



## **GENERAL TERMS AND CONDITIONS**

### **1. COVER SHEET(S)**

The cover sheet(s) hereto specify the Materials which BUYER shall purchase, and SELLER shall sell, in accordance with the cover sheet and the terms and conditions set forth herein. Additional or differing terms or conditions proposed by SELLER or included in any SELLER documentation (including, without limitation, any order acknowledgement or confirmation) are hereby objected to by BUYER and have no effect unless expressly accepted in writing by BUYER.

### **2. PRICE REVISION**

a. The price for the Materials is firm for the term of this Agreement, except as otherwise provided in this Agreement or as other agreed to by the parties in writing.

b. SELLER agrees that if, during the Contract Term, it sells or delivers any of the Materials named herein to any other customer under terms and conditions that result in a price lower than the price in effect hereunder, it will offer to sell to BUYER the Materials at the same terms and conditions. SELLER agrees to a third party audit of SELLER's records to ensure compliance upon reasonable request of BUYER.

c. If, at any time during the Contract Term, BUYER receives from another source an offer to supply Materials of like quality, at a price, or on terms which result in a price lower than the delivered price then in effect hereunder, BUYER may request SELLER to meet such competitive offer. If SELLER shall not timely (which shall not be later than five [5] working days after the date of BUYER's request) notify BUYER of SELLER's election to meet the competitive offer, effective as of the date of BUYER's request, and amend this Agreement accordingly, BUYER may, at its option, purchase such offered quantity, which purchased quantity shall be deducted from the contract quantity hereunder for the applicable Contract Term.

### **3. PACKING, SHIPPING AND TITLE**

a. SELLER shall pack, label and prepare the Materials for shipment in accordance with BUYER's instructions and in a manner so as to prevent its damage, contamination, or deterioration and so as to comply with applicable laws and regulations. SELLER will inspect the equipment of the carrier transporting Materials for safety hazards, and carrier's compliance with applicable laws and regulations, and to prevent damage, contamination, or deterioration of Materials.

b. SELLER shall arrange and pay for shipment of the Materials to BUYER's destination, provided that BUYER may, at its option, arrange for shipment, in which case an appropriate adjustment to the price of the Materials to reflect SELLER's cost reduction shall be made. If a carrier selected by BUYER is unable to pick up, or tenders a vehicle deemed unsuitable for transportation of, the Materials, SELLER shall immediately advise BUYER and follow the instructions of BUYER, provided that SELLER shall, if unable to timely contact BUYER, select a competent carrier and route, ship the Materials, and immediately advise BUYER of the transportation arrangements. BUYER will not pay detention or demurrage charges (i) accrued prior to or after BUYER's scheduled delivery date or time or, (ii) for time spent resolving quality or quantity disputes which are ultimately resolved in BUYER's favor.

c. Title to and risk of loss of the Materials shall pass to BUYER as the Materials pass the flange at BUYER's plant or is accepted at BUYER's dock or other BUYER-designated facility, whichever is applicable, regardless of the carrier or who selects or pays the carrier.

#### 4. SCHEDULING

BUYER will give SELLER reasonable notice regarding, and SELLER shall comply with, BUYER's requirements for time of delivery. SELLER understands and agrees that TIME IS OF THE ESSENCE and, further, that SELLER must notify BUYER of any delay. Any Materials received after the time specified will be held subject to BUYER's right to reject all or any part thereof.

