

# MetoKote Purchase Order Terms and Conditions

## TERMS AND CONDITIONS

**ACCEPTANCE OF PURCHASE ORDER:** This Purchase Order constitutes MetoKote's offer to Seller and shall become a binding contract upon the terms and conditions set forth herein upon acceptance by Seller either by acknowledgment or commencement of performance. Any terms or conditions (including process and delivery dates) proposed by Seller in accepting MetoKote's offer, which are inconsistent with or in addition to the terms and conditions herein set forth, shall be void and of no effect unless and to the extent expressly accepted by MetoKote in writing.

**BILLINGS AND SHIPPING:** Invoices shall be in duplicate and bills of lading shall show full routing, car number, etc. and shall be mailed at time of shipment to MetoKote's Accounts Payable Department. Taxes shall be listed separately. All articles are to be suitably prepared and packed for shipping and shall be shipped pursuant to the specific instructions on the face of this Purchase Order. All packages, packing slips and invoices shall be plainly marked to show MetoKote's order number.

**ASSIGNMENT:** Seller may not assign either its rights or obligations under this Purchase Order without the prior written consent of MetoKote except that claims for monies due or to become due under this Purchase Order may be assigned by Seller provided that Seller shall supply MetoKote promptly with two copies of any such assignment. None of the work to be performed under this Purchase Order shall be subcontracted for completed or substantially completed articles or major components without MetoKote's prior written consent.

**INSPECTION:** The articles may be inspected by MetoKote at all times and places and at any stage of production, and if at the premises of Seller, Seller, without additional charge, shall provide all reasonable facilities and assistance required for safe and convenient test and inspection. The foregoing shall not relieve Seller of its obligation to make full and adequate test and inspection. Any inspection prior to final acceptance at MetoKote's premises shall not be a waiver of MetoKote's right to inspect upon delivery. MetoKote reserves the right to inspect at its premises. All items are to be shipped F.O.B. MetoKote's plant. MetoKote may base acceptance or rejection on any or all articles on inspection by sampling. If, upon inspection, any of the articles shall be found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this Purchase Order, MetoKote may, in addition to its other rights: (a) require prompt correction, or replacement thereof at Seller's expense, including transportation charges; (b) rework, or have reworked, any such articles at Seller's expense for the purpose of conforming the articles to contractual requirements; (c) reject any such articles and require the

immediate removal thereof, MetoKote to be repaid or credited the full invoice price therefore plus transportation charges; or (d) cancel this Purchase Order in whole or in part under Section 8 hereof.

**RISK OF LOSS:** Risk of loss shall be determined pursuant to the delivery provision shown on the face of this Purchase Order. In the event that goods are rejected, the risk of loss for rejected items shall be the responsibility of the Seller from the time rejected items leave MetoKote's plant until redelivered to MetoKote.

**DEFAULT:** MetoKote may, by written notice to Seller, cancel for default this Purchase Order, in whole or in part, (i) if the Seller fails to deliver the articles or to perform the services strictly within the time specified herein, or if no time is specified, within a reasonable time; (ii) if the articles delivered do not conform to contractual requirements and if Seller shall fail to cure such defects within the contract time, or if Seller fails to perform any of the provisions of this Purchase Order, or so fails to make progress as to endanger performance of this Purchase Order in accordance with its terms; or (iii) if any proceedings in bankruptcy or insolvency, voluntary or involuntary, are commenced by, or against Seller, or if any receiver is appointed with or without Seller's consent, or if Seller makes any assignment for the benefit of creditors or if Seller commits any other act of bankruptcy or becomes insolvent or unable to meet its debts as they mature. If MetoKote terminates this Purchase Order, in whole or in part, due to Seller's default and it is necessary for MetoKote to procure any of the specified products or services elsewhere, then Seller will be liable for any re-procurement charges which exceed the amount which would have been due the Seller if it had satisfactorily completed this Purchase Order. Upon such termination, Seller will deliver to MetoKote any of the articles, parts or materials, for which MetoKote shall make written request at or after termination and MetoKote, will pay Seller the fair value of any such property so requested and delivered. Notwithstanding MetoKote's right to terminate this Purchase Agreement for delay in delivery, Seller shall not be liable to MetoKote for any damages therefore if Seller's delay is due to causes beyond its control, and without its fault or negligence, provided Seller exercises due diligence in promptly notifying MetoKote of conditions causing delay. MetoKote's remedies shall be cumulative and in addition to any other or further remedies provided in law or in equity.

