



2730 SW Third Avenue Suite 601, Miami, FL 33129 • Phone 305 858 8774, Fax 305-856-3271
www.sealcoattechnologies.com

PLEASE REVIEW THESE TERMS AND CONDITIONS CAREFULLY.

By submitting a Purchase Order to Sealcoat, you (the Buyer) are specifically agreeing to each of the Terms and Conditions set forth below. If you do not agree to all of the Terms and Conditions set forth below, please do not submit a Purchase Order to Sealcoat Technologies LLC and contact your sales representative to discuss these Terms and Conditions.

TERMS AND CONDITIONS

The following Terms and Conditions (the “**Terms and Conditions**”) form part of every Purchase Order submitted by any individual or entity identified in the Purchase Order (each, a “**Buyer**”) to Sealcoat Technologies, LLC, a Florida limited liability company, or any of its affiliates (collectively, the “**Sealcoat**”).

I. PURCHASE ORDERS

- a. The purchase order, together with these Terms and Conditions, shall become the binding agreement between Sealcoat and the Buyer as to the purchase of Sealcoat products upon Sealcoat acknowledging acceptance of the purchase order (hereinafter referred to as the “**Purchase Order**”) or Sealcoat commencing performance under the Purchase Order, whichever occurs first.
- b. Each Purchase Order shall contain “**Specified Delivery Terms,**” that is, the product(s) being ordered, the quantity of each product, the delivery address, and the requested delivery date for the Purchase Order. Purchase Orders sent via Electronic Data Interchange (“**EDI**”) shall contain the same Specified Delivery Terms.
- c. Any reference by the Buyer to any prior quotation, proposal, or communications between the Buyer and Sealcoat does not imply Sealcoat’s acceptance of any term, condition, or instruction contained in such document(s), and any terms and conditions stated in such documents will NOT be applicable to the Purchase Order, will NOT be considered to be Sealcoat's acceptance of such provisions, and are hereby excluded from the Purchase Order.



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- d. Trade custom and trade usage are superseded by the Purchase Order and will not be applicable in the interpretation of the Purchase Order.

Buyer's submission of a Purchase Order to Sealcoat constitutes Buyer's acceptance of these Terms and Conditions.

II. ACCEPTANCE OF ORDERS

- a. Sealcoat may either accept or reject any Purchase Order presented by the Buyer, and notification of such acceptance or rejection shall be in writing. Upon acceptance of the Purchase Order by Sealcoat, Sealcoat shall acknowledge the Specified Delivery Terms by return writing sent to the Buyer. Facsimiles (faxes) and emails shall be acceptable forms of written confirmation. Except for those Specified Delivery Terms provided in accepted Purchase Orders, no additional terms contained in any Purchase Order shall be binding upon Sealcoat.
- b. Upon acceptance of a Purchase Order for its products, Sealcoat shall use reasonable commercial efforts to meet the schedule for delivery requested by the Buyer; provided, however, that Sealcoat shall be entitled to propose alternative shipping dates for the products ordered before acceptance of the delivery date.
- c. No partial shipment of a Purchase Order shall constitute the acceptance of the entire Purchase Order, absent the written acceptance of such entire Purchase Order by Sealcoat.

III. PRICE AND PAYMENT

- a. All products shipped under a Purchase Order shall be invoiced by Sealcoat (the "Invoice") at the time of shipment. All Invoices are due and payable by the Buyer in accordance with the payment terms set forth on the Invoice. If there are no special payment terms given on an Invoice, the full amount of that Invoice is due and payable to Sealcoat immediately upon the receipt of the Invoice. Buyer will pay all invoice amounts without setoff or deduction of any kind.
- b. Buyer agrees to pay a late fee of one and one-half percent (1½%) per month or the highest rate allowed under the law, whichever is lower, on any overdue amounts. Buyer further agrees to pay all costs and expenses incurred by Sealcoat to collect late payments or other amounts due from Buyer (including but not limited to, reasonable attorney fees and costs). Upon Sealcoat's request, Buyer shall deliver to Sealcoat, its most recent audited financial statements.
- c. If Buyer fails to pay any Invoice by the due date, Sealcoat will have the right, at its sole option, to revoke any credit Buyer has, and/or to suspend further shipments until receipt of payment in full or adequate assurance of performance from the Buyer, and/or to cancel any or all Purchase Orders.