#### 5. WARRANTIES

In addition to any other warranties set forth herein, SELLER warrants: (a) that at the time of delivery SELLER will have and will pass to BUYER clear, marketable title to the Materials; (b) that all Materials will conform to BUYER's specifications, will conform to all applicable descriptions, data and samples approved by BUYER, will be of first class material and workmanship and free from defects, including defects in design, and will be merchantable; and (c) that, in performance of this Agreement, SELLER has complied and will comply with all applicable federal, state, and local laws, ordinances, orders, rules, and regulations; including without limitation, compliance with the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), which prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or expression, or national origin, and require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity or expression, national origin, protected veteran status or disability, the provisions set forth in 29 CFR Part 471, Appendix A to Subpart A (Executive Order 13496), Section 211 of Public Law 95-507 and Executive Order No. 12138 (Purchases from Small and Small Disadvantaged Businesses), the Federal Occupational Safety and Health Act of 1970, The Immigration Reform and Control Act of 1986, the Consumer Product Safety Act, the Toxic Substances Control Act, the Federal Hazardous Substances Act and the Fair Labor Standards Act (provided that where necessary to make the context of any law, rule and regulation applicable to this Agreement, the term "Contractor" shall mean the SELLER and the term "Contract" shall mean this Agreement). These warranties are in addition to and shall not be construed as restricting or limiting any warranties of SELLER, expressed or implied, which are otherwise provided herein or exist by operation of law.

#### 6. MODIFICATION OF MATERIALS SPECIFICATIONS

SELLER understands and agrees that BUYER may need to modify some or all of the specifications for the Materials during the Contract Term to address commercial requirements of BUYER and/or its customers. Accordingly, BUYER may, at any time during the Contract Term, notify SELLER of its intention to change the specifications of one or more of the Materials described herein. Any such notice shall include the modified specifications for each such Material.

SELLER shall have a mutually agreed time period from the date of such notice to advise BUYER whether or not it is able to meet the modified specification for each Material. If SELLER (i) timely advises BUYER that it is unable to meet one or more of the modified specifications, or (ii) fails to timely respond with respect to a modified specification, then this Agreement shall terminate thirty (30) days after the end of the mutually agreed time period or after such advisement, whichever is sooner, with respect to each such affected Material. If SELLER timely advises BUYER that it is able to meet the modified specifications for all Materials, this Agreement shall be amended to incorporate such modified specifications for each Material, effective as of the first date that SELLER commercially produces such Material meeting the modified specifications for BUYER, but in any event not to exceed ninety (90) days from the date of such

advisement. SELLER shall give BUYER prior reasonable notice of the date it expects to begin commercial production of each Material meeting the modified specification.

The parties agree that notwithstanding the requirements of Section 18 below, any amendment to the specifications as described above shall be effective without a separate writing signed by both parties.

## 7. QUALITY

a. SELLER shall use statistical methods to analyze and control its production processes to achieve and maintain a state of predictable stability. BUYER may request SELLER to furnish reasonable proof that appropriate statistical methods are being properly used and applied to produce the Materials. Such proof includes, without limitation, the following: (i) an acceptable Quality Assurance Control Plan of SELLER; (ii) periodic Quality Assurance surveys by BUYER of SELLER's production facility; and/or (iii) a report to BUYER of statistically analyzed data which demonstrates the state of predictable stability of the processes involved.

b. Regardless of real or apparent compliance of the Materials with the specifications, BUYER reserves the right to reject or revoke acceptance of any Material which does not contribute the properties which the BUYER-approved sample provided to the product or products in which it is used.

c. Each shipment of Materials shall be accompanied by an accurate certificate of analysis or other mutually agreeable quality control data. SELLER acknowledges that BUYER, in reliance upon SELLER's warranties hereunder, will use the Materials without first analyzing it.

d. SELLER shall not change the composition, manufacturing location, or process used to produce the Materials from that present when the Materials were originally approved by BUYER, without BUYER's prior written consent.

e. Any container holding the Materials when the Materials are delivered to BUYER will be labeled with the net weight of the Materials contained therein, and that the actual weight of the Materials contained in any container shall not deviate from the weight shown on the container's label by more than one percent (1%) if the labeled net weight is sixty (60) pounds or less, or by more than one-half of one percent (0.5%) if the labeled net weight is greater than sixty (60) pounds.

f. BUYER reserves the right to inspect the Materials, and their fabrication, at the facilities of SELLER or its suppliers. Inspection by BUYER does not relieve SELLER of any warranties or obligations hereunder. All Materials are subject to final inspection and acceptance by BUYER, notwithstanding any prior payment or inspection at source.

