



## General Terms and Conditions Purchase Order

**1. Acceptance of Entire Agreement:** These Purchase Order General Terms and Conditions including the terms and conditions on the face of the Purchase Order delivered by Buyer and all proposals, designs, plans and other documents specified by Buyer in such Purchase Order (hereinafter collectively defined as the "Contract") shall govern all purchases made by the Buyer from the Seller of goods, products and other equipment, including any software imbedded therein ("Products") and/or services ("Services"). Unless governed by a separate and specific agreement mutually agreed to in writing, executed by an authorized representative of both Parties, this Contract shall constitute the complete and final written agreement between Buyer and Seller and supersedes all other agreements and understandings between the Parties regarding the supply of Products and the performance of Services pursuant to the Contract. Seller's terms and conditions, whether included by reference in this Contract or in any other document delivered or issued by Seller, shall not be binding on the Buyer unless Buyer expressly agrees in writing and which acceptance shall be clearly referenced on the face of the Purchase Order.

**2. Price:** The Products supplied or to be supplied and the Services performed or to be performed pursuant to this Contract shall not be invoiced at a higher price than set out in the Purchase Order without the prior written consent of Buyer. The price set out in the Purchase Order is all inclusive of taxes, fees and other costs, and subject to this Section 2, Seller is not entitled to any additional payment unless agreed to in writing by Buyer. No charges will be allowed for packing, crating, freight surcharges, expedited delivery or cartage unless expressly stated in the Purchase Order. The charges and taxes payable by Buyer in accordance with this Contract must be itemized as separate line items, at Seller's actual cost on each invoice.

**3. Warranties, Inspection, and Right of Rejection:** *Products Warranty:* Seller hereby warrants that all Products shall (i) be produced in accordance with the terms of this Contract and fit for the purposes intended, (ii) comply with all applicable foreign and federal, state, provincial, municipal and local laws, ordinances and governmental rules, regulations and requirements, (iii) conform to the specifications, SDS, Certificates of Analysis, drawings, samples, or other descriptions furnished, and (iv) be new, of merchantable quality, and free from all defects, whether patent or latent, and that the workmanship of the Products is of the highest standards and, where the materials to be used are not specified, such materials used meet the highest standard of quality. *Services Warranty:* Seller hereby warrants and guarantees that (i) all Services shall comply with all applicable foreign and federal, state, provincial, municipal and local laws, ordinances and governmental rules, regulations and requirements, (ii) Seller shall perform its obligations for the benefit of Buyer in a professional, workmanlike, and timely manner, consistent with industry standards and in compliance with any scope of work or similar document included in the Contract. Time is of the essence in the performance of Seller's obligations hereunder. Buyer's acceptance of Seller's late performance shall not be deemed a waiver of this provision. *Inspection:* All Products will be subject to inspection and approval by Buyer with respect to quantity and patent defects. *Rejection:* If Products are rejected they will be held for disposition at Seller's risk and expense and any payment shall be promptly refunded by Seller. Any inspection or approval performed at Seller's location or elsewhere during or after manufacture, whether or not such inspection or approval be provided for by the terms of this Contract, shall be provisional only and shall not constitute final acceptance or be construed as a waiver of the foregoing right of inspection and approval or rejection after receipt of Products by Buyer at Buyer's location. Seller may be given a reasonable opportunity to correct defects after the receipt of such Products by Buyer, but only if corrections can be made within a reasonable time. Seller guarantees that any Products, Services, or any part thereof found defective or that do not meet any of these warranties within the longer of (i) Seller's standard warranty period, or (ii) one (1) year after such Products or part thereof are put into use by Buyer, or within one (1) year after such Services or part thereof are performed by Seller, will be promptly repaired, replaced or re-performed without charge. If such repair, replacement or re-performance is insufficient in Buyer's sole discretion, the full original cost of such Product or Service shall be refunded to Buyer. Such remedies are without prejudice to any other remedy of Buyer and shall also be warranted for an additional warranty period equal to the original warranty period after the date the repair, replacement or re-performance is completed, including delivery and installation where applicable. Buyer shall also have the right to have any Service provider removed and replaced at any time for any reason.