**TERMINATION:** MetoKote may terminate work under this Purchase Order, in whole or in part, at any time by giving notice to Seller in writing. Seller will thereupon immediately stop work on this Purchase Order or the terminated portion hereof and notify any subcontractors to

do likewise. If MetoKote terminates this Purchase Order pursuant to this Section 9, MetoKote shall pay Seller for the delivered portion of this Purchase Order at the rate specified on the face hereof and shall reimburse Seller for direct costs incurred by the Seller in obtaining raw materials and components in order to fulfill the Purchase Order (which the Seller cannot recover from its suppliers) until the time of MetoKote's written notice of termination. MetoKote shall have no other liability to the Seller for termination.

**WARRANTIES:** Seller represents and warrants that: (a) all articles supplied hereunder are free from defects in material and workmanship, claim, encumbrance, or lien and are of merchantable quality, and conform to MetoKote's specifications; (b) no article supplied hereunder is adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, or is an article which may not under such Act be introduced into interstate commerce; and (c) the use or sale of the articles delivered hereunder will not infringe any intellectual property right of any third party, but Seller does not warrant against infringement by reason of the use thereof in combination with other materials or in the operation of any process. All warranties shall be construed as conditions as well as warranties and shall not be deemed to be exclusive.

**INTELLECTUAL PROPERTY:** In case the product or any part thereof is held to infringe any intellectual property right of any third party and the use of the product or any part thereof is enjoined, Seller shall, at its own expense, either procure for MetoKote the right to continue using the product or any part thereof or replace same with non-infringing product or part thereof, or modify the product so that it becomes non-infringing, or in the event of the impossibility of the foregoing options grant MetoKote a credit for the purchase price of such product. Seller will not be liable to MetoKote if any patent infringement or claim thereof is based upon the use of the product in combination with other items where such infringement or claim thereof would not have occurred from the normal use for which the product was designed.

**INDEMNIFICATION:** Seller agrees to defend, indemnify and hold harmless MetoKote against any and all liability, judgments, damages, losses, and expenses occasioned by or resulting from any breach of warranty or by the failure of the Seller to comply with the terms hereof, regardless of whether or not such failure is caused in part by MetoKote.

**INFORMATION PROPRIETARY TO METOKOTE:** Seller agrees that all information contained in drawings, specifications, tooling, etc., which are submitted by MetoKote to Seller under or pursuant to this Purchase Order is proprietary to MetoKote and is submitted with the understanding and agreement by Seller that such information shall not be utilized in whole or in part by Seller, except for fulfillment of this Purchase Order, without written permission of MetoKote.

**INFORMATION PROPRIETARY TO SELLER:** Any information which is proprietary to Seller and which is disclosed in the products or documents furnished by Seller hereunder shall be deemed to have been disclosed as a part of the consideration for this Purchase Order and MetoKote shall have full right to its use as MetoKote sees fit.

**ADVERTISING:** Seller shall not, without first obtaining the written consent of MetoKote, in any manner advertise or publish the fact that Seller has contracted to furnish MetoKote the articles or services.

**WAIVERS:** The failure of MetoKote to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Purchase Order or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right, but the obligation of Seller with respect to such future performance shall continue in full force and effect.

**REVISION:** This Purchase Order expressly limits acceptance to the terms set forth herein. No terms stated by Seller in accepting or acknowledging this Purchase Order shall be binding upon MetoKote if inconsistent with or in addition to the terms stated herein unless accepted in writing by MetoKote. If, however, a written agreement is already in existence between METOKOTE and Seller covering the purchase of the articles, work, or services covered hereby, the terms and conditions of such written agreement shall prevail to the extent that they are inconsistent with the terms and conditions hereof.

**CONSTRUCTION:** This Purchase Order shall be deemed to have been entered into and shall be construed and interpreted in accordance with the laws of the State of Ohio (exclusive of choice of law provisions).

**CHANGES:** MetoKote shall have the right by written notice to change the extent of the work covered by this Purchase Order, the drawings, specifications, or other description herein, the time, method or place of delivery, or the method of shipment or packaging, or to suspend work. Upon receipt of any such notice, Seller shall immediately notify MetoKote of any price or delivery change, suspend work to be affected by the change, and not proceed until written acceptance is given by MetoKote. If any such change causes an increase or decrease in the cost of performance or in the time required for performance, an equitable adjustment shall be negotiated promptly and this Purchase Order modified in writing accordingly.

**COMPLIANCE WITH LAWS:** Seller shall comply with all applicable federal, state and local laws, rules and regulations in producing the goods and supplies to be furnished hereunder.