



DURA PAINTS (Pty) Ltd

Registration Number: 2012/184075/07
Vat Registration Number: 4900103005

CREDIT APPLICATION

INCORPORATING THE COMPANY'S CONDITIONS OF SALE AND SURETYSHIP

HEAD OFFICE:

Physical Address: 5 Wakefield Road, Founders View South,
Edenvale, Gauteng, South Africa

Postal Address: P O Box 303, Edenvale, 1610.

Telephone: +27 (11) 452 5221 E mail: orders@durapaints.co.za

PLEASE NOTE REQUIREMENTS:-

- Authorised company representative and witness to initial each page at bottom right hand corner & initial next to any changes made
- Attach CIPC documents (registration of company).
- Copy of Owner/s / Directors ID.
- Completed applications may be e mailed to Lauren Henning at purchasing@durapaints.co.za for pre-approval, however no orders will be process until the original Credit Application has been received and approved by the Company. Partially completed Applications or Applications that have been altered in any way will not be considered.
- Orders to be placed via email orders@durapaints.co.za only. Please note no verbal orders will be accepted.

Account Details	Full Legal Name										
	Trading Name										
	Physical Address									Code:	
	Postal Address									Code:	
	Delivery Address									Code:	
	Telephone Number					Fax Number:					
	Email Address (Accounts dept.)					Contact person (Accounts dept.)					
Business Details	Registered Address									Code:	
	Registration / Identity No.					VAT registration No.:					
	Date commenced business					Nature of Business					
	Type of business	Sole Proprietor			Private Company						
		Close Corporation			Public Company						
		Partnership			Other						
	Name of holding / subsidiary company/ies										
	Asset Value	Less than R1 million			Between R1 million and R2 million			Exceeds R2 million			
	Annual Turnover	Less than R1 million			Between R1 million and R2 million			Exceeds R2 million			
	Premises	Shop		Warehouse		Factory		Private House		Other	
		Owned					Rented				
	If owned	Bond holder:									
	If rented, Landlord's details	Full name:				Telephone number:					
		Physical address:								Code:	
		Postal address:								Code:	
Auditors Details	Full name:				Telephone number:						
	Physical address:								Code:		
	Postal address:								Code:		
Bankers Details	Name:				Branch Name:						
	Account No.:				Account Name:						
Credit Limit	Expected monthly purchases:				Amount of credit required: (Monthly x 2 = 30 day account)						
Full details of proprietor, directors, partners / members	Full names			Identity Number		Residential address			Equity		
Declaration	Have sequestration or liquidation proceedings ever been instituted against the Customer / its directors / its members / its partners or any person named above or has the Customer ever offered a compromise to its creditors?								State Yes or No		
If yes, please give details											

Trade Reference 1	Name		Phone number:
	Address		
			For official use only:
	How long trading with this supplier		
	Average monthly purchases		
	Payment terms		
Trade Reference 2	Name		Phone number:
	Address		
			For official use only:
	How long trading with this supplier		
	Average monthly purchases		
	Payment terms		
Trade Reference 3	Name		Phone number:
	Address		
			For official use only:
	How long trading with this supplier		
	Average monthly purchases		
	Payment terms		

GENERAL TERMS AND CONDITIONS OF SALE INCLUDING DEED OF SURETYSHIP

1. THIS AGREEMENT

These conditions of sale ("this Agreement") shall govern the supply of goods by DURA PAINTS (PROPRIETARY) LIMITED, its successors-in-title or assigns ("the Company") to the Customer and shall take precedence over any other conditions which may be contained in any of the Company's documentation as well as any of the Customer's documentation and will govern all transactions between the Company and the Customer unless otherwise recorded in writing in a single document and signed by both parties.

2. CREDIT FACILITIES

- 2.1. The Customer acknowledges that the granting of credit facilities is at the sole discretion of the Company.
- 2.2. The Company reserves the right to suspend or withdraw the Customer's credit facilities at any time if the Customer is in default under this Agreement.
- 2.3. The Company reserves the right to reduce the credit limit under the credit facilities granted to the Customer. The Company will increase the credit limit granted under the credit facilities with the consent of the Customer, provided that the Company is satisfied that the Customer will be able to meet its obligations under the increased credit limit.
- 2.4. Notwithstanding the above, the credit limit that is granted to the Customer from time to time shall not be deemed to be a limit of the Customer's indebtedness to the Company.

