

EVERLAST POWDER COATING - TERMS AND CONDITIONS

1. Acceptance of Terms

The recipient identified on the front of this form ("Buyer") is deemed to unconditionally accept these Terms and Conditions ("Terms") upon any of the following:

- (a) The Buyer or its representative places an order with EVERLAST POWDER COATING for any or all goods and/or services listed ("Goods/Services");
- (b) The Buyer or its representative orally or in writing accepts or requests delivery of the Goods/Services;
- (c) The Buyer confirms acceptance of these Terms through its conduct.

2. Inconsistent Terms

- (a) Any order or offer by the Buyer, even if containing different terms, constitutes an offer to purchase Goods/Services based on these Terms;
- (b) Unless EVERLAST POWDER COATING expressly agrees in writing to amend or accept inconsistent terms ("Inconsistent Terms"), all contracts are governed by these Terms. Inconsistent Terms, if agreed, take precedence during their application;
- (c) If the Buyer has a valid, separate supply agreement with EVERLAST POWDER COATING, that agreement's terms prevail over any inconsistent provisions in these Terms.

3. Delivery of Goods/Services

- (a) EVERLAST POWDER COATING will make reasonable efforts to meet quoted delivery or completion dates, but such dates are estimates and not binding;
- (b) EVERLAST POWDER COATING is not liable for delays or non-delivery due to uncontrollable events (e.g., strikes, raw material shortages, accidents), and the Buyer remains obligated to make payments under these Terms;
- (c) Unless otherwise agreed in writing, all Goods/Services are delivered ex-works. EVERLAST POWDER COATING's delivery obligation is fulfilled upon notifying the Buyer that Goods are available for collection at EVERLAST POWDER COATING's premises. Special packaging and delivery costs are borne by the Buyer and included in the invoice;

(d) The Buyer must collect Goods within 7 days of notification, or EVERLAST POWDER COATING may charge reasonable storage fees;

(e) Upon collection, the Buyer assumes responsibility for the Goods during transport, and EVERLAST POWDER COATING is not liable for loss or damage in transit;

(f) The Buyer must notify EVERLAST POWDER COATING in writing within 10 days of delivery of any discrepancies in quantity, quality, or description, or the Goods are deemed accepted, and the Buyer waives any claim. EVERLAST POWDER COATING's delivery note is prima facie evidence of delivery contents.

4. Risk

(a) Risk in items provided by the Buyer for processing by EVERLAST POWDER COATING remains with the original owner at all times;

(b) For Goods owned by EVERLAST POWDER COATING, risk transfers to the Buyer upon notification of availability for collection or delivery.

5. Title

(a) Until full payment is received, EVERLAST POWDER COATING retains title to the Goods. During this period, the Buyer:

- Holds the Goods as EVERLAST POWDER COATING's fiduciary;
- Must clearly mark the Goods as belonging to EVERLAST POWDER COATING at its own expense;
- Must not pledge or encumber the Goods;
- Permits EVERLAST POWDER COATING to enter the Buyer's premises to reclaim Goods;
- If the Goods are resold, EVERLAST POWDER COATING is entitled to the proceeds, which the Buyer

must hold in trust for EVERLAST POWDER COATING, separate from other funds;

(b) If the Buyer fails to pay on time, EVERLAST POWDER COATING may sue for the purchase price. If the original supplier retains title, EVERLAST POWDER COATING may defer title transfer;

(c) The Buyer must protect the Goods from damage and insure them for their full value.

6. Right to Repossess Goods

If the Buyer breaches these Terms or becomes insolvent, EVERLAST POWDER COATING may immediately

reclaim and resell the Goods. EVERLAST POWDER COATING is entitled to enter the Buyer's premises with consent or lawful authority to retrieve the Goods.

7. Lien

EVERLAST POWDER COATING holds a lien over the Buyer's unpaid Goods, unless a written credit agreement provides otherwise.

8. Payment

- (a) The Buyer must pay the full invoice amount within the specified period from the invoice date, unless otherwise agreed in writing;
- (b) Overdue payments incur interest at the Reserve Bank of Australia's cash rate plus 2%, calculated daily;
- (c) The Buyer must indemnify EVERLAST POWDER COATING for all reasonable costs (including legal fees) incurred in recovering payments;
- (d) If payment is outstanding, EVERLAST POWDER COATING may suspend all obligations;
- (e) The Buyer must pay in full without set-off, counterclaim, or delay.

9. Price or Product Changes

- (a) Before production begins, EVERLAST POWDER COATING may adjust the price of Goods/Services;
- (b) For partial deliveries, EVERLAST POWDER COATING may adjust the price of undelivered portions;
- (c) EVERLAST POWDER COATING reserves the right to modify Goods' specifications or performance;
- (d) If changes materially affect the Goods' nature, the Buyer may cancel the order within 3 business days of notification.

10. Change of Control Notification

The Buyer must notify EVERLAST POWDER COATING in writing 14 days before any change in its effective control.

11. Assignment

- (a) EVERLAST POWDER COATING may assign its rights and obligations by written notice;
- (b) The Buyer may not assign its obligations without EVERLAST POWDER COATING's written consent.

12. Return of Goods

- (a) Goods may only be returned with EVERLAST POWDER COATING's prior written approval. The Buyer must provide the original invoice number when requesting a return;
- (b) Return shipping costs are borne by the Buyer unless the return is due to a defect or fault under the Australian Consumer Law;
- (c) Nothing in this clause limits any rights the Buyer may have under the Australian Consumer Law, including in relation to defective or misdescribed Goods.

13. Order Cancellation

- (a) Orders may not be cancelled once accepted, except with EVERLAST POWDER COATING's written consent;
- (b) If cancellation is approved, the Buyer must reimburse EVERLAST POWDER COATING for any reasonable costs incurred up to the date of cancellation, including but not limited to materials procured and labour expended;
- (c) The cancellation fee will not exceed the actual direct costs incurred by EVERLAST POWDER COATING as a result of the cancellation;
- (d) This clause does not affect any rights the Buyer may have under the Australian Consumer Law.

14. Limitation of Liability

- (a) To the extent permitted by law, EVERLAST POWDER COATING excludes all liability for indirect, special or consequential loss arising in connection with the supply of Goods or Services;
- (b) However, nothing in these Terms excludes, restricts, or modifies any rights or remedies the Buyer may have under the Australian Consumer Law or any other applicable law which cannot be excluded, restricted or modified by agreement;
- (c) Where EVERLAST POWDER COATING's liability cannot be excluded but may be limited, it is limited, at EVERLAST POWDER COATING's option, to:
 - (i) the replacement of the Goods or the supply of equivalent Goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or

- (iv) the payment of the cost of having the Goods repaired.

15. Goods and Services Tax (GST)

EVERLAST POWDER COATING may charge GST at the prevailing rate.

16. Notification

Documents, notices, or invoices are deemed received if sent by mail (within 3 business days), fax, or email (immediately, unless a delivery failure is received).

17. Governing Law

These Terms are governed by the laws of Victoria, Australia, and the Buyer submits to the exclusive jurisdiction of its courts.

18. Severability

If any provision is invalid, the remaining provisions remain enforceable.

19. Non-Waiver of Rights

Failure by EVERLAST POWDER COATING to exercise any right does not waive its future exercise.

Contact: EVERLAST POWDER COATING

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