



Forward Protective Coatings Ltd

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

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1. Definitions and Interpretation

1.1 In these 'Conditions' the following words and expressions have the following meanings unless inconsistent with the context:

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| “Commencement Date” | the date on which the Services commence; |
| “Conditions” | these terms and conditions |
| “Contract” | any agreement for the supply of Services from the Supplier to the Customer in accordance with Condition 2.4; |
| “Customer” | the person who has accepted these Conditions; |
| “Fee” | the fees due from the Customer for the Services, calculated in accordance with Condition 5, plus any other charges referred to in these Conditions; |
| “Input Materials” | any documents, information and materials, provided by the Customer pursuant to the Contract including steelworks, measurements, data and any specifications or other materials or information supplied by the Customer pursuant to the Contract; |
| “Services” | the services to be provided by the Supplier to the Customer as agreed between the parties; |
| “Supplier” | Forward Protective Coatings Ltd and registered in England with company number 04353524 whose registered office is Vernon Street, Shirebrook, Mansfield, Notts, NG20 8SS; and |
| “Working Day” | any day from Monday to Friday other than a statutory holiday or public holiday in England. |

1.2 References to any statute or statutory provision include, unless the context otherwise requires, a reference to the statute or statutory provision as modified or re-enacted and in force from time to time, and any subordinate legislation made from time to time under the relevant statute or statutory provision.

1.3 References to persons include natural persons, firms, partnerships, companies, corporations, associations and organisations, (in each case whether or not having separate legal personality).

1.4 Use of any gender includes the other genders.

- 1.5 Words in the singular include the plural and words in the plural include the singular.
- 1.6 Any reference to “writing” or any cognate expression includes communications by post, facsimile and email but excludes text messages.
- 1.7 The headings to Conditions do not affect the interpretation of these Conditions.
- 1.8 Any phrase introduced by the term “include”, “including”, “in particular” or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.

2. Supply of Services

- 2.1 The Supplier shall provide the Services to the Customer subject to the provisions of these Conditions.
- 2.2 These Conditions shall:
 - 2.2.1 apply to and be incorporated into the Contract; and
 - 2.2.2 prevail over any inconsistent terms or conditions purportedly introduced by the Customer including but not limited to those contained in, or referred to, in the Customer’s purchase order, confirmation of order, acceptance of quotation or specification, or implied by law, trade custom, practice or course of dealing.
- 2.3 Any quotation submitted to the Customer will not constitute an offer and shall remain valid for the period stated therein, but if no period is specified such quotation shall be valid for 90 days.
- 2.4 Each order or acceptance of a quotation for the supply of Services by the Customer shall be deemed to be an offer by the Customer to purchase the Services subject to these Conditions. The Contract shall be made when the Supplier acknowledges the order placed by the Customer or, if earlier, by the Supplier starting to provide the Services.
- 2.5 Unless any written quotation from the Supplier specifies otherwise, the Customer shall, at its own expense, be under a duty to provide all Input Materials to be used by the Supplier in performing the Contract, at such time agreed between the parties, and any other materials or information requested by the Supplier from time to time or which is necessary to enable the Supplier to perform the Contract.
- 2.6 The Supplier’s employees or agents are not authorised to make any representations concerning the Services, unless confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed, save that nothing in this Condition excludes the Supplier’s liability for fraudulent misrepresentation.
- 2.7 In the event that the Customer wishes to cancel an order, it may only do so with the written consent of the Supplier and on the terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation. For the avoidance of doubt, this indemnity shall include the work in progress value of all work undertaken pursuant to providing the Services to the date of cancellation that has not yet been invoiced.
- 2.8 Any typographical, clerical or other omission in any sales literature, quotation, invoice, delivery note, or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

3. Commencement

- 3.1 The Services supplied under the Contract shall be provided by the Supplier to the Customer from the Commencement Date.