3. ORDERS FOR GOODS

- 3.1. Orders by the Customer shall constitute irrevocable offers to purchase the goods in question from the Company and shall be capable of acceptance by the Company expressly, impliedly or by the Company's conduct. The Customer may not cancel or withdraw any orders in respect of goods that the Company procures specifically for the Customer. In all other circumstances, if the Customer cancels or withdraws any orders, it shall be liable to pay the Company a cancellation fee which shall not exceed 15% of the value of the order and any irrecoverable costs that the Company has incurred in respect of such order prior to the Customer cancelling or withdrawing such order.
- 3.2. Orders shall be placed via e mail orders@durapaints.co.za . **No oral orders will be accepted.**

4. PRICES

- 4.1. Subject to the remaining provisions of this clause, the price of the Company's goods will be that reflected on the pricelist given to the Customer or that reflected in a written quotation that the Company has provided to the Customer which the Customer accepted within the period for which the quotation was valid or, failing the above, the Company's official list price ruling at the date of delivery of the goods.
- 4.2. The Company reserves its right to vary any quoted price by adding thereto the increased costs to it, which are beyond its control, of any goods prior to delivery thereof and a written statement by a director of the Company shall confirm such increase.
- 4.3. Prices quoted in a currency other than South African currency will be as stated in the corresponding invoice.
- 4.4. The Customer will be liable to pay the Company general sales, value added or similar taxes and any duties or surcharges that are levied in respect of the goods at the rate prevailing at the date of delivery.

5. PAYMENT

- 5.1. The Customer shall effect payment to the Company within 30 (thirty) days from date of the Company's statement without deduction or set-off. **The Customer is specifically liable for any cash deposit fees levied by a Bank in respect of any cash payment made.**
 - 5.2. All payments shall be made in the currency reflected on the invoice. The Customer carries any risk associated with or arising from the method elected to effect payment to the Company.
 - 5.3. The Customer shall not be entitled, for any cause whatsoever, to withhold, deduct from or defer any amounts due by it to the Company.
 - 5.4. The Company may appropriate all payments from the Customer to any such outstanding amounts as it deems fit unless the Customer advises the Company in writing, at the time of effecting payment, how the payment should be allocated.
 - 5.5. The Company reserves the right to levy interest at the maximum rate permitted by law on all overdue amounts. Should any amount not be paid by the Customer on due date or in the event the Customer is being provisionally or finally sequestrated or, being a company, provisionally or finally liquidated or being placed under judicial management or business rescue proceedings before the purchase price of the Product purchased from the Company is paid in full;
 - 5.5.1. the Company reserves the right to demand payment of the whole amount in respect of all purchases by the Customer, which shall become due, owing and payable, irrespective of the dates when the goods were purchased; and/or
 - 5.5.2. the Company shall be entitled to suspend all further deliveries of goods until such time as all outstanding amounts have been settled in full by the Customer without the Company incurring any liability to the Customer.
 - 5.5.3. the Company reserves the right, without notice, to proceed to the place where the purchased goods are stored, take possession thereof and remove the goods from such place.
 - 5.5.4. In the event of the Company instructing its Attorneys or Collecting Agents to collect any overdue amounts, all legal fees and collection charges between Attorney and Client shall be borne by the Customer and all payments made shall be allocated firstly towards such fees and charges, thereafter to interest and finally to capital.
6. The Customer hereby consents to the jurisdiction of the Magistrate Court for any action which may be instituted against the Customer
- 6.1. The Company reserves the right at any time to call for satisfactory guarantees from the Customer for payment of any amounts due or which may become due to the Company. If such guarantees are not supplied within 14 (fourteen) days of the Company's written request, the Company shall be entitled to suspend further deliveries to the Customer until it receives the requested guarantee and/or demand that all amounts owing by the Customer to the Company shall immediately become due and payable.

