

## **1. Definitions**

- 1.1 "Business Customer" means a customer who is not a Consumer.
- 1.2 "Consumer" means an individual who is not acting for the purposes of his or her business or profession.
- 1.3 "Customer" includes both "Business Customer" and "Consumer" and "you"
- 1.4 "Metroseal" means Accrasystem Limited trading as Metroseal, Registered in England and Wales (Reg no 2127351), whose registered office is 3<sup>rd</sup> Floor, Scottish Mutual House, 27-29 North Street, Hornchurch, Essex, RM11 1RS UK; also referred to as "we" or "us" in these terms and conditions.
- 1.5 "catalogue" means the catalogue of products and services offered by Metroseal.
- 1.6 "Force Majeure" means any cause affecting the performance by Metroseal of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but not limited to) governmental regulations, fire, flood or any disaster or industrial dispute affecting a third party.
- 1.7 "Normal Working Hours" means 8:30am to 5:00pm on a Working Day.
- 1.8 "Working days" means Monday to Friday, excluding Bank or other Public holidays.
- 1.9 Please note special terms apply to Consumers, which prevail over the other provisions of these terms and conditions. Consumers are referred to Clause 13.

## **2. General**

- 2.1 All orders for products and services on the Metroseal web site or brochures are accepted by Metroseal subject to these terms and conditions of sale. No other terms will apply to the supply of products and services by Metroseal unless agreed in writing by an authorised signatory of Metroseal.
- 2.2 All descriptions of the products and services contained on the Metroseal website or otherwise communicated to the Customer are approximate only and shall not form any part of the contract between Metroseal and the Customer. Metroseal may correct any errors on its website without liability to the Customer. The advertising of products and services on the Metroseal website or brochures, merely constitutes an invitation by Metroseal for the Customer to make an offer to purchase products and services.
- 2.3 Metroseal website or brochures are intended for sales to the United Kingdom and Ireland only. These terms and conditions do not apply to transactions carried outside these territories, to which separate terms and conditions of sale are applicable
- 2.4 Please note, Metroseal may record and / or monitor inbound and outbound calls and electronic traffic for training purposes.

## **3. Orders**

- 3.1 All contracts of sale made by Metroseal shall be deemed to incorporate these terms and conditions, which shall prevail over any other terms from the party ("the Customer") with whom Metroseal is dealing. Cancellation of orders by business to business customers is not accepted. Cancellation of orders by Consumers will be accepted in accordance with the Consumer Protection (Distance Selling) Regulations 2000. There is no intent in these terms and conditions to infringe upon a Consumer's statutory or contractual rights to reject faulty goods.
- 3.2 All orders are subject to acceptance and to availability of the goods ordered: Metroseal reserves the right to decline to trade with any company or person. In addition, Metroseal may decline to accept any order, whether or not payment has been received, by giving notice of non-acceptance to the Customer by telephone, facsimile or email within a reasonable period of receipt.
- 3.3 You undertake that:

## **4. Prices**

- 4.1 Goods and services are invoiced at the price prevailing at time of order.
- 4.2 Prices are quoted in British Pounds (GBP) and exclude VAT, shipping charges and other taxes which, where applicable must be paid by you in addition to the price and which will be listed with the total cost of your order
- 4.3 Metroseal reserves the right to modify the prices from time to time.

## **5. Delivery, Title and Risk**

5.1 Goods are subject to availability. Stock levels may change due to the time delay between orders placed and orders accepted. If items become out of stock after Metroseal accepts the order we will notify you as soon as possible. For items that are out of stock, consumers, should they wish to cancel the order will be refunded in full. Business customers are referred to clause 5.3

5.2 For online orders date and time for delivery shall not be of the essence. If this is the case, availability and price must be confirmed with Metroseal on telephone, fax or email. Times and dates for deliveries quoted on the Metroseal website or by Metroseal's employees are approximate only. Metroseal shall use reasonable endeavours to despatch goods by the date agreed with the customer, but does not accept liability for failure to deliver within the stated time where this is caused by circumstances beyond our reasonable control, such as (but not limited to) delays caused by delivery companies or manufacturer lead times. If a delay is likely, we shall contact the customer and advise of the delay. A customer who is a Consumer shall be entitled to cancel an order when advised of a delay if the revised delivery date is not acceptable.

