

Yenkin-Majestic Paint Corporation as Buyer Terms and Conditions of Purchase

1. Yenkin-Majestic Paint Corporation, or any of its subsidiaries or affiliates (collectively "Buyer") has communicated or will communicate to you an offer to purchase a quantity of products or services (the "Materials") at a defined price ("the Order"). The Order, which may be an oral communication or a written or electronic document, may have also included or will include particular shipping instructions and/or other specifications required by Buyer for the Materials. These terms and conditions, together with the aforementioned Order, constitute an offer by Buyer to purchase from you ("Seller") the described Materials pursuant to the terms and conditions described herein. This offer is not an acceptance or a confirmation of any previous offer or proposal from Seller, and this offer shall be deemed to be a rejection and counteroffer with respect to any previous offer or proposal from Seller. Acceptance of any shipment of the Materials shall not be construed as an acceptance of any such previous offer or proposal or an acceptance of any different or additional terms proposed by Seller. This offer shall become an "Agreement" upon acceptance by you. You shall be deemed to have accepted this offer by your commencement of production of the Materials for Buyer, by delivery of the Materials to Buyer, by your written acceptance or confirmation of this Agreement, or by any other act or communication constituting legal acceptance, whether or not any such acceptance or confirmation purports to state terms additional to or different from those stated herein. Buyer hereby expressly objects to and rejects any such additional or different provisions, and none of such provisions shall be deemed to be a part of the contract between the parties unless specifically agreed to in writing by an authorized representative of Buyer in a separate communication made for such purpose.

2. In the event of any inconsistency between these terms and conditions, and any supplemental conditions attached hereto or contained within any Order or other communication by Buyer, such supplemental conditions shall prevail. Changes to an Order with respect to an increase in the amount to be paid by Buyer will not be allowed unless authorized in writing by Buyer. Buyer shall have the right to make changes to any Order without charge or penalty, but under no circumstances will Buyer be responsible for any charge or other fee with respect to a changed Order. The terms of this document shall apply to any and all transactions for Material between Buyer and Seller. Acceptance of any communication by Seller or Seller's agent that references these terms shall constitute notice and acceptance of these provisions. These Terms and Conditions of Sale are intended to reflect the normal course of dealing between Seller and Buyer. SELLER'S SIGNATURE ON ANY FORM ASSOCIATED WITH THE SHIPMENT OR DELIVERY OF ANY ORDER SHALL OPERATE AS AN EXPRESS ASSENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

3. Seller agrees to sell, transfer and deliver the Materials to Buyer for the purchase price set forth in the Order, subject to all of the covenants, terms and conditions hereof. Buyer agrees to purchase the Materials, subject to all of the covenants, terms and conditions hereof, and to pay Seller the purchase price set forth in the Order. Typographical and other clerical errors in any prices are subject to correction. Buyer shall have the right to cancel any future delivery of any Materials upon notice to Seller without penalty or charge. Once per calendar quarter Buyer may return non-defective Materials to Seller after acceptance by Buyer, provided such Materials are in good and saleable condition, and Seller shall credit the full original purchase price of such Materials to Buyer within five (5) days of Seller's receipt of such Materials. Freight charges in such cases shall be the responsibility of Buyer, however under no circumstances will Buyer be responsible for any restocking or similar fee.

4. Materials shipped against this Agreement shall be invoiced at the price set forth in the Order. Payment of the purchase price shall be due no earlier than sixty-six days after the later of Buyer's receipt of Seller's invoice for such shipment or the date on which the Materials are received by Buyer. Under no circumstances shall there be any financing charges, late fees, or other penalties for late or untimely payment due or payable by Buyer. The purchase price for the materials shall include any taxes due with respect to the Materials. Buyer shall, however, pay for any taxes that it is statutorily required to pay, provided that Seller shall provide Buyer in advance of any purchase with documentation satisfactory to Buyer that establishes Buyer's statutory liability to pay such taxes. If Seller fails to provide such documentation, Buyer shall not be obligated to

pay any such taxes. Seller shall be responsible for all shipping and insurance costs, including without limitation, packing, crating and freight costs. Buyer may set off any amount owing at any time from Seller to Buyer or any of its affiliates against any amount payable at any time by Buyer in connection herewith.

