

Hale Performance Coatings  
2282 Albion Street  
Toledo, Ohio 43606

## PURCHASE ORDER TERMS AND CONDITIONS

### 1. DEFINITIONS

“Purchase Order” is this agreement between HPC and Vendor pertaining to the goods, including all the terms and conditions set forth on both sides of the Purchase Order regardless of whether it is signed by the Vendor.

“HPC” is Hale Performance Coatings and is the buyer under this Purchase Order.

“Goods” are any and all goods or services passing under or provided pursuant to the Purchase Order described on the face of the Purchase Order.

“Order Documentation” is, collectively, all of the written evidence of a contract between HPC and Vendor for the sale of Goods, including without limitation, any writings so constructed by virtue of Section 2-207 of the UCC.

“Person” is any natural person, firm, limited liability company, partnership, business organization or corporation.

“UCC” is the Uniform Commercial Code as adopted and in effect in the State of Ohio.

“Vendor” is the person or entity named after the word “Vendor” on the face of this Purchase Order and is the seller under this Purchase Order.

### 2. ACCEPTANCE

Vendor may accept the Purchase Order only by (a) signing, dating and returning to HPC the original or a copy of this Purchase Order, or (b) Vendor’s shipment of the Goods (in whole or in part) referenced by this Purchase Order to HPC.. HPC OBJECTS TO ANY ACKNOWLEDGEMENT OF THIS PURCHASE ORDER OR ANY PROVISION OF ANY OTHER DOCUMENT (INCLUDING, BUT NOT LIMITED TO, ANY MASTER AGREEMENT, MASTER SALES AGREEMENT, OR ANY DOCUMENT THAT PURPORTS TO APPLY TO THE SALE OF GOODS BY VENDOR TO HPC, EVEN IF THAT DOCUMENT PURPORTS TO GOVERN OR SUPERSEDE THIS PURCHASE ORDER) WHICH STATES TERMS ADDITIONAL TO OR DIFFERENT FROM THIS PURCHASE ORDER. THOSE ADDITIONAL OR DIFFERENT TERMS PROPOSED BY VENDOR ARE REJECTED AND SHALL NOT BE A PART OF ANY AGREEMENT BETWEEN HPC AND VENDOR WITH RESPECT TO THE GOODS AND/OR SERVICES REFERENCED IN THIS PURCHASE ORDER. Vendor and HPC agree that this Purchase Order is integrated, containing the entire agreement between the parties with respect to the purchase and sale of Goods and/or services that might relate thereto. NO ORDER DOCUMENTATION OTHER THAN THIS PURCHASE ORDER, SHALL BE EFFECTIVE BETWEEN HPC AND VENDOR UNLESS MADE BY A WRITING SIGNED BY VENDOR AND AN AUTHORIZED AGENT OF HPC WHICH REFERS SPECIFICALLY TO AND, BY ITS OWN TERMS, AMENDS OR SUPERSEDES THE PROVISIONS OF THIS PURCHASE ORDER.

### 3. TERMS OF PAYMENT

The terms of payment for the Goods and/or services are specified on the face of the Purchase Order. Any payment for Goods identified or tendered or attempted to be provided by Vendor hereunder shall not constitute an acceptance of those Goods by HPC. The Goods received (in whole or in part) shall be subject to inspection and rejection by HPC or an agent on behalf of HPC or by a purchaser to whom HPC has sold goods. Drafts on HPC’s accounts will not be honored nor C.O.D. shipments accepted unless arranged by prior written agreement. Except for price reductions pursuant to paragraph 5 of this Purchase Order, prices established in the Purchase Order may not be altered without the prior written consent of HPC in a writing which, by its

DyClad<sup>®</sup> • Electroless-Nickel • DyCote-C • TeflonNickel • Brite Dip Brass • DyCro-tuff<sup>®</sup>

terms, purports to amend and/or supersede the Purchase Order. The parties agree that HPC shall be obligated to pay any interest on past due amounts at a rate corresponding with the Consumer Price Index for All Urban Consumers (CPI-U) as set by the United States Department of Labor.