## 8. INTELLECTUAL PROPERTY

SELLER warrants that the Materials, their sale to BUYER, their resale by BUYER, and their use in accordance with SELLER's recommendations or instructions, shall not infringe any U.S. or non-U.S. patent, trade-mark, copyright, trade secret or other intellectual property or proprietary rights of any third party. SELLER shall indemnify and hold harmless BUYER from and against any and all claims, damages, judgments, expenses, and losses arising from or related to such infringement or alleged infringement. SELLER shall defend or settle, at its own expense, any claim, suit or proceeding brought against BUYER alleging such infringement. BUYER shall notify SELLER promptly in writing of the commencement of such claim, suit or proceeding and shall give SELLER authority, information, and a reasonable amount of assistance at SELLER's expense for the defense or settlement thereof. BUYER shall not settle or compromise any such claim, suit or proceeding without the prior written consent of SELLER, which shall not be unreasonably withheld. In the event that BUYER should be enjoined or reasonably appear certain to be enjoined in such suit or proceeding from using any of the Materials delivered hereunder, SELLER, at its expense and at BUYER's option, shall promptly either (i) secure termination of the

injunction and procure for BUYER the right to use such Materials without any obligation or liability, or (ii) replace said Materials with non-infringing materials or modify same to become non-infringing, all at SELLER's expense and to BUYER's satisfaction. If SELLER is unable after using its best efforts to effect either of said options, SELLER shall accept return of or remove said Materials from BUYER's premises at SELLER's expense and refund to BUYER the amount paid to SELLER therefor. The provisions of this Section 8 shall survive the termination of this Agreement.

#### 9. EXPORT CONTROLS

The parties acknowledge that they, as well as the Materials sold or otherwise transferred under this Agreement, may be subject to U.S. and other export controls, embargoes, sanctions and similar laws, regulations and requirements ("**Export Controls**"), as well as BUYER'S export policies, controls, and procedures as communicated to SELLER in writing by BUYER during the course of their business relationship hereunder ("**Export Compliance Requirements**"). SELLER agrees to: (1) comply with Export Controls; and (2) provide BUYER with all information and documentation deemed necessary by BUYER in order for BUYER to comply with all Export Controls as they relate to this business transaction.

#### 10. TAXES

Except as otherwise agreed in writing by the parties, SELLER shall be liable for all taxes, excises, and other governmental charges levied or applicable to the production, transportation, storage, sale, or delivery of any Materials hereunder or applicable to income, profits, or receipts received by SELLER for such Materials or imposed as a result of claims alleging SELLER's violation of dumping, trade, or other governmental laws or regulations.

#### 11. CHEMICAL INVENTORY REGULATORY COMPLIANCE

SELLER represents and warrants that it has reviewed and understands (or will review and understand prior to delivery of the Material) the regulations of Chemical substances as defined by the following chemical inventories as each may be amended from time to time (the "**Inventory Regulations**"):

- a) Australia
- b) Canada
- c) China
- d) European Union
- e) Japan
- f) Korea
- g) New Zealand
- h) Philippines
- i) Taiwan
- j) United States

In response to BUYER's periodic requests, SELLER shall timely provide BUYER with complete and accurate information relating to the Material ("**Information**") to enable BUYER to fulfill the Inventory Regulations (for guidance on the method of required reporting refer to [Purchasing Raw Material Process Link](#)). SELLER will notify BUYER without delay of the occurrence or likely occurrence of any event or circumstance which may result in the representations or warranties of this Section 11 becoming untrue or incorrect.

SELLER understands that BUYER will rely on the Information to comply with the requirements of the Inventory Regulations. SELLER agrees to indemnify, defend, and hold BUYER harmless from all claims, damages, fines, penalties or other costs which BUYER may incur at any time arising out of violations of the Inventory Regulations, or BUYER's inability to process, manufacture, use or distribute the Material for commercial purposes as a result of any such violations, if such violations result, in whole or in part, from inaccurate, incomplete, false or

misleading Information. The cost of obtaining and supplying Information shall be borne by SELLER.

