



## PCI LABS - TERMS & CONDITIONS OF SALE

THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY TO THE SALE OF MATERIAL DESCRIBED ON THE FACE HEREOF; PCI LABS (SELLER) DOES NOT ACCEPT AND EXPRESSLY REJECTS BUYER'S PURCHASE ORDER TERMS OTHER THAN THOSE CONTAINED IN A WRITTEN CONTRACT SIGNED BY BOTH BUYER AND SELLER COVERING MATERIAL DELIVERED HEREUNDER. IF THERE IS NO SUCH WRITTEN CONTRACT, SELLER WILL SELL MATERIAL TO BUYER ONLY UPON THE FOLLOWING TERMS AND CONDITIONS; ACCEPTANCE OF SUCH MATERIAL BY BUYER SHALL CONSTITUTE ASSENT TO SAID TERMS AND CONDITIONS.

**1. PRICING** – Seller's prices in effect on RFQ and as agreed upon at the time of PO entry shall govern.

**2. PAYMENT** – In consideration of Performance Coatings International Laboratories, LLC (referred to herein as PCI Labs) the Seller, extending credit to Buyer, such Buyer agrees to pay for all items delivered to or at the request of Buyer by PCI Labs within thirty (30) days from date of PCI Lab's invoice or such other terms as shown on the invoice. All accounts are due and payable at the remittance address shown on the PCI Lab's invoice. Buyer agrees that each of the terms and conditions of sale stated on the PCI Lab's invoice shall be a term of the contract of each sale from PCI Labs to Buyer. Buyer acknowledges that a monthly service charge at the maximum legal rate, but not to exceed 1-1.2% per month, (18% per annum), shall be made on all sums due to PCI Labs which have not been paid within thirty (30) days from the invoice date, and applicant agrees to promptly pay said service charge. The service charge will be due and payable on the forty-fifth (45<sup>th</sup>) day after the original invoice date, and an additional service charge, computed on the same basis, will be due and payable every thirty (30) days thereafter. Waiver of any one of the service charges shall not be deemed to be a waiver of future charges. Buyer further agrees that with regard to such service charges, Buyer and PCI Labs are parties to a written contract. If PCI Labs commences litigation in order to secure payment of any sums due to it from Buyer, the Buyer agrees to pay reasonable attorney's fees in addition to all other sums due. Purchases on credit are permitted at discretion and that this credit availability may be terminated at PCI Lab's sole discretion.

**3. WARRANTY/LIABILITY** – SELLER WARRANTS THAT GOODS SOLD SHALL BE OF SUPERIOR MERCHANTABILITY AND WORKMANSHIP. SELLER MAKES NO WARRANTIES THAT SUCH GOODS ARE FIT FOR ANY PARTICULAR USE OR PURPOSE AND SELLER MAKES NO OTHER WARRANTY, EXPRESSED OR IMPLIED, EXCEPT AS PROVIDED ABOVE. SELLER NEITHER MAKES NOR INTENDS, NOR DOES IT AUTHORIZE ANY AGENT OR REPRESENTATIVE TO MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, AND IT EXPRESSLY EXCLUDES AND DISCLAIMS ALL IMPLIED WARRANTIES OF ANY KIND, INCLUDING WARRANTY AGAINST PATENT INFRINGEMENT AND OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BUYER ASSUMES ALL RISK AND LIABILITY WITH RESPECT TO RESULTS OBTAINED BY THE USE OF THE GOODS, WHETHER USED ALONE OR IN COMBINATION WITH OTHER PRODUCTS. BUYER'S SOLE REMEDY FOR ANY DEFECT IN THE GOODS, WHETHER CAUSED BY NEGLIGENCE OR OTHERWISE AND SELLER'S SOLE LIABILITY, WHETHER BASED ON BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER CAUSE OF ACTION WITH RESPECT TO THE GOODS, SHALL BE LIMITED TO THE COST OF REPAIR OR REPLACEMENT AND IN NO CASE SHALL EXCEED THE PURCHASE PRICE, HEREUNDER. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS. BUYER FURTHER AGREES TO WAIVE ALL CLAIMS IN REGARD TO GOODS SOLD UNLESS BUYER HAS GIVEN NOTICE OF DEFECT WITHIN THIRTY (30) DAYS AFTER THE DATE OF DELIVERY. ANY ACTION FOR BREACH OF THIS CONTRACT MUST BE COMMENCED WITHIN THREE (3) MONTHS FROM THE DATE OF DELIVERY. CLAIMS FOR SHORTAGES OF LESS THAN ½ OF 1% OF THE NET WEIGHT OF BULK SHIPMENTS WILL NOT BE ALLOWED. OTHER EXCLUSIONS ARE ALSO PROVIDED ON FORM PCIS01B, PCI'S MATERIAL RETURN PROCEDURE AND POLICY. CHEMICAL SALES ARE COVERED UNDER A SEPARATE LIMITED WARRANTY.

