

## AmeriCoats Standard Terms and Conditions

This document contains the Terms and Conditions for the sale of product by AmeriCoats, a division of Coatings International, Inc., an Illinois corporation (“**Seller**”). Each purchaser of any product of Seller (“**Buyer**”) agrees to be bound by these Terms and Conditions.

1. Offer & Acceptance. Any quotation issued by Seller, whether or not such quotation is made in writing (each a “**Quotation**”), is an offer or counteroffer to the Buyer for the sale and purchase of the products identified therein or in any subsequently delivered invoice or packing slip (the “**Products**”) subject to these Terms and Conditions. Acceptance by Buyer of the Quotation may be made verbally or through the issuance of a purchase order. Any sale of Products by Seller to Buyer, regardless of which party makes the offer, shall be subject to these Terms and Conditions without modification and Buyer agrees to be bound by these Terms and Conditions. No additional or different terms or conditions will be binding upon Seller unless specifically agreed to in writing by an authorized representative of the Seller. Seller explicitly objects to any additional or contrary provisions contained in any purchase order or other communication heretofore or hereafter received from Buyer. By purchasing any Product from Seller, Buyer agrees that these Terms and Conditions, as amended by Seller from time to time, shall continue to govern the relationship between the parties, including all subsequent sales, until such time as both parties shall agree in writing.

2. Pricing/Payment. (a) The prices for the Products set forth on the Quotation or on Seller’s invoice shall be the Seller’s prices for the Buyer for the Products with these Terms and Conditions; provided, however, that material prices are subject to adjustment by the Seller to conform to the Seller’s price at the time of shipment. Unless otherwise noted therein, the Quotation shall be valid for thirty (30) days from the date thereof. All prices listed are payable in United States dollars.

(b) Upon shipment of any Products, Seller will invoice Buyer for those Products. Payment is due Net thirty (30) days from the date of shipment, unless otherwise provided in the Quotation. Interest will be charged at the maximum rate permitted by law on accounts past due. A one percent (1%) discount will be made for all orders paid in full within ten (10) days from the date of shipment.

(c) A confirmed letter of credit drawn on a prime U.S. bank is required for all purchases of Buyers located outside the contiguous United States of America. Any letter of credit required by Seller shall provide for payment against Seller’s invoice and bill of lading, and shall be in form and substance satisfactory to Seller.

3. Security Interest. Buyer hereby grants to Seller a security interest in the Products sold hereunder until Buyer has completed payment of the purchase price in full, plus accrued interest if any, and fully performed all of the other terms and conditions hereof, at which time Seller’s security interest is satisfied. Buyer hereby acknowledges and agrees that these Terms and Conditions shall constitute a security agreement under the Uniform Commercial Code in effect from time to time in the State of Illinois and agrees that Seller shall be entitled to prepare and file financing statements and such other documents evidencing Seller’s security interest as Seller determines necessary or advisable without further action of Buyer.

4. Taxes and Other Charges. Any manufacturer’s tax, occupation tax, use tax, sales tax, excise tax, value-added tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and the Buyer shall be paid by the Buyer in addition to the prices quoted or invoiced. In the event the Seller is required to pay any such tax, fee or charge, the Buyer shall reimburse Seller therefore; or in lieu of such payment, the Buyer shall provide Seller at the time the order is submitted with an exemption certificate or other document acceptable to the authority imposing the same. Should Seller, in its sole discretion, determine that the exemption document provided by Buyer does not clearly meet the requirements of the authority imposing a tax, the Buyer hereby agrees to pay such tax in full.

5. Shipping & Delivery. All Products are FOB shipping point, unless otherwise stated on the applicable Quotation, invoice and/or packing list. Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated in writing; all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries and any deliveries not in dispute shall be paid for regardless of other controversies relating to other delivered or undelivered merchandise. Method and route of shipment shall be at the discretion of Seller, unless otherwise stated on the applicable Quotation, invoice, or packing list.