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- d. All payments to Sealcoat shall be in immediately available funds (i.e., wire transfer, cashier's checks, or bank checks) in United States Dollars. Payment by company check or any other means may only be made upon the prior written consent of Sealcoat.
- e. All prices on an Invoice will be the prices given on any proforma invoice or written quote provided to the Buyer by Sealcoat. If no prices are given on a proforma invoice or written quotation, then the Invoice prices for products shipped under a Purchase Order shall be Sealcoat's then-current prices. All prices are subject to change from Purchase Order to Purchase Order to account for increases in Sealcoat's costs and other factors.
- f. All prices quoted in proforma invoices or written quotations from Sealcoat do NOT include sales taxes, use taxes, or other taxes or government charges arising out of or related to the sale. The Buyer agrees to pay all taxes and additional charges and fees as indicated on the Invoice from Sealcoat.
- g. Sealcoat may pass on to the Buyer any and all surcharges or equivalent charges levied or imposed by any source on, or in respect of, the raw materials used in the manufacture of Sealcoat Products, or upon their manufacture, sale, transportation, or delivery. Any such charges will be shown on a proforma invoice or written quotation from Sealcoat.
- h. Buyer will be responsible for the costs and expenses of plates and artwork for Buyer's designs, text, and logos printed on the products.

IV. EDI PAYMENTS

If Buyer and Sealcoat agree that EDI payments are an acceptable payment method and Sealcoat, for any reason, does not receive said EDI payment by the agreed upon payment date, Sealcoat may require Buyer to resubmit said payment within three (3) days. Should Buyer allege or assert that it has not received an invoice that would trigger payment, Sealcoat may resubmit any invoice, using any transmittal method it chooses, to Buyer. In any case, all remaining unpaid amounts arising from the Purchase Order will become immediately due and payable in accordance with these Terms and Conditions.

V. SHIPPING TERMS

- a. Unless otherwise agreed between the Parties, shipping of the products under the Purchase Order shall be effected "ex works" (EXW) (Incoterms 2010).
- b. Upon request and at the Buyer's expense, Sealcoat shall take out insurance against the usual transport risks. In the case that Sealcoat is to arrange carriage, any estimated delivery dates (ETA or ETD) shall be non-binding and be regarded as estimations and not guarantees of delivery. Sealcoat does not, in any way, guarantee delivery on any of these estimated dates.



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- c. If delivery is delayed at Buyer's instigation or if, in an individual case, the Parties have agreed that shipment should be made on call and if Buyer does not call for delivery within 14 days after being notified that the products are ready for shipment, the products will be kept and stored at Sealcoat's premises, in each case at the risk and cost of Buyer, and the Goods will be invoiced as delivered EXW according to Incoterms 2010.

VI. MODIFICATIONS AND CANCELLATIONS

- a. Sealcoat may cancel, modify, or suspend any Purchase Order. Sealcoat shall give reasonable advance written notice to the Buyer of any proposed change to (i) time or place of delivery or performance, (ii) method of packing or shipment, or (iii) quantity of the goods or extent of the services.
- b. After acceptance of a Purchase Order by Sealcoat, Buyer may NOT cancel, modify, or suspend any Purchase Order without the prior written consent of Sealcoat, which Sealcoat may give in its sole discretion.
- c. Buyer shall be solely liable to Sealcoat for any reasonable charges arising from any cancellation, modification, or suspension of a Purchase Order.

