



# Clayworks

CONDITIONS OF SALE

Natural Clay Plasters

# Clayworks

## CONDITIONS OF SALE

### 1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these conditions.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Buyer:** the person, firm or company identified on the Order. For the avoidance of doubt, the Buyer may be named as the customer on the Seller's quotation.

**Contract:** these conditions and the relevant Order.

**Deposit:** 30% of the total price of the Products.

**Force Majeure Event:** an event that is unforeseeable, unpreventable, and beyond the control of the party so affected and renders the performance of the obligations impossible and which cannot be stopped or prevented by ordinary legal means. Force majeure events include, without limitation: civil or foreign war, riot, strike, governmental or local authority action, power failure or breakdown of machinery, fire, natural disasters, or exceptional weather conditions.

**Order:** the Buyer's order for Products as set out in the Buyer's acceptance of the Seller's quotation, which is submitted by email.

**Products:** the products (or any part of them) set out in the Order.

**Seller:** Clayworks Limited registered in England and Wales with company number 04552140 whose registered office is at Lowin House, Tregolls Road, Truro, Cornwall TR1 2NA.

### 2. APPLICATION OF CONDITIONS

2.1 These conditions shall:

- (a) apply to and be incorporated in the Contract; and
- (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Buyer's order, purchase order, confirmation of order, or implied by law, trade custom, practice or course of dealing.

### 3. BASIS OF CONTRACT

3.1 The Order constitutes an offer by the Buyer to purchase the Products in accordance with these conditions.

3.2 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's representatives ("Written Confirmation") at which point and on which date the Contract shall come into existence ("Commencement Date").

3.3 A quotation for the Products given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

3.4 The Contract shall only relate to the Materials identified in the Order and the Seller shall have no obligation to arrange the services associated with the installation of the Products (e.g. plasterers).

### 4. QUALITY

4.1 The Seller shall use all reasonable efforts to ensure that the Products conform to the Seller's published specifications current at the time of delivery of the Products or the specifications specifically agreed in writing with the Buyer (including changes notified to the Buyer in accordance with this clause). Since, however, the Products are based on naturally occurring minerals, the Seller reserves the right to change such specifications from time to time and, in that event, will notify the Buyer prior to dispatch of any such changes.

4.2 Clayworks Clay Plasters have natural variations in their colours and textures – this is to be expected due to the use of only natural materials and pigments. The colour will not be flat like a paint but instead have a tonal variation that creates slight 'movement' in the wall. The texture also has natural variation. For the Smooth and Tonal Finishes it wants to be relatively smooth to the touch when a hand or finger is dragged across the surface area. The finish is not comparable to the texture of a gypsum plaster wall as it will have more variation to a gypsum wall – this is what creates the unique aesthetic.

4.3 The Products are offered on the basis that the Buyer has taken all reasonable measures to confirm their suitability for the Buyer's own particular products, applications and production methods. Recommendations for use of the Products, whether given in writing, orally, or to be implied from results of tests carried out by the Seller, are based on current knowledge at the time. No guarantee, either express or implied, is made by the Seller regarding the validity of the recommendations or the results obtained there from.

4.4 The Buyer acknowledges that the Product is comprised of a highly researched and tested mixture of complex geochemical and geological materials. They Buyer agrees that is shall not alter the Product, or mix the Product with any other materials, without obtaining the prior written consent of the Seller.

4.5 Due to the precise, natural geochemical formulations of Clayworks Clay Plasters, they have been tested to work successfully with Clayworks Primer and Clayworks Glaze. Use of any other primers, glazes or finishes on the Product constitutes a risk to the quality and performance of Clayworks Clay Plasters. As such Clayworks strongly recommends against use of any other primers or glazes or other finishes and cannot be responsible for the quality of Clayworks Clay Plaster Products if it they are so compromised.

4.6 The Products are offered on the basis that the Buyer has taken all reasonable measures to ensure that the surfaces on which Clayworks products will be applied are prepared in accordance with Clayworks Design Details <https://clay-works.com/specifications/design-detailing/> and that Clayworks approved contractors have the right to refuse to begin application until such surfaces are prepared as per these details and Clayworks Application Guidelines <https://clay-works.com/specifications/application-2/>. Clayworks Ltd cannot be held responsible for the quality of our materials if applied onto an improperly prepared surface.

## 5. DEFECTIVE PRODUCTS

5.1 The Products shall, on delivery, correspond with their respective specifications. If any of the Products do not correspond with their respective specification, they shall be deemed to be defective and such defects shall be notified by the Buyer in writing to the Seller:

- (a) for defects apparent on reasonable inspection, within 14 days of delivery; or
- (b) for latent defects or defects not apparent upon reasonable inspection, within 14 days of when those defects could reasonably have been first identified.

