

## **PPG Coatings Services Terms and Conditions of Sale and Warranty**

Effective Date: December 1, 2017

1. **Acceptance.** The following terms and conditions (“Terms and Conditions”) apply to all transactions for a service (“Service”) or good(s) or good(s) upon which Services are rendered (“Good”) produced or processed by, and each Quotation (defined below), order acknowledgement and invoice from, MetoKote Corporation d/b/a PPG Coatings Services, and its subsidiaries, divisions or affiliates, which include, but are not limited to: MetoKote U.K. Limited, Malcolm Enamellers ACP Limited, MetoKote de Mexico S. de R.L. de C.V., MetoKote Servicios S. de R.L. de C.V., MetoKote Canada Limited, MetoKote Deutschland GmbH, MetoKote CR s.r.o., MetoKote Hungary Coating Limited Liability Company, The Crown Group Co. and Electra-Finish, Inc. (collectively or singularly, as applicable, the “Seller”) and to each purchase order (“Purchase Order”) from each customer (“Customer”) of Seller with respect to any of the aforementioned business units. These Terms and Conditions are the only terms applicable to Seller’s provision of Services or Goods, except those relating solely to quantities, shipping instructions, or descriptions of the Services or Goods set forth in Customer’s Purchase Orders (collectively, “Purchase Order Terms”). Purchase Orders, if accepted by Seller, are accepted subject to the Terms and Conditions set forth herein. **SELLER HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY CUSTOMER, WHETHER OR NOT CONTAINED IN ANY OF CUSTOMER’S BUSINESS FORMS OR ON CUSTOMER’S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS SHALL BE VOID AND OF NO EFFECT UNLESS IN A WRITTEN AGREEMENT, SIGNED BY AN OFFICER, DIRECTOR, OR LEGAL COUNSEL (“Authorized Representative”) OF SELLER, WHICH SPECIFICALLY REFERS TO “A MODIFICATION OF” OR “DEVIATION FROM” THE LANGUAGE OF “SELLER’S TERMS AND CONDITIONS OF SALE”.** The parties agree that it is their intention that the battle of the form section of §2-207 of the Uniform Commercial Code as in effect in the State of Ohio, USA shall not apply to these Terms and Conditions.

In addition, no site usage agreement or any other click through agreement on a website will have any applicability or binding effect whether or not Seller clicks on an “ok,” “I accept,” or similar acknowledgment.

Customer’s Acceptance of these Terms and Conditions may be accomplished by any of the following means: 1. signing a Quotation containing Seller’s Terms and Conditions; 2. acceptance of Services or Goods; 3. submission of an order after receipt of a Quotation; 4. placing orders after receipt of other Quotations from Seller that include a reference to Seller’s Terms and Conditions; and 5. any other communication indicating acceptance of these Terms and Conditions.

2. **Quotations.** Any quotation or pricing proposal (“Quotation”) is only valid if in writing and then only for thirty (30) days from the date of the Quotation unless otherwise set forth in such Quotation. All Seller Quotations are subject to change or withdrawal without prior notice to Customer unless otherwise specifically stated in the Quotation. Seller shall have no obligation to provide, deliver, or sell Services or Goods covered by a Seller Quotation unless and until Seller issues an order acknowledgement or upon the shipment of Goods or commencement of Services by Seller.

3. **Prices.** Unless otherwise stated in the applicable documents, prices are in the currency of the country where the Services are provided or where the Goods are produced and are subject to change upon written notice to Customer. If a raw material or component is subject to a price increase, or if a supplier raises its prices or imposes a surcharge on Seller, Seller reserves the right to increase prices and/or surcharge Customer and Customer agrees to accept such price increase or surcharge for the term of such price increase or surcharge or until the termination of the contract to which these Terms and Conditions apply. Seller reserves the right to charge Customer overtime and other applicable charges to the extent that Seller incurs additional costs in performing Services or producing Goods due to the actions (or inaction) of Customer. Time of payment is of the essence. All orders are accepted subject to Seller’s price in effect at time of shipment. Customer is responsible to pay for, on or prior to the end of any program, order, etc., any unused materials (packaging, coating materials, etc.) specifically made or acquired for Customer’s order.

