

TERMS AND CONDITIONS

1. PREAMBLE:

- 1.1 This website can be accessed at <https://www.promacpaints.co.za/> and the relevant software applications (the “Website”) and is owned and operated by **Promac Paints (Pty) Ltd.**
- 1.2 These Website Terms and Conditions (“Terms and Conditions”) govern the ordering, sale and delivery of Goods, and the use of the Website.
- 1.3 These Terms and Conditions are binding and enforceable against every person that accesses or uses this Website (“you”, “your” or “user”). By using the Website and by clicking on the relevant tabs as may be applicable, you acknowledge that you have read and agree to be bound by these Terms and Conditions.
- 1.4 The Website enables you to shop online for a range of goods including but not limited to the following product paint brands such as ***Promac Paints; Easy Coat; E-Coat; RB10; Cedar; Harris Brushware & IPaint Brushware*** within the following decorative categories such as ***Preparation; Primers & Undercoats; Waterproofing; Top Coats; Special Purpose; Wood Care*** and more (“Goods”).
- 1.5 These terms will apply to every order placed by the Customer with **Promac Paints (Pty) Ltd.** for the supply of goods from time to time.

Notwithstanding same:

- 1.5.1 All goods supplied by **Promac Paints (Pty) Ltd.** to the Customer (as identified in the quotation, enquiry and/or any other means of doing so) are subject to these terms and conditions which appear on the approval forms and **Promac Paints (Pty) Ltd.** website;

1.5.2 Where a Customer interacts with **Promac Paints (Pty) Ltd.** website for the purpose of procuring a quotation and/ or an order, these terms and conditions will be of full force and effect;

1.5.3 the Customer agrees that these terms and conditions shall, novate and/or supersede any existing terms and conditions and that all orders placed by the Customer (now or in future, as the case may be) will be governed by these terms and conditions, either expressly, implicitly or tacitly (as the case may be).

2. **NOTICE:**

2.1 These Terms and Conditions apply to users who are consumers for purposes of the Consumer Protection Act, 68 of 2008 (the “CPA”).

2.2 Your attention is drawn to these Terms and Conditions because they are important and should be carefully noted.

2.3 If there is any provision in these Terms and Conditions that you do not understand, it is your responsibility to enquire in writing from **Promac Paints (Pty) Ltd.** to explain it to you before you accept the Terms and Conditions or continue using the Website. Any enquiries can be addressed to info@promacpaints.co.za

2.4 Nothing in these Terms and Conditions is intended or must be understood to unlawfully restrict, limit or avoid any right or obligation, as the case may be, created for either you or **Promac Paints (Pty) Ltd.** in terms of the CPA.

2.5 **Promac Paints (Pty) Ltd.** permits the use of this Website subject to the Terms and Conditions. By using this Website in any way, you shall be deemed to have accepted all the Terms and Conditions unconditionally. You must not use this Website if you do not agree to the Terms and Conditions.

3. ORDERS:

- 3.1 For the purpose of these terms and conditions, “*order*” shall include but not be limited to: email, digital channel and website generated enquiries.
- 3.2 Notwithstanding the above, for the purpose of an order being placed, all orders:
 - 3.2.1 Must be in writing; and
 - 3.2.2 Must include an order number, contact person, valid e-mail address, delivery address and payment method; and
 - 3.2.3 Must include the delivery date required (which shall influence the lead time and the urgency thereof).
- 3.3 An order will only be deemed to have been placed when the information requested in clause 3.2 is provided to **Promac Paints (Pty) Ltd.** and any payment terms complied with.
- 3.4 Users / Customer may place orders for Goods, which **Promac Paints (Pty) Ltd.** may accept or reject. Whether or not **Promac Paints (Pty) Ltd.** accepts an order depends on the availability of Goods, correctness of the information relating to the Goods (including without limitation the price) and receipt of payment.
- 3.5 **Promac Paints (Pty) Ltd.** will indicate the acceptance of your order by delivering the Goods to you or allowing you to collect them, and only at that point will an agreement of sale between you and **Promac Paints (Pty) Ltd.** come into effect (the “Sale”). This is regardless of any communication from **Promac Paints (Pty) Ltd.** stating that your order or payment has been confirmed. **Promac Paints (Pty) Ltd.** will indicate the rejection of your order (by the company itself) by cancelling it and, as soon as possible thereafter, refunding you for any amount already paid.