5.2 If the Products are recognised to be defective by the Seller, the Seller shall replace the defective part of the Products free of charge.

5.3 The Seller shall be under no liability in respect of any alleged defective Products unless:

- (a) the Buyer gives to the Seller written notice and details of the defect within the periods mentioned in clause 5.1.
- (b) the Buyer gives the Seller's representative adequate opportunity to inspect or examine the Products and remove samples for analysis;
- (c) the Buyer has stopped using the Products after giving notice in accordance with clause 5.1.

5.4 Except as provided in clause 5.2, the Seller shall have no liability to the Buyer in respect of the Products' failure to comply with their respective specification.

5.5 The Seller shall not be liable for the Products' failure to comply with clause 5.1 if:

- (a) The Buyer alters Products, or mixes it with any other materials, without the prior written consent of the Seller.
- (b) the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or working conditions.

5.6 The use of the Products, including preparing the surface, applying the plasters, achieving a desired custom aesthetic, designing, testing and specifying a compound, or product incorporating any of the Products, is the sole responsibility of the Buyer who shall assume any consequences thereof, whether direct or indirect, and whatsoever its nature, and the Seller makes no warranties in respect thereof. The Buyer shall assess Products across the specification range and take reasonable precautions to prevent any contamination of Products caused through no fault of the Seller during carriage or otherwise from entering the Buyer's production process. The Buyer acknowledges that it is relying on its own expertise and knowledge and not that of the Seller in entering the Contract. The Buyer shall make sure that Products comply with all laws and regulations applying to the Buyer from time to time. The Seller's prices are determined on the basis of the exclusions and limitations of liability contained in the Contract. The Buyer expressly agrees that these exclusions and limitations are reasonable because of the likelihood (amongst other matters) that otherwise the amount of damages awarded to the Buyer for a breach by the Seller of the Contract may be disproportionately greater than the price of the Products.

## 6. LIMITATION OF LIABILITY

6.1 The following provisions set out the entire financial liability of the Seller (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- (a) any breach of the Contract howsoever arising; and
- (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

6.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

6.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979.

6.4 Subject to clause 6.2 and clause 6.3:

(a) the Seller shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for loss of profits; loss of business; depletion of goodwill or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss or corruption of data or information; any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

(b) the Seller's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Products.

6.5 This clause 6 shall survive termination of the Contract.

## 7. DELIVERY

7.1 The time for delivery shall not be of the essence of the Contract. The Seller shall not be liable for any loss or damage howsoever arising from delay in delivery. The Buyer shall inform the Seller of preferred delivery date, address and name of persons to receive Products

before dispatch. The Seller shall inform the buyer of chosen delivery method, carrier and anticipated delivery time and date before dispatch. Because the Seller relies on 3rd parties for delivery the Seller shall not guarantee delivery times and the Buyer shall always take into consideration the high possibility of delays caused by circumstances beyond all parties control.

7.2 Delivery of the Products is completed:

(a) where the Seller undertakes delivery of the Products, when they are unloaded off the Seller's or third party's vehicle, ship or other transport at the premises, port, station or other address specified by the Buyer or, in the case of rail wagons or tankers parked at the Buyer's premises, upon arrival at the premises specified by the buyer at the time of placing the order.

(b) where the Buyer undertakes to collect the Products, when they are loaded on the Buyer's or a third party's vehicle, ship or other transport at the premises of the Seller or the address of any storage or warehouse facility used by the seller for the storage of Products.

7.3 The Seller shall be under no obligation to affect the delivery of the Products if the Buyer is in any breach of any of its obligations towards the Seller whether arising out of these conditions or otherwise including changing delivery address after the order has been dispatched or specifying wrong delivery address at time of order. The seller shall make every effort to accommodate changes in delivery address and time of delivery after order is dispatched but shall not be liable for any delay, cost or associated costs arising from changes after the order is placed.

7.4 Risk in the Products shall transfer to the Buyer on completion of delivery. It is the sole responsibility of the Buyer to take out all insurance cover required against all risks that could be incurred or caused by the Products as from their delivery. Carriers are responsible for Products lost or damaged in transit. In the case of such loss or damage, the Buyer shall immediately notify the carrier or its agent thereof and shall do all things necessary to affect a claim against the carrier for such loss or damage. Where any Products are delivered ex works or FOB UK Port, the Seller accepts no liability for any damage or deterioration in the Products as a result of the condition or cleanliness of any transporting vehicle not belonging to the Seller.

7.5 If after 20 days after which the Seller notified the Buyer that the Products were ready for delivery the Buyer has not taken delivery of them, the Seller may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Products or charge the Buyer for any shortfall below the price of the Products.

