



## United Paint & Chemical Corporation General Terms and Conditions of Sale

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### I. OFFER, ACCEPTANCE AND NOTIFICATION

A. This Quotation is an offer by United Paint & Chemical Corporation ("hereinafter United") to sell the product(s) and/or services identified herein pursuant to the following terms and conditions. This Quotation shall become a binding contract subject to the terms and conditions contained herein when acceptance by either delivery of a written acknowledgment from Purchaser or by delivery of any product, in whole or in part, by United to Purchaser.

**B. ACCEPTANCE OF THIS QUOTATION IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN. ANY ADDITIONS, MODIFICATIONS OR DIFFERENT TERMS OR CONDITIONS THAT ARE PROPOSED BY PURCHASER BY A SUBMITTAL OF A PURCHASE ORDER, RELEASE OR OTHER DOCUMENT (HEREINAFTER COLLECTIVELY, PURCHASE ORDER) CONTAINING TERMS AND CONDITIONS WHICH ARE NOT CONSISTENT WITH THE TERMS AND CONDITIONS CONTAINED HEREIN ARE EXPRESSLY REJECTED AND SHALL NOT BECOME PART OF THE PURCHASE ORDER IN THE ABSENCE OF AN AGREEMENT IN WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF UNITED. IT IS THE SPECIFIC INTENT OF UNITED THAT THE ONLY CONTRACT WITH THE PURCHASER ARE THOSE CONTAINED IN THE TERMS AND CONDITIONS OF THIS QUOTATION AND ANY MODIFICATIONS PROPOSED BY PURCHASER ARE EXPRESSLY REJECTED BY UNITED AND SHALL NOT BECOME PART OF THE PURCHASE ORDER IN THE ABSENCE OF UNITED'S WRITTEN ACCEPTANCE.**

### II. PAYMENTS

Payments for all products and services provided by United shall be due net thirty (30) days from the date of each United invoice. Any invoice which is not paid within the net thirty (30) days shall be subject to accrued interest on all unpaid amounts at the rate of eighteen (18%) percent per annum. Any objections to United's invoices must be made in writing and submitted to United within ten (10) business days of the invoice(s). Purchaser shall not offset or back charge any payments or invoices without United's prior written consent.

### III. SHIPPING

All shipments of United's products shall be FOB United's Southfield facility, unless otherwise agreed to in writing. Purchaser shall be limited to one (1) shipment per week. Purchaser's request for each shipment shall be made to United's customer service department during normal business hours. Normal shipping hours are 7:00 a.m. to 7:00 p.m. EST Monday through Friday. No shipments shall be made without a related Purchase Order or Release number and/or part number. All shipments requested outside of the normal shipping hours shall be subject to a surcharge which shall be quoted by United at the time of the request for the specific shipment.

### IV. LABELING OF PRODUCT CONTAINERS

United will provide its standard label for each individual product container. If Purchaser requires additional information or a different label (hereinafter "Customized Label"), Purchaser shall submit its request to United who shall provide a price quotation for the development, printing, and cost of attachment of the Customized Labels to the product container.



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### V. PRE-SHIPMENTS

Pre-shipments shall be limited to one (1) trial/test panel and/or one (1) quart of a specific paint (pre-shipment) to be submitted for Purchaser's evaluation. Pre-shipment is defined as a sample of paint or trial/test panel produced from a specific paint batch manufactured by United which Purchaser has yet to approve. The purpose of the pre-shipment is to provide the Purchaser with the opportunity to determine whether the paint meets all of Purchaser's specifications and requirements. All pre-shipments shall be evaluated within forty-eight (48) hours of receipt by the Purchaser (hereinafter referred to as the "Evaluation Period"). Purchaser shall notify United in writing within the Evaluation Period that the pre-shipment meets or does not meet its specifications or requirements. In the event that Purchaser fails to notify United in writing within the Evaluation Period as referenced herein, then Purchaser shall be assessed an equipment charge of Two Hundred Fifty Dollars (\$250.00) per day for each day that Purchaser fails to notify United of the acceptance or rejection of the pre-shipment. In the event that the pre-shipment does not meet the Purchaser's specifications or requirements, then Purchaser shall be required to complete and return United's Pre-Ship Packing List, or mutually agreed upon format, within the Evaluation Period. Lost or missing pre-shipments will be replaced by United at a charge of One Hundred (\$100) Dollars per pre-shipment.

