

The customer's attention is drawn in particular to the provisions of clause 9

1 Interpretation

- 1.1 Definitions. In these Conditions, the following definitions apply:
 "Business Day" a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
 "Conditions" the terms and conditions set out in this document.
 "Contract" the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
 "Customer" the person or firm who purchases the Goods from the Supplier.
 "Force Majeure Event" has a meaning set out in Clause 10.1.
 "Goods" the goods (or any part of them) set out in the Order.
 "Order" the Customer's order for the Goods, whether verbal or made in Writing or the Customer's acceptance of the Supplier's quotation, as the case may be.
 "Specification" any specification for the Goods, including any related plans and drawings, that is supplied to the Supplier by the Customer, or produced by the Supplier and agreed in writing by the Customer.
 "Supplier" Prismo Road Markings Limited (registered in England and Wales with company number 5906228, and whose registered office is at 5 Drumhead Road, Chorley North Industrial Park, Chorley, PR6 7BX, United Kingdom)
 "Writing" or "written" writing including faxes and emails.
- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a party includes its personal representatives, successors or permitted assigns. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted, and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

2 Basis of Contract

- 2.1 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.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer shall ensure that the terms of the Order and any relevant Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a Written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. Any advice or recommendation given by the Supplier or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Supplier is followed or acted on entirely at the Customer's own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed. Any samples, drawings, descriptive matter, or advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them.
- 2.5 A quotation shall not constitute an offer. A quotation shall only be valid if given in Writing, and then only for a period of 10 Business Days from its date of issue.
- 2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

3 Delivery

- 3.1 The Supplier shall ensure that:
- 3.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 3.1.2 if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 3.2 The quantity and types of any consignment of Goods as recorded by the Supplier upon despatch shall be conclusive evidence of the quantity and types received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary. The Supplier shall not be liable for short delivery, or for damage to Goods, unless written notice is given within two Business Days of the date of receipt of the Goods by the Customer. Any liability for short delivery or non-delivery shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro-rata Contract rate against any invoice wrongly raised.
- 3.3 Unless the parties have agreed otherwise in Writing, delivery is Ex Works (Incoterms). Accordingly, the Customer shall collect the Goods from the Supplier's premises at 5 Drumhead Road, Chorley North Ind. Pk, Chorley PR6 7BX, United Kingdom, or such other location as may be advised by the Supplier prior to delivery, ("Collection/Delivery Location"), within three Business Days of the Supplier notifying the Customer that the Goods are ready.
- 3.4 The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by the Supplier, the Customer shall make those licences and consents available to the Supplier prior to the relevant shipment.
- 3.5 Delivery of the Goods shall be completed on the Goods' arrival at the Collection/Delivery Location. The term 'delivery', in these Conditions, means making the Goods available for collection at the Collection/Delivery Location.
- 3.6 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.7 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.8 If the Customer fails to take delivery of the Goods within one Business Day of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- 3.8.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the second Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- 3.8.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.9 If five Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 3.10 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order Invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 3.11 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4 Quality

- 4.1 Where the Supplier is not the manufacturer of the Goods, the Supplier shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Supplier. The Supplier warrants that on delivery, and for the warranty period as stated in the Specification, commencing on the date of delivery, ("warranty period"), any Goods which have been manufactured by the Supplier shall:
- 4.1.1 conform in all material respects with their description and any applicable Specification;
- 4.1.2 be free from material defects in design, material and workmanship.
- 4.2 Subject to clause 4.3, if:
- 4.2.1 the Customer gives notice in writing to the Supplier during the warranty period and within one Business Day of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1; and the Supplier is given a reasonable opportunity of examining such Goods; and the Customer (if asked to do so by the Supplier) returns such Goods to the location notified to the Customer by the Supplier at the Supplier's cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 4.3 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 4.1 if:

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- 4.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 4.2; or
 - 4.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice; or
 - 4.3.3 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer; or
 - 4.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier; or
 - 4.3.5 the defect arises as a result of wilful damage, negligence, abnormal storage or working conditions, or adverse weather conditions.
- 4.4 Except as provided in this clause 4, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.
- 4.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 4.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5 Title and Risk

- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery as defined in clause 3.5.
- 5.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- 5.2.1 the Goods; and
 - 5.2.2 any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;
 - 5.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 5.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 5.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 5.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
 - 5.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6 Price and Payment

- 6.1 The price of the Goods shall be the price set out in the Order or quotation, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery, but in no event later than the date the Goods leave the Supplier's premises.
- 6.2 Unless otherwise agreed by the Supplier in writing, Orders of a value below £150 plus VAT shall incur an administration charge of £20 plus VAT. For example, an Order of a value of £100 plus VAT shall be invoiced at £120 plus VAT.
- 6.3 Orders are accepted at the prices current at the time of acceptance and on the understanding that they may be invoiced at prices ruling on the date of despatch irrespective of prices previously quoted. The Supplier may, at any time before delivery, increase the price to reflect any increase in the cost of the Goods that is due to:
- 6.3.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 6.3.2 any request by the Customer to change the delivery date(s) or requirements, quantities or types of Goods ordered, or the Specification; or
 - 6.3.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 6.4 Unless the Order states otherwise, the price of the Goods is inclusive of the costs and charges of packaging but is exclusive of the costs and charges of insurance and transport of the Goods to any location other than the Collection/Delivery Location. Any such excluded costs shall be paid by the Customer when it pays for the Goods.
- 6.5 The price of the Goods is exclusive of amounts in respect of value added tax or other sales taxes ("VAT"). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 6.6 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery, as defined in clause 3.5.
- 6.7 Unless an alternative payment method or payment date is agreed by the parties in Writing, the Customer shall pay the invoice in full and in cleared funds in the currency stated on the Order, or otherwise agreed upon by the parties in Writing, within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 6.8 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment ("due date"), then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above The Bank of England's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. #
- 6.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