5. Seller shall deliver the Materials F.O.B. to the place designated for shipment by Buyer in the Order. Seller shall follow any shipping instructions provided by Buyer and shall properly and carefully package the Materials to minimize the risk of damage in transit. Notwithstanding anything in the foregoing to the contrary, title to and risk of loss of the Materials shall pass to Buyer only upon receipt of the same by Buyer, and any rightful rejection or revocation of any Materials by Buyer shall immediately shift the risk of loss of such Materials, wherever located, to Seller. Seller agrees that any contrary provisions of Sections 2-509 and 2-510 of the Uniform Commercial Code shall not apply to this Agreement.

6. Notwithstanding anything herein to the contrary, Buyer shall have a reasonable opportunity to inspect the Materials after the same have been delivered to Buyer's premises. As well, Buyer may at its option elect to inspect Materials at Seller's plant or warehouse, and Seller shall arrange for such inspection by Buyer's personnel or agents. Buyer shall not be deemed to have accepted any such Materials until the expiration of such reasonable time for inspection. The parties acknowledge and understand that Buyer may inspect any commercial lot of the Materials consisting of numerous units of the same product by inspecting only a reasonable sampling of such units, and that Buyer may revoke acceptance of any other units of such commercial lot which Buyer at a later time discovers to be defective. Upon rejection or revocation of acceptance of any Materials, Seller promptly shall replace or correct, at Buyer's option, any unsatisfactory units at Seller's expense, including all shipping costs. Buyer's failure to inspect or reject Materials, or payment for Materials, shall not relieve Seller of any of its obligations hereunder or constitute a waiver of any of Buyer's rights hereunder.

7. Unless otherwise specified in the Order, Buyer's normal plant delivery hours are between 7:30 AM and 2:30 PM Monday through Friday and require a delivery appointment time. A delivery appointment time will be specified upon order placement or otherwise communicated by Buyer. Prior notice by Seller must be given in regard to late deliveries. A late delivery will forfeit its time slot, in which case the carrier will be advised of an alternative time to unload. Buyer will not be responsible for demurrage or other such charges relating to a delivery that misses its original unloading time. Deliveries must use specified delivery locations and observe communicated procedures regarding waiting times and locations. All Orders must include a certificate of analysis and be marked with Buyer's resource number, purchase order number, quantity, and lot number where appropriate. All bulk liquid deliveries require pumps supplied by carrier, weight tickets, caps and plugs for hoses. Seller must follow temperature requirements or load rejection may result.

8. Buyer may cancel any Order or part thereof at any time without fee or penalty, and may communicate such cancellation to Seller in any manner. Buyer will be responsible for completing the purchase of only those Materials that are both "custom" and "in process". A custom Material will be one that comprises a specification that is wholly unique to Buyer, for which there is no other outlet for Seller, and which has been expressly identified as "custom" in a writing associated with the Order. A Material shall be deemed to be "in process" when any component of such Material has been transformed through the manufacturing process. Buyer shall not have any obligation with respect to cancelled Orders of any Material, where such Material is not both "custom" and "in process" as defined herein. As well, Buyer shall have no obligation whatsoever to Seller for any raw materials or other components of Materials, whether for custom Materials or otherwise.

9. Neither party shall be liable for any delay or failure of performance due solely to strikes, fires, or other causes beyond its control and without its fault or negligence, provided that the party subject to such cause shall have given written notice thereof to the other as soon as the same could be anticipated, and if it could not be anticipated, promptly following the commencement thereof. If Seller should be unable, due to such cause, to meet all of its delivery commitments for the Material ordered herein as such become due, Seller shall not discriminate against Buyer or in favor of any other customer in making deliveries of such Material. Seller shall use its best efforts to anticipate the effect of such cause and mitigate the effect of such cause and to make deliveries as expeditiously as possible. If Buyer believes that the delay or anticipated delay in Seller's deliveries may impair its ability to meet its production schedules or may otherwise interfere with its operations, Buyer may at its option and without liability to

Seller, cancel outstanding deliveries hereunder wholly or in part, including for custom Material. Notwithstanding any provision of this Order, Seller agrees it will not claim impracticability to excuse its performance, whether by reason of Section 2-815 of the Uniform Commercial Code, usage of trade or otherwise