VII. ACCEPTANCE OF PRODUCTS

- a. Products delivered under the Purchase Order are subject to Buyer's reasonable inspection, testing, and approval at Buyer's destination by no later than 15 days after its receipt of such products from time to time. Buyer shall be conclusively deemed to have accepted such products, in their proper quantities, unless it gives written notice of any shortages or rejection of any such products to Sealcoat within such 15-day period and returns the rejected products to Sealcoat within 20 days. All shipping charges on such returns shall be borne by Sealcoat. Buyer is solely responsible for any and all damage, modifications, or alterations made to the products or the condition of the products during such acceptance testing and is responsible for ensuring that any such acceptance testing is compliant with applicable laws, regulations, and industry best practices.
- b. Sealcoat will have a reasonable opportunity to inspect, sort, and test or re-test any rejected products. Buyer guarantees access to Sealcoat and its representatives and agents to the rejected products for inspection prior to return shipment, and guarantees retrieval of any products from Buyer or any of Buyer's customers should an agreement be reached that warrants the return of the products.
- c. Buyer's exclusive remedies for any rejected products shall be for Sealcoat, in its sole discretion, to replace the rejected products or credit Buyer for the Invoice value of the rejected products.



VIII. SEALCOAT'S REPRESENTATIONS AND WARRANTIES

- a. Sealcoat represents and warrants that, when delivered, the products will (i) conform to all specifications approved in writing by a duly authorized representative of Sealcoat; (ii) be free from defects in materials and workmanship, other than defects which fall within agreed tolerances; and (iii) actual raw materials used in the manufacture of the products, while they may not be exact, will be within standard tolerances.
- b. Sealcoat will NOT be liable under any circumstances where the claimed damages result from: (i) faulty use of products; (ii) damage occurring subsequent to product delivery; (iii) use of product components other than those provided by Sealcoat, or (iv) any abuse or neglect of the Products. Similarly, Sealcoat will NOT be liable under any circumstances where the claimed damages result from either the Buyer or a third party failing to warehouse, handle, use, package or distribute the products in accordance with Sealcoat's written instructions, or the practices or methods regularly observed in the packaging trade.
- c. **All Sealcoat products are sold "as is." Sealcoat does not extend, express, or imply any warranty coverage other than those specifically given in these Terms and Conditions. Sealcoat makes no other warranties with respect to the quality or performance of the products or the compatibility of the products and the Buyer's specifications, plans, or formulations. This warranty is in lieu of all other warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose, which are hereby disclaimed and excluded from this agreement.**
- d. Buyer will promptly notify Sealcoat of any products that do not conform to the limited warranties stated above. Claims based on faulty workmanship, the use of defective materials, or failure to meet specifications must be presented within 30 days after discovery of the defect, but in any event, no later than 3 months after delivery of the product.
- e. Buyer's exclusive remedies for non-conformity of any products to such warranties shall be for Sealcoat, in its sole discretion, to correct the non-conformity, to replace the non-conforming products, or credit Buyer for the Invoice value of the non-conforming products. In no event shall Sealcoat's damages liability for a breach of warranty exceed the actual cost to Buyer of the defective products at the time of purchase. The foregoing remedies are the exclusive remedies of the Buyer.

IX. BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants that it and all of its employees, agents and representatives at all times and in all actions relating to the Purchaser Order shall be in compliance with all anti-corruption and/or anti-bribery laws, regulations, and requirements of any jurisdiction applicable to Buyer.

X. INDEMNIFICATION; INSURANCE

- a. Sealcoat agrees to indemnify and hold Buyer and Buyer's employees, representatives, and agents and employees harmless from and against any and all claims and causes of action brought against Buyer and from any and all damages, losses, expenses, attorney's fees, cost and liabilities sustained by Buyer arising out of Sealcoat's breach of any Term or Condition, and any willful misconduct or gross negligence in the performance of its obligations under the Purchaser Order.
- b. Buyer agrees to indemnify and hold Sealcoat and Sealcoat's employees, representatives, and agents (collectively, the "**Sealcoat Indemnitees**") harmless from and against any and all claims and causes of action brought against Sealcoat and from any and all damages, losses, expenses, attorney's fees, cost and liabilities sustained by Sealcoat arising out of Buyer's breach of any Term or Condition, and any willful misconduct or gross negligence in the performance of its obligations under the Purchase Order.
- c. Buyer further agrees to indemnify and hold harmless the Sealcoat Indemnitees from and against any and all claims, liabilities, losses, damages (including incidental, consequential, lost profits and all other damages) and expenses (including, without limitation, attorney's fees and other legal expenses) brought against or incurred by any Sealcoat Indemnitee because of (i) any breach by Buyer (or Buyer's representatives or agents) of any of Buyer's warranties to, or agreements with, the Sealcoat Indemnitees under the Purchase Order, or (ii) any contract or commitment entered into or made by Buyer with or to any third party that provides goods, materials or services to Buyer in connection with, or arising out of, the Purchase Order or the products provided under the Purchase Order.
- d. Buyer agrees that it will secure and maintain insurance providing coverage for liabilities to third parties for bodily injury, personal injury, and damage to property in amounts sufficient to protect Buyer in the event of such injury or damage, and will be in compliance with any and all laws, regulations or orders addressing the liabilities of companies similarly situated to Buyer. Buyer further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to Buyer in the jurisdiction or jurisdictions in which Buyer's operations take place.