- 3.6 Prior to delivery or your collection of the Goods, you may cancel an order at any time provided you do so before receiving a dispatch or delivery notice. After delivery or your collection of the Goods, you may return the Goods only in accordance with the Returns Policy in terms of clause 6 hereof.
- 3.7 You acknowledge that stock of all Goods on offer is limited and that pricing may change at any time without notice to you. In the case of Goods for sale by **Promac Paints (Pty) Ltd.**, **Promac Paints (Pty) Ltd.** will take all reasonable efforts to monitor stock levels and ensure that when stock is no longer available, that offers thereof are discontinued on the Website. However, we cannot guarantee the availability of stock. When Goods are no longer available after you have placed an order, **Promac Paints (Pty) Ltd.** will notify you and you will be entitled to a refund of any amount already paid by you for such Goods.

4. **PAYMENT:**

- 4.1 Delivery shall be subject to payment being made by the Customer to **Promac Paints (Pty) Ltd.** as reflected on the order and/ or invoice and these funds clearing in **Promac Paints (Pty) Ltd.** nominated banking account (unless otherwise agreed in writing).
- 4.2 We are committed to providing secure online payment facilities. All transactions are encrypted using appropriate encryption technology.
- 4.3 Payment may be made for Goods via the following methods (depending on its availability and/or your eligibility to use such a method) –
- 4.3.1 **Debit card**; where payment is made by debit card, we may require additional information in order to authorise and/or verify the validity of payment. In such cases we are entitled to withhold delivery until such time as the additional information is received by us and authorisation is obtained by us for the amounts. If we do not receive authorisation your order for the Goods will be cancelled. You warrant

that you are fully authorised to use the debit card supplied for purposes of paying the Goods. ***You also warrant that your debit card has sufficient available funds to cover all the costs incurred as a result of the services used on the Website;***

4.3.2 ***Credit card:*** where payment is made by credit card, we may require additional information in order to authorise and/or verify the validity of payment. In such cases we are entitled to withhold delivery until such time as the additional information is received by us and authorisation is obtained by us for the amounts. If we do not receive authorisation your order for the Goods will be cancelled. ***You warrant that you are fully authorised to use the credit card supplied for purposes of paying the Goods. You also warrant that your credit card has sufficient available funds to cover all the costs incurred as a result of the services used on the Website;***

4.3.3 Direct bank deposit or electronic funds transfer: if you pay via direct bank deposit or electronic funds transfer, payment must be made within 5 (five) days of placing your order. **Promac Paints (Pty) Ltd.** will not accept your order if payment has not been received;

4.3.4 Instant EFT;

4.4 Once you have selected your payment method, you will be directed to a link to a secure site for payment of the applicable purchase price for the Goods.

4.5 **Promac Paints (Pty) Ltd.** shall take all reasonable steps to protect the personal information of users. For the purpose of this clause, "*personal information*" shall be defined as Protection of Personal Information Act, 4 of 2013 and/or any other legislation that may find force and effect in terms of the protection of customer information, when making transacting online or via digital channels with **Promac Paints (Pty) Ltd.**

4.6 **Promac Paints (Pty) Ltd.** shall not be liable nor responsible for any instances of fraud and/or other acts and/or omissions that may cause financial loss, prejudice and/ or detriment to the Customer through the payment process and/or payment mechanism utilised by the Customer, unless such loss, prejudice and/or detriment is as a result of the gross negligence of **Promac Paints (Pty) Ltd.**

5. **DELIVERY, RISK AND POSSESSION:**

5.1 Unless otherwise agreed in writing, the Customer shall take delivery of the goods at **Promac Paints (Pty) Ltd.** premises.

5.2 In instances whereby **Promac Paints (Pty) Ltd.** and/or the Customer elect to utilise the services of a third party delivery and/or courier company, then:

5.2.1 Delivery shall take place at **Promac Paints (Pty) Ltd.** premises, when the nominated third party delivery/ courier company collects the goods; alternatively;

5.2.2 Should the Customer request that **Promac Paints (Pty) Ltd.** transport the goods to the Customer at an address nominated by the Customer, then (and in that instance) **Promac Paints (Pty) Ltd.** shall be acting as an agent for the Customer and delivery will be deemed to have taken place at **Promac Paints (Pty) Ltd.** premises.

5.3 Risk in and to the goods shall pass to the Customer when delivery takes place, notwithstanding that ownership of the goods shall only pass on payment being received in full.

5.4 Should the Customer fail to take possession of the product within sixty (60) business days after notice having been given in writing by **Promac Paints (Pty) Ltd.** that the goods are ready for collection and/or delivery having taken place, **Promac Paints (Pty) Ltd.** will be entitled to sell the product without any further notice, to recover damages or expenses incurred and

the Customer will have no claim against **Promac Paints (Pty) Ltd.** in this regard.

5.5 Where it accepts your order, **Promac Paints (Pty) Ltd.** or the Third Party Seller will deliver the Goods to you as soon as reasonably possible, but no later than 30 (thirty) days of receipt of your payment (“Delivery Period”). We will notify you if we are unable to deliver the Goods during the Delivery Period. You may then, within 7 (seven) days of receiving such notification elect whether or not to cancel your order for the Goods. If you elect to cancel your order, we will reimburse you for the purchase price.

