

Yenkin-Majestic Paint Corporation as Seller Terms and Conditions of Sale

1. Yenkin-Majestic Paint Corporation, or any of its subsidiaries or affiliates (collectively “Seller”) has communicated or will communicate to you (the “Purchaser”) an offer to sell a quantity of products (the “Products”) at a defined price (the “Sales Order”). The Sales 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 concerning the Products. These Terms and Conditions of Sale, together with the aforementioned Sales Order, constitute an offer by Seller to sell to Purchaser the described Products pursuant to these Terms and Conditions of Sale as described herein. The Sales Order is not an acceptance or a confirmation of any previous offer or proposal from Purchaser, and the Sales Order shall be deemed to be a rejection and counteroffer with respect to any previous offer or proposal from Purchaser. Neither acceptance of any Sales Order nor subsequent shipment of the Products shall be construed as an acceptance of any such previous offer or proposal or an acceptance of any different or additional terms proposed by Purchaser.

2. This Sales Order and the incorporated Terms and Conditions of Sale as described herein shall become an Agreement upon acceptance by Purchaser. Purchaser shall be deemed to have accepted these Terms and Conditions of Sale by its acknowledgment of the Sales Order however made, by delivery of the Products to Purchaser, by Purchaser’s 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. Acceptance of any shipment or Products shall also constitute an acceptance of these Terms and Conditions of Sale with respect to that shipment and all other shipments from Seller to Purchaser. Any conflicting terms and conditions contained in any purchase order or other document shall be superseded by these Terms and Conditions of Sale, and to the extent necessary to give full effect to these Terms and Conditions of Sale, any requirement in any such purchase order or other document prohibiting changes or modification is hereby waived by Purchaser, and any requirement of a writing to effect any change is hereby satisfied. Seller 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 Agreement between the parties unless specifically agreed to in writing by an authorized representative of Seller in a separate communication made for such purpose. **PURCHASER’S SIGNATURE ON ANY FORM ASSOCIATED WITH THE SALES ORDER OR DELIVERY OF THE PRODUCTS SHALL OPERATE AS AN EXPRESS ASSENT TO THESE TERMS AND CONDITIONS OF SALE.**

3. These Terms and Conditions of Sale shall govern all sales between Seller and Purchaser. By accepting any shipment, Purchaser acknowledges that the shipment conforms, in all material respects, to the requirements of the purchase order applicable to such shipment, unless a claim of nonconformance is made by Purchaser pursuant to paragraphs 6 and 7 herein. Any deviations, whether material or non-material, between the requirements of the purchase order and the actual Product received by Purchaser are hereby duly ratified by Purchaser’s acceptance of such shipment. These Terms and Conditions of Sale are intended to reflect the normal course of dealing between Seller and Purchaser.

4. If requested by Purchaser and agreed to by Seller, Seller has made or will make all reasonable efforts to deliver the shipment in a timely manner to Purchaser’s designated location. Under no circumstances will Seller be liable for delays resulting from causes beyond Seller’s control, including without limitation, accident, fire, flood or other casualty, act of God, war, labor disputes, labor shortages, shortage of material, lack of transportation facilities, priorities required by, requested by or granted for the benefit of any governmental agency, or restrictions imposed by law or governmental regulation, or other cause beyond its reasonable control (collectively “Uncontrollable Causes”). Under no circumstances shall Seller be liable for any late fee, penalty, or other charge for shipments that fail to meet an agreed-upon delivery date, regardless of cause of delay. If a specific shipping date or delivery date is agreed to in writing by Seller and a delay occurs that is not from Uncontrollable Causes, so long as the order has not been shipped, Purchaser’s sole remedy is to cancel the purchase order with no further recourse to Seller,

subject to paragraphs 5 and 11 below. Purchaser may cancel a purchase order at any time prior to shipment of Product by Seller, subject to paragraphs 5 and 11 below; however, once Product related to any order has been shipped Purchaser may not cancel the purchase order applicable to such Product. Price changes including surcharges of any kind communicated to Purchaser in advance of shipment shall control, regardless of pricing indicated on the original purchase order or previous communications from Seller. In such a case of a price change communicated to Purchaser after an order has been accepted at another price, Purchaser's sole remedy shall be to cancel the purchase order, subject to paragraphs 5 and 11 below. Purchaser may, with Seller's advance approval, return Product only for substantial nonconformance as indicated in paragraph 7 below. Seller may cancel or suspend a purchase order with no liability, penalty, or charge of any kind if Purchaser's account is not current or if Seller deems itself insecure for any reason. Seller shall deliver any shipment to Purchaser at a location mutually agreed to by the parties and indicated on Seller's sales order. Risk of loss or damage shall transfer from Seller to Purchaser at the moment any shipment of product is duly delivered to a carrier by Seller.

