



DEWAYNE'S QUALITY METAL COATINGS GENERAL TERMS AND CONDITIONS OF SALE

1. Applicability.

(a) These General Terms and Conditions of Sale (these "**Terms**") are the only terms which govern the sale of metal finishing and related support services ("**Products**") by DeWayne's Quality Metal Coatings, LLC, a Delaware limited liability company (together with its affiliates, successors and assigns, "**Seller**"), to the buyer named on the Sales Confirmation ("**Buyer**"). The issuance of a purchase order, written or verbal acceptance of the accompanying quotation or the shipment of parts for finishing shall constitute Buyer's acceptance of these Terms. Notwithstanding anything herein to the contrary, if a written contract signed by Buyer and Seller is in existence covering the sale of the Products covered by these Terms, the terms and conditions of that contract shall prevail to the extent they are inconsistent with these Terms.

(b) The accompanying quotation, sales confirmation or invoice (the "**Sales Confirmation**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations, warranties and communications, both written and oral, between the parties. These Terms prevail over any of Buyer's general terms and conditions of purchase ("**Buyer's Terms**") regardless whether or when Buyer has submitted its purchase order or Buyer's Terms, and Buyer's Terms shall not apply unless Seller has accepted them in a writing signed by an authorized representative of Seller that expressly acknowledges and accepts Buyer's Terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's Terms and does not serve to modify or amend these Terms.

(c) Quotations are valid for ninety (90) days after delivery to Seller, after which period they expire and cannot be accepted. Seller reserves the right to terminate any quotations prior to their expiration.

2. Parts.

(a) Parts provided by Buyer for finishing must be free of rust, heavy oil, grease and surface defects that do not come off in the metal finishing process. Seller is not responsible for inspecting the condition of parts prior to finishing, nor is Seller responsible for the failure of the parts to withstand the metal finishing process except to the extent such failure is the result of Seller's negligent acts or omissions in finishing the parts. If Seller incurs any costs in processing parts because such parts do not comply with this Section 2(a), Seller shall be entitled to charge Buyer (and Buyer shall pay Seller) for such costs. Such costs may include, but are not limited to, costs associated with stripping and recoating the parts.

(b) Seller is not responsible for any costs or delays associated with mixed parts or sorting. If Seller incurs any costs in processing or sorting mixed parts, Seller shall be entitled to charge Buyer (and Buyer shall pay Seller) for such costs. Such costs may include, but are not limited to, the cost of labor for the time required to sort the mixed parts. If Seller is delayed in finishing parts because of the need to sort mixed parts, the time for delivery set forth Section 5 shall begin running on the date Seller discovers the need to sort the mixed parts, and Seller shall not be liable to Buyer for any costs associated with the delay, including, without limitation, the cost of expedited freight.



3. Tooling. Seller will maintain in good working order and repair any tooling provided by Buyer for so long as such tooling is required for the performance of Seller's obligations under this Agreement. Seller shall be entitled to charge Buyer (and Buyer shall pay Seller) for the costs associated with maintaining the tooling. Any tooling provided by Buyer that is left with Seller and not recovered by Buyer within six (6) months after Seller's performance under this Agreement shall become the property of Seller.

4. Testing. Buyer is responsible for all charges associated with production part approval process ("PPAP") testing and sampling unless Seller agrees in writing to accept surrogate data. If Seller incurs any PPAP testing or sampling costs, Seller shall be entitled to charge Buyer (and Buyer shall pay Seller) for such costs.

5. Delivery.

(a) Seller will deliver finished Products to Buyer within a reasonable time after Seller's receipt of parts for finishing from Buyer. Without limiting the generality of the foregoing sentence, Seller will be deemed to have complied with the "reasonable time" standard if it delivers the parts within seven (7) business days, per process that Seller is required to run, commencing the first business day after Seller receives the parts. Seller shall not be liable for any delays, loss or damage in transit.

(b) Except as set forth in the Sales Confirmation or as otherwise agreed in writing by the parties, Seller shall deliver finished Products to Seller's location at 205 N. Industrial Dr., Lexington, Tennessee 38351 (the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Products. Buyer is responsible for work instructions and materials if special packaging or handling is required. Unless Buyer pays for special packaging and handling, Seller will deliver the Products to Seller in the same containers and quantities (subject to any allowable scrap per Section 6) as received from Seller. Buyer shall take delivery of the Products within thirty (30) days after the Products have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Products at the Delivery Point.

(c) Notwithstanding anything herein to the contrary, Seller may, in its sole discretion, without liability or penalty, make partial shipments of the Products to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

(d) If for any reason Buyer fails to accept delivery on the date set forth in Section 5(b), or if Seller is unable to deliver the Products at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Products shall pass to Buyer; (ii) the Products shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Products until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

6. Quantity. If in its performance of this Agreement Seller delivers to Buyer a quantity of Products of up to two percent (2%) less than the quantity of parts Seller receives from Buyer, Buyer shall not be entitled to object to or reject the Products or any portion of them by reason of the shortfall and shall pay for such Products the Price(s). For the avoidance of doubt, the two percent (2%) figure shall be calculated against all parts Seller receives from Buyer under this Agreement (e.g., if Seller receives six shipments of parts from Buyer over the course of six months, then the two percent (2%) figure shall be calculated against all six shipments). The quantity of any installment of Products as recorded by Seller



on delivery is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

7. Shipping Terms. Delivery shall be made FOB Seller's location at 205 N. Industrial Dr., Lexington, Tennessee 38351. Quotations do not include any shipping costs. Seller is not responsible for any freight, transportation, insurance, handling, demurrage or similar charges, which charges shall be the sole responsibility of Buyer. Any shipping rates included in Seller's quotations are estimates.