7. DELIVERY

- 7.1. Date of delivery will be deemed to be the date when the goods are delivered to the Customer's nominated delivery address or the date on which the Company notifies the Customer that the goods are available for collection.
- 7.2. Any third party who collects the goods from the Company will be deemed to be the Customer's agent.
- 7.3. The Company may effect delivery in one or more instalments and each instalment shall be treated as a separate transaction.
- 7.4. The Company shall endeavour to deliver the goods to the Customer either on the date agreed between the parties or within a reasonable period (taking into account the availability of the goods and/or the lead time applicable to such goods) from receipt of the Customer's order. If the Company is not able to deliver the goods to the Customer as aforesaid, it will advise the Customer of this fact and will deliver the goods within a reasonable period thereafter.
- 7.5. If the Customer delays the delivery of the goods, the Company, at its sole discretion, will be entitled to charge the Customer a daily storage fee until such time as the goods can be delivered to the Customer or the Company may cancel the transaction and recover whatever damages it has suffered as a result of the Customer's breach.
- 7.6. The Customer must inspect the goods as soon as it receives the goods. Once the Customer signs the Company's delivery documents, the Customer will be indicating to the Company that it received delivery of the goods and that they are in good order and condition and ready for use.

8. RISK AND OWNERSHIP

- 8.1. The risk in the goods shall pass to the Customer on the date of delivery from which point onwards the Customer shall be responsible for transporting, handling or storing the goods as prescribed by the Company or by law. If the Company delivers the goods to the Customer, the Customer shall be responsible for the offloading of the goods and if the Customer collects the goods from the Company, the Customer shall be responsible for the on loading of the goods.
- 8.2. Ownership in the goods shall remain vested in the Company until the full purchase price for such goods is paid to the Company.
- 8.3. The Company shall have the right to recover the goods from the Customer in the event of non-payment.

9. QUALITY SPECIFICATIONS

- 9.1. Notwithstanding the description of the goods ordered, or product or catalogue number, the Company reserves the right to supply goods ordered at the current specifications at the date of delivery. Repeat orders by a Customer are subject to this provision.
- 9.2. Goods are sold and information and advice given on the understanding that the Customer is solely responsible for determining the suitability of the goods for the intended use.
- 9.3. Notwithstanding any representations, guarantees and specifications made by the Company in respect of the goods or which may be contained in catalogues, brochures, labels and other sources of information relating to the goods, the Customer is required to examine, test and evaluate the goods, including the colour, before using the goods.

10. DISCREPANCIES

- 10.1. The Customer shall notify the Company in writing within 7 (seven) calendar days from the date of delivery, or within such other period as allowed in terms of legislation, that the goods delivered are defective, indicating the invoice number, batch number, the description of the goods and the quantity of each of the goods with details of the complaint.
- 10.2. Unless the Customer gives notice to the Company in the aforesaid manner, the Company shall not be liable for any of the aforesaid discrepancies, provided that receipt of the aforesaid written notice shall only constitute proof of notification and not of the discrepancy.
- 10.3. Once the Company has satisfied itself of the validity of the Customer's complaint it will resolve the complaint by either correcting the goods supplied to the Customer or replacing the defective or damaged goods or passing a credit in respect of the Customer's account.
- 10.4. Provided that the Customer has complied with this clause and the Company has accepted the Customer's complaint, the Customer shall deliver the goods in question to the Company at the address reflected on the Company's corresponding invoice within 10 (ten) days of being requested to do so by the Company.
- 10.5. If notwithstanding the exercise of reasonable care, the Customer could not reasonably have become aware of any damage to or defect in the goods within the period referred to in clause 9.1, the Company may at its discretion be prepared to extend the period provided that full details are given in writing as to the reasons why the damage or defect was not detected earlier.
- 10.6. The above is subject to the Customer complying with all applicable legislation and the procedures prescribed by the Company relating to the handling and storage of the goods, the Customer not having altered the goods and any defect or damage to the goods not having been caused by any conduct or omission on the part of the Customer or any third party.