XI. LIMITATIONS TO LIABILITY

- a. **In no event shall Sealcoat be liable to Buyer under any circumstances, for any indirect, incidental, special, punitive or consequential damage (including, but not limited to, lost profits, buyer's attorney's fees, revenues, business opportunities, good will, downtime, interruption of business) resulting from or arising out of: (i) negligence; (ii) any breach of any Term or Condition, or any duties, obligations, or responsibilities under the Purchase Order; or (iii) the delivery, performance, or use of the products, even if Sealcoat has been advised of the possibility of such damages.**

- b. Notwithstanding any provision herein, if the products are not used in accordance with the customary practices of the trade, Sealcoat shall incur no responsibility or liability for damages whatsoever.
- c. Sealcoat shall not be responsible or liable under any circumstances whatsoever for Buyer's product quality, product defects or other matters caused by or related to Buyer's facilities, operations, equipment, assemblies, or any other of Buyer's equipment or operations, or with respect to assistance provided by Sealcoat's employees, agents, or contractors. Buyer assumes all responsibility for its facilities, operations, equipment, and assemblies.

XII. REMEDIES; NO IMPLIED WAIVER

The remedies in these Terms and Conditions and any Purchase Order shall be cumulative and in addition to any other remedies allowed to Sealcoat under applicable law. The failure of Sealcoat at any time to require performance by Buyer of any provision of these Terms and Conditions or any Purchase Order shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of Sealcoat of a breach of any provision of these Terms and Conditions or any Purchase Order constitute a waiver of any succeeding breach of the same or any other provision.

XIII. FORCE MAJEURE

- a. Sealcoat's performance under a Purchase Order will be excused upon and during continuation of any event, condition or occurrence beyond Sealcoat's reasonable control, including but not limited to hurricane, fire, storm, flood, earthquake, explosion, accident, war, rebellion, insurrection, riot, political instability, sabotage, epidemic, quarantine restrictions, labor disputes, labor shortages, transportation embargoes or failures or delays in transportation, inability to secure raw materials or machinery for the manufacture of products, acts of God, acts of terrorism, acts of any government or any agencies of government and lack of utilities or supplies. Sealcoat shall have the right, in the event of its inability to make complete deliveries under this and all of its purchase orders with other buyers because of an event beyond Sealcoat's control, to reduce deliveries under these Terms and Conditions, to prorate deliveries, and to defer and postpone deliveries during any such force majeure event(s) or situation(s).
- b. Sealcoat shall not be held liable for delays in delivery owing to force majeure or other occurrences which were not foreseeable at the time the contract was concluded (such as strike, disruptions in operations, failure to receive supplies in good time, delays in transport, unfavorable weather conditions, etc.) and which are beyond Sealcoat's control. The date of delivery shall be extended by the temporary period Sealcoat is unable to perform through no fault of his own. Sealcoat may deliver partial shipments provided that (i) Buyer can use the partial shipment for the intended purpose contractually agreed upon, (ii) shipment of the remaining products is assured, and (iii) no additional costs accrue for buyer therefrom. Claims for damages based on the impossibility to deliver or



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owing to delays in delivery and any further claims of the Buyer shall be excluded, in particular, but not limited to, claims for compensation in lieu of performance, or for compensation of other direct or indirect damages, including concomitant or consequential damages, for whatever legal reason(s).