8. Title and Risk of Loss. Buyer shall retain title to the parts it provides to Seller for finishing. Risk of loss passes to Buyer upon delivery of the Products at the Delivery Point.

9. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

10. Inspection and Rejection of Nonconforming Products.

(a) Buyer shall inspect the Products within ten (10) days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Products unless it notifies Seller in writing of any nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. For purposes of this Section only, the term "Products" includes any samples. A Product is nonconforming only if it does not meet the specifications set forth in the Sales Confirmation.

(b) If Buyer timely notifies Seller of any nonconforming Products, Seller shall, in its sole discretion, (i) repair such nonconforming Products, or (ii) credit or refund the Price of such nonconforming Products at the pro rata contract rate, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. If Seller exercises its option to repair nonconforming Products, Buyer shall ship, at Seller's cost but at Buyer's risk of loss, the nonconforming Products to Seller's facility located at 205 N. Industrial Dr., Lexington, Tennessee 38351. Delivery of the repaired Products shall be made in accordance with Section 5.

(c) Buyer acknowledges and agrees that the remedy set forth in Section 10(b) is Buyer's exclusive remedy for the delivery of nonconforming Products. Except as provided under Section 10(b), all sales of Products to Buyer are made on a one-way basis and Buyer has no right to return Products purchased under this Agreement to Seller.

11. Price.

(a) Buyer shall purchase the Products from Seller at the price(s) (the "**Price(s)**") set forth in the Sales Confirmation, provided that Seller may adjust pricing based on the outcome of an initial sample or production run. Seller reserves the right to correct any mathematical or typographical errors in the Sales Confirmation. Seller also reserves the right to change pricing for increases in its costs for material, labor and benefits, energy or other items outside of Seller's control. If the Price(s) should be increased by Seller before delivery of the Products, then these Terms shall be construed as if the increased price(s) were originally inserted in this Agreement, and Buyer shall be billed by Seller on the basis of such increased price(s).

(b) All Price(s) are based on the lot sizes set forth in the Sales Confirmation. The minimum lot charge is \$100.00 per lot for each part number and for each process. If Buyer requires



expedited delivery of the Products, overtime charges are \$500.00 per hour per line with a minimum of four (4) hours on Saturdays, Sundays and holidays. Seller's normal business hours are 7 AM to midnight, Monday through Friday.

(c) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, however, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

12. Payment Terms.

(a) Buyer shall pay all invoiced amounts due to Seller on delivery unless Seller notifies Buyer in writing of Buyer's credit approval, in which case Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of Seller's invoice. Buyer shall make all payments hereunder by wire transfer, ACH, corporate check or credit card and in US dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of one and one half percent (1.5%) per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Products if Buyer fails to pay any amounts due and owing to Seller.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

13. Limited Warranty.

(a) Seller warrants to Buyer that, for a period equal to the shorter of Buyer's testing cycle and three (3) months from the date of shipment of the Products ("**Warranty Period**"), such Products will meet the specifications set forth in the Sales Confirmation and be free from material defects in material and workmanship.

(b) **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 13(A), SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE PRODUCTS, INCLUDING ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(c) Products manufactured by a third party ("**Third Party Product**") may constitute, contain or be contained in, incorporated into, attached to or packaged together with, the Products. Third Party Products are not covered by the warranty in Section 13(a). For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE OR WARRANTY**



AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(d) Seller shall not be liable for a breach of the warranty set forth in Section 13(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within ten (10) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Products and Buyer (if requested to do so by Seller) returns such Products to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Products are defective.

(e) Seller shall not be liable for a breach of the warranty set forth in Section 13(a) if: (i) Buyer makes any further use of such Products after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products; or (iii) Buyer alters or repairs such Products without the prior written consent of Seller.

(f) Subject to Section 13(d) and Section 13(e) above, with respect to any such Products during the Warranty Period, Seller shall, in its sole discretion, (i) repair such defective Products, or (ii) credit or refund the Price of such defective Products at the pro rata contract rate, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. If Seller exercises its option to repair defective Products, Buyer shall ship, at Seller's cost but at Buyer's risk of loss, the nonconforming Products to Seller's facility located at 205 N. Industrial Dr., Lexington, Tennessee 38351. Delivery of the repaired Products shall be made in accordance with Section 5.

(g) THE REMEDY SET FORTH IN SECTION 13(F) SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 13(A).

14. Limitation of Liability.

(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE PRODUCTS SOLD HEREUNDER.

(c) Buyer shall indemnify and hold Seller harmless from and against any and all damages and liabilities incurred by Seller in excess of the amounts set forth in Sections 14(a) and 14(b). The limitation of liability set forth in Section 14(b) shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct or (ii) death or bodily injury resulting from Seller's acts or omissions.



15. Compliance with Law. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

16. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement and such failure continues for thirty (30) days after Buyer's receipt of written notice of nonpayment; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Seller may also terminate this Agreement on sixty (60) days' written notice to Buyer.

17. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

19. Force Majeure. Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), restraints or delays affecting carriers, inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

20. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

21. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership,



joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

22. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

23. Governing Law. All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Tennessee without giving effect to any choice or conflict of law provision or rule (whether of the State of Tennessee or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Tennessee

24. Submission to Jurisdiction. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration proceedings shall be held in Lexington, Virginia.

25. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party and (b) if the party giving the Notice has complied with the requirements of this Section.

26. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

27. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement, including, but not limited to, the following provisions: Limitation of Liability; Insurance; Compliance with Law; Confidential Information; Governing Law; Submission to Jurisdiction; and Survival.

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