5.3 In the case of a Business Customer, if Metroseal is unable to deliver the goods within 30 days of the agreed delivery date, the Customer will, as its sole and exclusive remedy, be entitled to cancel the order and require any monies paid to Metroseal in respect of that order to be refunded. In order to cancel, the Customer must send written notice of cancellation to Metroseal after the above date but before delivery of the goods or notification from Metroseal that the goods are ready for delivery. This Clause does not apply to Consumers.

5.4 In the case of Business Customers, Metroseal does not accept liability for shortages or damage to deliveries unless the Customer notifies Metroseal of the shortage or damage in writing within 48 hours of receipt of the delivery. Consumers should notify shortages or damage within a reasonable period of becoming aware.

5.5 Business Customers are required to be able to accept the goods when they are ready for delivery within Normal Working Hours.

5.6 Delivery is deemed to take place when the goods are delivered to the Customer's nominated address, whereupon the risks of loss, breakage and all damage and all other risks shall pass to the Customer.

5.7 Title in the goods does not pass to the Customer until payment is received in full by Metroseal, however risk of loss or damage is passed on to the customer on delivery of goods.

5.8 If the Customer cannot accept delivery, Metroseal may at its option:

5.9 The Customer may request a Proof of Delivery, provided that this request is made in writing within 2 months of the date of delivery and Metroseal shall use reasonable endeavours to provide such proof. Thereafter, delivery shall be deemed to have been successfully completed.

5.10 For courier shipments only: Upon delivery of the goods, the Customer will be asked to sign a Proof of Delivery to acknowledge safe receipt. It is the responsibility of the Customer to ensure that the number of packages delivered corresponds with the number stated on the delivery note. Where a discrepancy occurs or where there is evident damage to the packaging, this should be noted on the Proof of Delivery. Metroseal shall not be liable for discrepancies or damage evident on delivery where the Customer accepts delivery and signs the Proof of Delivery without amendment.

5.11 Where the Customer requests goods to be sent by Royal Mail or expressly instructs Metroseal to leave goods without requiring Metroseal to obtain a Proof of Delivery, delivery shall be deemed to have been successfully completed on despatch by Metroseal

## **6. Payment**

6.1 Payment is due before shipment unless a Customer has been approved for credit. Metroseal's standard credit terms require payment within 30 days from the date of the invoice, except in the case of transactions where different terms are agreed in writing.

6.2 Payment may be made by BACS transfer, cash, cheque, Visa, MasterCard, Solo and Maestro. Handling charges for cash payments may apply. If any sum is not paid on the due date for payment then, without prejudice to any other right or remedy: All sums then outstanding from the Customer will immediately become due and payable notwithstanding that such sums would not otherwise be due until a later date, and Metroseal may apply a compensation charge to the Customer of £40 for outstanding sums up to £999.99: £70 for outstanding sums between £1,000 and £9,999.99 and £100 for outstanding sums of £10,000 or more. Metroseal may also charge the Customer interest from the due date until payment is made in full (both before and after any judgement) on the amount unpaid at a rate which is 8 per cent per annum above the Bank of England base rate as set at 31 December for the period 1 January to 30 June inclusive in the following year and as set at 30 June for the period 1 July to 31 December inclusive, compounded monthly.

6.3 Should Metroseal need to take legal recourse to recover the funds due to it, any legal costs the former may incur as a result of breach of this agreement (including non-payment) will be payable by the customer.

## **7. Product specifications**

7.1 Metroseal makes every effort to supply the goods as advertised but reserves the right to supply the goods subject to minor variations in actual dimensions and specifications. Where these dimensions are critical to the application and use of product customer is advised to get them confirmed in writing by fax or e-mail from us.

7.2 Metroseal has made every effort to ensure that the colours of the products are displayed online as accurately as possible. However since presentation of colour varies with type of monitor settings and slightly from batch to batch during production, Metroseal cannot guarantee that the colours accurately reflect the colour of the product on delivery. Customers are strongly advised to ask for samples before ordering to ascertain suitability. Metroseal will take every care and effort to ensure that product descriptions, sizes and prices are displayed correctly at the time of entering the relevant information onto the system. However, Metroseal reserves the right to refuse any orders where the information/sizes and prices are published incorrectly (this includes promotions).