10. Seller hereby affirms the express and implied warranties provided under the Uniform Commercial Code, notwithstanding any prior or previous disclaimer of such warranties contained in any communication by Seller. Seller further warrants to Buyer that (i) the Materials shall be free from defects in materials and workmanship, and shall be merchantable and fit for their particular purpose; (ii) the Materials shall conform to all specifications and drawings provided by Seller and to any other specifications agreed upon between the parties; (iii) the Materials when shipped shall be free from all liens, security interests and encumbrances of any type whatsoever; and (iv) the Materials shall be manufactured, produced, furnished and delivered to Buyer in full and complete compliance with all applicable laws and regulations, including, without limitation, the Robinson Patman Act, the Fair Labor Standards Act of 1938 as amended by Executive Order No. 11246 (Equal Employment Opportunity) Executive Order No. 11458 and 11625 (Utilization of Minority Business Enterprises), Executive Order No. 11701 (Listing of Job Openings for Disabled Veterans and Veterans of the Vietnam Era), Executive Order No. 11758 (Employment of the Handicapped), the Hazardous Materials Transportation Act of 1975, the Federal Hazardous Substances Act, the Federal Poison Prevention Packaging Act of 1970, the Occupational Safety and Health Act of 1970, the Toxic Substances Control Act and all rules, regulations, standards and rulings promulgated or issued thereunder, as from time to time amended, modified and/or superseded. Seller further agrees to execute upon Buyer's request, a certificate of compliance regarding subsection (iv) above.

11. If this Order covers the performance of labor and/or supervision of installation on Buyer's premises, Seller agrees to indemnify Buyer and hold it harmless from and against any and all claims, liabilities, costs, losses or expenses, including reasonable attorneys' fees, for injury or damage to any person or property arising out of the performance of this Order. Seller without further request will furnish Buyer a certificate or other satisfactory evidence of insurance to the effect that Seller has and will maintain while on Buyer's premises adequate insurance coverage (including public liability and property damage, automobile liability and workmen's compensation) in such amounts and with such insurance companies as are satisfactory to Buyer. Seller also agrees that it, its employees, agents, and subcontractors, will comply with all of Buyer's safety and other rules covering outside contractors while on Buyer's premises or performing work on behalf of Buyer.

12. Seller agrees to indemnify Buyer and hold it harmless from and against any and all claims, liabilities, costs, losses or expenses, including reasonable attorneys' fees, incurred or suffered by Buyer as a result of or in connection with Seller's breach of any of its obligations hereunder, including consequential damages that were foreseeable at the time of sale. Seller further agrees to indemnify Buyer and hold it harmless from and against any and all claims, liabilities, costs, losses or expenses, including reasonable attorneys' fees, arising out of any alleged death or injury to any person, or any alleged damage or loss of property resulting or claimed to result from any actual or claimed defect in the Materials sold under this Order.

13. Seller shall be deemed to be in default hereunder if it violates any of the terms hereof or fails timely to perform any of its covenants, duties or obligations hereunder, or if it performs or fails to perform any other act, whether pursuant to agreement or otherwise, which gives Buyer reasonable grounds to feel insecure with respect to Seller's future performance hereunder. The filing of a voluntary petition under any Federal or State Bankruptcy Act by Seller, or its adjudication as a bankrupt, or if Seller becomes insolvent or commits an act of insolvency or bankruptcy, shall be deemed an act of default hereunder. Upon default by Seller hereunder, Buyer may exercise any or all of the following rights and remedies, in addition to such other rights and remedies as may be provided hereunder or under applicable law: (i) Reject or revoke acceptance of any or all of the Materials, whether not such Materials are defective and whether or not the condition of delivery thereof otherwise relates to, pertains to, concerns or gives rise to such event of default; and/or (ii) Terminate this Agreement without any obligation whatsoever with respect to Materials not yet delivered to Buyer at the time of such termination; and/or (iii) Withhold payment otherwise due Seller until any potential claims for indemnities, offsets, or other liabilities to Buyer are resolved in favor of Seller. Buyer's decision to pursue any one such

remedy shall not be deemed to be an election not to pursue any other remedy at the same time or at any other time.