11. RETURNS

- 11.1. Save as provided under clause 9 above, goods sold by the Company are not returnable save with the written consent of the Company, in the form of a Goods Return Note (GRN) issued by the Company.
- 11.2. Should the Company, in its absolute discretion, elect to accept return of any goods, it will furnish the Customer with a Goods Return Note (GRN) and the goods must immediately be returned to the Company at the Customer's expense with the corresponding invoice and delivery note, undamaged and in the same condition as they were in at date of delivery. The risk in the goods shall remain with the Customer until the goods are received and accepted by the Company.
- 11.3. The Company reserves the right not to accept any goods that do not comply with the above provisions.

12. WARRANTIES

- 12.1. THE COMPANY WARRANTS THAT THE GOODS ARE REASONABLY SUITABLE FOR THE PURPOSES FOR WHICH THEY ARE GENERALLY INTENDED (BUT NOT FOR ANY OTHER SPECIFIC PURPOSE AS THE COMPANY DOES NOT KNOW WHAT THE CUSTOMER INTENDS TO USE THE GOODS FOR), ARE OF GOOD QUALITY, FREE OF ANY DEFECTS AND WILL BE USABLE FOR A REASONABLE PERIOD OF TIME (HAVING REGARD TO THE USE TO WHICH THE GOODS WOULD NORMALLY BE PUT AND TO ALL SURROUNDING CIRCUMSTANCES OF THEIR SUPPLY).
- 12.2. THE AFORESAID WARRANTY SHALL ONLY BE APPLICABLE TO GOODS THAT ARE NOT TAMPERED WITH, THAT THE CUSTOMER HAS STORED UNDER THE PRESCRIBED CONDITIONS OR RECONSTITUTED UNDER THE PRESCRIBED CONDITIONS OR USED FOR THE PURPOSES FOR WHICH THEY ARE GENERALLY INTENDED OR USED AS PRESCRIBED BY THE COMPANY OR USED PRIOR TO SAME EXPIRING OR SUBJECTED TO THE NECESSARY EVALUATION AND CONTROL TESTS.
- 12.3. SAVE FOR THE ABOVE GUARANTEES OR UNDERTAKINGS AND SAVE FOR WHAT IS EXPRESSLY SET OUT IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE COMPANY SHALL NOT BE BOUND BY ANY OTHER WARRANTIES, GUARANTEES OR UNDERTAKINGS, WHETHER EXPRESS OR IMPLIED.

13. BREACH

- 13.1. If the Customer breaches any provision of this Agreement, or fails to pay any amount on its due date, or suffers any civil judgment being taken or entered against it, or commits an act of insolvency, or is placed under sequestration, liquidation or business rescue (whether voluntary or compulsory), or makes or attempts to make any general offer of compromise with any of its creditors or sells its business or changes the structure of its ownership, the Company shall, without prejudice to any other remedies that it has available to it in terms of this Agreement or in law, be entitled to: -
- 13.2. suspend or cease performance of its obligations to the Customer until the Customer's breach has been remedied; and/or
- 13.2.1. summarily cancel the sale of any goods to the Customer; and/or
- 13.2.2. repossess any goods which have not been paid for; and/or
- 13.2.3. summarily cancel this Agreement or claim specific performance of all of the Customer's obligations whether or not such obligations have fallen due for performance, in all events without prejudice to the Company's rights to claim damages.
- 13.2.4. If the Company breaches any provision of this Agreement and fails to remedy same within a period of 7 (seven) calendar days after receiving written demand to rectify such breach from the Customer, the Customer will be entitled to claim specific performance of the Company's obligations or to terminate this Agreement, in addition to any other rights that it has in terms of law.

14. NO RELAXATION

No relaxation which the Company may have permitted on any one occasion in regard to the carrying out of the Customer's obligations shall prejudice or be regarded as a waiver of the Company's rights to enforce those obligations on any subsequent occasion or be considered a novation of any of the terms and conditions of this contract.