6. Claims. Claims for shortages or other errors in delivery must be made in writing to Seller within five (5) days after receipt of shipment. Failure to give such notice shall constitute unqualified acceptance of all shipments made prior to Seller’s receipt of Buyer’s notice of claim, and shall constitute a waiver of all such claims by Buyer. Claims for loss or damage to goods in transit should be made to the carrier and not to Seller.

7. Force Majeure. All delivery dates are approximate. Seller shall not be liable for any damage as a result of any delay or failure to deliver due to any act of God, act of the Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown or other labor difficulties, war, terrorism, riot, delay in transportation, defaults of common carriers or, without limiting the foregoing, any other delays beyond the Seller’s control.

8. Storage. If the Products are not shipped after notification to the Buyer that they are ready for shipping, for any reason beyond Seller’s reasonable control, including the Buyer’s failure to give shipping instructions, Seller may bill Buyer and/or may store such Products at the Buyer’s risk in a warehouse or yard or upon Seller’s premises, and the Buyer shall pay all handling, transportation and storage charges at the prevailing commercial rates upon submission of invoices therefor. Interest may be charged at legal rates.

9. Warranty. Seller warrants that the Products shall be free from defects in materials and shall materially conform to the specifications set forth in the applicable Quotation at the time of delivery. If Buyer notifies Seller in writing of nonconformity with this warranty within ten (10) days of delivery, Seller shall promptly use reasonable efforts to remedy the nonconformity at no additional expense to Buyer. Such repair or replacement shall be Seller’s sole obligation and Buyer’s exclusive remedy hereunder and shall be conditioned upon, at Seller’s option, delivery of such non-conforming Products to Seller. THE EXPRESS WARRANTY IN THIS SECTION IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. Any description of the Products, whether in writing or made orally by Seller, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Buyer’s order are for

the sole purpose of identifying the Products and shall not be construed as an express warranty. Any suggestions by Seller regarding use, application or suitability of the Products shall not be construed as an express warranty unless confirmed to be such in writing by Seller.

10. Technical Data Sheets. Buyer agrees to follow all instructions and warnings, including, without limitation, handling and use instructions, on the technical data sheets that accompany the Products. Such technical data sheets may or may not be affixed to the Products' packaging. For each of the Products sold by Seller to Buyer, Buyer is responsible for obtaining and reviewing Seller's applicable technical data sheet.

11. Limitation of Liability. (a) IN NO EVENT WILL SELLER OR ITS EMPLOYEES, OFFICERS AND DIRECTORS BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, COSTS, EXPENSES, OR LOSSES (INCLUDING LOST PROFITS OR OPPORTUNITY COSTS), REGARDLESS OF THE FORM OF ACTION, DAMAGE, CLAIM, LIABILITY, COST, EXPENSE, OR LOSS, WHETHER IN CONTRACT, STATUTE, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE.

(b) SELLER SPECIFICALLY LIMITS ITS LIABILITY TO THE PRODUCTS PRODUCED HEREUNDER. IN NO EVENT SHALL SELLER BE LIABLE FOR THE PERFORMANCE OF THE SUBSEQUENT PRODUCTS PRODUCED THEREFROM. SELLER, ITS EMPLOYEES, OFFICERS AND DIRECTORS WILL NOT BE LIABLE TO BUYER FOR ANY ACTIONS, DAMAGES, CLAIMS, LIABILITIES, COSTS EXPENSES, OR LOSSES IN ANY WAY ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS FOR AN AGGREGATE AMOUNT IN EXCESS OF THE FEES SET FORTH IN THE INVOICE FOR THE PRODUCTS GIVING RISE TO LIABILITY.

(c) NONE OF THESE TERMS AND CONDITIONS WILL BE ENFORCABLE BY OR CREATE ANY RIGHT OR CAUSE OF ACTION FOR OR ON BEHALF OF ANY PERSON OR ENTITY OTHER THAN BUYER AND SELLER.