#### 4. NO EXTRAS

Unless authorized by the Purchase Order, (a) Vendor may not charge extra for packaging, reels, boxes, crating, cartage or storage, energy or other surcharges, and (b) the price for the Goods shall not exceed the price stated in the Purchase Order. There shall be no restocking or related charge for any Goods returned to Vendor by HPC for any reason.

#### 5. COST REDUCTION

HPC shall receive the benefit of any general or specific price reduction by Vendor on the Goods. Vendor agrees to invoice HPC at the Good's lowest prevailing market price, if such price is not stated on the Purchase Order.

#### 6. FREIGHT

Unless otherwise expressly stated on the face of the Purchase Order, Vendor shall ship all Goods F.O.B. destination. Vendor shall pay all freight or express charges from and return to place or origin on rejected Goods.

#### 7. SHIPPING AND RISK OF LOSS

Vendor shall ship all Goods as specified by HPC to the Person at the address(es) shown after the words "Ship To" stated on the face of the Purchase Order. Vendor shall have complete responsibility for all expense and risk of loss while Goods are in its hands or the hands of a common carrier arranged for by Vendor. HPC shall have no liability or responsibility for any injury, loss or damage to any Goods or to any person arising out of the transportation, delivery, unloading or any other aspect of shipping any Goods. HPC may file claims against (and Vendor is not required to file claims against) any carrier with which HPC contracts in the event of any loss in connection with the transportation of Goods.

#### 8. DELIVERY

Vendor shall deliver all Goods on the date indicated pursuant to this Purchase Order. Time is of the essence. HPC may cancel the Purchase Order without liability to Vendor or any other Person, if Vendor fails to deliver any Goods as required by the Purchase Order and may charge Vendor with any losses incurred as a result thereof. Vendor acknowledges and agrees that the failure to deliver any installment or shipment of Goods as required in the Order, and/or any non-conformity of all or any part of any installment or shipment of Goods, will substantially impair the value of the whole Purchase Order and constitute a breach of the whole Purchase Order. No acceptance by HPC of all or any part of any non-conforming installment or shipment of Goods shall waive such non-conformity, regardless of whether HPC timely and reasonably notifies Vendor of cancellation.

#### 9. FORCE MAJEURE

If fires, accidents, epidemics, embargoes or directions of any governmental authority with jurisdiction, or other causes beyond the control of either Vendor or HPC affect their respective abilities to order shipment of, to ship or to accept any Goods, then the other party may delay or suspend shipment or acceptance (as the case may be) of such affected Goods without liability to the other party, but if it is Vendor who suspects or delays shipment, it shall allocate its available supply of Goods of the type described on the face of the Purchase Order among its customers as HPC unilaterally deems to be fair and equitable.

#### 10. CANCELLATION

HPC may without liability cancel the Purchase Order upon notice to Vendor, if Vendor (a) admits its inability to pay, or fails to pay, its debts generally as they become due, (b) becomes insolvent, (c) makes a general assignment for the benefit of its creditors, (d) files a petition or admits the material allegations of any petition filed against it in bankruptcy under applicable federal bankruptcy laws or other laws for the relief of debtors, (e) fails to comply with any material terms or condition of the Purchase Order, or (f) as otherwise provided in the Purchase Order.

### 11. CONFIDENTIAL INFORMATION

Without HPC's prior written consent, Vendor shall not disclose to any third party any information pertaining to the Purchase Order. Upon cancellation or fulfillment of the terms of the Purchase Order, Vendor shall return upon HPC's request all drawings, blueprints, descriptions, or other papers containing such information. Vendor agrees that no adequate remedy at law exists should Vendor violate this provision. HPC may enforce Vendor's compliance with this provision by seeking injunctive or other equitable relief in addition to damages. Any and all information concerning pricing, quantity or any other term of the Purchase Order is considered proprietary of HPC. Vendor shall not discuss, convey or transmit any such information in any form to any non-HPC personnel. Vendor may not assign, subcontract, delegate or transfer the Purchase Order nor any rights or duties hereunder without HPC's prior written consent.