15. FORCE MAJEURE

The Company will not be liable to the Customer for failing to perform its obligations in terms of this Agreement as a result of an act of God or any cause beyond its control.

16. LIMITATION OF LIABILITY AND INDEMNITY

- 16.1. THE COMPANY SHALL ONLY BE LIABLE FOR DIRECT LOSS OR DAMAGES THAT ARE SUFFERED OR SUSTAINED BY THE CUSTOMER AS A RESULT OF ITS GROSS NEGLIGENCE OR WILFUL MISCONDUCT, PROVIDED THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE LOSS OR DAMAGES THAT THE CUSTOMER MAY RECOVER FROM THE COMPANY WILL NOT EXCEED THE TOTAL PRICE PAID OR DUE TO BE PAID BY THE CUSTOMER FOR THE GOODS THAT FORM THE SUBJECT MATTER OF SUCH CLAIM, UNLESS OTHERWISE REQUIRED BY LAW.
- 16.2. THE COMPANY SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, DELICTUAL OR OTHER LOSS OR DAMAGE OF ANY NATURE AND HOWSOEVER ARISING WHICH MAY BE SUFFERED BY THE CUSTOMER AS A RESULT OF OR IN CONNECTION WITH ANY TRANSACTION CONTEMPLATED HEREIN, THE GOODS OR THE USE OR APPLICATION OF THE GOODS.
- 16.3. THE CUSTOMER HEREBY INDEMNIFIES THE COMPANY FOR AND HOLDS IT HARMLESS AGAINST ANY CLAIM MADE AGAINST THE COMPANY BY A THIRD PARTY ARISING FROM THE GOODS SUPPLIED BY THE COMPANY TO CUSTOMER OR THE CUSTOMER'S USE OF SUCH GOODS OR ANY OTHER MATTER FOR WHICH THE COMPANY WOULD NOT BE LIABLE TO THE CUSTOMER UNDER THIS AGREEMENT.
- 16.4. NOTWITHSTANDING THE ABOVE, THE COMPANY DOES NOT EXCLUDE OR LIMIT ITS LIABILITY, IF ANY, FOR ANY MATTER FOR WHICH IT WOULD BE ILLEGAL FOR THE COMPANY TO DO SO.

17. CESSION

- 17.1. The Customer shall not be entitled to cede its rights or assign its obligations under this Agreement.
- 17.2. The Company shall be entitled to cede its rights or assign its obligations under this Agreement without requiring the written consent of the Customer if such cession or assignment does not prejudice the Customer. Should such cession and/or assignment take place, such cessionary shall also be entitled to enforce its rights hereunder against the Customer in respect of goods that it supplies to the Customer.

18. COPYRIGHT

The Company is the owner of the copyright and all other intellectual property rights that vest in the Company's catalogues, on-line software and its website. No part of the foregoing may be used by the Customer for any purpose other than the ordering of goods from the Company. The Customer shall not copy or reproduce any parts of the foregoing without the express written consent of the Company.

19. DOMICILIUM

- 19.1. The Customer's physical address, postal address and e mail contact details are set out in the application section of this Agreement will constitute the Customer's chosen *domicilium citandi et executandi*. The Company's physical address, postal address and e mail details are set out on the first page of this Agreement will constitute the Company's chosen *domicilium*.
- 19.2. Either party may change its *domicilium* by furnishing the other party with 7 (seven) days written notice of its new *domicilium* details.
- 19.3. Any notice to a party sent by pre-paid registered post in a correctly addressed envelope shall be deemed to have been received on the 7th (seventh) calendar day after posting, delivered by hand during normal business hours shall be deemed to have been received on the day of delivery or sent by e mail during normal business hours shall be deemed to have been received on the date of dispatch.
- 19.4. Notwithstanding the above, a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium*.