(d) ANY ACTION BY BUYER AGAINST SELLER MUST BE BROUGHT WITHIN TWELVE MONTHS AFTER THE EVENT GIVING RISE TO THE CAUSE OF ACTION.

12. Returns. Products may not be returned to Seller without Seller's prior written permission. Such return will be on the terms and conditions as Seller may require.

13. Indemnity. (a) Seller shall defend or settle, at its option and expense, any and all claims, liabilities, losses, expenses (including reasonable attorneys' fees), fines, penalties, taxes or damages (collectively "**Liabilities**") incurred by or asserted against Buyer to the extent such Liabilities result from a third party claim that any of the Products infringe upon that third party's trade secret, trademark, service mark, copyright, or patent ("**Intellectual Property Rights**"). The foregoing indemnification obligations shall not apply to any infringement to the extent caused by Buyer's (i) misuse, (ii) alteration, or (iii) combination of the Products with materials not provided, specified, or approved by Seller. The sale of any Products hereunder may in no way be construed as an inducement by Seller of any infringement by Buyer

(b) If Seller determines that either party may become subject to a suit seeking an injunction or order precluding use of any Product by Buyer, Seller may, at its option, obtain the right for continued use of the Product for Seller or substitute an alternative Product.

(c) Buyer shall defend or settle, at its option and expense, any and all Liabilities incurred by or asserted against Seller in connection with any third party claim to the extent such Liabilities result from Buyer's (i) misuse, (ii) alteration, or (iii) combination of the Products with materials not provided, specified, or approved by Seller.

(d) Each indemnifying party ("**Indemnitor**") shall defend or settle, at its option and expense, any and all Liabilities incurred or asserted against the indemnified party ("**Indemnitee**") as specified above, provided that Indemnitee (i) promptly notifies Indemnitor of any claim subject to indemnification (but further provided that failure to promptly notify shall only relieve Indemnitor of its indemnification obligation to the extent that such failure prejudices Indemnitor's response or defense), (ii) gives Indemnitor the right to control and direct the defense and settlement of any such claim, as long as the settlement does not include any financial obligation or admission of liability for Indemnitee, (iii) cooperates fully with Indemnitor for the defense of any such claim, and (iv) complies with Indemnitor's direction to cease using any Product, which, in Indemnitor's judgment, is likely to be ruled an infringement of a third party's Intellectual Property Rights.

14. Technical Information. Any sketches, models, samples or designs submitted by Seller shall remain the property of Seller, and shall be treated as confidential information unless the Seller has in writing indicated a contrary intent. No use or disclosure of such sketches, models and samples, or any design or production process or techniques revealed thereby, shall be made without the express written consent of the Seller.

15. Assignment. Neither party may assign, transfer or delegate any of the rights or obligations under these Terms and Conditions without the written consent of the other party, except that Seller may (i) assign and/or subcontract all or a portion of these Terms and Conditions to an affiliate or subsidiary without consent of Buyer or (ii) assign its rights and obligations hereunder to any successor in interest to all or substantially all of the assets and business of Seller, without the consent or approval of Buyer.

16. Governing Law and Jurisdiction. These Terms and Conditions will be governed and construed under Illinois law without regard to its conflict of laws provisions. Buyer hereby submits to the personal non-exclusive jurisdiction of the courts of the state of Illinois for all purposes connected to the purchase and sale of the Products. In any legal proceeding between the parties, venue shall exclusively lie in the state and federal courts situated in Cook County, Illinois.

17. No Waiver of Breach. No waiver of any breach of these Terms and Conditions will be a waiver of any other breach, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party.

18. Severability. If any provision of these Terms and Conditions shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect the validity and enforceability of any legal and enforceable provision hereof, which shall be construed as if such illegal and unenforceable provision(s) had not been inserted herein.

19. Survival. Provisions regarding payment, termination, ownership, warranties, limitations of liability, governing law, confidentiality, severability, and waivers will survive the expiration or termination of this engagement.