**4. Delivery Schedule: Title and Risk of Loss:** All Products to be delivered to Buyer shall be packaged in accordance with applicable laws, with instructions or specifications in this Contract or referred to in drawings or specifications for the Products, including but not limited to packaging slips and Certificates of Analysis, as applicable. All packaging shall include proper labels, including bar code information, lot numbers or identifying codes, and weights. In the absence of any specific instructions or specifications on packing and packaging, Seller shall (i) comply with the best commercial practice for shipment adequate for safe arrival of the Products at Buyer's specified destination, (ii) comply with carrier regulations, (iii) comply with, or ensure carrier's compliance with, all safety rules and regulations at destination site, and (iv) secure the lowest possible transportation rates. Where Buyer is responsible for transportation, any extra transportation cost resulting from failure to comply with this Section shall be charged to Seller's account. Title and risk of loss of all Products shall pass to Buyer pursuant to the terms on the relevant Purchase Order. Seller shall furnish sufficient labor and management forces, plant, and equipment and shall work such hours (including night shift, overtime, weekend and holiday work, without additional cost to Buyer) as may be required to ensure timely delivery of the Products and performance of the Services to Buyer. Regardless of delivery or performance in installments, Seller's obligation is not severable. All Products delivered and Services performed under this Contract shall be free of all liens, hypothecs,

security interests, rights of others and other charges and encumbrances and, if Buyer requests, a proper release of all liens or satisfactory evidence of freedom from liens will be promptly delivered to Buyer. Buyer will not accept shipments sent cash on delivery (C.O.D.) without Buyer's prior express written consent and will return them at Seller's risk. In the event Seller reasonably believes that the delivery of Products or performance of Services pursuant to this Contract may be delayed, Seller shall immediately inform Buyer of any such delay and shall submit recovery plans to meet Buyer's requirements. Notwithstanding the foregoing, Seller shall not be relieved of its liability as a result of the late delivery of such Products or late performance of such Services, unless due to a force majeure event per Section 15.

**5. Changes to Quantity or Scope:** The quantity of Products delivered or the scope of Service provided by Seller pursuant to this Contract shall neither exceed nor be less than the quantity of Products or scope of Service specified in the Contract, without Buyer's prior written permission. If Buyer changes the terms of a Purchase Order thereby causing an increase or decrease in the cost of, or the delivery schedule or performance schedule for, the Products or the Services covered by this Contract, Seller shall advise the Buyer, in writing, within ten (10) days of receipt of such change request from Buyer, of any equitable adjustment in the invoice, delivery or performance schedule, or both, that the Seller intends to make. Any claims by Seller for adjustment under this clause following such ten (10) day period shall be deemed waived.

**6. Payment Terms:** Itemized invoices must include the Purchase Order Number and the corresponding Purchase Order item number for the Products in question. Where Products are delivered the invoice shall also indicate the manufacturer and sku, the date and terms of shipment, itemized quantities, descriptions and corresponding prices of the Products shipped, any discount terms, and a copy of the signed proof of delivery to verify receipt of the Products by Buyer. Where Services are performed, the invoice shall also include a reasonably detailed description of the Services provided. Payment of invoices does not constitute acceptance of the applicable Products or Services and payment thereof is without prejudice to any and all claims the Buyer may have against the Seller under this Contract. If Buyer and Seller agree to payment terms other than Net 65 days from receipt of undisputed invoice, such terms shall be clearly stated on the Purchase Order.

**7. Audit:** Buyer reserves the right to audit Seller's records and facilities to assure compliance with the terms of this Contract and any applicable laws or regulations. Seller shall make available all data reasonably requested by Buyer. Seller shall ensure a comparable right to audit with any subcontractors.

**8. Intellectual Property:** "Intellectual Property" shall mean any and all information, knowledge, data, developments, designs or processes protected by a patent, trademark, copyright, trade secret, or agreement or any other exclusive right under state, federal or any international law. Seller shall immediately notify Buyer if Seller has or acquires knowledge of any Intellectual Property rights under which a suit for alleged infringement thereof can reasonably be brought in connection with the Services rendered or the Products delivered pursuant to this Contract. Seller shall defend, indemnify and hold Buyer harmless, at Seller's expense, from and against any claims threatened or brought at law or in equity arising out of or related to the Products or Services against Buyer, its affiliates, successors and assigns, for infringement of any third party Intellectual Property rights, Seller shall pay the costs and expenses of any such action or suit, including reasonable compensation and expenses of experts and legal counsel of Buyer's choice and selection, and Seller shall also pay and hold Buyer harmless from damages or other sums, settled, awarded or assessed in any such action or suit. No compromise or settlement directly or indirectly affecting Buyer's operations may be agreed to without Buyer's consent, which will not be unreasonably withheld. If any of the Products, Services, or any component part furnished hereunder, is held to infringe, or their use is enjoined, Seller shall, promptly at Seller's expense, procure for Buyer the right to continue using the Products or Services, replace them with a substantially equivalent non-infringing product or service, or modify them so they become non-infringing with substantially equivalent performance. Seller's obligations must be performed in such a manner so as not to interfere with Buyer's operations as determined in Buyer's sole discretion. Should Seller fail to comply with the above within the time period set out by Buyer, Buyer reserves its rights at law or, at its option, to return the infringing Products to Seller at Seller's expense, in which case Seller shall refund the purchase price to Buyer within ten (10) days from the delivery of the infringing Products.

