

## COATING CENTER TERMS AND CONDITIONS OF SALE

THESE TERMS APPLY TO ALL GOODS AND SERVICES SUPPLIED BY COATING CENTER BRANDED COMPANIES EFFECTIVE 1<sup>st</sup> JULY 2020 UNTIL SUPERCEDED



These Worldwide Terms and Conditions of Sale ("Terms") shall govern all sales of Goods or Services to Buyer ("Order"). Seller and Buyer are the parties named on the Order.

**1. Applicability:** These Terms shall govern the Order to the exclusion of any other terms and conditions subject to which any quotation is purported to be accepted or order is purported to be made by Buyer. These Terms supersede any terms and conditions contained in Buyer's request for quote, purchase order, invoice, order acknowledgement, Goods inwards/ delivery stamp, or similar document or notation. These Terms may not be amended, supplemented, changed or modified except by concurrent or subsequent written agreement, signed by an authorised representative of Seller and Buyer. Seller's acknowledgement of Buyer's purchase order shall not constitute acceptance of any terms and conditions contained therein, regardless of how such terms and conditions may be prefaced or described. **Seller accepts Buyer's Order on condition that Buyer assents to these Terms and any terms included on Seller's quotation. Buyer's assent to these Terms and waiver of any differing terms is evidenced either by Buyer's purchase order which constitutes an offer by Buyer to buy on these Terms (any contrary terms or conditions of which shall be disregarded) and which shall be accepted by Seller by written confirmation issued by Seller's authorised representative or (if earlier) by Seller providing the Goods and /or Services.**

**2. Payment and Shipping Terms:** Payment terms are net 30 days end of month, EXW (ICC Incoterm 2020 as amended) Seller's Facility, unless expressly provided to the contrary on the accompanying quotation. Any amount not paid by the due date shall therefrom incur interest on the amount at the maximum legal rate.

Shipping dates are approximate and are based on prompt receipt of all necessary information. In the event of delay in furnishing complete information, dates of shipment may be extended by Seller for a reasonable time. In the event that Seller provides transport services the price will be based on destination and shipping mode.

If Buyer's financial condition is or becomes unsatisfactory to Seller, Seller reserves the right to: (a) require payment from Buyer on a Cash In Advance basis; (b) require a letter of credit or other acceptable security before shipment; or (c) cancel shipment at any time prior to delivery of the Goods without obligation or liability on Seller's part.

**3. Delivery:** Seller shall not be liable for delay in delivery due to causes beyond its reasonable control including, but not limited to, acts of God, acts of government, acts of Buyer, fires, labour disputes, boycotts, floods, epidemics, quarantine restrictions, war, insurrection, terrorism, riot, civil or military authority, freight embargoes, transportation shortages or delays, unusually severe weather or inability to obtain necessary labour, materials or manufacturing facilities due to such causes. In the event of any such delay, the date of delivery shall be extended for a length of time equal to the period of the delay.

**4. Price:** All price quotations issued by Seller are valid for (a) thirty days, or (b) issuance of a purchase order expressly referencing the quotation, whichever is earlier. Buyer shall reimburse Seller for any excise, sales, use, VAT or other taxes incident to this transaction for which Seller may be liable or which Seller is required by law to collect. All transportation, insurance and similar charges incident to delivery shall be paid by Buyer. Seller shall issue its invoice upon shipment, or upon notice to Buyer that Seller is ready to ship, whichever is earlier.

**5. Title:** Title to the goods supplied by Seller ("Goods") shall not pass to Buyer until the earlier of (i) Seller receives payment in full for the Goods and any other Goods that Seller has supplied to Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; or (ii) Buyer resells the Goods in the ordinary course of its business, in which case title to the Goods shall pass to Buyer immediately before the time that the resale occurs. Buyer shall sell as principal and not as Seller's agent. Until title to the goods has passed to Buyer, Buyer shall store the Goods separately and readily identifiable; not remove, deface or obscure any identifying mark or packaging, maintain the Goods in merchantable condition and keep them insured against all risks from the date of delivery. In the case of any insolvency of Buyer/ Buyer being unable to pay its debts howsoever arising, Buyer's right to resell or use the Goods shall cease immediately and Seller may at any time require Buyer to deliver up all the Goods in its possession not resold or irrevocably incorporated into another product, and /or enter into any premises of Seller or any third party where the Goods are stored to recover the Goods. The Goods in stock shall be presumed to be those unpaid.