5.6 **Promac Paints (Pty) Ltd.** obligation to deliver a product to you is fulfilled when we deliver the product to the physical address nominated by you for delivery of the order.

6. **RETURN POLICY:**

6.1 Any acceptance of returned products is at the sole and absolute discretion of **Promac Paints (Pty) Ltd.** and shall be subject to the following:

6.1.1 No returns will be recognised and/or accepted if made later than seven (7) business days after delivery;

6.1.2 All costs resulting from the transport of returned goods will be for the account of the Customer.

7. **ERRORS:**

7.1 We shall take all reasonable efforts to accurately reflect the description, availability, purchase price and delivery charges of Goods on the Website. However, should there be any errors of whatsoever nature on the Website (which are not due to our gross negligence), we shall not be liable for any loss, claim or expense relating to a transaction based on any error, save – in the case of any incorrect purchase price – to the extent of refunding you for any amount already paid, or otherwise as set out in the Returns Policy.

8. **WARRANTIES, GUARANTEES AND INDEMNITIES:**

8.1 **Promac Paints (Pty) Ltd.** warrants that:

8.1.1 it shall use its best endeavours to ensure that the information or use of the website, alternatively other marketing material used shall not lead to any damage to the Customer (notwithstanding that any use of the website or marketing material shall be at the Customer's discretion and/or risk);

8.1.2 it shall take every care to ensure that all reasonable efforts are made relating to the quality of products and services, such products and/or services can be affected by factors outside its control, and that it accepts no liability (including instances of consequential damages) save for instances of gross negligence.

8.1.3 No guarantee is given as to the suitability of goods sold for any particular purpose nor that may the goods be fit for any particular purpose.

8.1.4 **Promac Paints (Pty) Ltd.** liability for any goods which may be proved to be defective, shall be limited to replacing the defective goods or, at the Customer's discretion, passing a credit note for the amount equivalent to the purchase price of the goods.

8.1.5 Under no circumstances will **Promac Paints (Pty) Ltd.** be responsible for any consequential damage of any nature which may arise out of the goods being defective in any way whatsoever, save for instances of gross negligence on the part of **Promac Paints (Pty) Ltd.**

8.1.6 Insofar as goods supplied by **Promac Paints (Pty) Ltd.** may be hazardous and/or unsafe, ***it is recorded that the Customer undertakes to consider, read and obey any and all notices displayed on or supplied with said packaging, and the Customer further undertakes and acknowledges not to use said products in a manner other than directed and for the ordinary use of such goods.***

8.1.7 The Customer herewith agrees and indemnifies **Promac Paints (Pty) Ltd.** against any and all claims, liabilities, losses, cost, fines, damages, and expenses incurred (whether directly or indirectly), arising as a result of the fact that **Promac Paints (Pty) Ltd.** has acted on the Customer's instructions or instructions which purport to emanate from the Customer.

8.1.8 The Customer warrants and acknowledges that it is aware that these terms of credit include clauses aimed at limiting the risk of **Promac Paints (Pty) Ltd.** and/or constitutes an assumption of risk and/or liability by the Customer.

8.1.9 The Customer hereby warrants that:

8.1.9.1 All the information and instruction provided by the Customer is accurate, true and complete in all respects. Any failure to provide accurate, true and complete instructions to **Promac Paints (Pty) Ltd.** will impact on **Promac Paints (Pty) Ltd.** ability to perform and deliver in terms of the information;

8.1.9.2 Where an order is placed with **Promac Paints (Pty) Ltd.** the person doing so shall be duly authorised by the Customer to do so.

8.1.9.3 The Customer waives its legal right to set-off.

9. **PRIVACY POLICY:**

9.1 We respect your privacy and will take all reasonable measures to protect it, as more fully detailed in our [Privacy Policy](#), which is incorporated by reference.

10. **CHANGES TO THESE TERMS AND CONDITIONS:**

10.1 **Promac Paints (Pty) Ltd.** may, in its sole discretion, change any of these Terms and Conditions at any time. It is your responsibility to regularly check

these Terms and Conditions and make sure that you are satisfied with the changes. Should you not be satisfied, you must not place any further orders on, or in any other way use, the Website.

10.2 Any such change will only apply to your use of this Website after the change is displayed on the Website. If you use the Website after such amended Terms and Conditions have been displayed on the Website, you will be deemed to have accepted such changes.

11. **CREDIT AND SEARCH:**

11.1 The Customer agrees that **Promac Paints (Pty) Ltd.** may approach credit agencies with the view to ascertaining the Customer's credit record and that in the event of the Customer being in arrears with its account or failing to pay it, **Promac Paints (Pty) Ltd.** shall then have an irrevocable right to inform credit agencies thereof.

