p>13. Intellectual Property</p> <p>13.1 Where Mipa Coatings Pty Ltd has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Mipa Coatings Pty Ltd. Under no circumstances may such designs, drawings and documents be used without the express written approval of Mipa Coatings Pty Ltd.</p> <p>13.2 The Customer warrants that all designs, specifications or instructions given to Mipa Coatings Pty Ltd will not infringe any patent, trademark, copyright, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Mipa Coatings Pty Ltd against any action taken by a third party against Mipa Coatings Pty Ltd in respect of any such infringement.</p> <p>13.3 The Customer agrees that Mipa Coatings Pty Ltd may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Mipa Coatings Pty Ltd has created for the Customer.</p> <p>14. Default and Consequences of Default</p> <p>14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Mipa Coatings Pty Ltd sole discretion such interest shall compound monthly at such a rate) after set off as before any judgment.</p> <p>14.2 If the Customer owes Mipa Coatings Pty Ltd any money the Customer shall indemnify Mipa Australia from and against all costs and disbursements incurred by Mipa Australia in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Mipa Coatings Pty Ltd contract default fee, and bank disbursement fees).</p> <p>14.3 Further to any other rights or remedies Mipa Coatings Pty Ltd may have under this contract, if a Customer has made payment to Mipa Coatings Pty Ltd, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to the interest on the amount of the reversed transaction under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.</p>	<p>14.4 Without prejudice to Mipa Coatings Pty Ltd other remedies at law Mipa Coatings Pty Ltd shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Mipa Coatings Pty Ltd shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to Mipa Coatings Pty Ltd becomes overdue, or in Mipa Coatings Pty Ltd opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer has exceeded any applicable credit limit provided by Mipa Coatings Pty Ltd;</p> <p>(c) 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;</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p> <p>15. Cancellation</p> <p>15.1 Without prejudice to any other remedies Mipa Coatings Pty Ltd may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Mipa Coatings Pty Ltd may suspend or terminate the supply of Goods to the Customer. Mipa Coatings Pty Ltd will not be liable to the Customer for any loss or damage the Customer suffers because Mipa Coatings Pty Ltd has exercised its rights under this clause.</p> <p>15.2 Mipa Coatings Pty Ltd may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Mipa Coatings Pty Ltd shall give priority to the Customer's money paid by the Customer for the Goods. Mipa Coatings Pty Ltd shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>15.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Mipa Coatings Pty Ltd as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>15.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>16. Privacy Act 1988</p> <p>16.1 The Customer agrees for Mipa Coatings Pty Ltd to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B., occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Mipa Coatings Pty Ltd.</p> <p>16.2 The Customer agrees that Mipa Coatings Pty Ltd may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess an application by the Customer; and/or</p> <p>(b) to notify other credit providers of a default by the Customer; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Customer including the Customer's repayment history in relation to the provision of Goods; and/or</p> <p>16.3 The Customer consents to Mipa Coatings Pty Ltd being given a consumer credit report to collect overdue payment on commercial credit.</p> <p>16.4 The Customer agrees that personal credit information provided may be used and retained by Mipa Coatings Pty Ltd for the following purposes (and for other agreed purposes or required by):</p> <p>(a) the provision of Goods; and/or</p> <p>(b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or</p> <p>(c) processing any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or</p> <p>(d) enabling the collection of amounts outstanding in relation to the Goods.</p> <p>16.5 Mipa Coatings Pty Ltd may give information about the Customer to a CRB for the following purposes:</p> <p>(a) to obtain a consumer credit report;</p> <p>(b) allow the CRB to create or maintain a credit information file about the Customer including credit history.</p> <p>16.6 The information given to the CRB may include:</p> <p>(a) personal information as outlined in 16.1 above;</p> <p>(b) name of the credit provider and that Mipa Coatings Pty Ltd is a current credit provider to the Customer;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of consumer credit;</p> <p>(e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);</p> <p>(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding debts; and</p> <p>(g) information that, in the opinion of Mipa Coatings Pty Ltd, the Customer has committed a serious credit infringement;</p> <p>(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).</p> <p>16.7 The Customer shall have the right to request (by e-mail from Mipa Coatings Pty Ltd):</p> <p>(a) a copy of the information about the Customer retained by Mipa Coatings Pty Ltd and the right to request that Mipa Coatings Pty Ltd correct any incorrect information; and</p> <p>(b) that Mipa Coatings Pty Ltd does not disclose any personal information about the Customer to direct or indirect marketing.</p> <p>16.8 Mipa Coatings Pty Ltd will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.</p> <p>16.9 The Customer may request a privacy complaint by contacting Mipa Coatings Pty Ltd via e-mail. Mipa Coatings Pty Ltd will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.</p> <p>17. Dispute Resolution</p> <p>17.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a written notice in writing, adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing refer the matter to be heard or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:</p> <p>(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and</p> <p>(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.</p> <p>18. Service of Notices</p> <p>18.1 Any notice given under this contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this contract;</p> <p>(d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.</p> <p>19. Trusts</p> <p>19.1 If the Customer at any time upon or subsequent to entering into to the contract is acting in the capacity of trustee of any Trust ("Trust") then whether or not Mipa Coatings Pty Ltd may have notice of the Trust, the Customer covenants with Mipa Coatings Pty Ltd as follows:</p> <p>(a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;</p> <p>(b) the Customer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.</p> <p>(c) The Customer will not without consent in writing of Mipa Coatings Pty Ltd (Mipa Coatings Pty Ltd will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:</p> <p>(i) any alteration to or variation of the terms of the Trust;</p> <p>(ii) any advancement or distribution of capital of the Trust; or</p> <p>(iv) any resettlement of the trust property.</p> <p>20. General</p> <p>20.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that 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.</p> <p>20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which Mipa Coatings Pty Ltd has its principal place of business and to the jurisdiction of the courts of Victoria.</p> <p>20.3 Subject to clause 12 Mipa Coatings Pty Ltd shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Mipa Coatings Pty Ltd of these terms and conditions (alternatively Mipa Coatings Pty Ltd liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).</p> <p>20.4 Mipa Coatings Pty Ltd may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.</p> <p>20.5 The Customer cannot licence or assign without the written approval of Mipa Coatings Pty Ltd.</p>
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Please note that a larger print version of these terms and conditions is available from Mipa Coatings Pty Ltd on request.

Mipa Coatings Pty Ltd – Terms & Conditions of Trade

- 20.6 Mipa Coatings Pty Ltd may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Mipa Coatings Pty Ltd sub-contractors without the authority of Mipa Coatings Pty Ltd.
- 20.7 The Customer agrees that Mipa Coatings Pty Ltd may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Mipa Coatings Pty Ltd to provide Goods to the Customer.
- 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.