4. **Terms of Payment.** The inspection rights granted to Customer will not affect or alter the payment terms or the timing of Customer’s payment obligations. Under no circumstances will Customer have a right of setoff. Seller shall have the right to offset its payables against its receivables from Customer. Unless otherwise expressly agreed to by Seller in its Quotation, terms of payment are thirty (30) days net from the date of Seller’s invoice. If Customer fails to pay timely pay any such invoice, then Seller reserves the right to take any or all of the following actions: (a) any actions allowable under law; (b) withhold shipment of goods; (c) demand the return of previously shipped Goods; (d) institute new payment terms; and/or (e) cancel any Purchase Orders. Customer agrees to pay interest on overdue invoices at the rate of the lesser of one and one half percent (1½ %) per month or the highest rate permitted by law. If Customer fails to make any payment as required, then Customer agrees to indemnify Seller for all costs and expenses, including reasonable attorneys’ fees, court costs, and associated expenses incurred by Seller in collecting the past due amount.

5. **Credit Approval.** All Quotations and shipments to be made hereunder are subject to the approval of Seller’s accounting department. If, in Seller’s sole judgment, the financial viability or responsibility of Customer is or becomes unsatisfactory, then Seller may, at its option and without prejudice to any of its other remedies hereunder or at law or equity, (a) defer or decline to make any shipments hereunder except upon receipt of satisfactory security or cash payments in advance, and / or (b) terminate all Purchase Orders of Customer.

6. **Cancellation.** Seller reserves the right to cancel any Purchase Orders or releases thereunder, or terminate any Agreement relating to Seller’s Services or Goods on not less than thirty (30) days’ notice. Unless specifically agreed to by Seller in writing signed by an Authorized Representative of Seller, once Seller has either accepted a Purchase Order or has begun taking actions with respect to such Purchase Order, such Purchase Order cannot be canceled, terminated or modified by Customer in whole or in part except with Seller’s consent in a writing signed by an Authorized Representative of Seller and then only upon terms and conditions to be agreed upon, which shall include protection of Seller against all losses related to the termination. If Customer nonetheless repudiates the Purchase Order or contract or notifies Seller to proceed no further therewith, Seller shall have the right to deliver all Goods, and work in process, and Customer agrees to accept same and to pay to Seller the contract price for all such Services and Goods plus reimbursement of any costs associated with the early termination.

7. **Inspection / Non – Conforming Shipments.** Seller grants Customer the right to inspect Goods for a period of fifteen (15) business days immediately following delivery (“Inspection Period”). Customer must notify, through an NCR (as defined herein), Seller of any Service or Good that does not conform to the terms applicable to its order within the Inspection Period, and afford Seller a reasonable opportunity to inspect such Good or good upon which Services have been performed and cure any nonconformity. If Customer fails to provide Seller with a NCR (as defined below) within the Inspection Period, then Customer shall be deemed to have accepted such Services or Goods. Customer will have no right to return any Good or Good upon which Services have been rendered without Seller’s prior written authorization (“Return Good Authorization” or “RGA”). Any return authorized by Seller must be made in accordance with Seller’s return policies then in effect and must be accompanied by a written statement by Customer documenting the reason why the Good or good upon which Services were rendered was returned (such written statement herein “Non-Conformance Report” or “NCR”). Customer shall be responsible for all costs and expenses associated with any returns of Goods and will bear the risk of loss or damage of such Goods unless Seller agrees otherwise in writing or the Good actually did not conform to the warranties herein. Seller, in its sole discretion, may reject any return of a Good not approved by Seller in accordance with this paragraph or otherwise not returned in accordance with Seller’s then current return policies.

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8. **Title / Risk of Loss / Delivery.** Unless other arrangements are made in writing, Seller anticipates the use of common carriers for transport of Goods. Unless specifically otherwise provided in Seller's invoice or Quotation, the carrier, not Seller, will bill for freight rates and other transportation charges. Freight payments are solely the responsibility of the Customer, to be paid directly by the Customer to the carrier. Seller reserves the right to adjust prices to cover additional costs a) when the Customer specifies that deliveries are to be made in installments that do not conform to Seller's typical production schedule, and b) when Seller elects to deliver as specified by Customer. All Goods shall be shipped F.O.B. Seller's plant and shall become the property (if not already the property) of Customer upon delivery to the carrier and receipt of payment in full to Seller. Customer assumes all risk and liability for loss, damage, or destruction, as well as the results of any use or misuse by third parties who may acquire or use the Goods illicitly after the delivery to the carrier. Unless mutually agreed upon in writing, shipping dates are approximate and are based upon prompt receipt of all necessary information. Seller reserves the right to ship items in a single or multiple shipments.