## 12. HAZARD COMMUNICATION (SDS/LABELING)

SELLER will provide BUYER with most recently revised Safety Data Sheets ("**SDS**") for each Material. SELLER warrants that each SDS provided complies with the regulatory requirements of the county of origin and the country of ultimate destination; for example the Globally Harmonized System of Classification and Labeling of Chemicals ("**GHS**") regulatory requirements. Each SDS must be in English and the language(s) required by the pertinent regulatory authority or the predominant language of the ultimate receiving location. SELLER shall send the initial and subsequent SDS to the BUYER's facility that is the final shipping destination of the Material. Updated SDS must be provided promptly if the Material composition changes with respect to the addition, removal, or change in concentration of any substances or if the status of the Material changes as a result of modifications in applicable regulatory provisions.

SELLER will ensure that all Materials covered by this Agreement be packaged in such a way as to include a visible hazard warning label that complies with hazard communication regulations of the county of ultimate destination, (often but not always the Globally Harmonized System of Classification and Labeling of Chemicals (GHS) in the required language. Where there is no labeling regulation addressing language, the labels shall be in the predominant language of the receiving location. The PPG assigned CHAMP code must also be included on the MATERIAL label.

If the SELLER is unable to ship to countries requested by the BUYER and the BUYER transports the material to that country, the SELLER will support the BUYER by providing SDS and hazard warning labels that are applicable for the destination country.

## 13. DEFAULT

Upon default by either party hereto in the performance of any obligation hereunder, the other party may give notice in writing to the defaulting party specifying the nature of the default. Unless such default be cured and adequate assurance of due performance be provided, timely, which shall be no later than fifteen (15) days following the giving of such notice, this Agreement may be terminated at the option of the party giving such notice. The foregoing remedy shall be in addition to any other rights or remedies, at law or in equity, which the nondefaulting party may have on account of the default.

## 14. INDEMNIFICATION

In consideration for the purchase by PPG of Materials manufactured, sold and/or distributed by SELLER, SELLER assumes the risk of all damage, loss, costs and expense, and agrees to indemnify, defend and hold harmless PPG, its officers, employees and representatives, from and against any and all losses, costs, expenses, liabilities, suits, actions, claims, and other obligations and proceedings whatsoever (collectively, "**Claim**") and any judgments rendered against PPG, court costs, fines or penalties, attorney's fees and other sums that PPG may pay or become obligated to pay on account of any Claim alleging: (i) violations of trademark, copyright or patent rights or any other intellectual property rights by any product manufactured, sold and/or distributed by SELLER to or through PPG; (ii) injury to any person (including, without limitation, injury resulting in death) or damage (including, without limitation, loss or destruction) to property of whatever nature, to the extent such personal injury or property damage was caused, or alleged to have been caused, by any product manufactured, sold and/or distributed by SELLER to or through PPG; (iii) violation or alleged violation of law or regulation by SELLER or relating to SELLER's products; or (iv) breach of this Agreement by SELLER. SELLER shall assume the defense of PPG at its sole cost, shall pay any and all sums that PPG becomes legally obligated to pay as a result of such Claim and shall promptly reimburse PPG for any costs or expenses incurred by PPG in connection with any Claim. This Section 14 shall not apply to the extent that

the Claim alleges, arises or results solely from PPG negligence or misconduct. In the event of any Claim against PPG in connection with any of the foregoing, PPG agrees to notify SELLER of any such Claim. PPG failure to provide a notice to SELLER under this Section 14 does not relieve SELLER of any liability that SELLER may have to PPG; provided that SELLER shall not be liable for any costs that result directly from a delay in PPG providing notice, which delay materially prejudices the defense of the related Claim. PPG shall cooperate in the defense of any Claim for which indemnification is sought, provided that SELLER shall obtain PPG written consent prior to any admission, compromise or settlement which affects PPG rights or interests. Although SELLER shall have control of the defense of any Claim for which indemnification is sought, SELLER agrees to comply with the following: (i) SELLER shall promptly provide PPG with copies of all pleadings and discovery requests as soon as they are available to SELLER; (ii) SELLER shall (a) provide PPG with copies of all pleadings as early as practicable in advance of their filing by SELLER, (b) give PPG the opportunity to provide comments to any such pleadings and (c) reasonably consider such comments; (iii) SELLER shall choose defense counsel that is reasonably satisfactory to SELLER; (iv) SELLER will keep PPG informed of all material information pertaining to a Claim; (v) SELLER shall promptly inform PPG of the date of any mediation, arbitration, trial or settlement conference; and (vi) SELLER shall inform PPG of the outcome of any mediation, arbitration, motion, trial or settlement or any other matter from which appeal rights could arise. If PPG determines that a defense or defenses are available to PPG that are not available to SELLER and raising such defense or defenses would create a conflict of interest for the counsel defending the Claim, PPG will be entitled to retain separate counsel for the purpose of raising these defenses at SELLER expense.