**4. TAXES** – Sales, use, excise, property or other taxes or duties that may be levied on the transaction and/or transportation by local, state, federal or foreign governments are not included in the quoted prices. Any such taxes or duties, which the Seller may be obligated to pay, shall be for the account of the Buyer, and the Buyer shall promptly reimburse the Seller therefore.

**5. PERFORMANCE** – Seller shall not be liable for its failure to perform hereunder if said performance is made impracticable due to any occurrence beyond its reasonable control, including acts of God, fires, floods, wars, sabotage, accidents, labor disputes or shortages, governmental laws, ordinances, rules and regulations, whether valid or invalid or inability to obtain raw material from third parties due to discontinuation and any other similar or different occurrence. Seller whose performance is made impracticable by any such occurrence shall have the right to omit during the period of such occurrence all or any portion of the quantity deliverable during such period, whereupon the total quantity deliverable hereunder shall be reduced by the quantity so omitted. If, due to any such occurrence, Seller is unable to supply the total demands for any material specified hereunder. Seller shall allocate its availability supply among its customers in a fair and equitable manner.

**6. DELIVERY** – Seller's terms of delivery in effect on the time of order entry shall govern, however, shipping dates are approximate. Buyer agrees that in no event shall Seller be liable for damages or expenses direct, indirect, consequential or otherwise caused by delays in shipment or delivery due to transportation carriers. All shipping dates are contingent upon the prompt receipt of the buyer's supplied parts, complete and accurate prints, specifications and/or other items to be supplied or approved by the Buyer whether



enumerated here or not. When partial shipments are made with Buyer's prior approval, each shipment shall constitute a separate sale with the same effect as though made under a separate contract covering only the amount thereof and shall be invoiced and paid by Buyer separately in accordance with the terms thereof including any prepaid freight charges. In no event shall Seller be obligated to purchase material from other in order to enable it to deliver material to Buyer.

**7. CHANGE ORDER** – Changes to the specifications shipping schedules or quantities by the Buyer may result in revision of acknowledged prices commensurate with any cost changes required, including administrative fees.

**8. CANCELLATIONS** – THERE WILL BE A \$250.00 CANCELLATION CHARGE. BUYER MAY CANCEL THE CONTRACT OR DEFER DELIVERIES BY WRITTEN NOTICE TO THE SELLER, IN WHICH CASE, THE BUYER WILL INCUR LIABILITY FOR THE FULL PRICE FOR QUANTITIES ALREADY COMPLETED, PARTIAL REIMBURSEMENT FOR WORK-IN-PROGRESS AND THE FULL COST PLUS A HANDLING CHARGE FOR ANY RAW MATERIALS PURCHASED TO MEET THE BUYER'S DELIVERY DEMANDS UP TO THE TIME OF RECEIPT OF THE WRITTEN NOTICE BY THE SELLER.

**9. PATENTS** – Seller reserves the right to suspend deliveries hereunder or to limit this contract, without liability, if the Seller believes that manufacture and/or sales by Seller, for the sale and/or use by Buyer, of any goods sold hereunder infringes any U.S. patent now or hereafter issued under which Seller is not licensed.

