

Engineered Performance Coatings Inc

Standard Terms and Conditions for the Purchase of Goods and/or Services

1. Definitions

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means these Terms and Conditions together with the terms of any applicable Purchase Order.
- 1.2 "EPC" means Engineered Performance Coatings Inc, 4881 Kendrick St SE Grand Rapids MI 49512.
- 1.3 "Intellectual Property Rights" means all rights in patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property (including the right to apply for registration of the same) wherever in the world enforceable.
- 1.4 "Purchase Order" means the standard EPC document which includes or is attached to a statement of work describing the goods and/or services to be provided by the Supplier and which provides a maximum value payable by EPC to the Supplier.
- 1.5 "Supplier" means the organization or person who supplies goods and/or services to EPC.
- 1.6 "Supplier Personnel" means any employee or contractor supplied by the Supplier to provide any services to EPC.

2. General and Basis of Contract

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of goods and/or services by the Supplier pursuant to one or more Purchase Orders.
- 2.2 These Terms and Conditions apply to the Agreement to the exclusion of any other terms that the Supplier seeks to impose or incorporate, and which are implied by custom, trade, practice or the course of dealing.
- 2.3 Any quotation, proposal, illustration or similar, including any terms and conditions the Supplier may seek to impose or incorporate as provided by the Supplier to EPC shall constitute an offer by the Supplier to provide or supply the goods or services set out therein.
- 2.4 A Purchase Order or other acceptance in writing by EPC shall be made expressly subject to these terms and is the only means by which EPC shall give acceptance and under which a contract shall come into existence.
- 2.5 Where it is agreed that the Supplier shall supply goods and/or services, the goods and/or services to be supplied, the price payable and any other special terms agreed between the parties shall be set out in the Purchase Order. All Purchase Orders shall be subject to these Terms and Conditions.
- 2.6 No changes or variations to these Terms and Conditions or any Purchase Order shall be effective unless agreed in writing between the parties.

3. Price and Payment

- 3.1 The price and any applicable taxes and expenses for the goods and/or services shall be as specified in the Purchase Order.
- 3.2 An invoice shall be produced by the Supplier and supplied to EPC in accordance with the terms set out in the Purchase Order. Unless expressly stated otherwise in the Purchase Order, EPC shall pay for the goods and/or services 30 days following the end of month in which the goods and/or services are supplied or in which the invoice is received, whichever is the later. In no circumstances shall the time for payment be of the essence of the Agreement.
- 3.3 EPC shall not be responsible for any expenses, charges or price other than those set out in the Purchase Order or otherwise expressly approved in writing by EPC.
- 3.4 If the parties agree that the Supplier is to provide goods and/or services or resources in addition to those specified in a Purchase Order, then such agreement will be reflected in a further Purchase Order, which will be deemed incorporated into this Agreement.
- 3.5 Once a Purchase Order has been agreed by EPC the price for the goods and/or services shall be fixed.

4. Warranty, Product Safety, Conformity and Counterfeit Product.

• 4.1 The Supplier warrants and guarantees that upon delivery and for a period of 12 months thereafter (unless a different period is stated in the Purchase Order) all goods and materials supplied under this Agreement shall be free from any defects, patent or latent, in material and workmanship, conform to all applicable statutory and regulatory requirements relating to their manufacture, labelling, packaging, storage, handling and delivery and also to applicable specifications and drawings and, to the extent that detailed designs were not provided to EPC, will be free from design defects and in every aspect suitable for the purposes held out as intended by EPC, as to which the Supplier hereby acknowledges that it has had due notice. The approval by EPC of any designs provided by the Supplier shall not relieve the Supplier of its obligations under any provision contained in this Clause.