**6. Buyer Cancellation:** Buyer may cancel the Order at the sole discretion of the Seller only upon written notice and payment to Seller of all costs and expenses incurred by Seller (i) in fulfilling the Order prior to cancellation and (ii) as a result of cancellation.

**7. Returns:** Returns are only permitted at Seller's sole discretion and subject always to prepayment of (i) Seller's restocking fee and (ii) transportation to location specified by Seller.

**8. Set-off:** All amounts owed to Seller shall be due and payable according to the terms of the Order in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**9. Intellectual Property:** Notwithstanding delivery of and the passing of title in any product, nothing in these terms and conditions shall have the effect of granting or transferring to, or vesting in, Buyer any intellectual property rights in or to any Goods. Buyer shall have no rights to use any trademarks owned or used by Seller. Any designs, drawings, plans or other data supplied by Seller to Buyer or specifically produced by Seller for Buyer in connection with the Order together with all intellectual property shall be the exclusive property of Seller.

**10. Buyer's Designs and Specifications:** Buyer will protect and indemnify Seller against all claims arising out of patents, designs, trade secrets, copyrights, or trade names with respect to Goods manufactured wholly or partially to Buyer's designs or specifications, including any costs, expenses, loss, attorneys' fees, settlement payments, or damages.

**11. Claims:** All claims must be made within 14 days after receipt of Goods (except for warranty claims, which are governed by the Limited Warranty below).

**12. Performance Estimates:** Any performance standards furnished by Buyer may depend on several variable factors, and as such no results or estimates are guaranteed.

**13. Limited Warranty:** Subject to the **LIMITATION OF LIABILITY / EXCLUSION OF CONSEQUENTIAL LOSS** (Section 14 below), Seller warrants as follows: For a period of twelve (12) months following original shipment by the Seller or for component repairs three months from the date of their initial use or three months from the date of their delivery, whichever occurs first (the "Warranty Period"), the Goods shall be free from defects

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in material and workmanship. If within the Warranty Period the Goods, or any part thereof, do not conform to this warranty, and Buyer so notifies Seller in writing within a reasonable time after discovery, Seller shall correct such nonconformity by repair or replacement within ninety (90) business days. Seller's sole obligation and Buyer's sole remedy under this warranty is repair or replacement, at Seller's election, of any Goods found by Seller to be defective in breach of this warranty. Goods must be returned transportation prepaid to the location specified by the Seller. No returns will be accepted without prior authorisation of Seller. Seller must be contacted in writing to initiate the warranty process. All Goods repaired or replaced shall be re-warranted only for the remainder of the original warranty period.

With regard to any work, direction of work, technical information or technical consulting and advice or other services furnished by Seller to Buyer ("Services"), Seller warrants the subject of the Order will be performed with reasonable skill and care and within a reasonable period. Performance dates are only estimates and Seller shall not have any liability therefor. Buyer shall notify Seller in writing of any nonconforming Services within twenty (20) business days of completion of the Service. Seller's sole obligation and Buyer's sole remedy under this warranty in relation to the Services shall be re-performance of the Services found by Seller not to conform to the warranty of which Seller was properly notified. Buyer agrees to provide Seller reasonable and clear access to perform the Services which may include removal of material or structures as well as supplying any equipment, materials or structures which are necessary to provide reasonable access for the Services to be performed.