**10. TOOLING** – The Seller retains ownership of any tools, which are purchased or made by Seller for which Seller has charged \$1,500.00 or less. The Buyer will retain ownership of all tools for which he has been charged in excess of \$1,500.00; however, the Seller will retain these tools subject to recall up to a period of two years after completion of the last order.

**11. CLAIMS** . GOODS MAY NOT BE RETURNED WITHOUT PRIOR AUTHORIZATION FROM THE SELLER. SEE PCI'S MATERIAL RETURN PROCEDURE AND POLICY, FORM: PCIS01B. CREDIT OR REPLACEMENT WILL NOT BE ALLOWED FOR GOODS RETURNED THIRTY (30) DAYS AFTER SHIPMENT. THE SELLER HAS THE OPTION, IN THE EVENT, SUCH CLAIM IS SUSTAINED, TO REPLACE, REPAIR OR CREDIT THE BUYER. ALL RETURNS MUST HAVE WRITTEN AUTHORIZATION BY PCI LAB'S QUALITY MANAGER. RETURNS MAY BE SUBJECT TO A RESTOCKING CHARGE. IF LITIGATION IS REQUIRED, THE LAWS OF THE COMMONWEALTH OF PA WILL OVERRIDE ANY AND ALL OTHER JURISDICTIONS.

**12. BUYER FURNISHED PRODUCT** – This sale from Seller to Buyer on Buyer's furnished product shall specify 1) the number of uncoated parts to be supplied by Buyer which Seller requires in order to produce the number of coated parts which buyer is ordering and to meet Buyer's specifications, i.e. the yield (up to 10% in-excess of the total order quantity) which Seller expects to obtain of coated parts and 2) the Inspection Quality Plan desired. (See Document Number: PCI-S01A titled "Inspection and Sampling Plans for Customer Supplied Materials"). Seller will coat all of the parts which Buyer supplies to Seller and if the yield of coated parts meeting Buyer's specifications exceeds the ordered quantity under this PO, then Buyer shall purchase from Seller and pay to Seller the quoted unit price for each of the excess coated parts which meet Buyer's specification. However, if the yield obtained is less than specified by this quotation, then Seller shall bill Buyer only for those coated parts that do meet the Buyer's specifications.

**13. ARTWORK** – The Seller's maintenance responsibility for art work and masters will expire thirty (30) days after the completion of the last order. However, the Seller will retain, without storage charges, all sketch, artwork, and masters for the Buyer's exclusive use for one year following the date of the last purchase order.

**14. NON-WAIVER** – Waiver of any breach of this contract and terms and conditions shall be limited to the particular instance and shall not be a continuing waiver as to future breaches. Failure of Seller to enforce any provision of this order shall not constitute a waiver of the provision.

**15. TERMINATION FOR CONVENIENCE** – This agreement cannot be changed or terminated orally. Any such change or termination shall be valid only if in writing signed by Buyer. In the event of such termination, Buyer will give Seller full instructions with respect to delivery of goods (in process, purchased or committed) and Seller shall be compensated therefore based on Seller's actual out of pocket costs. FOB AND RISK OF LOSS . Unless otherwise specified, the FOB point shall be that of Seller's location at Bangor, PA. If transportation is FOB to Buyer's location, Buyer shall bear all risks of loss and damage to the goods and will make all necessary arrangements with transportation companies for the movement of goods to Seller's location.

**16. MATERIAL RETURNS** – PCI's Material Return Procedure and Policy (Form: PCI-S01B) shall govern all material returns from Buyer.

**17. APPLICABLE LAW** – The quotation provided and acceptance by Buyer of the aforementioned Terms and Conditions and this order acceptance by PCI Labs hereof shall be governed by the laws of the Commonwealth of Pennsylvania. Venue and any action in connection with this agreement shall be laid in Northampton County's Superior Court or a court of competent jurisdiction and Buyer consents to the jurisdiction of such courts.

**18. COMPLETE AGREEMENT** – This order acceptance contains the complete and entire agreement between the parties to the subject matter hereof, and replaces and supersedes any prior contemporaneous communications, representations or agreements, whether oral or written, with respect to this Purchase Order.