- 4.2 The Supplier's obligations under this Clause shall extend to any defect or non-conformity arising or manifesting itself within the warranty period referred to above from delivery.
- 4.3 Where there is a breach of the warranty contained in this Clause by the Supplier, EPC, without thereby waiving any rights or remedies otherwise provided by law and/or elsewhere in this Agreement, may require the Supplier to repair or replace the defective goods at the Supplier's risk and expense or repay the price or part of the price relating to the defect to EPC.
- 4.4 Items repaired or replaced shall be subject to these Terms and Conditions in the same manner as those originally delivered under this Agreement. If the Supplier refuses or fails promptly to repair or replace items when requested under this provision, EPC may itself, or through an agent or sub-contractor, or otherwise, repair or replace any item itself and the Supplier agrees to reimburse EPC for any costs or expenses incurred.
- 4.5 EPC requires the Supplier to develop, implement, and maintain and keep up-to-date effective policies and training programs to ensure the Supplier's Personnel are aware of their relevant contribution to the quality, safety and conformity of the Supplier's products and/or services. Upon request by EPC, the Supplier shall provide details of such policies and training programs together with confirmation that the Supplier's Personnel have been provided with copies or access to such policies and their training in these matters is up-to date.
- 4.6 To prevent the purchase of counterfeit or suspect/unapproved products, and to ensure product identification and traceability (and for other reasons) EPC will institute controls that include the requirement of Material Certificates, Certificates of Conformity, and/or other supporting documentation from its suppliers as is appropriate. These requirements will be specified on EPC's Purchase Order or may otherwise be communicated to the Supplier.

• 5. Delivery

- 5.1 Delivery of the goods shall be made to such location as EPC shall direct. Any time agreed between the parties for such delivery shall be of the essence of the Agreement and EPC shall be entitled to cancel, without notice, the whole or any part of any Purchase Order if this Clause is not complied with by the Supplier.
- 5.2 Where EPC cancels the whole or part of any Purchase Order in accordance with Clause 11.
 - 5.2.1 All sums payable by EPC in relation to the whole or part of the contract cancelled shall cease to become payable.
 - 5.2.2 All sums paid by EPC in relation to the whole or part of the contract cancelled shall be repaid by the Supplier immediately.
 - 5.2.3 EPC shall be entitled to recover damages from the Supplier for any loss caused because of the Supplier's failure to deliver the goods and/or as a result of the cancellation of the whole or part of the contract.

6. Title

- 6.1 The Supplier warrants that it has good title to the goods and that it will transfer such title as it may have in the goods to EPC pursuant to Clause 6.2.
- 6.2 Title in the goods will pass to EPC when the goods are unconditionally appropriated (by either party or by or with the consent of either party) to this Agreement, or on delivery to EPC, whichever happens first.

7. Risk

- The goods will be and shall remain at the Supplier's risk until such time as they are delivered to EPC (or at its direction) and are found to be in accordance with the requirements of this Agreement. It shall be the duty of

the Supplier to always maintain a contract of insurance over the goods and, on request from EPC, to assign to EPC the benefits of such insurance.

8. Inspection of Goods

- 8.1 EPC shall inspect the goods as soon as practicable following delivery and in any event within 3 normal UK business days.
- 8.2 Where goods are damaged EPC shall notify the Supplier within 3 days of such inspection. EPC may reject the damaged goods or goods which are reasonably determined by EPC not to be in accordance with specification and the following provisions shall apply:
 - 8.2.1 the Supplier shall collect the damaged or failed goods from EPC at the Supplier's expense.
 - 8.2.2 during the period between delivery of the goods to EPC and collection by the Supplier, EPC shall not be liable for any loss or further damage caused to the damaged or failed goods.
 - 8.2.3 all sums payable by EPC in relation to the damaged goods or failed shall cease to become payable.
 - 8.2.4 all sums paid by EPC in relation to the damaged or failed goods shall be repaid by the Supplier immediately.
 - 8.2.5 EPC shall be entitled to claim damages from the Supplier for any losses caused to EPC because of the goods being damaged or failing to meet specification.
- 8.3 Where there are shortages in the order EPC shall notify the Supplier within 3 days of delivery and the following provisions shall apply:
 - 8.3.1 all sums payable by EPC in relation to the missing goods shall cease to become payable.
 - 8.3.2 all sums paid by EPC in relation to the missing goods shall be repaid by the Supplier immediately.
 - 8.3.3 EPC shall be entitled to claim damages from the Supplier for any losses caused to EPC because of the shortages.
- 8.4 If EPC so requests, the Supplier shall immediately replace damaged or failed goods or supply goods which are missing at the Supplier's expense or EPC shall be entitled to cancel, without notice, the whole or any unexecuted part of the order and the rights referred to in Clause 5.2 shall apply.
- 8.5 Where there is an excess of goods in relation to the order EPC may reject the excess goods by notice in writing to the Supplier within 3 days of delivery and the following provisions shall apply:
 - 8.5.1 the Supplier shall collect the excess goods from EPC at the Supplier's expense.
 - 8.5.2 during the period between delivery of the goods and collection by the Supplier, EPC shall not be liable for any loss or damage caused to the excess goods.
 - 8.5.3 no sum shall be due to the Supplier for the excess goods and if sums are paid to the Supplier for the excess goods, the Supplier shall repay such sums to EPC immediately upon request.
- 8.6 EPC may accept excess goods by notifying the Supplier of such acceptance and the price of the excess goods shall be payable by EPC.
- 8.7 The Supplier shall repair or replace free of charge, goods damaged or lost in transit upon receiving notice to that effect from EPC.
- 8.8 EPC's signature on any delivery note of the Supplier is evidence of the number of packages received only and not evidence of the correct quantity of goods received or that the goods are in a good condition or of the correct quality.
- 8.9 Nothing in Clause shall prejudice EPC's rights under the Supplier's warranty given in Clause 4 above.