### VI. LEAD TIME AND FORECAST FOR PRE-SHIPMENT PRODUCTS

Purchaser shall provide United with both a (a) firm release date forecast ("Release Date") for all Purchase Orders and/or Releases that are subject to the conditions described in paragraph V above, and a (b) build to forecast date ("Forecast Date"), for each Purchase Order and/or Release for more than fifty (50) cumulative gallons per product to be manufactured and shipped within a thirty (30) business day period. The Release Date shall be provided 10 business days before the anticipated date of shipment for each Purchase Order and/or Release and the Forecast Date shall be provided 30 business days prior to the anticipated date of shipment. Release Dates shall not be changed and/or modified by Purchaser without the written consent of United. Any Purchase Order and/or Release for quantities of less than fifty (50) cumulative gallons per product to be manufactured and shipped within a thirty (30) business day period shall be treated as a "Spot Buy" and such Spot Buys shall be treated in the manner and fashion as described in paragraph VIII below.

### VII. LEAD TIME FOR NON-PRE-SHIPMENT PRODUCTS

All Purchase Orders or Releases that are not subject to the Pre-Shipment requirements described in Paragraph V above shall require a ten (10) business day lead time before delivery. Any Purchase Order(s) or Releases in which the Purchaser requests shipment that provides less than the aforementioned ten (10) business days lead time shall be considered an "Expedited Order" and Purchaser shall pay an additional Five Hundred (\$500) Dollars for each Expedited Order.

### VIII. SPOT BUYS AND SURCHARGES

- A. Any Purchase Order or Release for less than fifty (50) cumulative gallons per product within a thirty (30) business day period shall be considered a Spot Buy. The price per gallon for each Spot Buy shall be either \$150.00 per gallon, or a price to be quoted by United.
- B. All Spot Buys shall be subject to the 10-business-day lead time as provided for in paragraph VII above.



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### IX. RETURN OF PRODUCTS-- (CONFORMING AND NON-CONFORMING)

A. CONFORMING PRODUCTS: Purchaser may return unopened containers of United's conforming products if the products were manufactured within ninety (90) days of its return. Conforming products as used herein shall mean any product which meets all of the specifications as contained in United's Technical Data Sheet ("TDS"). Prior to returning any conforming products, Purchaser shall first obtain a Return Material Authorization ("RMA") from United's customer service department for each return. All returns shall be made to United's Southfield facility within ten (10) business days from the date of the issuance of the RMA. Purchaser shall pay for all shipping costs for each return. Any products which are returned without a RMA or which do not conform to the terms or conditions of the RMA will not be accepted. Any returned shipments that are not accepted by United will be returned to, and all costs of return will be charged to, the Purchaser.

Purchaser shall pay a restocking fee of twenty-five (25%) percent of the original purchase price for each returned product, said amount to be deducted from any material credit. No conforming products shall be accepted by United if (a) its manufactured date is more than ninety (90) days from the date of return; (b) it has been opened, altered, changed, or modified in any fashion except by United; (c) Purchaser did not obtain a RMA; and/or (d) it is not in the original container or the container has been damaged.

B. NON-CONFORMING PRODUCTS: If, in the sole opinion of United, one or more of its products do not meet the terms or conditions as contained in United's TDS, and if such product(s) cannot be adjusted by United to meet the terms and conditions of the TDS, then in such event the product shall be considered "Non-Conforming" and, Purchaser may return the Non-Conforming product to United pursuant to the following terms and conditions:

- (i) Purchaser must obtain an RMA from United's Customer Service Department for each return;
- (ii) The returned product must have been manufactured within six (6) months from the date of return;
- (iii) The product has not been changed, altered or modified except by United;
- (iv) The product must be returned within ten (10) business days from the date of the issuance of the RMA;
- (v) United shall pay for the cost of shipping for the return product.

### X. TERMINATION FOR BREACH

United may terminate all or any part of the Purchase Order and/or Release without any liability if Purchaser (a) fails to make any payments within the time period provided for in this Agreement; (b) fails to provide United with the required Forecast information (Release Date and Forecast Date) as referenced elsewhere herein; (c) refuses to accept the shipment of any products except as provided for in paragraph V of this Agreement; (d) if Purchaser attempts to back-charge or offset any money due and owing to United for any products that have not been properly rejected pursuant to the terms and conditions contained herein; and (e) breaches any other term or condition of this Agreement.



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### **XI. WARRANTIES**

United warrants that its products shall meet all of the original Production Part Approval Process requirements ("PPAP") as promulgated by the Original Equipment Manufacturer ("OEM"), or end customer, for each product as long as the product is used by Purchaser within six (6) months from the date of manufacture. This Warranty is issued to Purchaser only, and specifically excludes Warranties to any other entity including but not limited to Purchasers' customers and/or OEM's. If Purchaser, or anyone acting for or on its behalf (other than United), makes any changes or modifications to United's product(s) or to the method of application of said product(s) which is not provided for in the PPAP or United's TDS, then this Warranty shall be void as to that product. Purchaser assumes all risk and liability whatsoever resulting from the use of said products whether used singly or in combination with other substances.

