

TERMS AND CONDITIONS OF PURCHASE

- 1. DEFINITIONS** The term "Merchandise" means the goods identified on the front of this Purchase Order. The term "Purchaser" means Hentzen Coatings, Inc. and the term "Supplier" means the person, firm, corporation or other entity from whom the Merchandise has been ordered by Purchaser.
- 2. CONTRACT** The terms and conditions set forth herein (including any standards and/or specifications set forth herein or attached hereto or previously supplied by Purchaser or Supplier) constitute the entire purchase contract between Purchaser and Supplier. This Purchase Order supersedes all previous communications and negotiations. The terms and conditions of this Purchase Order may be varied only by an agreement in writing signed by Purchaser. NO TERMS IN ADDITION TO OR DIFFERENT FROM THOSE CONTAINED IN THIS PURCHASE ORDER OR WHICH MAY BE CONTAINED IN ANY ACCEPTANCE OR ACKNOWLEDGEMENT FROM SUPPLIER OR OTHERWISE WILL BE BINDING UNLESS ACCEPTED IN WRITING BY PURCHASER. IN NO EVENT WILL PURCHASER BE DEEMED TO HAVE WAIVED ANY EXPRESS OR IMPLIED WARRANTIES OF ANY KIND (INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR THOSE ARISING FROM ANY COURSE OF DEALING OR USAGE OF TRADE) OR ANY RIGHTS OR REMEDIES PROVIDED TO IT BY OR UNDER ANY APPLICABLE LAW UNLESS SUCH WAIVER IS EXPRESSLY SET FORTH IN A WRITING SIGNED BY PURCHASER. No waiver by Purchaser of a breach of any provision of this Purchase Order shall be construed as a waiver of any other breach provision of this Purchase Order shall be construed as a waiver of any other breach of that provision or a of a breach of any other provision. Time is of the essence.
- 3. PACKING, MARKING AND DELIVERY REQUIREMENTS** A. The Merchandise will be packed and shipped by Supplier in accordance with any instructions by Purchaser and, in all events, in accordance with good commercial practices, to ensure that no damage results from weather or transportation. No extra charges will be allowed for packing and shipping unless specified on the front of the Purchase Order. Pigment purchases of one ton or over must be palletized.
B. All packages and containers must display the following information, in clear and easily readable form, on the side of such package or container near the top: Gross, tare and net weight or volume; Purchaser code number; Supplier lot number, HMIS label.
C. Packing slip and COA must accompany all shipments and show Purchaser order number and Supplier lot number. A copy of the Packing slip must be affixed to the outside of shipping container. Bill of lading must show delivery location address in full.
- 4. DELIVERY DATES** Delivery shall be made in accordance with the delivery dates or schedules set forth in this Purchase Order or in a separate schedule furnished by Purchaser. On blanket purchase orders, Purchaser will from time to time issue release authorizations specifying dates, quantities and destinations for Merchandise. Purchaser reserves the right to change shipping schedules and/or defer shipment of the Merchandise or any part thereof if Purchaser's production schedule for any reason is changed delayed or curtailed and/or strikes or any other occurrence(s) interfere with the receipt, handling and /or stocking of Merchandise. If Supplier fails to meet the specified delivery dates or schedules for any reason, Purchaser may refuse to accept delivery or, at its option and upon notice to Supplier, may terminate this contract without any liability hereunder. Supplier shall notify Purchaser immediately if Supplier becomes aware of any possible delay in, or inability to make any shipment. If, to comply with Purchaser's delivery dates, Supplier must ship products by more expensive means, any such additional expense shall be borne by Supplier.
- 5. INVOICE, PRICE AND PAYMENTS** Supplier's price shall not be higher than the price stated on the reverse side hereof, the last price quoted by Supplier or charged to Purchaser, or the prevailing market price, whichever is lowest, without the written approval of Purchaser. If any sales, use, duty, excise or other similar tax or charge, for which Purchaser has not furnished or agreed to furnish an exception certificate, is applicable to this order, it must be stated separately on the invoice. Purchaser shall not be required to pay for any Merchandise until thirty (30) days after Purchaser has received such Merchandise in accordance with its delivery instructions. In the event any Merchandise is delivered to Purchaser prior to the date due under Purchaser's delivery instructions, Purchaser shall not be liable therefor until thirty (30) days after the date such Merchandise property would be delivered under Purchaser's instructions.
- 6. RISK OF LOSS; TITLE** If this is an FOB origin contract, title and risk of loss pass from Supplier to Purchaser upon delivery to a common carrier. If this is an FOB destination contract, title and risk of loss pass from Supplier to Purchaser (a) as the Product passes the flange connections between the delivery and receiving lines in the case of delivery by transports, trucks or rail cars; (b) when the drums, boxes or other containers have been safely removed from the dock of the vehicle transporting them onto the Purchaser's dock; or (c) as otherwise specified on the reverse side hereof.
- 7. INSPECTION; REJECTION** Merchandise purchased hereunder is subject to inspection and approval at Purchaser's designated destination. Purchaser reserves the right to reject and refuse acceptance of Merchandise that is not in accordance with Purchaser's instructions, specifications, formulations or Supplier's warranties (express or implied). Supplier will reimburse Purchaser for inspection costs of rejected Merchandise. Rejected or refused Merchandise will be returned to Supplier at Supplier's expense. Inspection of Merchandise or payment for any of the Merchandise will not be deemed an acceptance thereof. Inspection (even if it fails to disclose defects), acceptance and/or payment by Purchaser of or for Merchandise shall not relieve Supplier of any of its obligations and/or warranties hereunder.
