

# PURCHASE ORDER TERMS AND CONDITIONS

**1. Definitions:** The Term "Articles" means goods, material, equipment, products, technical data, intellectual property, drawings, or services identified in the Purchase Order.

**2. Seller's Acceptance:** The Purchase Order constitutes Niles Industrial Coatings' offer to Seller. The delivery of any Articles shall constitute a full acceptance by the Seller of the Purchase Order.

**3. Price and Payment:** Niles Industrial Coatings ("NIC") shall not be invoiced at a price higher than that stated on the face of this Purchase Order ("Price"), which shall be binding on Seller for 12 months. If the Purchase Order is not priced, Seller shall not charge a higher price than last quoted or charged to NIC. Seller warrants that the Price is the lowest charged by Seller for the Articles to any customer and that any reduction made by Seller in the price of Articles covered by this Purchase Order before NIC's acceptance of the Articles shall be applicable to this Purchase Order. Unless otherwise stated on the face of this Purchase Order, the Price is deemed to include (a) all applicable federal, state and local taxes and (b) the charges for insurance, import dues, packaging, transportation and any other fee or expense relating to the provision of the Articles or services ordered. Once payment is made by the project owner to NIC for the Articles used for such project, payment to Seller shall be made within 30 days of NIC's acceptance of the Articles or NIC's receipt of Seller's invoice, whichever is later.

**4. Quantity:** Unless otherwise specified on the face of this Purchase Order, such order shall be shipped complete. NIC shall not be obligated to accept any shipment of Articles in excess of the quantity specified in this Purchase Order. Any excess quantity will be held at Seller's risk and expense for a reasonable time awaiting return shipping instructions from Seller. Risk of loss and return shipping damages for any excess shall be borne by Seller.

**5. Warranty:** Seller warrants that the Articles delivered shall conform to the specifications provided in the Purchase Order, shall be free from any liens or encumbrances, shall be of new material and good workmanship, merchantable and free from defects, and shall be fit for the purposes intended by NIC. Unless NIC executes and delivers to Seller an express waiver of warranty, NIC and Seller agree that the implied warranties of merchantability and fitness for a particular purpose and other warranties, express and implied, apply to this transaction and the Articles sold.

**6. Special Products:** Unless otherwise provided on the face of this Purchase Order, any drawings, special dies, tools, patterns, or equipment required for the manufacture of the Articles shall be furnished by Seller at no cost to NIC. NIC, at its option, may reimburse Seller for Seller's reasonable cost for such drawings, dies, tools, or patterns, and shall, as a result, become the owner and entitled to possession of same upon NIC's request therefore.

**7. Delivery:** Except as NIC may otherwise direct, the Articles shall be delivered complete to NIC in the stated quantity and by the required delivery date. Regardless of F.O.B point, Seller agrees to bear all the risks of loss, damages, or destruction of the Articles ordered herein which occur prior to acceptance by NIC. No such loss, damage, or destruction shall release Seller from obligations hereunder.

**8. Packing:** All Articles shall be suitably packaged for shipment to prevent damage.

**9. Inspection of Articles:** All Articles delivered to NIC are subject to inspection and acceptance or rejection by NIC within a reasonable time, notwithstanding any prior payment of the Price. Any Articles that are rejected or for which NIC revokes its acceptance may be held at Seller's risk and expense and may be returned and charged back to Seller at its own expense. For any Articles that are rejected or for which acceptance is revoked, the quantity under the Purchase Order shall be automatically reduced, and no substitution or replacement shall be made unless authorized in writing by NIC.

**10. Changes:** At any time prior to delivery, NIC, in its sole and unfettered discretion, may increase or decrease the ordered quantity of Articles or make any other change in the Purchase Order, whether in whole or in part, by providing written notice to Seller. If any such change causes an increase or decrease in the cost or time required to perform this Purchase Order, an equitable adjustment shall be made and this Purchase Order shall be modified in writing accordingly. Seller shall be deemed to have waived any claim for adjustment unless asserted in writing within 10 days from the date of NIC's written notice of change.

**11. Setoff:** NIC shall be entitled at all times to deduct from the amount due the Seller under this Purchase Order, either damages for any breach of this Purchase Order or amounts otherwise due NIC from Seller, irrespective of whether or not deduction is related to the Articles or services covered by this Purchase Order.

**12. Breach:** The failure of Seller to perform any provision of this Purchase Order required to be performed by Seller including, but not limited to, a breach of the warranty provided in this Purchase Order or delivery time, shall be a Breach of this agreement.

**13. Termination, Breach and Time for Performance:** NIC may, at any time and for any reason or no reason, terminate this Purchase Order in whole or in part by written notice to Seller, whether Seller is in Default or not. Upon termination, NIC shall have no obligations hereunder except to the extent provided in this paragraph 13. If this Purchase Order is terminated without a Breach by Seller, Seller shall be entitled to, as its sole and exclusive remedy, reimbursement of Seller's reasonable cost incurred in the performance of this Purchase Order prior to the effective date of termination, provided that such reimbursement shall not exceed the Price. If this Purchase Order is terminated by NIC for Seller's breach, Seller shall not be entitled to any reimbursement, and NIC may pursue any and all remedies it may have against Seller under this Purchase Order or at law or in equity.

**14. Remedies:** Each of the rights and remedies reserved by NIC in this Purchase Order shall be cumulative and additional to any other or further remedies in law or equity.

**15. Insolvency:** NIC may immediately cancel this Purchase Order in whole or in part without liability to the Seller upon the occurrence of any of the following or any other comparable event: insolvency of the Seller, filing of voluntary or involuntary petition for bankruptcy, appointment of a receiver or trustee for Seller, execution by Seller of an assignment for the benefit of creditors.