20. LEGAL PROVISIONS

- 20.1. This Agreement and all transactions between the Customer and the Company shall be governed by and decided upon in accordance with the laws of the Republic of South Africa.
- 20.2. Either party shall, at their option, be entitled to institute action in the Magistrate's Court, notwithstanding that the amount of the party's claim exceeds the jurisdiction of such Court. Notwithstanding this consent, either party shall be entitled to institute such proceedings out of any competent Court with jurisdiction.
- 20.3. A certificate issued by any manager of the Company, whose authority, appointment and signature it shall not be necessary to prove, that purports to certify any indebtedness of the Customer to the Company, delivery of the goods to the Customer, or any other fact shall constitute *prima facie* proof of such indebtedness or delivery or such other fact.

21. GENERAL

- 21.1. This Agreement constitutes the entire agreement between the parties. To the maximum extent permitted by law, no party shall be entitled to rely upon any term, warranty, guarantee, condition or representation, unless it is contained herein.
- 21.2. No amendment of this Agreement and no extension of time, waiver or relaxation of any of the provisions of this Agreement shall be binding, unless recorded in a single document signed by both of the parties.
- 21.3. No relaxation or indulgence shall prejudice or be deemed to be a waiver of any of a party's rights hereunder.
- 21.4. Each provision of this Agreement is severable, the one from the other. If any provision is found to be defective, unlawful or unenforceable for any reason, the remaining provisions shall continue to be of full force and effect.
- 21.5. The rule of construction that this Agreement be interpreted against the party responsible for drafting this document shall not apply.

22. DISCLOSURE OF INFORMATION

- 22.1. The Customer hereby consents and grants authority to the Company to conduct credit checks, searches and the like with any credit agency or party which the Company may at its discretion consider expedient or necessary, *inter alia*, for the purpose of ascertaining the credit worthiness of the Customer or in order to trace the Customer or any of its assets.
- 22.2. The Customer acknowledges that the application for and existence of any account with the Company may be recorded by credit agencies and details of the conduct of the account may be given to and duly recorded by and shared with other persons for various reasons. The Company shall be entitled to record any adverse credit report with any agency or person.
- 22.3. The Customer hereby waives any claim and indemnifies and holds the Company harmless against any claim for any nature and howsoever arising from the aforesaid instances.

23. INTERPRETATION

- 23.1 The headings in these conditions are for convenience only and are not to be taken into account for the purpose of interpreting the contract.

24. SURETYSHIP

The signatory to this Agreement (“the surety”) binds himself/herself in his/her private and individual capacity as surety for and co-principal debtor with the Customer in favour of the Company for the due performance of any obligation of the Customer and for the payment to the Company by the Customer of any amount which may now or at any time be or become owing to the Company by the Customer. The surety’s liability to the Company shall not be limited by any credit limit granted by the Company to the Customer. This suretyship shall remain in full force and effect for so long as any amounts shall remain owing by the Customer to the Company and notwithstanding the temporary extinction of the Customer’s indebtedness to the Company. The surety waives and renounces the legal benefits of excussion (*the right to require the Company to first proceed against the Customer for payment of any debt owing to the Company before proceeding against the surety*), cession of action (*the right to require the Company to give cession of the action for payment of debts to the surety before any action against the surety may be taken*), the benefit of simultaneous citation and division of debt (*the right of a co-surety to be liable only for his pro rata share of the principal debt*) and the right to an accounting from the Company. The surety further undertakes to be bound by the remaining provisions of this Agreement *mutatis mutandis* and chooses their *domicilium* address as the Customer’s physical address set out in the application section of this Agreement.

I, the undersigned, do hereby warrant that: -

- a) All of the information recorded in the application section is accurate, correct and complete in all respects. The Customer undertakes to notify the Company of any changes to such information within 7 (seven) days from such change occurring;
- b) The Customer agrees that all transactions concluded with the Company will be subject to this Agreement;
- c) I have the necessary authority to represent the Customer herein.

THUS DONE AND SIGNED BY THE CUSTOMER AT _____

ON THIS THE _____ DAY OF _____ 20____

AS WITNESS:

FOR THE CUSTOMER:

SIGNATURE: _____

SIGNATURE: _____

FULL NAME: _____

FULL NAME: _____

I.D. NO: _____

I.D. NO: _____

DESIGNATION: _____