**9. Indemnity and Limitation of Liability:** To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer, its subsidiaries and affiliates (each an "Indemnitee"), from and against all claims, demands, damages, liabilities, losses and expenses (including attorney and paralegal fees and court costs and including penalties and interest) incurred or suffered by any indemnitee and arising out of or resulting from, directly or indirectly, (i) the Products delivered or Services performed pursuant to this Contract; (ii) any act or omission of Seller in the performance of its obligations under this Contract; (iii) a breach of Seller's representations or warranties; or (iv) a breach by Seller of any of its obligations under this Contract including but not limited to bodily injury, sickness, disease or death, or damage to or destruction of tangible property (including loss of use resulting therefrom). The foregoing indemnity shall be in addition to any other indemnity obligations of Seller set forth in this Contract. Any insurance recoveries or policies shall not limit any obligation of Seller hereunder.



**10. Anti-Corruption; Code of Conduct:** Supplier shall at all times comply with the **Supplier Code of Conduct**, established by Buyer and available for review at <http://suppliers.sherwin-williams.com/cs/suppliers/supplier-code-of-conduct>. Supplier shall comply with all applicable laws, regulations, and all other legal requirements of any type that apply to any aspect of Supplier's activities in connection with this Contract, including, without limitation, those dealing with the sale, promotion, marketing, delivery, distribution, performance, or installation of goods, tax, foreign exchange, economic and currency controls, and all other applicable laws. For purposes of this Section, "Government Official" means any officer or employee of a government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization. Supplier understands that Buyer's business practices prohibit bribery and corrupt behavior in any form. Supplier shall not offer, pay or provide anything of value, including but not limited to cash or other value, or in the form of a bribe, gratuity or other inducement, either directly or indirectly to any Government Official for the purpose of influencing any act or decision. Supplier shall comply with all applicable laws that relate to corruption or bribery including but not limited to, money laundering, terrorism, commercial bribery, or bribing or otherwise improperly dealing with Government Officials. Such activity is prohibited even if the activity appears customary or consistent with prevailing business practices. Promptly upon request, Seller will certify in a written form acceptable to Buyer that Supplier has complied with this section and, if requested, will permit SW to inspect Supplier's books and records to ensure compliance. Supplier will cause its owners, officers, employees, representatives, and agents to cooperate fully in any investigation of Supplier activities by SW or any governmental, legal, or regulatory body. Supplier represents and warrants that: (i) neither Supplier, nor any of its owners, officers, employees, agents, or representatives have been convicted of or debarred from the practice of a profession based on an offence involving deceit, fraud, or moral turpitude; (ii) Supplier has not made any improper payment to a Government Official in connection with Supplier's relationship with Buyer or otherwise to obtain or retain business; (iii) Supplier shall require all of its dealers and Suppliers to comply with the requirements of this Section and shall require such dealers and Suppliers to cooperate with Buyer and/or Supplier in any inquiry related to this section. Supplier shall be responsible to ensure that Supplier's dealers and Suppliers for Products are in compliance with the requirements of this Section. In addition to the [Code of Conduct](#), Seller further agrees to comply with the provisions of 29 CFR Part 471, Appendix A to Subpart A and the Equal Opportunity Clauses at 41 CFR Section 60-1.40, 41 CFR 60-300.5(a) and 41 CFR 741.5(a), 41 CFR Section 60-1.40, 41 CFR 60-300.5(a) and 41 CFR 741.5(a), as applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Covered prime contractors and subcontractors must take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