**16. Assignment/Subcontracting:** Seller shall not (a) assign this Purchase Order, any interest herein or any rights hereunder or (b) subcontract any obligation to be performed hereunder without the prior written consent of NIC.

**17. Indemnification and Insurance:** Seller shall indemnify, defend and hold harmless NIC and its customers against any "indemnity loss" arising out of, connected with or resulting from the Articles including, without limitation, the selection, delivery, possession, use operating and return of the Articles. "Indemnity loss" includes, but is not limited to, all claims, actions, proceedings, costs, expenses, damages, liabilities, penalties, fines, actual attorneys' fees, consequential and incidental damages, and loss, damage, liability or claims arising from injury or death to persons or damage to property. Seller shall maintain such public liability insurance, automobile liability insurance, workers' compensation, and employer's liability insurance and adequately protect NIC against damages, liabilities, claims, losses, and expenses. Seller agrees to submit certificates of insurance evidencing the insurance coverage when requested by NIC.

**18. Government Compliance:** Seller agrees to comply with all federal, state, and local laws, executive orders, rules, regulations, and ordinances that may be applicable to Seller's performance of its obligations under this Purchase Order. Seller represents and warrants to NIC that all material and/or equipment rented, leased or purchased under this Purchase Order meets all standards of the Occupational Safety and Health Act of 1970 and Construction Safety Act of 1969, as amended, and of applicable State and local laws and regulations pertaining to safety. Seller agrees to defend, indemnify and hold NIC harmless of and from any loss, including but not limited to any fines, penalties and corrective measures, NIC may sustain by reason of Seller's failure to comply with said laws or regulations in connection with the design, manufacture and/or installation (if installation is included) of such equipment, materials and/or supplies purchased hereunder.

**19. No Modification:** Any attempt by Seller to vary the terms of this offer shall be deemed a material alteration. Such alteration will constitute a rejection of offer and shall not be binding unless the new provisions are accepted in a writing executed by NIC and delivered to Seller.

**20. No Implied Waiver:** No covenant or condition of this Purchase Order can be waived except by the written consent of NIC. Forbearance or indulgence by NIC in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Seller to which the same may apply.

**21. Entire Agreement:** This Purchase Order constitutes the entire agreement between NIC and Seller with respect to the subject matter hereof and supersedes all prior agreements, communications and understandings of any nature whatsoever, whether oral, written or otherwise. This Purchase Order may not be amended or modified except in a writing signed by NIC.

**22. Disclosure of Information:** Unless otherwise expressly agreed to in writing, all information disclosed by NIC to Seller or to which Seller otherwise obtains during the course of performance of this Purchase Order shall be maintained in confidence of Seller and shall remain NIC's property. Seller shall not disclose such information to third persons without the prior written consent of NIC. Such information shall be used by Seller solely for purposes of performance of this Purchase Order.

**23. Notice:** Any notice to be given hereunder shall be given in writing, postage prepaid and shall be effective when deposited in the U.S. Mail.

**24. Use of NIC's Name:** Seller shall not in any advertising, sale promotion materials, press releases or any other publicity matters use the name of NIC, NIC's parent, any affiliate or subsidiary of NIC or any variation thereof or language from which the connection of said names may be implied without NIC's prior written approval.

**25. Force Majeure:** NIC shall not be liable for delays due to causes beyond its control and without its fault or negligence, including but not limited to acts of God, the public enemy, the government, strikes or other labor disputes, fires, floods, freight embargoes or unusually severe weather. In the event any such cause affects Seller's performance for a period of 10 or more days, NIC may have the right to terminate this Purchase Order for its convenience pursuant to Paragraph 13.

**26. Installation:** In the event the Purchase Order specifies the installation of any materials or equipment or requires that employees of Seller be present, do work, or make installations on the building or site for which the above materials, equipment or services are purchased, Seller agrees as follows: (1) to pay all Federal and State taxes on the payroll of his employees under the terms of the various old age, unemployment or pension benefits laws now enacted or which may be enacted prior to completion of this Purchase Order; (2) to carry and pay for proper workers' compensation and employer's liability insurance, property damage insurance and public liability insurance, and to hold NIC harmless from all costs or damages arising out of actions to or caused by Seller's employees; (3) to abide by and comply with all Federal and State laws and regulations concerning employment, wages and hours of employees engaged in the work, and agree to defend and indemnify NIC and save it harmless from all claims which may be made against it by an employee or employees or Governmental Agencies as a result of Seller's failure to comply with such Federal and State laws and regulations; (4) Seller further agrees to defend, indemnify and save NIC harmless from all claims or suits for damages arising from such work or installation.

**27. NIC Security Rules/Procedures:** Seller and its agents and subcontractors shall comply at all time with NIC's security/safety measures, rules and procedures when on NIC's premises or project locations.

**28. Independent Contractor:** Seller shall provide the Articles pursuant to this Purchase Order as an independent contractor and not as an agent, servant or employee of NIC.

**29. Title:** All rights, title and interest in and to all deliverable items and all work product produced or delivered pursuant to this Purchase Order shall belong to and vest in NIC, including without limitation all rights to patent such deliverable items or work product and, if the deliverable items or work product are of the type or nature protected by copyright, the deliverable items or work product shall be considered "works for hire" within the meaning of the Copyright Act and may be used by NIC for any purpose without restriction.

**30. Liens:** If requested by NIC, Seller shall furnish all necessary lien waivers, affidavits or other documents, required to keep the Owner's premises free from all liens or claims for liens, arising out of the furnishing of the material or equipment herein, as payments are made from time to time under this Purchase Order.

**31. Governing Law:** This Purchase Order shall be interpreted and construed in accordance with the laws of the State of Michigan.