XIV. SECURITY AGREEMENT

- a. To secure payment of all sums due under the Purchase Order or otherwise, Sealcoat shall retain a security interest in the products delivered to Buyer under any and all Purchase Orders. The Purchase Order shall be deemed a “**Security Agreement**” under the Uniform Commercial Code. Buyer authorizes Sealcoat as its attorney-in-fact to execute and file on Buyer’s behalf all documents Sealcoat deems necessary to perfect such security interest.
- b. All title and interest in and to the goods covered by the Purchase Order shall remain in Sealcoat until payment in full of all applicable Invoices is received.

XV. INTELLECTUAL PROPERTY

All inventions and all improvements to the products (whether or not patentable) that Sealcoat creates or develops in the course of Sealcoat’s fulfillment of the Purchase Order or Sealcoat’s design or development of the products for Buyer, including all proprietary rights in the foregoing (collectively, the “**Intellectual Property**”), shall be Sealcoat’s sole property, and Buyer hereby assigns, and agrees to assign, to Sealcoat all right, title and interest that Buyer now has or in the future acquires in the Intellectual Property.

XVI. CONFIDENTIAL INFORMATION

- a. Buyer agrees that any information disclosed to Sealcoat in connection with the products covered by any Purchase Order is not confidential and Buyer will not assert any claim (other than one for patent infringement) against Sealcoat with respect to that information.
- b. Buyer agrees that any information disclosed by Sealcoat to Buyer, including non-public product information, pricing, availability, and production information, is confidential and Buyer agrees not to use or disclose any such information without prior written consent of Sealcoat.
- c. Buyer agrees that if Buyer breaches or threatens to breach these covenants of confidentiality, then Sealcoat’s remedies at law will be inadequate. Therefore, Sealcoat shall have the right of injunctive relief in addition to any and all other remedies and rights at law or in equity, and Buyer’s rights and remedies shall be cumulative. Each party shall waive any requirement that a party post a bond or surety obligation related to its action to seek such a temporary injunction.



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XVII. ASSIGNMENT

Buyer shall not assign its rights or delegate, subcontract or assign its duties under these Terms and Conditions or any Purchase Order without Sealcoat's prior written consent, which may be withheld for any reason.

XVIII. RELATIONSHIP OF PARTIES

The relationship between the parties is, and will be, that of a vendor and buyer and not a joint venture, partnership, principal-agent, broker, sales representative or franchise relationship, unless expressly provided in another agreement between the parties.

XIX. NOTICES

Any notice or other communication that is required or permitted under these Terms and Conditions shall be in writing and shall be effective: (i) when personally delivered or sent via facsimile or email to a telephone number or email address, as applicable, specified in the Purchase Order; (ii) the next business day after delivery to a nationally-recognized overnight delivery service (e.g., FedEx) with all charges prepaid; or (iii) 3 days after mailing if sent by United States Postal Service certified mail, return receipt requested, postage prepaid, addressed to Buyer or Sealcoat, as applicable, at its address specified in the Purchase Order or to another address that a party shall specify to the other by written notice.

XX. SEVERABILITY

In the event that any provision of these Terms and Conditions is determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable to any extent, such provision shall be enforced to the extent permissible under the law, and all remaining provisions of these Terms and Conditions shall remain in full force and effect. Neither party shall be deemed to have waived any right, power, privilege or remedy unless such waiver is in writing and duly executed by it. No failure to exercise, delay in exercising or course of dealing with respect to any right, power, privilege or remedy shall operate as a waiver thereof by either party or of any other right, power, privilege or remedy. No exercise or partial exercise of any right, power, privilege, or remedy shall preclude any other or further exercise thereof by either party of the exercise of any other right, power, privilege, or remedy by either party.

XXI. GOVERNING LAW

These Terms and Conditions and all Purchase Orders will be construed in accordance with, and all disputes will be governed by, the laws of the State of Florida, without regard to its conflict of laws rules. Buyer specifically waives application of the UN Convention on Contracts for the International Sale of Goods.