Within thirty (30) business days after any shipment of United's products to Purchaser, the product(s) shall be examined and tested. Purchaser shall notify United in writing if United's products are found defective in any respect. Failure to notify United within the abovementioned time period shall constitute a waiver of all claims with respect to United's product(s). United's liability, if any, for breach of any contract, warranty, negligence or otherwise, shall in no event exceed the amount of the purchase price of the defective product(s) with respect to which any damages are claimed. United shall not be liable for any consequential, special, exemplary, punitive or incidental damages. THIS WARRANTY IS EXPRESSLY ISSUED IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

All warranty claims shall be made in writing by Purchaser within the thirty (30) business days time period referenced above. Any warranty claim(s) that are not brought pursuant to the terms contained in this paragraph (XI) shall be deemed waived.

### **XII. RELEASE OF LIABILITY/LIMITATION OF DAMAGES**

United shall not be liable to Purchaser for any loss, cost, damage, injury or expense of any kind or nature caused directly or indirectly by its products (or a delay in manufacturing or shipping its products) including but not limited to, any interruption in or loss to Purchaser's business; any loss of profits, or anticipated profits, delay or late charges or any other direct, indirect, special or consequential damages. Purchaser's sole remedy for any breach by United shall be the replacement of the product without cost to Purchaser.

### **XIII. COMMERCIAL IMPRACTICABILITY AND FORCE MAJEURE**

Any delay or failure on the part of United to perform any obligation under this Agreement or any Purchase Order or Release will be excused if and to the extent such delay or failure is caused by any of the following event and/or occurrence:

- A. Acts of God or nature;
- B. Restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental (both foreign and domestic) authority;
- C. Embargoes, tariffs, fires, explosions, natural disasters, riots, wars, sabotage;
- D. Inability to obtain power or loss of power;



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- E. Change in cost or availability of raw materials that are required to manufacture the products which are identified in this Agreement, if the cost of the raw materials increase by more than ten (10%) per cent from the price which was the basis for the prices as originally quoted herein or if such materials are unavailable.
- F. A labor strike and/or walkout by United's workers.

During the time period of any delay or failure to perform by United, Purchaser may, at its option, acquire the finished product(s) from another source. If United is unable to supply Purchaser with the finished product(s) as referenced herein for a continuous period of thirty (30) business days, then Purchaser, at its option, may declare this Agreement terminated and except for any outstanding unpaid invoice(s) or charges due and owing from Purchaser to United, Purchaser and United shall have no further liability to each other.

#### **XIV. LIMITATION ON CLAIMS FROM PURCHASER**

Except for an alleged breach of warranty claim which is addressed in paragraph XI above, any other action or claim by Purchaser must be commenced within one (1) year after the alleged breach or other event giving rise to Purchaser's claim regardless of Purchaser's lack of knowledge of the breach or other event giving rise to such claim.

#### **XV. GOVERNING LAW; JURISDICTION; VENUE**

Any dispute or claim between the parties shall be governed by the Internal Laws of the State of Michigan without regard to any applicable conflict of law provisions. Purchaser consents to the exclusive jurisdiction of the applicable Court in either the U.S. District Court for the Eastern District of Michigan, Southern Division, or the State Court in Oakland County, Michigan for any legal or equitable action or proceeding arising out of or in connection with each dispute or claim by and between the parties hereto. Purchaser specifically waives any and all objections to venue in those Courts.

#### **XVI. LANGUAGE, SEVERABILITY, NO IMPLIED WAIVER**

A. The Parties acknowledge that this Agreement and all documents relating hereto shall be in the English language only.

B. If any term or this Agreement is invalid or unenforceable, that term or provision will be deemed reformed or deleted as the case may be, but only to the extent necessary to comply with applicable law. The remaining provisions of this Agreement will remain in full force and effect.

C. The failure of either party at any time to require performance by the other part of any provision of the Agreement will not affect the right to require performance at any later time nor will the waiver of either party of a breach of any provision of this Agreement constitute a waiver of any breach of same or other provisions of this Agreement.



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### **XVII. ENTIRE AGREEMENT, MODIFICATIONS**

Except as specifically described elsewhere herein, this Agreement along with any attachments, exhibits, supplements, or other terms of United specifically referenced herein, constitutes the entire agreement between United and Purchaser with respect to the matters contained herein. The Terms and Conditions contained herein shall only be modified or amended by a writing executed by authorized representatives of each party to this Agreement.

### **XVIII. ACKNOWLEDGEMENT OF TERMS AND CONDITIONS**

Purchaser represents and warrants that it has read, understands, and agrees with the terms and conditions contained in this Agreement and any other related documents in their entirety, prior to the issuance of its Purchase Order(s), Release(s) and/or similar document(s). Further Purchaser has had the opportunity to review this Agreement and related documents with its attorneys and/or other advisors of its choice, and that it issues its Purchase Order(s), Release(s), and/or other related document(s) subject to all of the terms and conditions contained in this Agreement.