7 Goods Returned for Credit

- 7.1 In no event shall Goods be returned for credit without the prior written authorisation of the Supplier.
- 7.2 Goods shall not be deemed accepted for credit by the Supplier until the Supplier has had a reasonable opportunity to examine the Goods and confirmed in writing that it accepts them for credit. All Goods returned for credit must be securely packaged to reach the Supplier without damage.
- 7.3 Where the Supplier does accept returned Goods for credit, it will make a minimum service charge of 25% of the Goods' value, plus all transportation charges that are incurred by the Supplier, plus any costs incurred by the Supplier to restore such Goods to marketable and 'as new' condition.
- 7.4 Until such Goods have been accepted by the Supplier, they will remain at the risk of the Customer and, if the Customer fails to collect them within three Business Days of being requested to do so, the Supplier may destroy them or resell them without liability to the Customer.
- 7.5 This clause 7 shall not affect the Customer's right to return defective Goods as provided for in clause 4 above.

8 Customer's Insolvency or Incapacity

- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 8.2 For the purposes of clause 8.2, the relevant events are:
- 8.2.1 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either Unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
 - 8.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) these events take place for the sole purpose of a Scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer; or
 - 8.2.3 (being an individual) the Customer is the subject of a bankruptcy petition or order; or
 - 8.2.4 a creditor or encumbrancer of the Customer 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 its assets and such attachment or process is not discharged within 14 days; or
 - 8.2.5 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or
 - 8.2.6 (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or

- 8.2.7 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- 8.2.8 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.1 to clause 8.2.7 (inclusive); or
- 8.2.9 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- 8.2.10 the financial position of the Customer deteriorates to such an extent that in the opinion of the Supplier the capability of the Customer adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
- 8.2.11 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

9 Limitation of Liability

- 9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 9.1.2 fraud or fraudulent misrepresentation; or
- 9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 9.1.4 defective products under the Consumer Protection Act 1987; or
- 9.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- 9.2.1 the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract (including any losses that may result from a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors); and
- 9.2.2 the Supplier'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, including losses caused by a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors shall not exceed the price of the Goods.

10 Force Majeure

- 10.1 The Supplier shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, shortages of raw materials, or default of suppliers or subcontractors.

11 General

- 11.1 Assignment and subcontracting
- 11.1.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 11.1.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 11.2 Notices
- 11.2.1 Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, or fax.
- 11.2.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2.1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- 11.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 11.3 Severance
- 11.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 11.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 11.4 Waiver A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 11.5 Intellectual property rights The Customer shall not repackage the Goods or remove any trademarks or copyright notices. The Customer shall not use or seek to register any trade mark which is identical to or confusingly similar to any trade mark which the Supplier owns or claims rights in anywhere in the world. The Customer shall promptly and fully notify the Supplier of any actual or suspected infringement of any of the Supplier's intellectual property rights, and any claim by any third party that the Goods infringe the rights of any person, which comes to its notice.
- 11.6 Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.7 Variation Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by a Director of the Supplier, or such other person as the Supplier notifies the Customer of in writing, and by the Customer.
- 11.8 Anti-bribery provisions The Customer shall not offer, promise or give a bribe to any person, or request, agree to receive or accept a bribe from any person. If the Customer receives a request for a bribe, or an offer of a bribe, it shall immediately inform the Supplier. In this clause, a "bribe" means a financial or other advantage intended to induce a person to perform improperly a function or activity, or reward a person for the improper performance of it.
- 11.9 Governing law and jurisdiction 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales. The United Nations Convention on the International Sale of Goods shall not apply to this agreement. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply but where they conflict with this agreement, this agreement shall prevail. In respect of proceedings in England and in any other jurisdiction, process may be served on either party in the manner specified for notices in clause 11.2. Nothing in this clause 11.9 shall limit the right of the Supplier to take proceedings against the Customer in any other court of competent jurisdiction. The rights set out in this clause are in addition to any other manner of service permitted by law at the time when service is made.
- 11.10 It is the Customer's obligation to acquaint itself and to comply with all applicable requirements and restrictions imposed by law or by governmental and other authorities or corporations relating to the possession, use, import, export, or resale of the Goods. It is the Customer's obligation to ensure that no Goods are exported or imported in violation of the laws of any jurisdiction into or through which the Goods are transported during the course of reaching the Delivery Location. Where necessary, the Customer shall inform the Supplier at a reasonable time before delivery of any documents which it is necessary for the Supplier to provide in order to allow export of the Goods in compliance with the laws of any relevant jurisdiction.