



WALLCOLMONOY

General Terms and Conditions of Sale

These Terms are available at www.wallcolmony.com/termsandconditions/.

1. Applicability.

1.1 These terms and conditions for an offer of sale (these "Terms") are the only terms which govern the sale of the goods ("Goods") and services ("Services") by Wall Colmony Corporation ("Seller") to the Buyer ("Buyer") named in the confirmation of an offer of sale according to these Terms ("Order Confirmation").
1.2 The Order Confirmation and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Buyer accepts the Order Confirmation and these Terms, and forms the Agreement with the Seller, by doing any of the following: (a) confirming acceptance of the Order Confirmation in writing; (b) receiving an Order Confirmation in response to any type of order request by Buyer, whether written or oral, and Buyer subsequently not providing a timely written objection to Seller within 3 days of receipt of such Order Confirmation; or (c) any other conduct that recognizes the existence of an Agreement with respect to the subject matter of the Order Confirmation, including, but not limited to, the acceptance of delivery Goods or Services.

1.3 The fulfillment of Buyer's order does not constitute acceptance of any of Buyer's additional or conflicting terms and does not serve to modify or amend these Terms. Any additional or conflicting terms, including warranty terms, within the Buyer's offer or acceptance are expressly rejected and objected to and will not be deemed accepted by Seller, unless (a) the Seller confirms in writing the Seller's acceptance as to each additional or conflicting term, or (b) the parties enter a written contract, which is signed by both parties, covering the sale of the Goods and Services, and such contract states that the contract will have precedence over these Terms. As to all other sales of Goods and Services, these Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms.

1.4 Notwithstanding anything to the contrary contained in this Agreement, Seller may, from time to time change the Services without the consent of Buyer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Order Confirmation.

2. Delivery.

2.1 The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit.

2.2 Unless the Seller states an alternate delivery point on the face of the Order Confirmation, the Seller shall deliver the Goods Ex Works ("EXW") to Seller's facility located at 550 Sand Sage Road NW, Los Lunas, NM 87031 (the "Delivery Point"). The Seller shall use the Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within 3 days of Seller's written notice that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.

2.3 Seller may, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

2.4 If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered to the Delivery Point, or if Seller is unable to deliver the Goods to the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (a) risk of loss to the Goods shall pass to Buyer; (b) the Goods shall be deemed to have been delivered; and (c) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

2.5 Seller shall use reasonable efforts to meet any performance dates to render the Services specified in the Order Confirmation, and any such dates shall be estimates only.

2.6 With respect to the Services, Buyer shall (a) cooperate with Seller in all matters relating to the Services and provide such access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested by Seller, for the purposes of performing the Services; (b) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Seller to perform Services in accordance with the requirements of this Agreement; (c) provide such customer materials or information as Seller may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (d) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

3. Non-Delivery.

3.1 The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

3.2 The Seller shall not be liable for the non-delivery of any quantity of Goods, unless Buyer gives written notice to Seller of the non-delivery within 14 days of the date when the Goods would in the ordinary course of events have been delivered to the Delivery Point or otherwise received by the Buyer if shipped according to alternate instructions stated within the Order Confirmation.

3.3 Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered. Buyer acknowledges and agrees that the remedies set forth in Section 3.3 are Buyer's exclusive remedies for any non-delivery of Goods. The sales of Goods to Buyer are on a one-way basis, and Buyer has no right to return Goods purchased under this Agreement to Seller.

4. **Quantity.** If Seller delivers to Buyer a quantity of Goods of up to 10% more or less than the quantity set forth in the Order Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Order Confirmation adjusted pro rata.

5. **Shipping Terms.** Unless otherwise stated by Seller on the Order Confirmation, the delivery of the Goods will be made EXW at Delivery Point.

6. **Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Goods to the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under applicable law.

7. **Amendment and Modification.** These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

8. Inspection and Rejection of Nonconforming Goods.

8.1 Buyer shall inspect the Goods within 14 days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only the following: (a) product shipped is different than identified in Seller's Order Confirmation; or (b) product's label or packaging incorrectly identifies its contents.

8.2 If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (a) replace such Nonconforming Goods with conforming Goods, or (b) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at Buyer's expense and risk of loss, the Nonconforming Goods to Seller's facility located at 550 Sand Sage Road NW, Los Lunas, NM. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

8.3 Buyer acknowledges and agrees that the remedies set forth in Section 8.2 are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 8.2, all sales of Goods to Buyer are made on a one-way basis, and Buyer has no right to return Goods purchased under this Agreement to Seller.