9. **Damage.** Customer shall notify Seller (and as applicable the delivering carrier) within fifteen (15) business days from date of receipt of Goods of any damage, shrinkage, or shortage. Customer shall afford Seller a reasonable opportunity to inspect the Goods. Any loss occasioned by damage or shrinkage in transit will be for Customer's account and claims for such loss shall be made solely against the carrier.

10. **Indemnification.** Customer shall indemnify and hold Seller harmless from and against any and all claims, demands, liabilities, suits, actions, proceedings, damages, costs and expenses (including, but not limited to, attorney's fees), etc. incident to or arising out of or in connection with or relating to Customer's negligent or willful acts related to this Agreement. Seller may participate in any such defense to such extent as it, in its sole discretion, may determine.

**11. WARRANTY. SELLER WARRANTS, SUBJECT TO SCRAP RATE ALLOWANCES, THAT THE SERVICES AND GOODS (TO THE EXTENT THAT THE GOODS WERE PRODUCED OR SUPPLIED BY SELLER OR ONE OF ITS SUPPLIERS) CONTRACTED FOR HEREUNDER: (A) WILL CONFORM TO THE APPLICABLE SPECIFICATIONS SET FORTH ON SELLER'S QUOTATION AND AS OTHERWISE MUTUALLY AGREED TO BY SELLER AND CUSTOMER IN WRITING FOR A PERIOD OF ONE YEAR FROM THE DATE OF PROCESSING; AND (B) WILL BE CONVEYED FREE AND CLEAR OF ANY LIEN, SECURITY INTEREST OR ENCUMBRANCE CREATED BY SELLER OR ANY PARTY CLAIMING BY, THROUGH, OR UNDER SELLER. SELLER SHALL HAVE THE RIGHT EITHER TO RE-PERFORM NON-CONFORMING SERVICES, REPLACE OR REPAIR ANY DEFECTIVE GOODS (TO THE EXTENT SUCH DEFECT IS PROXIMATELY CAUSED BY SELLER), TO REFUND THE CONTRACT PRICE, REPLACE (OR PAY FOR REPLACEMENT OF) DAMAGED GOODS, OR TO GRANT A REASONABLE ALLOWANCE ON ACCOUNT OF SUCH DEFECTS. SELLER'S LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR DEFECTIVE GOODS OR DEFECTIVE SERVICES SHALL BE LIMITED SOLELY TO RE-PERFORMANCE, REPLACEMENT, REPAIR, REFUND OR ALLOWANCE AS SELLER MAY ELECT.**

**CUSTOMER SHALL ALLOW SELLER A REASONABLE OPPORTUNITY TO INVESTIGATE ALL NON-CONFORMANCE CLAIMS AND NO GOODS SHALL BE RETURNED TO SELLER WITHOUT AN NCR.**

**12. DISCLAIMER OF FURTHER WARRANTIES. EXCEPT AS SET FORTH ABOVE, SELLER MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE) WITH RESPECT TO ITS SERVICES AND GOODS.**

**13. LIMITATION OF LIABILITIES AND REMEDIES. (A) NOTWITHSTANDING ANYTHING CONTAINED ELSEWHERE IN THESE TERMS AND CONDITIONS OR IN ANY OTHER DOCUMENT ISSUED IN CONNECTION WITH THESE TERMS AND CONDITIONS OR THE COMMERCIAL ARRANGEMENT TO WHICH THESE TERMS AND CONDITIONS RELATE (COLLECTIVELY "AGREEMENT"), SELLER SHALL NOT BE LIABLE, AND CUSTOMER WAIVES ALL CLAIMS AGAINST SELLER, FOR INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS, COMMERCIAL LOSSES OR GOODWILL, ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE PRODUCTS OR SERVICES, WHETHER SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT BASED UPON SELLER'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION.**

**(B) NOTWITHSTANDING ANYTHING CONTAINED ELSEWHERE IN THE AGREEMENT, IN NO EVENT SHALL SELLER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES BE LIABLE TO CUSTOMER OR ANY THIRD PARTY WITH RESPECT TO THE AGREEMENT FOR AN AMOUNT IN EXCESS OF \$250,000, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, WARRANTY, INDEMNITY, NEGLIGENCE OF ANY KIND, STRICT LIABILITY, TORT, OR ANY OTHER THEORY) UPON WHICH THE CLAIM IS BASED.**