Notwithstanding the above, PPG shall have the right, but not the obligation, to participate in the handling, adjustment, or defense of any Claim. Should SELLER fail to assume its obligations hereunder, as determined by PPG in its reasonable discretion, SELLER agrees that PPG shall have the right, but not the obligation, to defend itself and to require from SELLER reimbursement and indemnification for any and all costs and expenses (including attorneys' fees).

SELLER acknowledges and agrees that it is bound by the above indemnification obligations regardless of (i) whether PPG has been advised of or is aware of the possibility of a potential Claim relating to any product manufactured, sold and/or distributed by SELLER (collectively, the "**Potential Claims**"), or (ii) any action or inaction on the part of PPG with respect to its consideration of the potential purchase of such products or the Potential Claims whether before or after the purchase of such products by or through PPG.

These rights in this Section 14 shall (i) survive implicit or explicit termination dates in other sections of this Agreement and (ii) be in addition to any other rights PPG may have under any Federal or state laws or the rules or regulations of any governmental agency in any country.

#### 15. FORCE MAJEURE

In case performance of any terms or provisions hereof shall be delayed or prevented because of compliance with any law, decree, request, or order of any governmental agency or authority, either local, state, or federal, or because of riots, war, public disturbances, strikes, lockouts, differences with workmen, fires, floods, acts of God, breakdown or failure of transportation or transportation facilities, inability to obtain raw materials, fuel, power, labor, or transportation facilities, or for any other similar or dissimilar reason which is not within the reasonable control of the party whose performance is interfered with and which by the exercise of reasonable diligence said party is unable to prevent, the party so suffering may, at its option, suspend performance during the period such cause continues, and no liability shall attach against either party on account thereof. During a period of force majeure affecting SELLER, SELLER shall allocate its available supply of Materials among its internal uses and current contract purchasers on a basis no less favorable to BUYER than a pro rata basis. During a period of force majeure affecting SELLER, BUYER may elect to provide any unavailable raw material, fuel,

power, or transportation, with an appropriate adjustment to price, and all Materials produced using such BUYER-supplied elements shall be allocated to BUYER. Any force majeure circumstance shall be remedied with all reasonable dispatch, but this shall not require the settlement of strikes or labor controversies by acceding to the demands of the opposing party or parties. The party affected by force majeure shall promptly and timely notify the other of the existence thereof, the expected delays, and the estimated effect upon its performance hereunder. In the event that deliveries hereunder have been suspended due to force majeure for any consecutive three (3) month period, BUYER may cancel this Agreement on thirty (30) days' written notice.

16. DISPUTES

In the event of a dispute regarding this Agreement or its performance, the parties must attempt in good faith to resolve the dispute by mediation according to the then current rules or recommendation of the Center for Public Resources with respect to the mediation of commercial disputes, or such other similar procedures as agreed to by the parties.