14a. Seller agrees to indemnify and hold Buyer harmless from and in respect of any damages, losses or expenses which Buyer may suffer or incur (including reasonable attorneys' fees) arising out of, relating to or concerning any claim, action or allegation that any of the Materials (or the use of same in an intended manner) infringes any patent, trademark, trade secret, or similar intellectual property rights claimed by any third party; provided that Buyer shall notify Seller in writing of any such claim, act or allegation promptly after learning of the same and shall assist and cooperate in the defense or settlement thereof. Such defense or settlement shall be at Seller's sole expense, and Seller shall pay all damages and costs finally awarded against Buyer as a result of any such suit or proceeding.

b. This Agreement shall constitute the complete understanding and contract between Seller and Buyer with respect to the subject matter hereof and supersedes any prior written or oral understandings with regard thereto. No subsequent communications with respect to any Order shall be binding upon Buyer unless such is a writing separately communicated to and signed by an authorized representative of Buyer.

c. Time is of the essence in Seller's performance. No purported amendment, modification or waiver of any provision of the Agreement or resulting contract shall be binding on Buyer unless set forth in a written document signed by an authorized representative of Buyer. Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term of the contract between Seller and Buyer or of the same circumstance or event upon any recurrence thereof. Seller may not assign any of its rights or obligations without Buyer's prior written consent.

d. If any provision hereof is held to be unenforceable by the final order of any court of competent jurisdiction, such provision shall be severed herefrom and shall not affect the interpretation or enforceability of remaining provisions hereof.

e. This Agreement and the resulting contract between the parties shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any controversy or claim arising out of or relating to the Materials or Order shall be settled exclusively by arbitration proceedings held in Columbus, Ohio, in accordance with the rules of the American Arbitration Association. The decision of the arbitrator shall be conclusive and binding. Judgment upon the award rendered may be entered in any court having jurisdiction over the party to be charged. No suit or action will be brought by either party until such arbitration proceedings have been completed, and then any suit or action shall be brought only to enforce the decision of the arbitrator. Actions enforcing any indemnity provision of this Agreement shall likewise be subject to this paragraph.

f. There shall be no assignment of this Order or of monies due or to become due hereunder without prior written consent of Buyer.

g. All information, drawings, formulations, material, goods, equipment, apparatus or documents disclosed or delivered to Seller by Buyer or arising from work or services done for Buyer, and also all knowledge of any business relationship between Seller and Buyer, shall be treated by Seller as confidential proprietary information of Buyer and shall not be disclosed or made available to others by Seller without prior permission of Buyer. Seller also agrees not to use any of such information, drawings, formulations, material, goods, equipment, apparatus or documents for the manufacture or production of products or components for any other party or for Seller. Such obligation shall not apply to any information, material, goods, equipment or apparatus which Seller establishes (a) is already known to Seller at the time of its receipt from Buyer as shown by Seller's records, (b) is or subsequently becomes available and accessible to the public through no fault of Seller, or (c) is rightfully disclosed to Seller by a third party on a non-confidential basis.

h. The title to any tangible property, including but not limited to material, goods, equipment, apparatus, documents, and literary property (e.g., drawings, manuscripts, artwork, motion pictures, video programs, and computer software), provided Seller by Buyer or produced by Seller in submitting a bid or estimate or in carrying out an Order for Buyer shall be vested in Buyer, and Seller agrees to return or deliver such tangible property to Buyer upon request. Seller hereby expressly assigns to Buyer all intellectual property rights in and to any intellectual property produced by Seller for Buyer.

i. In the event the Agreement relates to services in whole or in part, the Seller shall be considered a consultant and every work, idea, creation, or patent (hereinafter "work" or "works") created or acquired by or on

behalf of the Seller for Buyer (past and future) shall be considered a “work made for hire” on behalf of the Buyer. It is the intent of the parties that Buyer shall have unrestricted ownership in and to all such works and to any derivative works, without further compensation of any kind to the Seller. To the extent that the law would fail to automatically vest in Buyer the full unrestricted ownership of all such works under “work for hire” treatment or similar concepts, the Seller hereby (i) assigns to Buyer the copyright, patent, and any and all other rights ever in and to such work including any derivatives; (ii) appoints Buyer irrevocably as its agent for purposes of executing any and all documents, and taking all acts necessary, relating to prosecuting and perfecting such assignment; and (iii) waives any claim of moral right that it may have in or in connection with such work..

j. Unless otherwise agreed herein, Seller at its cost shall supply all material, equipment, tools and facilities required to perform this Order. Any material, equipment, tools or other property furnished or specifically paid for by Buyer shall be Buyer’s property, shall be used only in filling Orders from Buyer, and may on demand be removed by Buyer without charge. Seller shall use such property at its own risk and shall be responsible for all loss of or damage to the same while in the Seller’s custody. Seller shall at its cost store and maintain all such property in good condition and repair. Buyer makes no warranties of any nature with respect to any such property, which is furnished “AS IS”.