4. Performance of the Services

- 4.1 The parties shall agree the time and place for performance of the Services, subject always to the availability of the Supplier.
- 4.2 The Supplier shall use reasonable endeavours to meet any performance dates, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

5. Fees and Payment

- 5.1 The Supplier agrees to provide to the Customer the Services subject to payment of the Fee. Condition 5.2 shall apply if the Supplier provides the Services (or part thereof) on a time and materials basis, and Condition 5.3 shall apply if the Supplier provides the Services (or part thereof) for a fixed Fee.
- 5.2 Where Services are provided on a time and materials basis:
- 5.2.1 the Fee payable for the Services shall be calculated in accordance with the daily rate specified by the Supplier.
- 5.2.2 the Supplier's standard daily rates for each individual person are calculated on the basis of an 8-hour day, worked between 8.00 am and 5.00 pm on Working Days;
- 5.2.3 the Supplier shall be entitled to charge an overtime rate of 1.5 times the Supplier's standard daily rate on a pro-rata basis for each part day, or for any time worked by individuals whom it engages on the Services outside the hours referred to in Condition 5.2.2, and where this work is undertaken on a Sunday the Supplier shall be entitled to charge an overtime rate of 2 times the Supplier's standard daily rate;
- 5.2.4 the Supplier shall ensure that every individual whom it engages on the Services completes time sheets recording time spent, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in Condition 5.2.5; and
- 5.2.5 the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this Condition 5.2.
- 5.3 Where the Services are provided for a fixed Fee, the total Fee for the Services shall be the amount agreed between the parties. The Supplier shall be entitled at its option to invoice the Customer pro rata for the Fee and for any expenses and costs of materials where appropriate, calculated as provided in Condition 5.4 on a monthly basis or in full on completion of the Services.
- 5.4 Any Fee excludes the cost of any ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Supplier for the supply of the Services. Such expenses, materials and third-party services shall be invoiced by the Supplier.

- 5.5 The parties agree that the Supplier may review and increase the Fee provided that the Customer may, within 14 days of receiving notice of such increase, terminate the Contract by giving written notice to the Supplier.
- 5.6 In the event that the Customer terminates the Contract under Condition 5.5, the Supplier shall be entitled to invoice the Customer for a proportionate amount of the Fee for the Services supplied prior to termination, together with any expenses and costs of materials calculated in accordance with Condition 5.4.
- 5.7 The Customer shall pay each invoice submitted to it by the Supplier in Sterling by cash, cheque or electronic transfer within 30 days of the end of the month in which the invoice was raised. Payment made in any other currency or by any other method shall not be deemed payment for the Services, and payment shall not be deemed to have been made until it has been received in full and in cleared funds.
- 5.8 All amounts stated are exclusive of VAT and/or any other applicable taxes or levy, which shall be charged in addition at the rate in force at the date any payment is required from the Customer.
- 5.9 If payment of the Fee and all other amounts payable are not received in accordance with Condition 5, the Supplier shall be entitled (without prejudice to any other right or remedy available to it, whether under the Contract or otherwise):
- 5.9.1 to charge interest on the outstanding amount at the rate of 4% per annum above the base lending rate of Supplier's current bank, accruing daily, whether before or after any judgment;
 - 5.9.2 to require that the Customer make a payment in advance of any Services or any part thereof of the Services not yet supplied;
 - 5.9.3 to suspend the provision of the Services or any part thereof, or suspend any services supplied under any contract between the parties;
 - 5.9.4 after providing 90 days notice of such intention, sell or otherwise dispose of any Input Materials or other goods in its possession which belong to the Customer and apply the proceeds of sale to the overdue payment, provided always that the Supplier shall account to the Customer for any proceeds received in excess of the outstanding payment; and
 - 5.9.5 all invoices issued to the Customer by the Supplier in respect of any services sold or supplied pursuant to any other contract shall immediately fall due for payment, regardless of the terms of the contract, or otherwise under which such sums are payable until full payment of the amount outstanding, including any interest applicable in accordance with Condition 5.9.1 is received in cleared funds.
- 5.10 Time and payment of the Fee or any other charges falling due under the Contract shall be of the essence of the Contract as regards any time, date, or period mentioned in these Conditions, or in the Contract or subsequently substituted as a time, date or period by agreement between the parties.
- 5.11 Unless otherwise agreed by the Supplier in writing, all queries from the Customer regarding any invoice must be received within 14 days of the date of the invoice.

6. The Customer's Obligations

- 6.1 The Customer warrants that it shall:

- 6.1.1 co-operate with the Supplier in all matters relating to the Services and appoint a manager in relation to the Services who shall have authority to contractually bind the Customer on matters relating to the Services;
 - 6.1.2 provide the Supplier with reasonable notice of any intention to visit the Supplier's premises for the purpose of inspecting the Services. For the avoidance of doubt, the Supplier shall be entitled to refuse the Customer entry to the Supplier's premises if the Customer attends at the Supplier's premises without prior arrangement with the Supplier;
 - 6.1.3 provide to the Supplier its employees, agents and sub-contractors, in a timely manner and at no charge, safe and unrestricted access to all Premises, resources, working space, staff and any other facilities ("**Relevant Premises**") as requested by the Supplier and as necessary to enable the Supplier to perform its obligations under the Contract;
 - 6.1.4 provide to the Supplier, in a timely manner, such Input Materials and any other information and documentation as the Supplier may request and ensure that it is accurate in all material respects;
 - 6.1.5 carry out all actions by the agreed date for performance;
 - 6.1.6 inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Relevant Premises;
 - 6.1.7 be responsible (at its own cost) for preparing and maintaining the Relevant Premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from the Relevant Premises in accordance with all applicable laws, before and during the supply of the Services at the Relevant Premises and informing the Supplier of all of its obligations and actions under this Condition 6.1.7;
 - 6.1.8 obtain and maintain all necessary licences and consents, and comply with all relevant legislation in relation to the Services in all cases before the Commencement Date;
 - 6.1.9 collect any Input Materials within 30 days of notification from the Supplier that the Input Materials are ready for collection; and
 - 6.1.10 instruct the Customer's employees, agents and sub-contractors to co-operate and assist the Supplier.
- 6.2 Notwithstanding the provisions of Condition 6.4, the Supplier may charge the Customer for any additional reasonable costs and expenses incurred by the Supplier caused by the Customer's instructions, failure to provide instructions, or failure to comply with Condition 6.1.
- 6.3 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising from such prevention or delay.
- 6.4 The Customer shall be liable to pay to the Supplier, any costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit, loss of goodwill and loss of reputation, loss or damage to property and those arising from injury to or death of any person, loss of opportunity to deploy resources elsewhere, third party losses) arising directly or indirectly from any failure by the Customer to comply with Condition 6.1.

- 6.5 If the Customer fails, due to no fault of the Supplier, to collect any Input Materials in accordance with Condition 6.1.9 the Supplier shall upon giving the Customer 30 days notice in writing, be entitled to dispose of the Input Materials at it sees fit and shall not be liable to the Customer for any losses which the Customer incurs as a result of such disposal.
- 6.6 The Customer shall not, without the prior written consent of the Supplier, at any time from the Commencement Date to the expiry of 6 months after the termination of the Contract, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier in the provision of the Services.
- 6.7 Any consent given by the Supplier in accordance with Condition 6.6 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee or sub-contractor.

7. Changes to Services

- 7.1 If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 7.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- 7.2.1 the likely time required to implement the change;
 - 7.2.2 any variations to the Fee arising from the change; and
 - 7.2.3 any other impact of the change on the Conditions.
- 7.3 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to the Fee, and the Conditions to take account of the change.
- 7.4 The Supplier may charge for its time spent in assessing a request for change from the Customer on a time and materials basis.
- 7.5 The Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the Fee for the Services.

8. Warranties and Liability

- 8.1 The Supplier warrants that it will use reasonable care and skill in performing the Services, and to a standard which conforms to generally accepted industry standards and practices.
- 8.2 Where any valid claim in respect of the Services is made by the Customer under the warranty provided at Condition 8.1 the Supplier shall be entitled at its option to:
- 8.2.1 re-perform the relevant part of the Services found not to conform to warranty at the Supplier's cost; or
 - 8.2.2 at the Supplier's sole discretion, refund to the Customer the Fee (or a proportionate part of the Fee) paid in respect of the relevant part of the Services found not to conform to warranty, and subject to condition 8.7 the supplier shall have no further liability to the Customer.
- 8.3 Subject to Condition 8.7, the Supplier's liability in connection with the supply of the Services shall be as follows:

- 8.3.1 in respect of any loss of goodwill, loss of business, loss of profits, loss of anticipated savings, loss of use or for any type of consequential, special or indirect loss or damage the Supplier's liability shall be nil;
- 8.3.2 in respect of physical damage to or loss of the Customer's tangible property to the extent that it results from the wilful default or negligence of the Supplier, its employees, agents or contractors, the Supplier's liability shall be limited to an amount of £2,000,000 in respect of each incident or series or connected incidents; and
- 8.3.3 in respect of all other direct loss (whether in contract, tort, or otherwise) the Supplier's total liability under the Contract shall not in aggregate exceed the Fee paid .
- 8.4 The limitations on liability in this Condition 8 are reflected in the Fee. If the Customer requests any increased level of liability the Supplier shall, where possible, provide a revised quotation taking into account any increase to the caps on liability requested by the Customer. In accordance with Condition 13 no variation to this Condition 8 shall be binding unless agreed in writing by the Supplier.
- 8.5 Subject to Condition 8.7 the Supplier shall have no liability under the provisions of these Conditions, or otherwise, if the Services have not been paid for by the due date for payment in accordance with Condition 5.7. Any claim by the Customer under this Condition 8 shall not entitle the Customer to withhold or delay payment in respect of any other Services (or services supplied under any other contract), in respect of which no such claim has been made whether or not those Services form part of the same consignment.
- 8.6 All warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.7 Nothing in these Conditions excludes or limits the liability of the Supplier for death or personal injury caused by the negligence of the Supplier.