9. Supplier's Obligations

- 9.1 The Supplier warrants, represents and undertakes that:
 - 9.1.1 all services performed under this Agreement and any Purchase Order shall be performed with all due skill and care, in a good and workmanlike manner and otherwise in line with best practice within its industry ("Best Industry Practice").

- 9.1.2 the Supplier Personnel will possess the qualifications, professional competence, and experience to carry out such services in accordance with Best Industry Practice.
- 9.1.3 the services will not in any way infringe or violate any Intellectual Property Rights, trade secrets or rights in proprietary information, nor any contractual, employment or property rights, duties of non-disclosure or other rights of any third parties; and
- 9.1.4 it has full capacity and authority to enter into this Agreement and that it has or will obtain prior to the commencement of the services, any necessary licenses, consents and permits required of it for the performance of the services.
- 9.2 The Supplier shall provide EPC with such progress reports, evidence or other information concerning the services as may be requested by EPC from time to time.
- 9.3 The Supplier shall be responsible for maintaining such insurance policies in connection with the provision of the services as may be appropriate or as EPC may require from time to time.
- 9.4 The Supplier shall procure that the Supplier Personnel take all reasonable steps to safeguard their own safety and the safety of any other person who may be affected by their actions, and the Supplier agrees to indemnify and keep indemnified EPC from all and any liabilities, obligations, costs, and expenses whatsoever arising from any loss, damage or injury caused to EPC or any third party by the Supplier Personnel.
- 9.5 The Supplier acknowledges and agrees that EPC requires that Supplier maintain a high standard of ethical conduct in all its dealings with EPC. The Supplier is encouraged to implement a written code of conduct to be applied to the Supplier's Personnel and to flow down their principles to the entities that furnish them with goods and services. EPC expects its Supplier to maintain effective programs to encourage the Supplier's Personnel to make ethical, value driven choices in their business dealings. EPC may at its discretion require the Supplier to comply with its own ethical conduct policies.

• **10. Status and Liabilities**

- 10.1 It is expressly understood that neither the Supplier nor the Supplier Personnel have the authority to act as agent for EPC or to contract on EPC's behalf.
- 10.2 The Supplier Personnel shall at no time be deemed to be employed or otherwise engaged by EPC.
- 10.3 The Supplier shall be responsible for paying the Supplier Personnel and for making any deductions required by law in respect of income tax and National Insurance contributions or similar contributions relating to the provision of the services. The Supplier agrees to indemnify EPC in respect of any claims that may be made by the relevant authorities against EPC in respect of tax demands or National Insurance or similar contributions relating to the provision of the services by the Supplier.
- 10.4 The Supplier shall, and shall procure that the Supplier Personnel shall, comply with all applicable statutes, rules and regulations in providing the services, including all immigration and employment requirements imposed by any applicable jurisdiction, and the Supplier shall indemnify and hold harmless EPC from damages arising out of any failure to do so.
- 10.5 Save in respect of liability arising from death or personal injury caused by negligence, fraud and any other matter it is unlawful to exclude or limit liability for, EPC's liability to the Supplier shall in no circumstances exceed payment of the price of the goods and/or services provided by the Supplier.