**(C) SELLER SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS, DAMAGE, OR INJURY TO PERSONS OR PROPERTY RESULTING FROM THE HANDLING, STORAGE, TRANSPORTATION, RESALE, OR USE OF ITS GOODS IN MANUFACTURING PROCESSES, OR IN COMBINATION WITH OTHER SUBSTANCES, OR OTHERWISE.**

14. **Returns.** Except as provided in Sections 7 and 11 hereof, Seller will neither accept return of Goods, nor be responsible for their destruction.

15. **Scrap.** Unless otherwise stated in a Quotation, Seller will be allowed a one percent (1%) scrap rate for Goods and Services.

16. **APQP.** Seller reserves the right to conduct Advance Product Quality Planning ("APQP") analysis in preparation to perform Services or produce Goods. Customer understands and agrees that delays, scrap rate adjustments, rejection of its orders for Goods or Services, or other changes may occur based on the results of APQP analysis, though to the extent that there are changes based on APQP analysis either party may terminate the order without fault, liability or cost. Customer agrees and acknowledges that it will cooperate with Seller in any APQP process and that failure to fully cooperate with Seller in the APQP process (including, but not limited to, providing requested parts) will result in Seller's right to terminate the agreement and assess costs to Customer.

17. **Technical Data.** All physical properties, statements and recommendations are either based on the tests or experience that Seller believes to be reliable, but they are not guaranteed. Seller relies on descriptions of the Goods including, but not limited to, geometry and substrate.

18. **Tooling / Molds / Dies.** Unless otherwise agreed in a writing signed by an Authorized Representative of Seller, all material, equipment, facilities, and special tooling (tooling includes, but is not limited to, tools, jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, and manufacturing aids and replacements thereof) used in the manufacture of the Goods or rendering of Services covered by any Purchase Order shall remain the property of Seller.

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19. **Taxes.** Customer shall pay to Seller, in addition to the agreed price, the amount of all fees, duties, licenses, tariffs, and all transactions, use, privilege, occupation, excise, value added or other taxes, federal, state, local or foreign, which Seller is required to pay or collect in connection with the Services or Goods contracted for under this Agreement. Failure by the Seller to collect any such fees or taxes shall not affect Customer's obligations hereunder and Customer shall fully defend, indemnify and hold harmless Seller with respect to such tax obligations.

20. **Ownership of Intellectual Property.** All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights, trademarks, patents, etc. and applications therefore, and other information or Intellectual Property disclosed or otherwise provided to Customer by Seller and all rights therein (collectively, "Intellectual Property") shall remain the property of Seller and shall be kept confidential by Customer in accordance with these Terms and Conditions. Customer shall have no claim to, nor ownership interest in, any Intellectual Property and such information, in whatever form and any copies thereof, shall be promptly returned to Seller upon written request from Seller. Customer acknowledges that Seller grants no license or rights of any sort to Customer hereunder in respect of any Intellectual Property, other than the limited right to use Seller's proprietary Goods purchased from Seller. Unless otherwise agreed in a writing signed by an Authorized Representative of Seller, the sale of Services or Goods by Seller to Customer does not include any design, development or related services associated with the Intellectual Property of the Seller. Unless otherwise agreed to in a writing signed by an Authorized Representative of Seller, any Intellectual Property developed by it or mutually with Customer in the course of providing, preparing to provide, or in any way related to the rendering of Services or production/development of Goods shall be owned by Seller.

21. **Confidential Information.** Customer shall hold in confidence all information furnished or made available by Seller (including, but not limited to, information disclosed prior to the applicability of these Terms and Conditions) to Customer in connection with the subject matter of these Terms and Conditions or of Customer's Purchase Order. Customer agrees not to use or disclose such information without the prior written consent of an Authorized Representative of Seller. The obligations in this Section 21 do not apply to information that (a) at the time of disclosure was or becomes, generally available to the public through no breach by the Customer of any obligation herein, (b) the Customer can show by written records was in its possession prior to disclosure by Seller, or (c) is legally disclosed to Customer by a third party having no direct or indirect confidentiality obligation to Seller respecting such information.