**THE LIMITED WARRANTY CONTAINED HEREIN IS THE SOLE AND EXCLUSIVE WARRANTY OF SELLER AND THE SOLE AND EXCLUSIVE REMEDY OF BUYER FOR DEFECTIVE OR NON-CONFORMING GOODS OR SERVICES AND IS IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, AND GUARANTEES. ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE EXPRESSLY DISCLAIMED BY SELLER, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE.**

Seller shall have no liability for any defect arising from any drawing, design or specification provided by Buyer. Seller shall not be liable for repairs or alterations made by Buyer or third parties without written agreement between Seller and Buyer, and any such repairs or alterations shall void the limited warranty herein. Seller does not warrant the Goods or any repair/replacement part against, and shall not be liable to the Buyer for, the effects of wilful damage, negligence or abnormal working conditions, misuse, incorrect handling or application of the Goods, erosion, corrosion, or normal wear and tear due to operation or the environment. The warranty and remedies of the Buyer are conditional upon proper storage, installation, use and maintenance of the Goods in all material respects, and in accordance with Seller's written recommendations. Seller will endeavour to convey to Buyer the benefit of any manufacturer's warranty for parts materials and equipment not manufactured by Seller.

**14. Limitation of Liability and Exclusion of Consequential Loss: The total aggregate liability of the Seller with respect to any Order, or any breach of any Order, whether based on contract, warranty, tort (including negligence) indemnity, strict liability, under statute, or otherwise, (including liability for recovery of sums paid by Buyer and for all damages, costs and expenses) shall not exceed the net Order price of the specific Goods or Services from which Buyer's claim arises.**

**IN NO EVENT SHALL SELLER BE LIABLE FOR**

**(i) LOSS OF USE (WHETHER DIRECT OR INDIRECT);**

**(ii) LOSS OF ACTUAL OR ANTICIPATED PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT);**

**(iii) LOSS OF REVENUE, LOSS OF PRODUCTION, OR LOSS OF BUSINESS (IN EACH CASE, WHETHER DIRECT OR INDIRECT);**

**(iv) LOSS OF GOODWILL, LOSS OF REPUTATION, OR LOSS OF OPPORTUNITY (IN EACH CASE WHETHER DIRECT OR INDIRECT);**

**(v) LOSS OF ANTICIPATED SAVINGS OR LOSS OF MARGIN (IN EACH CASE, WHETHER DIRECT OR INDIRECT); (vi) LOSS OR DAMAGE TO OR CORRUPTION OF DATA;**

**(vii) ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES OF ANY KIND;**

**(viii) DEFECTS IN DESIGN OR ENGINEERING WHETHER PERFORMED BY SELLER OR OTHERS; OR**

**(ix) ANY AMOUNTS IN EXCESS OF SELLER'S NET PRICE OF THE GOODS OR SERVICE IN QUESTION, HOWSOEVER CAUSED INCLUDING, WITHOUT LIMITATION, BY NEGLIGENCE AND/OR ARISING FROM BREACH OF OR DEFECT OR DELAY IN PERFORMANCE OF ANY OF SELLER'S OBLIGATIONS UNDER THESE TERMS.**

**Where it is prohibited by law, these terms shall not operate to exclude or restrict Seller's liability, if any, for (i) death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable, (ii) fraud or fraudulent misrepresentation or for the fraud or fraudulent misrepresentation by a person for whom it is vicariously liable, or (iii) breach of its obligations relating to title.**

Seller's prices are determined on the basis of the limits of liability set forth in these Terms. Buyer may by written notice to Seller request Seller to agree to a higher limit of liability. In the event Seller agrees to a higher limit of liability and contingent upon insurance coverage for such higher limit being obtained, Seller shall use reasonable endeavours to effect insurance up to such limit and Buyer shall pay upon demand the amount of all premiums. Buyer shall disclose such information as the insurer(s) shall require. In no case shall Buyer be entitled to recover from Seller more than the amount received from the insurer(s).

**15. Non-use of Seller's data:** Buyer agrees that it shall not use Seller's data for the manufacture or procurement of Goods which are the subject of an Order or any similar Goods, or cause said Goods to be manufactured by, or procured from, any other source or reproduce said data and information or otherwise appropriate them without the written authorisation of Seller.