11. Termination

- 11.1 EPC may terminate any Purchase Order in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on it. EPC shall pay the Supplier fair and reasonable compensation for any work in progress on the goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 11.2 Without limiting its other rights or remedies, EPC may terminate this Agreement and all purchase Orders under it with immediate effect by providing written notice to the Supplier if:
 - 11.2.1 the Supplier or the Supplier Personnel commit any material or persistent breach of this Agreement.
 - 11.2.2 the Supplier fails to or refuses after written warning to procure that the Supplier Personnel provide the services properly required of them in accordance with this Agreement.
 - 11.2.3 the Supplier passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect.

- 11.2.4 the Supplier ceases to carry on its business or substantially the whole of its business; or
- 11.2.5 the Supplier is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

12. Indemnity

- The Supplier agrees to indemnify EPC against all claims, costs and expenses which EPC may incur and which arise, directly or indirectly, from the Supplier's breach of any of its obligations under this Agreement.

13. Intellectual Property Rights

- 13.1 Unless relating to the supply of goods in which the Supplier is the pre-existing owner or licensee of any related Intellectual Property Rights or otherwise specified in the Purchase Order, all Intellectual Property Rights produced from or arising as a result of the performance of this Agreement or any Purchase Order under it shall, so far as not already vested, are hereby automatically assigned by the Supplier to EPC. To the extent that this Clause does not constitute a valid assignment or at the request of EPC, EPC the Supplier shall do all that is reasonably necessary to ensure that such rights vest in EPC by the execution of appropriate instruments or the making of agreements with third parties.
- 13.2 To the extent that the Supplier is providing goods or services in which there are pre-existing Intellectual Property Rights, the price paid by EPC includes a non-exclusive, irrevocable and transferable licence to EPC to make use of and exploit such Intellectual Property Rights without payment of any further royalty or other sum to the Supplier or any other person.
- 13.3 The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by EPC to the Supplier and all rights in EPC's materials are and shall remain the exclusive property of EPC. The Supplier shall keep the EPC's materials in safe custody at its own risk, maintain them in good condition until returned to EPC and not dispose or use the same other than in accordance with EPC's written instructions or authorization.

14. Confidentiality

- 14.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, or initiatives which are of a confidential nature and have been disclosed to the Supplier by EPC, its employees, agents or subcontractors and any other confidential information concerning EPC's business, its products and services which the Supplier may obtain. The Supplier shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Supplier's obligations under the Agreement and any Purchase Order and shall ensure that the Supplier's Personnel comply with the obligations set out in this Clause as though they were a party to the Agreement. The Supplier may also disclose such of EPC's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 14.2 The Clause 14 shall survive termination of the Agreement.

15. Force Majeure

- EPC shall not be liable for any delay or failure to perform any of its obligations under this Agreement if the delay or failure results from events or circumstances beyond its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, flood or industrial disputes, and EPC shall be entitled to a reasonable extension of its obligations.

16. Relationship of Parties

- Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in this Agreement shall be deemed to construe either of the parties as the agent of the other.

17. Assignment

- The Supplier shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of EPC.

18. Severability

- If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed, and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

19. Waiver

- No failure by EPC to enforce any of these Terms and Conditions shall constitute a waiver of its rights hereunder.

20. Notices

- Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Purchase Order or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered 2 normal UK working days after posting (with proof of posting).

21. No third parties

- Nothing in this Agreement, nor any Purchase Order is intended to, nor shall it confer any rights on a third party.

22. Entire Agreement

- This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings, or proposals, oral or written.

23. Governing Law and Jurisdiction

- This Agreement shall be governed by and construed in accordance with the law of England and Wales and the parties hereby submit to the exclusive jurisdiction of courts of England and Wales.