**11. Force Majeure:** If the performance of this Agreement, or of any obligation hereunder is delayed, prevented, restricted or interfered with in whole or in part, by reason of: (a) fire, explosion, illegal strike, casualty or accident resulting in plant closure, lack or failure of transportation facilities, epidemic, cyclone, flood, drought, or inability to obtain, for reasons beyond the reasonable control of a party hereto, raw materials, power or supplies; (b) war, revolution, civil commotion, acts of public enemies, blockage or embargo; (c) any law, order, or other requirement of any government binding upon the party unable to perform; or (d) any other act or condition whatsoever, whether similar or dissimilar to those enumerated, beyond the reasonable control of a party hereto; the party so affected, upon giving prompt written notice to the other party, shall be excused from such performance to the extent of such delay, and the other party shall likewise be excused from performance of its obligations to the extent such obligations related to the performance so prevented. In such event (i) the party affected shall use its best efforts to avoid and to remove such causes of nonperformance and both parties shall continue performance hereunder in good faith whenever such causes are removed; and (ii) nothing herein contained shall be construed as requiring either party to accede to any demands of employees or labor unions which such party, in its sole discretion, shall consider unreasonable. Force majeure shall not include financial distress, insolvency, bankruptcy, or other similar conditions affecting one of the parties, affiliates and/or sub-contractors. Should the affected Party be unable to resume performance within 30 days, the non-affected Party shall be entitled to terminate this Contract by giving a written notice to the other Party confirming its election to terminate this Contract, which termination shall take effect on the date of the delivery of such notice or later on as specified in such notice.

**12. Insurance:** Seller shall procure and maintain appropriate insurance coverage meeting or exceeding the following requirements, as well as all jurisdictional and legal mandates: (a) **Commercial General Liability:** Commercial General Liability Insurance, including contractual liability, premises liability, on-going operations liability, completed operations liability, personal injury, broad form property damage with minimum limits of US\$2,000,000 per occurrence and US\$3,000,000 in the aggregate. The policy shall include Buyer as an additional insured, include cross-liability coverage and shall be endorsed to include a waiver of subrogation in favor of Buyer. (b) **Employer's Liability:** Employer's Liability Insurance in an amount not less than \$1,000,000 for bodily injury by accident, each accident US\$1,000,000 bodily injury by disease, each employee and policy limit. (c) **Workers' Compensation:** Workers' Compensation Insurance for the benefit of Seller's employees, as required by the laws of the state, or province in which the work is being performed, and as required by any other similar federal, state, provincial, municipal or local laws applicable to such employee(s). Buyer makes no representation that such insurance coverage is adequate for Seller and Seller is solely responsible for maintaining adequate insurance. The obligation of Seller to provide insurance shall not limit in any way the liability or obligations assumed by the Seller.

**13. Compliance with Environmental and Regulatory Laws:** Seller warrants that the Products sold or Services furnished hereunder have been and will be produced and furnished in full and complete compliance with all applicable laws, including but not limited to environmental laws and regulations, any safety and health laws, and requirements that chemical substances furnished hereunder be reported for the U.S. Environmental Protection Agency, Toxic Substances Control Act inventory or other applicable government agency. Seller will furnish to Buyer, upon Buyer's request, all certificates and forms necessary in Buyer's judgment to certify compliance with all such applicable environmental laws and regulations. For any Services performed at Buyer's location, Seller shall also comply with the Buyer's safety rules. Seller shall provide a SDS, Certificate of Analysis, or other similar document as required by applicable law, to Buyer for Products sold to Buyer hereunder. Where such information is required due to the nature of the Product, a SDS will be provided prior to such Products being delivered to Buyer's facility. Buyer shall have the right to rely on information contained in the SDS, Certificates of Analysis and other technical information related to the Products that Seller provides to Buyer.

**14. Governing Law:** This Contract shall be construed interpreted and governed by the laws of the country, state or province of Buyer's address on face of the Purchase Order. Any dispute arising under, or in connection with, this Contract will be subject to the exclusive jurisdiction of the courts located in such country, state or province. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

**15. Confidentiality and Nondisclosure:** "Confidential Information" shall mean the Contract and any information, action, process, design, idea, formula, technique, diagram, specification, model, concept, experience, knowledge, supporting documents, material, program, software, electronic files regardless of format, which the Buyer has deemed to be confidential or proprietary or which any reasonable professional should know to be confidential. Seller shall protect any and all Confidential Information and other information it receives from the Buyer as though it were its own. Seller shall not disclose Confidential Information to any third parties without express written authorization from Buyer or use Confidential Information for its own benefit or for the benefit of any third parties during or after termination or completion of the Contract. Seller shall protect all forwarded Confidential Information or any other information it receives from the Buyer, and will return all copies of the Confidential Information to Buyer at the termination of the Contract, or will destroy all copies and provide an affidavit attesting to its destruction. To the extent that Seller has incorporated or included Buyer's Confidential Information into its own materials, including but not limited to documents, systems, programs, and developments, such materials shall also be returned to Buyer or destroyed. Confidential Information does not apply to information that is: (i) generally known information, assuming the Seller is not responsible for its undesired dissemination; (ii) learned by the Seller from a legal source (without breaching confidentiality obligations) other than the Buyer; (iii) independently developed by the Seller of its own efforts and which the Seller can demonstrate by written or other tangible evidence it rightfully possessed prior to disclosure by the Buyer. Buyer, in addition to Buyer's other rights and remedies, reserves the right to terminate the Contract if Seller fails to protect the Confidential Information.