XXII. DISPUTE RESOLUTION

- a. In the event of a breach of these Terms and Conditions by any party, the non-breaching party shall be entitled to all appropriate equitable and legal relief, including, but not limited to: (a) an injunction to enforce these Terms and Conditions or prevent conduct in violation of these Terms and Conditions; (b) damages incurred by the non-breaching party as a result of the breach; and (c) attorneys' fees and costs (at all arbitral, trial, and appellate levels) incurred by the non-breaching party in enforcing the terms of these Terms and Conditions.

***** THE FOLLOWING IS A MANDATORY ARBITRATION PROVISION *****

- b. Any issue, question, dispute, claim or controversy arising out of any invoice, Purchase Order, payment, or relating to these Terms and Conditions or any provision thereof, or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of these Terms and Conditions to arbitrate, shall be determined by arbitration in Miami, Florida, before a single arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. Judgment on the Award may be entered in any court having jurisdiction. This dispute resolution provision shall include urgent or emergency arbitration relief and not preclude any party from seeking provisional remedies in aid of such urgent or emergency arbitration relief from an arbitrator in accordance herewith.
- c. The parties understand, acknowledge, and agree that by agreeing to arbitrate in the manner required under these Terms and Conditions, they are each waiving any right they may have to bring before a court (for other than injunctive relief as provided below), any claim that such party may have arising out of, or for any violation of, any federal, state, local, or other law, regulation, or ordinance, or any other rights protected or arising under any law, rule, or regulation. Nevertheless, the parties agree to waive all such rights they may have and agree to submit all disputes to binding arbitration in accordance with the terms of these Terms and Conditions.

***** THE FOLLOWING IS A WAIVER OF RIGHTS TO A CLASS ACTION *****

- d. All arbitrations under these Terms and Conditions must be on an individual basis. This means that neither the Buyer nor Sealcoat, individually, may consolidate its or his claims in arbitration by or against any other party, or litigate in court, or

arbitrate any dispute, claim, or controversy as a representative or member of a class or in a private attorney general capacity. To the extent that a dispute arises as to this waiver of a party's right to class action, only a court sitting in Miami-Dade County, Florida, USA, and not an arbitrator, shall determine the validity and effect of this class action waiver.

- e. The Arbitrator shall have the authority to award the same damages and other relief that a court could award. The Arbitrator shall issue a reasoned award explaining the decision and any damages awarded. The Arbitrator's decision will be final and binding upon the parties. The parties will abide by, and fully perform, any award rendered by the Arbitrator. In rendering the award, the Arbitrator shall state the reasons therefore, including (without limitation) any computations of actual damages or offsets, if applicable.
- f. The arbitration proceedings and any result(s) of arbitration (including any arbitration award) shall be maintained by the parties as "Confidential Information" in accordance with Section XVI above, except as is otherwise required by court order or as is necessary to confirm, vacate, or enforce the award and for disclosure in confidence to the parties' respective attorneys, tax advisors, and senior management and other parties with a strict need to know.
- a. In the event of arbitration under the terms of these Terms and Conditions, the fees charged by JAMS or other arbitration administrator and the Arbitrator shall be borne by the parties as determined by the Arbitrator, except for any initial registration fee, which the parties shall bear equally. Otherwise, the parties shall each bear their own costs, expenses and attorneys' fees incurred in arbitration, except as otherwise decides by the Arbitrator.

II. ENTIRE AGREEMENT

These Terms and Conditions, the Purchase Order, any Invoice, and any proforma invoice or quotation issued by Sealcoat constitute the entire agreement between the parties with respect to its subject matter; control the terms and conditions of sale for the purchase of products hereunder; supersede all previous agreements, course of dealings and understandings between the parties including, but not limited to, any acknowledgement, invoice or other similar forms issued by either party to the other; and may not be modified except by an instrument in writing signed by the duly authorized representatives of both parties.

III. TERMS AND CONDITIONS CONTROL

Unless specifically provided in writing by Sealcoat, in the event of a conflict or inconsistency between these Terms and Conditions and any other writing between the parties, these Terms and Conditions shall prevail.