**16. Non-disclosure:** Buyer agrees that it shall not disclose or make available to any third party any of Seller's data or other information pertaining to this Order which is proprietary to Seller without obtaining Seller's prior written agreement.

**17. Compliance with Warnings:** Buyer agrees to comply with such health and safety information, warning statements and/ or instructions in connection with the installation, use or maintenance, including preventative maintenance of Goods as may be provided by Seller and will further communicate these to any of its employees, agents and contractors and any subsequent buyer or end user supplied by Buyer.

**18. Export and Import:** Buyer agrees to comply with all applicable import and export control law and/or regulations, including without limitation those of the UK, EU, United States and all other jurisdictions from which the Goods or technology may be supplied or to which the Goods or technology may be shipped. In no event shall Buyer export or re-export to any entity or person within any country that is subject to sanctions or use, transfer, release, import, export or re-export the Goods or technology in violation of applicable export laws and/or regulations. If Seller is required to prepare an export license application on Buyer's behalf Buyer will reimburse any costs and shall allow such additional time to be added to the delivery as shall be necessary.

**19. Special Tooling and Data:** Charges for tools, dies and other equipment cover only a portion of their cost and ownership and sole right to possession and use thereof shall not pass to Buyer but shall remain in Seller. Seller retains all rights, title and interest in drawings, engineering instructions, specifications, and all other written data, if any, furnished and/or specified to be supplied with the Goods.

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**20. Code of Conduct:** Seller is committed to conducting its business ethically and lawfully. Seller expects that Buyer will also conduct its business ethically and lawfully. If Buyer has cause to believe that Seller or any employee or agent of Seller has behaved unethically or unlawfully under, or in connection with, these Terms, Buyer is encouraged to report such behaviour to Seller. Seller's Code of Conduct and mechanisms for making such reports are available on [www.coatingcenterinc.com](http://www.coatingcenterinc.com).

**21. General: Waiver:** Failure by Seller to assert all or any of its rights upon any breach of an Order shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach, nor shall any waiver be implied from the acceptance of any payment of service. No waiver of any right shall extend to or affect any other right Seller may possess, nor shall such waiver extend to any subsequent similar or dissimilar breach.

**Severability:** If any portion of these Terms are determined to be illegal, invalid, or unenforceable, for any reason, then such provision shall be deemed modified/ stricken to the minimum extent necessary to make it valid, legal and enforceable for purposes of the dispute in question and all other provisions shall remain in full force and effect.

**Assignment and Third Party Rights:** Buyer may not assign or transfer all or part of its rights or obligations under this Order without the prior written consent of Seller. Seller may assign or transfer all or part of its rights and to sub-contract any of its obligations under the Order. The parties do not intend that any term of the Order shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.

**Entire Agreement:** These Terms constitute the entire agreement and understanding between Buyer and Seller in connection with the subject matter of this Order, and supersede all prior oral or written communications, representations or agreements in relations thereto and neither party has entered into the Order in reliance upon, and shall have no remedy in respect of, any representation or statement (whether made by the other party or any other person) which is not expressly set out in these Terms or Sellers Quotation. Nothing in the preceding sentence shall be interpreted or construed as limiting the liability of Seller for fraud or fraudulent misrepresentation.

**22. Applicable Law and Dispute:** This Order shall be interpreted in accordance with the laws of the jurisdiction in which Seller's facility accepting the Order hereunder is located ("Local Law"), exclusive of any choice of law provisions. Seller and Buyer expressly agree to exclude from this Order the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto. Seller's action to collect unpaid balances shall be subject to the exclusive jurisdiction of the local courts in the territory in which Seller's principal office is located. All other disputes arising out of or in connection with an Order shall be finally settled by binding arbitration in the country in which Seller's facility accepting the order hereunder is located, under the Rules of Arbitration of the International Chamber of Commerce then in effect by one or more arbitrators appointed in accordance with said Rules.

**23. Language and Translations:** English shall be the legal language of this Order, and all parties waive any right to use and/or rely upon any other language, translation or interpretation. The parties specifically agree that in the case of any inconsistencies or interpretation disputes, the English language version shall control.