9. Termination

- 9.1 The Contract will terminate automatically when the Services have been completed and all payments to be made have been made in full.
- 9.2 Without prejudice to any other remedies or rights whether under the Contract or otherwise, the Supplier may terminate the Contract at any time by written notice to the Customer and the notice taking effect as specified in the notice if
- 9.2.1 the Customer commits a material breach of any of these Conditions, and (if such a breach is remediable), fails to remedy that breach within 14 days of being notified in writing; or
- 9.2.2 the Customer suspends, or threatens to suspend, payment of its debts or makes any voluntary arrangement with its creditors or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 9.2.3 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of any property or assets of the Customer; or
- 9.2.4 the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;

- 9.2.5 the Customer fails to pay any amount payable, including any interest accrued, in full cleared funds in accordance with Condition 5; or
- 9.2.6 the Supplier reasonably apprehends that any of the events mentioned above is about to occur and notifies the other Customer accordingly.
- 9.3 For the purposes of Condition 9.2.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

10. Consequences of termination

- 10.1 Upon termination of the Contract for any reason:
- 10.1.1 the Customer shall immediately pay to the Supplier all outstanding invoices, and in respect of any part of the Fee or other sums payable by the Customer but for which no invoice has been submitted, the Supplier may submit an invoice which shall be payable immediately on receipt; and
- 10.1.2 the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

11. Force Majeure

- 11.1 The Supplier shall not be liable to the Customer or be deemed to be in breach of this Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Contract, if the delay or failure was due to any cause beyond the Supplier's reasonable control such as (but without limitation) any strike, lock-out or other form of industrial action, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or government order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors or inability to procure materials required for performance of the Contract.
- 11.2 The Supplier shall promptly notify the Customer in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

12. Assignment

- 12.1 The Supplier may assign the Contract, or any part of it to any person.
- 12.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.

13. Variation

- 13.1 Subject to Condition 7, no variation, modification or alteration of the Contract or these Conditions shall be valid unless it is in writing and signed by or on behalf of each party.

14. Third party rights

- 14.1 A person, who is not a party to the Contract, will not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

15. Notice

- 15.1 Any notice required or permitted to be given by either party to the other under these Conditions, shall be in writing addressed to that other party at its registered office or principal place of business, or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Notices sent by post shall be deemed served on the next Working Day following posting where the notice is sent and received, within the United Kingdom, or 7 Working Days following posting where the notice is sent and/or received outside of the United Kingdom. Any notice delivered personally shall be deemed served at the time of personal delivery, provided the same occurs on a Working Day. Any notice sent by fax or e-mail shall be deemed served at the time of transmission provided that the same occurs on a Working Day. To prove service, it shall be sufficient to show that the e-mail or fax was transmitted to the e-mail address or fax number of the other party or that the envelope containing notice was properly addressed and posted.

16. Entire agreement

- 16.1 Each Contract constitutes the entire agreement between the parties in relation to its subject matter, supersedes any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

17. No partnership or agency

- 17.1 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for or to bind another party in any way.

18. Further assurance

- 18.1 Each party to the Contract shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of the Contract or to make it easier to enforce.

19. Severance

- 19.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions shall remain in full force and effect.

20. Waiver

- 20.1 If either party fails or delays or compromises in exercising a right or remedy under the Contract, the right or remedy is not to be treated as having been waived, restricted, or varied and agreement by either party to refrain from exercising a right in one particular instance will not prevent it from exercising it in full in the future.

21. Cumulative remedies

- 21.1 All rights and remedies available to either of the parties under the terms of the Contract or under the general law are to be cumulative, and no exercise by either of the parties of any such right or remedy is to restrict or prejudice the exercise of any other right or remedy granted by the Contract or otherwise available to that party.

22. Governing law and jurisdiction

- 22.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter will be governed by and construed in accordance with the law of England and Wales.
- 22.2 The parties irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.