7.3 If Metroseal cannot supply the goods ordered by the Customer, Metroseal reserves the right to offer goods of equal or superior quality at no extra cost. In such a case, if the Customer does not wish to accept the alternative goods offered, he or she may cancel the order and require the refund of any money paid to Metroseal in respect of that order, including carriage charges. This shall be the sole remedy of the Customer in these circumstances.

7.4 Metroseal has to adhere to the manufacturer's guidelines stipulating that a given defect(s) that are deemed acceptable before an item is accepted for replacement on grounds of fault. E.g. All Moulded products are generally made to ISO 3302 M3 C tolerance, extruded products to BS 3715 E2 tolerance and sponge products to BS 3715 E3 tolerance

7.5 Each user bears the full responsibility for making its own determination as to the suitability of Metroseal's materials, products, services, recommendations or advice for its own particular purpose. Each user must identify and perform tests and analysis sufficient to assure that its finished parts will be safe and suitable for use under end-use conditions. Because actual use of products by the user is beyond the control of Metroseal, such use is within the exclusive responsibility of the user, and Metroseal cannot be held responsible for any loss incurred through incorrect or faulty use of the products. Further, no statement contained herein concerning a possible or suggested use of any material, product, service or design is intended or should be construed to grant any license under any patent or other intellectual property right of Metroseal or any of its subsidiaries or affiliated companies, or as a recommendation for the use of such material, product, service or design in the infringement of any patent or other intellectual property right.

## **8. Trade names & Trade Marks and Rights**

8.1 Trade names and marks (other than Metroseal's) are not always indications of the actual manufacturer of a particular product and may rather be indicative of general use systems and machines associated with such products.

8.2 Metroseal acknowledges the intellectual property rights of suppliers and manufacturers of the products appearing in Metroseal's sales literature and on Metroseal's website. The Customer acknowledges that Metroseal and its licensors own the intellectual property rights in the catalogues, the website content and the stock numbers, and that their whole or partial reproduction without Metroseal's prior written consent is prohibited.

## **9. Warranties & Returns**

Please note that special terms apply to Consumers who wish to return goods, which prevail over the provisions of this Clause 9. Customers who are Consumers are referred to Clause 14.

9.1 Metroseal is committed to providing our customers with the highest quality products and service. However, on rare occasions, products may be found to be faulty or defective. In such cases we offer the returns facilities described below.

9.2 If you are not a Consumer, subject to the other provisions of these terms and conditions, Metroseal warrants that upon delivery and for a period of 3 months from the date of delivery the products will be of satisfactory quality within the meaning of Sales of Goods Act 1979. These warranties shall not apply to any defect which arises from improper use, failure to follow the product instructions, or any repair or modification made without the consent of Metroseal.

9.3 If you purchase goods in the course of your business, the following provisions of this Clause shall apply. Other than the express provisions set out in these terms and conditions, all other terms and the implied terms or warranties relating to the supply of goods are excluded to the fullest extent permitted by law. Goods are not tested or sold as being fit for any particular application or for use under specific conditions, unless expressly agreed in writing.

9.4 Subject to the right of Consumers to return goods for refund under The Consumer Protection (Distance Selling) Regulations 2000 (see Clause 13), Metroseal does not sell products on a trial basis. Customers are strongly advised to check suitability and specifications of products before ordering. In some instances, Customers may benefit from special price discounts. Such goods are not returnable and may not be sold to other customers. Accordingly, orders for such goods cannot be cancelled and Metroseal can only return or repair Goods where they prove to be defective and the Goods are returned for repair or replacement.

9.5 In the event that Metroseal, at its discretion (unless the Consumer Protection (Distance Selling) Regulations 2000 apply, see Clause 13), agrees to accept the return for credit of unwanted products, the goods must be returned with Metroseal's prior written agreement within 14 days of delivery. The goods must be unopened and in perfect re-saleable condition. All goods returned in these circumstances (except where the Consumer Protection (Distance Selling) Regulations 2000 apply, see Clause 13) will be subject to a 20% re-stocking fee of Metroseal's sale price for the goods in addition to two way carriage costs (subject to a minimum of £10). Please ensure that the product(s) you have purchased are to your specification prior to breaking the manufacturer's seals. This will avoid disappointment and the product(s) being rejected, should you wish to return them.