- 8. BUYER-FURNISHED FORMULATIONS** Supplier will not disclose to any other party, or use, reproduce, or appropriate, any material, formulations, designs, and other property or data furnished by Purchaser nor will Supplier use the same to produce or manufacture more Merchandise than is required hereunder.
- 9. TITLE AND LIENS** Supplier warrants that (a) the Merchandise is free and clear of all liens, encumbrances and rights of third parties and (b) Supplier has good and marketable title to the Merchandise.
- 10. WARRANTIES** In addition to all warranties prescribed by law, Supplier specifically warrants that the Merchandise ordered will be merchantable; free from defects in material or workmanship; to the extent the Merchandise is not manufactured in accordance with Purchaser's formulations, free from defects in design; and fit for the purposes for which such is intended and ordinarily employed. Supplier warrants that the Merchandise will conform to any specifications, formulations, and other descriptions. Such warranties, including warranties prescribed by law, will run to Purchaser, its successors, assigns, and customers, and to users of the Merchandise.
- 11. COMPLIANCE WITH LAWS** Supplier will comply with all applicable federal, state and local laws, regulations and orders. This includes, without limitation, the requirement that Supplier certify in writing that the Merchandise was produced in compliance with and meets all applicable requirements and standards of the Fair Labor Standards Act and the regulations and orders of the United States Department of Labor issued thereunder, the Occupational Health and Safety Act, and applicable affirmative action laws.
- 12. EQUAL OPPORTUNITY / AFFIRMATIVE ACTION** THE SUPPLIER WILL COMPLY WITH ALL PROVISIONS OF EXECUTIVE ORDER 11246 AS AMENDED AND 29 C.F.R. PART 471, APPENDIX A TO SUBPART A OF EXECUTIVE ORDER 13496, AND ALL RELEVANT RULES, REGULATIONS, AND ORDERS OF THE SECRETARY OF LABOR.
Veterans rule: "The contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans."
Disability Rule: "This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities."
- 13. CANCELLATION** Purchaser may at its option cancel any unshipped Merchandise. If this Purchase Order covers stock merchandise, Purchaser's only obligation shall be to pay for Merchandise shipped prior to the cancellation. If this Purchase Order covers Merchandise manufactured to Purchaser's specifications or specifications prepared by Supplier for Purchaser, (a) upon receipt in any manner of notice of cancellation, Supplier shall stop all performance hereunder except as otherwise directed by Purchaser; (b) provided that Supplier is not in default hereunder, Purchaser shall pay to Supplier the costs incurred by Supplier in manufacturing or fabricating the Merchandise prior to the date of cancellation; and (c) upon such payment, title to any materials and any completed or uncompleted Merchandise shall pass to Purchaser.
- 14. TERMINATION FOR DEFAULT** In the event of a breach by Supplier of any of the terms of this Purchase Order, including Supplier's warranties, Purchaser may, at its option and without prejudice to or limitation of any of its other rights, cancel any undelivered Merchandise.
- 15. INDEMNIFICATION** Supplier agrees to defend, indemnify, and hold Purchaser, its employees, customers, successors and assigns, harmless against any claims or demands, action or proceeding, liability, loss or expense whatsoever, including reasonable attorneys' fees, arising from any actual or alleged (a) defect in the Merchandise (b) failure to comply with specifications or with the express and implied warranties of Supplier, (c) violation by the Merchandise, or in its manufacture or sale, of any statute, ordinance or administrative order, rule or regulation, or (d) infringement by any of Supplier's formulations not manufactured, packaged, or labeled in accordance with Purchaser's formulations, of any patent, trademark, or other trade designation, trade secret, copyright, or other intellectual property right, which shall have been in effect at the time this order is accepted by Supplier.
- 16. CONSTRUCTION AND DISPUTES** This contract shall be construed under the Uniform Commercial Code as codified in Wisconsin. All disputes concerning the Merchandise and not otherwise resolved between Purchaser and Supplier shall be resolved in a court of competent jurisdiction in Milwaukee County, Wisconsin, and in no other place; provided that, in Purchaser's sole discretion, such action may be heard in some place designated by Purchaser (if necessary to acquire jurisdiction over one or more third parties), so that the dispute can be resolved in one action. Supplier hereby consents to the jurisdiction of such court or courts.
- 17. GOVERNMENT CONTRACT REQUIREMENTS:** A. If this Purchase Order is a subcontract under a Government prime contract, as may be evidenced by the inclusion of a reference to a Government contract number on the face of this order, then all clauses required by the Defense Acquisition Regulations (DARs) or other equivalent regulations, or by the Government prime contract to be included in subcontracts of this nature, are hereby incorporated in and made part of this Purchase Order.
B. Since the phraseology of the clauses incorporated above has been primarily designed for government prime contracts, words and phrases in the foregoing regulations importing the Government or the prime contractor or their representatives shall, when a fair and reasonable interpretation of the context of the order so requires in order to express properly the subcontract relationship be deemed to refer to Purchaser or Supplier or their respective representatives, provided, however, that all references to "Government" in the patent clauses incorporated herein above shall refer only to the United States Government and all references to "Contracting Officer", in the clauses incorporated herein above shall refer to Government Contracting Officer for the prime contract provided, further that all references to the clause entitled "Disputes" shall be deemed deleted. Copies of such DAR clauses and information as to the Cognizant Contracting Officer shall be furnished by Purchaser to Supplier upon request.
C. If the face of this order bears a Government prime contract number, Supplier agrees that its books, records, and its plant, or such parts thereof as may be engaged in the performance of this order shall at all reasonable times be subject to inspection and audit by any authorized representative of any Department of the United States Government.
- 18. QUALITY REQUIREMENTS** By accepting this Purchase Order, Supplier agrees to comply with Purchaser's Supplier Quality Requirements (QF 3005) which are available at www.Hentzen.com under Support/Supplier.