

## CUSTOM COATING, INC. GENERAL TERMS AND CONDITIONS

### 1. Applicability.

(a) These terms and conditions of sale (these "**Terms**") are the only terms governing the sale and/or provision of coating services by Custom Coating, Inc. ("**Seller**") to any person or company purchasing goods or services from Seller ("**Customer**").

(b) The accompanying quotation and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Customer's general terms and conditions of purchase regardless whether or when Customer has submitted its purchase order or such terms. These terms shall control over any terms contained in Customer's purchase orders or production releases. Fulfillment of Customer's order does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms.

2. Ownership of Material to be Coated. Customer shall provide Seller with the parts or other items ("**Material**") to be coated using Seller's proprietary processes. Customer retains ownership of all Material provided to Seller to be coated.

(a) Seller shall have no liability for any loss or damage to material while in transit to or from Seller's facility. Material shipped to Seller shall be F.O. B. to Seller's location. All shipping costs of Material to and from Seller's facility shall be borne by Customer.

(b) Customer shall not make any claim for shortages in count unless made in writing and presented or mailed within ten (10) working days after receipt of Material by Customer or its consignee.

(c) Seller shall not, under any circumstances, be considered to be an insurer of Customer's Material. The parties agree that any control and/or possession of Customer's Material shall be for the benefit of all parties and Seller shall only have a duty of reasonable care for the handling of the Customer's Material.

3. Performance by Seller. Seller shall coat the Material provided to it by Customer using Seller's proprietary processes. Seller's coating will conform materially to the specifications for the particular coating used. Specifications for the various coatings applied by Seller are attached hereto as Exhibit A.

The parties recognize and agree that the coatings applied by Seller are commercially available products sold by third parties. The compositions of these

coatings is proprietary to the third party and are unknown to Seller. The formulations of these coatings may be changed from time to time by the manufacturer. Accordingly, Seller cannot agree or warrant that Customer's Materials will be coated with any particular substance, only that the coating will be applied in accordance with the specifications set forth in Exhibit A. Seller does not warrant the performance or suitability of the coating applied to Customer's Materials.

4. **Condition of Materials Provided by Customer.** Customer warrants that all Material provided to Seller to be coated shall be free from defects, imperfections, foreign substances, including but not limited to unapproved lubes, oils, coolants, chlorinated paraffin/wax, zinc stearates and mold release agents, or any other condition that would interfere with the coating process.

(a) Seller shall not be obligated to check or inspect the Materials supplied by Customer prior to processing or applying any coating to the same.

(b) Seller shall not be liable for any loss or damage suffered by Customer as a result of unsatisfactory surface coating services provided by Seller where the cause of the unsatisfactory finish to such Material is due to the poor or unsatisfactory condition of the Material supplied by Customer for processing.

(c) In the event that Seller's coating does not meet the specification due to (1) metal imperfections (2) changes in grade or composition of Materials, manufacturing and/or fabrication imperfections, (3) the presence of foreign substances on the Material; or (4) any other similar variable over which Seller exercises no control, Customer shall still be required to pay the contracted amount for Seller's services.

(d) Customer shall provide Seller with containers to transport and store Materials while in the possession of Seller, at no charge to the Seller. Any damage resulting from the use of such containers shall be at the Customer's risk. Seller shall not be liable for damage to or loss of such containers unless caused by Seller's gross negligence.

5. **Payment Terms.**

(a) Customer shall pay all invoiced amounts due to Seller as set forth in the relevant invoice.

(b) 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 Customer.

(c) Customer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer 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 Goods if Customer fails to pay any amounts when due as invoiced. Customer 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.

(d) All of Customer's Material in Seller's possession shall be subject to a general lien for all monies owed by Customer to Seller, regardless of whether or not such monies owed to Seller are for work, labor, materials, or services rendered on any particular order. Seller may retain possession of any of Customer's material until Customer has paid Seller in full on any amounts due and owing if Customer is delinquent on any payment due pursuant to this Agreement. Customer waives any claim against Seller for exercising its rights under this section. Should it be determined that Seller did not have legal grounds to exercise its right under this section, Customer waives any claims for wrongful bailment, conversion, replevin or other similar claims against Seller.

6. **Limited Warranty.**

(a) Seller warrants to Customer that Seller's process and coating will materially conform to the specifications attached hereto as Exhibit A.

**(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 6(a) SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. SELLER DOES NOT WARRANT THE PERFORMANCE OR SUITABILITY OF ANY COATING APPLIED TO CUSTOMER'S MATERIALS.**

(c) With respect to any Material found to be improperly processed by Seller, Seller shall, in its sole discretion, either: (i) rework such Materials or (ii) credit or refund the price of such Material.