**16. Term and Termination:** This Contract shall continue for the time period stated on the Purchase Order, and if no term is stated, the Contract shall continue until the Products are delivered and accepted, or the Services are performed. Buyer shall have the right to terminate the Contract or any part thereof at any time for any reason following a prior written notice to Seller to that effect. This Contract shall terminate automatically in the event that Seller is not able to meet its debts as they become due, becomes insolvent, or files for bankruptcy protection. Any provisions that by their terms should continue after the termination of this Contract shall continue. Upon receipt of written notice of termination, Seller shall promptly comply with the directions in such notice and shall take action necessary to terminate the work subject to the notice, minimize costs and liabilities for the terminated work.

**17. Miscellaneous:** Seller is an independent contractor, and Seller's employees and any approved subcontractors shall at all times be under Seller's supervision, direction, and control. This is a non-exclusive relationship and Buyer has the right to purchase similar Products or Services from other vendors. Notice given under this Contract shall be effective three business days after posting, postage prepaid if by mail, the business day after sending if by facsimile (fax), or electronic (e-mail), or at the time of delivery if personally delivered. Buyer's failure to insist on Seller's strict performance of the terms and conditions of this Contract at any time shall not be construed as Buyer's waiver of Seller's future performance. If any provision in this Contract or any related document is held to be invalid or unenforceable, such invalidity shall be limited to the provision affected and shall not impair the validity and enforceability of the remainder of the subject provision or the remaining provisions of this Contract. This Contract shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties hereto. Seller may not assign the Contract without the consent of Buyer which consent shall not be unreasonably withheld. Seller may not use Buyer's name or any of Buyer's or its affiliates' trademarks, tradenames, or logos for any reason, including in any client list, press release, brochure, advertisement or the like.

**18. Language:** The parties hereto acknowledge and confirm that they have requested that this Contract and all notices and communications contemplated hereby be drafted in the English language. Les parties aux présentes reconnaissent et confirment qu'elles ont exigé que la présente convention ainsi que tout avis et communications aux tenues des présentes soient rédigés dans la langue anglaise.



**SHERWIN-WILLIAMS.**

19. Equal Employment Opportunity, Affirmative Action and Employee Rights under the National Labor Relations Act. **The provisions of 29 CFR Part 471, Appendix A to Subpart A and the Equal Opportunity Clauses at 41 CFR Section 60-1.40, 41 CFR Section 60-4.3, 41 CFR 60-300.5(a) and 41 CFR 741.5(a) are incorporated herein by reference, as applicable. This contractor (Buyer) and subcontractor (Seller) shall abide by the requirements of 41 CFR Section 60-1.40, 41 CFR Section 60-4.3, 41 CFR 60-300.5(a) and 41 CFR 741.5(a), as applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative**

**action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.** Buyer is a federal, state and local government contractor subject to various nondiscrimination and affirmative action compliance requirements, including but not limited to Executive Order 11246, as amended, the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. As part of Buyer's efforts to comply with these laws, their implementing regulations and Buyer's contractual commitments, Buyer has developed and implemented equal employment opportunity and affirmative action policies and programs, which are designed to ensure that all qualified applicants and employees are treated without regard to such factors as race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, disability, pregnancy, genetic information or any other consideration prohibited by law or by contract. The implementing regulations regarding the laws listed in this paragraph require federal contractors to send to their subcontractors, including subcontracting vendors and suppliers, information about the federal contractors' nondiscrimination and affirmative action policies, and to "request appropriate action" on the subcontractors' part. Accordingly, Buyer hereby notifies Seller about Buyer's important nondiscrimination and affirmative action policies and efforts and requests appropriate action on the Seller's part. The cooperation of the Seller is appreciated to ensure equal employment opportunity and affirmative action throughout Buyer's organization and its subcontracting chain.