5. In the event that Purchaser cancels or changes an order prior to shipment for any reason including Uncontrollable Causes, Seller may charge Purchaser the normal sales price for any custom-manufactured Products that have been completely or partially manufactured prior to or as of the date of any such cancellation, and for the cost of raw materials associated with those Products. In addition, Seller may charge Purchaser an order change or cancellation fee of up to 30% of the total purchase price for orders of standard stocked Products or custom-manufactured Products that have not been partially manufactured prior to or as of the date of such change or cancellation. Seller may also charge Purchaser the normal sales price of any Products manufactured by Seller based on min-max inventory levels reasonably established to service Purchaser for which no purchase order has been issued, and for the cost of raw materials associated with those Products for which there are no immediate alternative uses.

6. The bill of lading, or such similar documentation evidencing receipt of any shipment, signed by an employee or agent of Purchaser, shall constitute proof of acceptance of any shipment by Purchaser. All complaints or claims including those of substantial nonconformance of the Products must be made within ten (10) days of acceptance or, in the case of use of the Product and resale to Purchaser's customer, within thirty (30) days of shipment of the derivative product by Purchaser. Failure by Purchaser or Purchaser's customer to make a complaint or claim or to state a particular basis of complaint, as determined by Seller in its reasonable discretion, within the periods indicated above, shall preclude Purchaser or Purchaser's customer from making any future claim related to any such alleged complaint.

7. Purchaser may reject and return substantially nonconforming Products only upon express written approval of Seller, which approval shall not be unreasonably withheld. Seller, in its sole discretion, will determine the method to resolve any such substantial nonconformance, and Purchaser hereby agrees to accept any reasonable accommodation offered by Seller. Seller's reasonable determination about whether a Product is substantially nonconforming shall be conclusive. A substantial nonconformance with respect to any individual installment of an order shall in no circumstances affect the obligation of Purchaser with respect to the remaining installments of said order. Purchaser shall be liable to Seller for all costs associated with an improper rejection or return.

8. Seller warrants it has title to Products delivered hereunder and may properly sell the same to Purchaser. Unless there is a separate written warranty expressly negotiated between Seller and Purchaser covering the Products indicated on the purchase order, SELLER MAKES NO OTHER WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, OF ANY KIND, AND EXPRESSLY EXCLUDES LIABILITY FOR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER CAUSED BY BREACH OF THIS OR OTHER AGREEMENT, SELLER'S NEGLIGENCE OR OTHERWISE, AND SELLER ASSUMES NO RISK WHATSOEVER AS TO THE RESULT OF THE USE OF MATERIAL EITHER SINGLY OR IN COMBINATION WITH OTHER MATERIAL. SELLER DOES NOT WARRANT THAT THE GOODS SOLD HEREUNDER ARE MERCHANTABLE OR FIT FOR ANY PARTICULAR USE OR PURPOSE. PURCHASER IS PURCHASING THE PRODUCT "AS IS."

9. Purchaser warrants that it will inspect all Products before use or resale and assumes responsibility to analyze such Products before accepting delivery. Purchaser warrants that it is familiar

with the characteristics of the Products and acknowledges that Purchaser is in the best position to identify and correct any defects in the Products, either latent or apparent. Purchaser assumes all risks and liability for results obtained from the use by Purchaser or by persons to whom Purchaser may resell, in manufacturing processes or in combination with other substances, of Products covered by these Terms and Conditions. Purchaser assumes responsibility for and warrants that it will communicate to employees and customers all warnings that relate to the potential exposure to Products, and further warrants that workplace and disposal practices are in compliance with all laws, regulations and ordinances. No statements of Seller by its management, sales agents or other employees, representatives or agents or any information contained in any advertising or promotional material as to quality, grade, performance and use shall be considered a warranty of any kind, nor shall such statements vitiate this paragraph in any way. Purchaser warrants that it will not rely on any such statements or information about the use or applicability of Products in specific applications or as intermediates in the creation of other materials, and further warrants that it will undertake its own independent testing of such use or applicability and rely exclusively on its own determinations of such use or applicability. Purchaser warrants that it shall not sell or permit the sale of, in any state or region, products marked as not for sale or otherwise not permitted for sale or use in such state or region. Purchaser shall indemnify Seller against all costs including legal fees associated with any breach of any warranty under this paragraph 9.