**(d) THE REMEDIES SET FORTH IN SECTION 6 SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 6(a).**

7. **Limitation of Liability.**

(a) **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY CUSTOMER OR COULD HAVE BEEN REASONABLY FORESEEN BY CUSTOMER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, 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 OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR SERVICES PROVIDED HEREUNDER.**

(c) The limitation of liability set forth in **Section 6(b)** above shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

8. **Seller's Intellectual Property.** Customer acknowledges that the technology, manufacturing, and coating process used by Seller to coat Customer's Materials is confidential and proprietary. Customer agrees not to divulge any information about Seller's business that may become available to Customer as a result of its course of dealings with Seller. Customer shall not, directly or indirectly, attempt to duplicate or reverse-engineer Seller's coating process or in any other manner attempt to misuse or misappropriate any of Seller's trade secrets or intellectual property.

(a) Any design, invention or other information developed by Seller in the performance of the Agreement will remain the property of Seller, whether or not Seller charges for design, research, development, testing, or similar services. Any patentable or trade secret features developed by Seller will be the property of Seller and Seller will be under no obligation to refrain from using in its business any information, manufacturing processes or unpatented disclosures which Seller develops in the performance of the Agreement.

(b) The Customer acknowledges that the Seller would be irrevocably damaged if the know-how, trade secrets, patentable and unpatentable designs, specifications and inventions, and other technical and manufacturing information and any information relating to the Seller's processes, procedures, sales, business, operations and affairs pertaining to or in any way relating to the manner in which Customer's Materials are

coated by Seller which are made available to the Customer by the Seller(hereinafter called “Confidential Information”) were disclosed to or utilized on behalf of any person, firm or business entity which competes or may compete with the Seller. The Customer agrees that it will hold and use the Confidential Information in the same manner as it deals with its own confidential information and trade secrets, and that it will not divulge nor permit any of its employees, agents or authorized representatives to divulge any Confidential Information to any other person, firm or business entity, and the Customer shall further restrict circulation of the Confidential Information within its organization except to the extent necessary to fulfill the purposes of this Agreement. The Customer agrees that it will not use the Confidential Information in any way which is adverse to the interest of the Seller or inconsistent with these Terms. All such information supplied by Seller shall be received in confidence except for information that (a) was generally available to the Customer from public or published sources, provided publication did not take place in violation of these Terms or through fault or omission of the Customer, (b) was lawfully obtained from a source under no obligation of confidentiality, directly or indirectly, to either the Customer or the Seller, or (c) was disclosed to the general public with the written approval of the Seller, and Customer shall exercise due diligence and reasonable care to hold such information in confidence.

(c) Any Intellectual Property owned or licensed by Seller and used by Seller in connection with the performance of its obligations will remain the exclusive property of Seller. Nothing in this Agreement will be deemed to grant Customer any license or any other rights in such Intellectual Property. The term “Intellectual Property” includes without limitation all of the following: (i) inventions, discoveries, patents, patent applications and all related continuations, divisional, reissue, utility model, design and process patents, applications and registrations thereof, certificates of invention; (ii) works, copyrights, registrations and application for registration thereof; (iii) computer software programs, data and documentation; (iv) trade secrets, confidential information, know-how, techniques, designs, prototypes, enhancements, improvements, work-in progress, research and development information; and (v) all other proprietary rights relating to the foregoing.

9. **Customer’s Intellectual Property.** . Customer acknowledges that any information disclosed to Seller has not and will not be considered by Customer to be confidential or a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Seller at or prior to the time of the disclosure.

10. **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 Customer, if Customer: (i) fails to pay any amount when due under this Agreement and such failure continues for seven (7) days after Customer's receipt of written notice of nonpayment; or (ii) 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.

11. **Force Majeure.** The Seller shall not be liable or responsible to Customer, 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, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers.

12. **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 Indiana without giving effect to any choice or conflict of law provision or rule (whether of the State of Indiana or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Indiana.

13. **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America, in the Northern District of Indiana, or the courts of the State of Indiana located in the County of DeKalb, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

14. **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.

15. **Notices.** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing.

16. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement.

17. **Assignment.** No right or interest in this Agreement may be assigned by Customer without the prior written consent of Seller. Any assignment attempted by Customer shall be void and ineffective for all purposes unless made in conformity with this Section.

## **Exhibit A**

### **Coating Application Services Provided**

#### **Coating application specifications:**

1. Henkel: BONDERITE M-MN LUBRITE 2

RoHS compliant.

Target coating weight ( 800 mg/ft<sup>2</sup> )

Micro-crystalline grain size range ( 1 – 6  $\mu$ m )

2. Henkel: BONDERITE M-NT 5200 MU

RoHS compliant

TACOM JUL 2007 Qualification Acceptance ( 5 – 59 ) mg/ft<sup>2</sup>

Henkel: The actual control ranges used are application specific and will be established through production testing.