9. Price.

9.1 Buyer shall purchase the Goods and Services from Seller at the price(s) (the "Price(s)") set forth in the Order Confirmation.

9.2 Buyer agrees to reimburse Seller for all reasonable travel and out-of-pocket expenses incurred by Seller in connection with the performance of the Services.

9.3 All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer, as well as shipping, packing, packaging, and insurance charges. Buyer shall be responsible for all such charges, costs and taxes. However, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

10. Payment Terms.

10.1 Unless otherwise stated by Seller on the Order Confirmation, Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder by wire transfer or check and in US dollars.

10.2 Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods or performance of any Services if Buyer fails to pay any amounts when due hereunder and such failure continues for 7 days following written notice thereof.

10.3 Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

11. Limited Warranty.

11.1 Subject to the proper storage of Material (defined below), Seller provides a limited warranty to the Buyer that the Material will conform to the product specifications stated within the specific Certificate of Analysis corresponding to such Material. The limited warranty is valid from the date such Material is delivered to the Delivery Point or shipped by Seller, until the first of the of the following to occur (a) the application of the Material to an item, or (b) the expiration of a period of 6 months from the date the Material is delivered to the Delivery Point or shipped by Seller. Upon the first of the foregoing (a) or (b) to occur, the limited warranty expires. "Material" means consumables used in the coating process, including, but not limited to, powder, paste, wire, rod, tape, grit, cement, and binders, and Material expressly excludes any type of equipment, replacement parts, or spare parts.

11.2 The Seller provides a limited warranty to the Buyer that Seller shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services. The limited warranty is valid for a period of 60 days from the date Services are provided.

11.3 EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 11.1 APPLICABLE TO MATERIAL AND 11.2 APPLICABLE TO SERVICES, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE MATERIAL, GOODS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

11.4 The Seller shall not be liable for a breach of the limited warranty unless: (a) Buyer gives written notice of the defective Material or Services, reasonably described, to Seller within 7 days of the time when Buyer discovers or ought to have discovered the defect; (b) Seller is given a reasonable opportunity after receiving the notice to examine such Material and Services; (c) Buyer, if requested to do so by Seller, returns such Material to Seller's place of business at Seller's cost for the examination of such Material; and (d) Seller reasonably verifies Buyer's claim that such Material or Services are defective. Additionally, the Seller shall not be liable for a breach of the limited warranty if: (x) Buyer makes any further use of such Material after giving such notice; (y) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Material; or (z) Buyer alters or repairs such Material without the prior written consent of Seller.

11.5 Subject to the limited warranty, with respect to Material during the applicable limited warranty period, Seller shall, in its sole discretion, either: (a) repair or replace the Material (or the defective part), or (b) credit or refund the price of the Material at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Material to Seller.

11.6 Subject to the limited warranty, with respect to any Services subject to a claim during the applicable limited warranty period, Seller shall, in its sole discretion, (a) repair or re-perform the applicable Services, or (b) credit or refund the price of such Services at the pro rata contract rate.

11.7 THE REMEDIES SET FORTH IN SECTION 11.5 AND SECTION 11.6 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY.

12. Limitation of Liability.

12.1 IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

12.2 IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS AND SERVICES SOLD HEREUNDER.

13. Insurance and Indemnity.

13.1 For a minimum period of 3 years after delivery of the Goods, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. Buyer shall provide Seller with 30 days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy.

13.2 Buyer shall defend, indemnify and hold-harmless Seller from and against any third-party claim resulting from, arising out of, or relating to any claim or loss pertaining to the Goods or Services, which includes damages, liabilities, costs or expenses, and reasonable attorneys' fees.

14. **Compliance with Law.** Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permits, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

15. **Termination.** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement and such failure continues for 14 days after Buyer's receipt of written notice of nonpayment; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

16. **Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17. **Confidential Information.** During the Term of this Agreement, Buyer may receive Seller's confidential information which includes information marked as "confidential," "proprietary" or with a similar legend, or whether or not so marked or confirmed, is of a character which would be treated by any reasonable business person as confidential, proprietary or sensitive in nature. Confidential information may include specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media. Confidential information is provided solely for the use of performing this agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

18. **Force Majeure.** The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any of its obligations under this Agreement and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

19. **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

20. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

21. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

22. **Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Michigan.

23. **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America located in the Eastern District of Michigan or the courts of the State of Michigan located in Oakland County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

24. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Order Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

25. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

26. **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Insurance, Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction, and Survival.