9.6 No contract shall be cancelled once accepted by Metroseal nor shall any Goods which are delivered in accordance with the contract be returned without prior written approval of Metroseal and on terms to be determined at the absolute discretion of Metroseal.

## **10. Metroseal's liability**

10.1 In its dealings with Business Customers, Metroseal shall under no circumstances be liable for any consequential or indirect damage or loss, however caused, including (but not restricted to) loss of business or profits, loss of goodwill, damage to trading relationships loss of data and other financial loss. ("Financial loss" in this sense does not refer to the price you have paid for the goods, which we may be liable to refund to you, in whole or in part, if the goods are faulty or do not comply with their description). Subject to and without prejudice Metroseal's liability in respect of all other losses shall be limited to the invoiced amount of the relevant order.

10.2 Nothing in this agreement shall limit Metroseal's liability for death or personal injury caused by its negligence.

10.3 We have no obligation to compensate customers for damages beyond repair or replacement of goods, or refunding of the invoice date.

10.4 In particular, we are not liable for direct or indirect damages, consequential damages caused by subordinates, assistants and/or subcontractors – even when attributable to malicious intent and/or gross negligence on their part – or for damages caused by the use of aids, suffered by our customers or by third parties.

10.5 If a customer resells goods supplied by us, or if it processes or incorporates such goods in new products which it subsequently sells, that customer is required to arrange adequate insurance cover against the liability risk. The customer undertakes to send us a copy of the relevant policy at our earliest request.

10.6 The customer indemnifies us against all third party claims for which we cannot be held liable under the foregoing.

## **11. Health & Safety**

11.1 Metroseal confirms that the goods it supplies as a distributor do not present a hazard to health and safety

## **12. Force Majeure**

12.1 Metroseal shall not be liable to the Business Customer/Consumer or be deemed to be in breach of the contract by reason of any delay in performing or any failure to perform any of Metroseal's obligations in respect of the Goods, if the delay or failure was due to any cause beyond Metroseal's reasonable control (force majeure). Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Metroseal's reasonable control:

12.2 If we are unable to provide you with your Goods within a reasonable time due to circumstances outside our control, we shall either agree a new timescale with you for the delivery of the Goods or either of us may decide to terminate the contract in which case we will return any prepayments that you have made in full or cancel the whole or any part of these terms and conditions of sale, without any liability to the Business Customer or consumer

### **13. Reduced price offer & Liquidation Products**

13.1 Goods sold on "Reduced price offer" or "Liquidation Stock" are downgraded goods that Metroseal is able to offer at a discount on the normal catalogue price. Stocks of goods offered as above are limited and such goods are sold subject to the following special rules. These special rules apply in addition to, and in the event of any conflict override, all of Metroseal's other terms and conditions, except those terms and conditions specifically covering Consumers.

13.2 Upon receipt of an order, Metroseal will check stock availability. Until stock availability is confirmed to the customer, a contract for sale will not be created and no payment will be debited from the customer.

13.3 All goods sold by Metroseal as Reduced price offer & Liquidation Products are sold subject to the following special rules that apply in addition to Metroseal's other terms and conditions.

13.4 Products are non-returnable unless we have made an error or the goods are faulty;

13.5 Prices are not subject to value, cash or volume discounts.

### **14. The Consumer Protection (Distance Selling) Regulations 2000**

14.1 Contracts for the purchase of goods by a Consumer not acting in the course of a business and made over the telephone or through the Metroseal website, or by mail order, are, with the exception of certain excepted contracts, subject to The Consumer Protection (Distance Selling) Regulations 2000 ('the Regulations'). If you are a Consumer, Metroseal warrants that upon delivery and for a period of 3 months from the date of delivery the products shall be of satisfactory quality and fit for purpose within the meaning of the Sale of Goods Act 1979 (subject to the provisions of these term and conditions).