22. **Updates.** Seller may revise these Terms and Conditions at any time by posting them to its website at <http://ppgcoatingservices10stg.ppgac.com/about/terms-and-conditions>

23. **Force Majeure.** Seller shall not be liable for failure to perform or delay in performance or delivery of any Services or Goods due to (a) fires, floods, other natural disaster, strikes, or other labor disputes, accidents, sabotage, terrorism, war, riots, financial distress of a supplier or other disruption in Seller's supply chain, acts of precedence or priorities granted at the request or for the benefit, directly or indirectly, of any federal, state or local government or any subdivision or agency thereof, delays in transportation or lack of transportation facilities, restrictions imposed by federal, state or local laws, rules or regulations; or (b) any other cause beyond the reasonable control of Seller. If any of the foregoing occurs, the time for performance shall be extended for such time as may be required to enable Seller to perform. Seller may, during any period of shortage due to any of the above circumstances, allocate its available supply of resources to provide Services or Goods among itself and its Customers in such manner as Seller, in its judgment, deems fair and equitable. Seller is not required to resolve labor disputes or disputes with suppliers of raw materials, supplies, equipment, fuel or power, or seek alternate sources thereof except to the extent that Seller considers this to be in its best interest. If a force majeure circumstance affects either party's performance for at least ninety (90) consecutive days, the party who is able to perform may terminate the agreement to which these Terms and Conditions apply upon written notice to the affected party.

24. **Assignment and Delegation.** Neither party may assign any rights or interest or delegate any obligation or duty of such party under these Terms and Conditions or the Agreement without the prior written consent of the other party. Any attempted assignment or delegation without such consent is void for all purposes.

25. **Integration Clause.** Except as otherwise indicated herein, these Terms and Conditions constitute the entire Terms and Conditions to transactions between Seller and Customer with respect to the Services and Goods.

26. **Waiver.** No failure of Seller to insist upon strict compliance by Customer with these Terms and Conditions or to exercise any right accruing from any breach of Customer shall impair Seller's rights in case Customer's breach continues or in case of any subsequent breach by Customer. Waiver by Seller of any breach by Customer of these Terms and Conditions shall not be construed as a waiver of any other existing or future breach.

27. **Limitation of Actions.** Notwithstanding any contrary statute of limitations, any cause of action for any alleged breach of these Terms and Conditions by Seller shall be barred unless commenced by Customer within one (1) year from the accrual of such cause or action.

28. **Dispute Costs.** In any litigation or arbitration between Seller and Customer concerning these Terms and Conditions, the prevailing party is entitled, in addition to such other relief that is granted, to a reasonable sum for their attorney's fees, provided that if each party prevails in part, such fees shall be allocated in such manner as the court or arbitrator shall determine.

29. **Choice of Laws; Jurisdiction and Venue.** All of Seller's contracts with Customer, including these Terms and Conditions, shall be governed exclusively by the laws of Seller's domicile. The UN Convention on contracts for the international sale of goods (Vienna, 11 April 1980) is expressly excluded. The Uniform Law on the International Sale of Goods as well as the Uniform Law on the formation of contracts for the International Sale of Goods are each expressly excluded. The courts of Seller's country of domicile shall have sole jurisdiction; provided, however, that Seller may, as a separate and/or additional option, initiate legal proceedings with any other court of competent jurisdiction in Customer's country of domicile. Seller and Customer irrevocably and unconditionally waive any objection to the laying of venue of any proceedings as set forth herein. To the extent permitted under applicable law, Customer expressly waives any and all rights it may have to rescind any contract with the Seller on any ground whatsoever.

**30. JURY WAIVER. THE PARTIES HERETO EXPRESSLY RELEASE AND WAIVE ANY AND ALL RIGHTS TO A JURY TRIAL AND CONSENT TO HAVE ANY DISPUTE HEARD SOLELY BY THE COURT OF COMPETENT JURISDICTION SET FORTH IN SECTION 29.**

31. **Severability.** The parties intend that these Terms and Conditions are severable. If any provision herein is or is deemed to be unlawful or unenforceable then the remaining provisions shall remain in full force and effect.

32. **Survival.** Any provision of these Terms and Conditions, which by its nature extends beyond the expiration, termination, or cancellation of these Terms and Conditions, shall remain in full force and effect.