## 8. RETENTION OF TITLE

8.1 The Seller shall retain the ownership of the Products until full payment of the price, including principal and any interest due. Submission of a draft or of any other document or trade bill creating an obligation to pay shall not constitute a payment hereunder.

8.2 Until ownership of the Products has passed to the Buyer, the Buyer shall:

- (a) ensure that the Products are readily identifiable.
- (b) oppose any legal action which may be initiated by third parties on the Products by means of seizure, confiscation or any other equivalent procedure and shall as soon as it becomes aware of such possibility, notify the Seller to enable it to preserve its rights;
- (c) notify the Seller immediately if it becomes subject to any of the events listed in clause 12.2;
- (d) not enter into any arrangement or agreement the effect of which is the creation of security or any other kind of encumbrance over the Products in favour of any third parties.

8.3 Before ownership of the Products passes to the Buyer, the Buyer shall return the Products on demand or otherwise the Seller shall be entitled to recover the Products or any part thereof. For the purposes of exercising such rights the Seller, may enter the Buyer's premises, and any other address where the Products are located, at any time in order to recover the Products. Products recovered shall be credited against all sums owing by the Buyer to the Seller, including costs of recovery, as the Seller may determine.

## 9. PRICE AND PAYMENT

9.1 The price of the Products will be the price stated in the Written Confirmation as part of the invoice.

9.2 The price of the Products:

- (a) excludes amounts in respect of value added tax ("VAT"), which the Buyer shall additionally be liable to pay, subject to VAT status and International VAT regulations, to the Seller at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Products, which shall be invoiced to the Buyer.

9.3 The Seller shall invoice the buyer 100% of the value of the order for confirmed orders. Payment shall be made to the bank account nominated in writing by the Seller in pounds sterling. Time for payment is of the essence to ensure timeous production. Product will not be manufactured until payment is cleared by our bank.

9.4 If the Seller does not receive full payment on the due date in respect of any Contract (except for a bona fide dispute), all outstanding payments to be made by the Buyer shall immediately and without further notice become due and payable, whether or not secured, and without any discount, if any, for early payment.

9.5 If the Buyer fails to pay any outstanding sum on the due date, then the Buyer shall pay interest on the overdue amount at the rate of 3% per annum above (UK) Barclays Bank plc base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.

9.6 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

## 10. INTELLECTUAL PROPERTY RIGHTS

10.1 All patents, trademarks, trade names, copyrights and designs in relation to the Products and any literature or confidential information supplied by the Seller in connection therewith shall be and remain the absolute property of the Seller. The Buyer shall not either before, during or after the Contract have any claim or right or property therein or register or cause to be registered in any part of the world any patent, trade mark, tradename, copyright or design similar to, or any imitation of, such patent, trade mark, trade name, copyright or design.

10.2 The Products are supplied on the basis that the Buyer will not chemically or otherwise analyse any samples of the Products and will not use any information related to the Products for the production of Products similar or equivalent to the Products or the supply thereof from a competitive source. This limitation shall not prevent analysis in the case of a bona fide product liability dispute, where legal action is threatened or pending against the Seller. The Buyer is also responsible for ensuring that the intended use of the Products will not infringe any third party's intellectual property rights.

## 11. DATA PROTECTION

The Seller shall collect and process information relating to employees, workers, agents, contractors and officers of the Buyer in accordance with its privacy policy displayed on its website from time to time.

## 12. TERMINATION

12.1 Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:

(a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

(b) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Products under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 12.1(a) to clause 12.1(b), or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

12.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.

12.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.

12.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

12.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 13. FORCE MAJEURE

Neither party shall be held liable for any delay in performing, or any failure to perform their respective obligations, if the delay or failure is due to a Force Majeure Event. If the period of delay or non-performance exceed a period of 3 consecutive months, either party may terminate the Contract by giving 10 Business Days' written notice to the affected party.

## 14. CONFIDENTIALITY

14.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.2.

14.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## 15. ASSIGNMENT AND OTHER DEALINGS

15.1 The Seller may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

15.2 The Buyer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Seller.

## 16. ENTIRE AGREEMENT

16.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**16.2** Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

**16.3** Nothing in this clause shall limit or exclude any liability for fraud.

## 17. VARIATION

Except as set out in these terms, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 18. WAIVER

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## 19. SEVERANCE

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.

Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

## 20. NOTICES

**20.1** Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by email to the email address specified in the Order. In the event that this email address is invalid any notice shall be delivered by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or a home address if an individual.

**20.2** Any notice shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

(c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 20.2 business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

**20.3** This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

## 21. THIRD PARTY RIGHTS

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

## 22. GOVERNING LAW AND JURISDICTION

**22.1** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed and construed in accordance with the laws of England.

**22.2** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.



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