14.2 If the Regulations apply, Consumers may cancel goods purchased from Metroseal by sending a written notice of cancellation by post or hand delivery addressed to Customer Services at Metroseal, or by fax or e-mail

14.3 The notice of cancellation must be delivered within 7 working days of the day after date of delivery of the goods.

14.4 The Customer will be responsible for the cost of returning the goods if he or she exercises this right of cancellation under the Regulations. If the Customer does not actually return the goods to Metroseal, the Customer is under a duty to make the goods available for collection at the Customer's expense from the address to which they were delivered.

14.5 The Customer is under a duty to retain possession of the goods whilst awaiting return to Metroseal and to take reasonable care of them during this period. The Customer will be liable for any loss of or damage to the goods if he or she fails to comply with this obligation.

### **15. Errors & Omissions**

15.1 Metroseal makes every effort to ensure that all prices and descriptions quoted in its catalogue and on its website are correct and accurate. However, the frenetic tempo of e-commerce makes it inevitable that mistakes will occasionally occur. In the case of a manifest error or omission, Metroseal will be entitled to rescind the contract, notwithstanding that it has already accepted the Customer's order and/or received payment from the Customer. Metroseal's liability in that event will be limited to the return of any money the Customer has paid in respect of the order. In the case of a manifest error in relation to price, the Customer will be entitled to purchase the goods by paying the difference between the quoted price and the correct price, as confirmed in writing by Metroseal after the manifest error has been discovered.

15.2 A 'manifest error', as the term is used in sub-paragraph (1) above, means, in relation to an incorrect price, a price quoted in error by Metroseal which is more than 10% less than the price that would have been quoted had the mistake not been made.

## **16. General terms of business**

16.1 Nothing in these terms and conditions affects your statutory rights as a Consumer.

16.2 If any provision in this Agreement is held to be invalid or unenforceable by any court, tribunal or administrative body, it shall be deemed severed from the Agreement and this shall not affect the validity or enforceability of the remaining provisions.

16.3 Any waiver of a breach of this Agreement must be in writing.

16.4 Any variation of this Agreement must be in writing and signed by a duly authorised Metroseal official.

16.5 The headings are for convenience only and shall not affect the interpretation of this Agreement.

16.6 Assignment. You must not transfer any contract made with us under these Conditions, as it is personal to you, without written authority from us. This authority will not be refused without good reason.

16.7 Insolvency

16.8 Customer Service queries Metroseal shall make every reasonable effort to resolve or acknowledge by post, telephone or email any queries which the Business Customer/Consumer has made within 48 hours of receipt of any such query. Metroseal shall make every reasonable endeavour to respond to complaints within 5 working days and keep the Business Customer/Consumer reasonably notified of any progress thereafter. Telephone calls made to Metroseal may be recorded for training purposes.

16.9 Third Party (Rights) Act 1999 No third party shall be allowed to enforce any rights under this contract. The parties hereby exclude the application of the Contracts (rights of Third Parties) Act 1999 to each and every contract made under these Conditions.

16.10 No Waiver Metroseal's failure to insist upon strict performance of any provision of these Conditions shall not be deemed a waiver of its rights or remedies in respect of any present or future default of the Business Customer/Consumer in performance or compliance with any of these Conditions.

16.11 Notice Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice. Notice shall be delivered personally or sent by first class prepaid recorded delivery or by registered post (airmail if overseas) or by facsimile transmission and shall be deemed to be given in the case of delivery personally on delivery and in the case of posting (in the absence of evidence of earlier receipt) 48 hours after posting (six days if sent by airmail) and in the case of facsimile transmission on completion of the transmission provided that the sender shall have received printed confirmation of transmission.

16.12 Enforceability If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provision of these Conditions and the remainder of the provision in question shall not be affected.

16.13 Dispute In the event of a dispute between the Business Customer/Consumer and Metroseal, should Metroseal in writing require, the Business Customer/Consumer agrees to submit to the jurisdiction in accordance with the Arbitration Act 1996 for the time being in force as a legally binding alternative to court action.

16.14 Jurisdiction The contract shall be governed by the laws of England & Wales and the Business Customer/Consumer agrees to submit to the non-exclusive jurisdiction of the English courts.

16.15 Images Product images are provided for illustrative purposes only and the actual product you receive may differ from the image displayed in the catalogue or on our website, especially with generic products.