17. NOTICES

All notices or other communications to be given in writing shall be deemed given by either party to the other party upon the date of receipt. Notices shall be addressed to BUYER and SELLER as follows, or at such other address as specified by a notice in accordance with this paragraph:

If to BUYER: PPG Industries, Inc.  
One PPG Place  
Pittsburgh, PA 15272  
Attn: Global Procurement - Sundries

If to SELLER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

18. ENTIRE AGREEMENT

This Agreement, including all documents referenced herein and therein, contain the entire agreement of the parties with regard to the subject matter hereof and supersedes any prior communications, commitments, representations or warranty, or contracts between the parties relating to the subject matter hereof. No modifications of this Agreement shall be of any force or effect unless reduced to a writing which specifically references this Agreement, states an express intent to modify or amend this Agreement, and is signed by SELLER and BUYER. Except as otherwise provided in this Agreement, this Agreement shall not be modified by acceptance by SELLER or BUYER of any order forms, invoices, or other documents issued by the other party, even if they contain inconsistent or supplemental terms or conditions. BUYER's acceptance of, or payment for, any shipment made or required under this Purchase Agreement shall not in any way alter the terms hereof.

19. CONFIDENTIALITY

Any information disclosed or provided by one Party hereto to the other under and in connection with this Agreement and marked as being confidential, and the terms and conditions of this Agreement, all shall be confidential, shall be used only for purposes of this Agreement and shall not be disclosed by a party hereto to any third party without the prior written consent of the other party, except (i) as required by law, governmental regulation, court order or similar legal process, or applicable stock exchange rules and regulations, provided that the party seeking to disclose notifies the other party of the requirement to disclose and reasonably cooperates with the other party to limit the disclosure, (ii) to the extent such matter or information is or becomes

publicly known other than by disclosure to the party seeking to disclose; (iii) to the extent such information is independently developed without resort to the disclosed information, or (iv) to the extent such matter or information has been lawfully received by the party seeking to disclose from a third party who has not breached a contractual, legal or fiduciary duty of nondisclosure with respect to such matter or information. The obligations set forth in this Section 19 shall continue during the Contract Term and for two (2) calendar years thereafter.

## 20. MISCELLANEOUS

a. BUYER recognizes the importance of conducting business in an ethical manner that respects human rights. BUYER maintains internal accountability standards for employees through its legal and ethical compliance program Leadership Through Integrity, PPG Industries Global Code of Ethics (the "**Global Code of Ethics**"), which focuses on areas of ethical risk, and helps foster BUYER's culture of honesty, accountability and transparency.

The Global Code of Ethics prohibits the use of child labor or forced labor in any form and requires BUYER to provide a safe, healthful workplace. BUYER's Global Code of Ethics also includes the requirement to comply with all laws in all places where we do business. We regard observing local law to be the minimum acceptable level of conduct. In addition, BUYER's own standards of conduct frequently oblige us to go beyond the legal minimum of a locality and to conduct our affairs according to the higher standard. If an employee is in violation of our Global Code of Ethics, we reserve the right to terminate such employee.

BUYER expects SELLER to also operate its business practices in accordance with BUYER's ethics and integrity expectations. At minimum, SELLER must fully comply with applicable local laws and internationally recognized standards in every region it operates. Under no circumstance, shall SELLER or a subcontractor of SELLER knowingly utilize child or forced labor in its global business. In the event SELLER violates BUYER's policies, values or ethics, we will take appropriate action. While SELLER may be permitted to remedy the violation, if SELLER persists in conducting its business in a manner inconsistent with these obligations, BUYER will evaluate the business relationship with SELLER and take appropriate corrective action. Corrective action may include cancelation of an affected order, prohibition on further use of a facility or SELLER, termination of applicable contracts and reporting the violation to the proper authorities. BUYER reserves the right to audit SELLER to evaluate its compliance with the law and BUYER requirements.

b. The failure of either party in any one or more instances to insist on performance of any of the provisions hereof shall in no way be construed to be a waiver of such provision or of any default or of any rights arising by reason of the party's default.

c. The waiver, illegality, invalidity, and/or unenforceability of any provision appearing in this Agreement shall not affect the validity of the Agreement as a whole or the validity of any other provisions herein.

d. This Agreement and its performance may not be assigned without the prior written consent of the other party, which consent may not be unreasonably withheld.

e. The remedies herein reserved by the parties shall be cumulative and additional to any other or further remedies provided in law or equity which the parties may possess.

f. This Agreement is made under Pennsylvania law and shall be governed by and construed in accordance with the Uniform Commercial Code as adopted in Pennsylvania, except as the provisions of such Code are herein varied.