12. **OWNERSHIP AND COPYRIGHT:**

12.1 The contents of the Website, including any material, information, data, software, icons, text, graphics, lay-outs, images, sound clips, advertisements, video clips, trade names, logos, trade-marks, designs and service marks which are displayed on or incorporated in this Website ("Website Content") are protected by law, including but not limited to copyright and trade mark law. The Website Content is the property of **Promac Paints (Pty) Ltd.**

12.2 You will not acquire any right, title or interest in or to the Website or the Website Content.

12.3 Any use, distribution or reproduction of the Website Content is prohibited unless expressly authorised in terms of these Terms and Conditions or otherwise provided for in law.

13. **DISCLAIMER:**

13.1 The use of the Website is entirely at the customer's own risk and you the customer assume full responsibility for any risk or loss resulting from use of the Website or reliance on any information on the Website.

13.2 **Promac Paints (Pty) Ltd.** disclaims liability for any damage, loss or expenses, whether direct, indirect or consequential in nature, arising out of or in connection with your access to or use of the Website and/or any content therein unless otherwise provided by law.

14. **LIMITATION OF LIABILITY:**

14.1 **Promac Paints (Pty) Ltd.** cannot be held liable for any inaccurate information published on the Website and/or any incorrect prices displayed on the Website, save where such liability arises from the gross negligence or wilful misconduct of **Promac Paints (Pty) Ltd.**, its employees, agents or authorised representatives. You are encouraged to contact us to report any possible malfunctions or errors by way of e-mail info@promacpaints.co.za

14.2 **Promac Paints (Pty) Ltd. SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGES WHICH MIGHT ARISE FROM YOUR USE OF, OR RELIANCE UPON, THE WEBSITE OR THE CONTENT CONTAINED IN THE WEBSITE; OR YOUR INABILITY TO USE THE WEBSITE, AND/OR UNLAWFUL ACTIVITY ON THE WEBSITE.**

15. **CONSENT TO JURISDICTION:**

15.1 These Terms and Conditions and our relationship and/or any dispute arising from or in connection with these Terms and Conditions shall be governed and interpreted in accordance with the laws of the Republic of South Africa. Your continued use of the Website will constitute your consent and submission to the jurisdiction of the South African courts regarding all

proceedings, transactions, applications or the like instituted by either party against the other, arising from any of these Terms and Conditions.

15.2 In the event of any dispute arising between you and **Promac Paints (Pty) Ltd.** , you hereby consent to the non-exclusive jurisdiction of the High Court of the Republic of South Africa (Gauteng Division, Pretoria) notwithstanding that the quantum in the action or proceedings may otherwise fall below the monetary jurisdiction of that court.

15.3 Nothing in this clause 15 or the Terms and Conditions limits your right to approach any court, tribunal or forum of competent jurisdiction in terms of the CPA.

16. **NOTICES:**

16.1 **Promac Paints (Pty) Ltd.** hereby selects **354 Derdepoort Road, Silverton, Pretoria, Gauteng** as its address for the service of all formal notices and legal processes in connection with these Terms and Conditions.

16.2 The customer hereby select the delivery address as specified with your order as your legal address, but you may change it to any other physical address by giving **Promac Paints (Pty) Ltd.** not less than 7 days' notice in writing.

16.2.1 Notices must be sent either by hand, prepaid registered post, or email and must be in English. All notices sent –

16.2.1.1 By hand will be deemed to have been received on the date of delivery; by prepaid registered post, will be deemed to have been received 15 days after the date of posting;

16.2.1.2 By email will be deemed to have been on the date indicated in the "Read Receipt" notification. All email correspondence must

make use of the “read receipt” function to serve as proof that an email has been received.

17. GENERAL:

- 17.1 The Customer may not delegate any rights or obligations in terms of these Terms & Conditions without the prior written consent of **Promac Paints (Pty) Ltd.**
- 17.2 **Promac Paints (Pty) Ltd.** is owned and operated by **Promac Paints (Pty) Ltd.** All elements of the website, including but not limited to, the images, text, databases, icons, hyperlinks, software, private information, photographs, graphics, illustrations, artwork, design, names, logos and trademarks (collectively, the "content"), are protected by copyright, trademark, design and other South African and international laws relating to intellectual property.
- 17.3 The Customer and/or any related or unrelated third party may not download, view and print content from the website for private and non-commercial purposes. No portion or element of the website or the content contained thereon may be reproduced or transmitted via any means. The website, its content and all related rights shall remain the exclusive property of **Promac Paints (Pty) Ltd.** Email addresses, names, telephone numbers and fax numbers appearing on the website may not be incorporated into any database or used for any marketing or other purposes whatsoever.