10. NO CLAIM OF ANY KIND, WHETHER BASED ON DELIVERY OR NON-DELIVERY OF PRODUCTS, OR BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY, INTENTIONAL TORT, OTHER TORT THEORIES, OR ANY STATUTE INCLUDING THE UNIFORM COMMERCIAL CODE AS ENACTED BY ANY STATE, SHALL BE GREATER IN AMOUNT THAN THE PURCHASE PRICE OF THE PRODUCTS TO WHICH SUCH CLAIM RELATES. Any claims by Purchaser or its customers must be received by Seller in writing within the time periods set out in paragraph 6 above. Failure to deliver notice of claim to Seller within such time periods will constitute a waiver by Purchaser or its customers of all claims with respect to such Products. To the extent Seller is liable for any claim related to Seller's products in excess of the limitation imposed by this paragraph 10, Purchaser agrees to (i) in the event that the claimant is Seller, waive such damages in excess of said limitation, or (ii) in the event that claimant is a third party, indemnify Seller and hold it harmless against such excess amount including all reasonable fees and expenses incurred by Seller associated with such claim.

11. Any notices or other communications hereunder including modifications to or cancellations of a Purchase Order shall be deemed to have been duly given and made if in writing and (i) if served by personal delivery upon the party for whom it is intended, (ii) if delivered by registered or certified mail, return receipt requested, or (iii) if delivered by a national courier service at the address of Purchaser set forth on the purchase order or the address of Seller set forth on the Sales Order. Any such notice shall be deemed delivered (a) on the date delivered if by personal delivery, (b) on the date upon which the return receipt is signed, if mailed by registered or certified mail, or (c) on the next succeeding business day if sent by national courier service.

12. Unless otherwise negotiated by the parties and set forth in a writing signed by an authorized representative of Seller, payment terms for all Sales Orders or sales of Product shall be net 30 days. If payment is late by more than 30 days, Purchaser hereby agrees to pay Seller a late payment fee of \$200 per invoice, plus finance charges of 1% per month accruing on the entire balance due to Seller from the date of invoice. Seller's prices are F.O.B. Seller's plant, unless otherwise agreed to by the parties and set forth in a writing signed by an authorized representative of Seller. There shall be no setoff by Purchaser of any amounts owed to Purchaser by Seller.

13. In the event an order between Seller and Purchaser relates to services, or a Sales Order for Products is deemed to include services, these Terms and Conditions shall apply equally to the provision of such services, and wherever these Terms and Conditions use the term "Product" or "Products," full force and meaning shall be given as if the term "service" or "services" were used instead.

14. Every work, idea, creation, or patent (hereinafter "work" or "works") created or acquired by Seller for or on behalf of the Purchaser by Seller, past and future, shall be considered proprietary to and

owned by Seller, and shall expressly not be considered a “work made for hire” on behalf of Purchaser. The title to any tangible property, including but not limited to material, goods, equipment, apparatus, documents, formulas, and literary property (e.g., drawings, manuscripts, artwork, motion pictures, video programs, and computer software), provided to Seller by Purchaser or produced by Seller in submitting a bid or estimate or in carrying out a Sales Order for Purchaser, shall be vested in and retained by Seller and will not be subject to return to Purchaser. Purchaser hereby expressly assigns to Seller any and all claim to intellectual property rights in and to any intellectual property or work produced by Seller for or on behalf of Purchaser. It is the intent of the parties that Seller shall have and retain unrestricted ownership in and to all works undertaken hereunder and to any derivative works, without compensation of any kind to the Purchaser. To the extent that the law would fail to automatically vest in Seller the full unrestricted ownership of all such works, the Purchaser hereby (i) assigns to Seller the copyright, patent, and any and all other rights ever in and to such work including any derivatives; (ii) appoints Seller 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.

15. These Terms and Conditions and the Agreement arising therefrom shall be construed according to the laws of Ohio. Except for actions to collect a debt, any controversy or claim arising out of or relating to the Products or Sales 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. Other than collection actions, 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.

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

17. Seller may at its sole discretion assign its obligations under the Sales Order or this Agreement, however Purchaser shall make no assignment hereunder without advance written consent by Seller, which consent shall not be unreasonably withheld. Purchaser expressly denies any agreement with Seller as to resale price maintenance by Purchaser whether express or implied by statutory provisions, or otherwise. In no event shall Purchaser undertake or permit any Products manufactured by Seller to be analyzed, reverse-engineered, tested or otherwise examined without Seller’s specific written consent. Purchaser expressly affirms that it is solvent as of the date of receipt of any Products. These Terms and Conditions represent the entire agreement between the parties and supersedes all previous writings between the parties, except for any separate written warranty as referenced in paragraph 8 above. These Terms and Conditions shall apply to the sale and shipment of all Products by Seller to Purchaser until these Terms and Conditions are superseded or modified in a writing signed by an officer of Seller specifically referencing these Terms and Conditions. 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.