### 12. RESTRICTIONS ON EXPORT – ITAR, NUCLEAR, DOD, AND ALL OTHER RESTRICTED INFORMATION

Vendor shall not disclose any proprietary information or other information furnished hereunder in any manner contrary to laws and regulations of the United States of America, including technical data as defined in the International Trafficking in Arms Regulations (ITAR) 22 CFR 120.0. Export of this material may be restricted by the Arms Export Central Act (22 USC 2751, *et seq.*). These regulations contain significant fines for violations. Both parties agree that it will not transfer any export controlled item, data, print process, or service, to include transfer to foreign persons employed by or associated with, or under contract to either Vendor or lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception. Vendor shall indemnify and hold harmless HPC for any fines or other damages resulting from violations of any such laws and regulations by Vendor.

### 13. COMPLIANCE WITH LAW

Vendor's performance of the Purchase Order shall comply with all applicable federal and state laws, regulations and orders. Upon request, Vendor shall furnish HPC with a sworn certificate representing such compliance in form satisfactory to HPC.

### 14. WARRANTIES

Vendor warrants that the Goods, including without limitation, any services or installation provided by Vendor to HPC (a) are free of defects in title, labor, material, fabrication or processing, (b) conform to applicable specifications, drawings, samples or in other descriptions provided to or by the Vendor, (c) are fit for their intended purposes, (d) are merchantable, (e) are free of design defects and (f) are fit for any particular purpose which HPC made known to Vendor by any method or medium. These warranties shall run to HPC, its successors, assigns and customers, and to buyers, users and consumers of the goods. In addition to all other remedies provided by the UCC for breach of warranty, Vendor at its own expense shall replace, install or correct promptly any goods not conforming to these warranties, and HPC may charge the Vendor all costs incurred in correcting or replacing goods not corrected or replaced by the Vendor. These warranties, any implied warranties, or any remedy for any breach of warranty cannot be disclaimed or limited by Vendor.

### 15. LIABILITY

Insofar as labor or the performance of work (as distinguished from the sale of Goods) is covered by the Purchase Order, Vendor shall perform such labor or work as an independent contractor. Vendor, at its expense, shall indemnify and hold harmless HPC, its agents, employees and customers, from and against any and all liability to any persons or things or property, in connection with work performed hereunder or incidental thereto.

### 16. INSURANCE

Vendor shall maintain product liability, comprehensive general liability, auto liability, worker's compensation, and such other insurance (the "Insurance") as will reasonably protect Vendor and HPC against any claims which may arise in connection with the production, sales, use, consumption and/or delivery of Goods, and all other transactions or operations contemplated by

DyClad<sup>®</sup> • Electroless-Nickel • DyCote-C • TeflonNickel • Brite Dip Brass • DyCro-tuff<sup>®</sup>

the Purchase Order, whether such transactions are performed by Vendor or other Person engaged by Vendor or any employees or agents of such other Persons. Upon request, Vendor shall provide HPC with a certificate of insurance evidencing the existence of the required insurance and naming HPC as an additional insured by a Vendor's endorsement. Vendor shall cause the insurer to provide HPC with thirty (30) days advance written notice of changes in or cancellation of any insurance. Upon request, Vendor will provide a copy of any accident report filed with Vendor's Insurance carriers pertaining to accidents occurring as a result of any Goods and/or anything furnished under or required by the Purchase Order. The minimum insurance coverage requirements are:

- (a) Product Liability & Comprehensive General Liability: Limits of at least \$1 Million per occurrence (without subrogation limits)
- (b) Automobile Liability: As required in each state in which work is to be performed, but in no case less than \$500,000 combined single limit, including, without limitation, all autos, including hired and nonowned; and
- (c) Workers Compensation: As required in each state in which work is to be performed, and including, without limitations, employers liability protection of not less than \$500,000.

#### 17. INDEMNITY AGREEMENT

Vendor assumes all responsibility and liability for, and agrees to indemnify and hold HPC and its employees and agents harmless from and against: (a) any and all damage, loss or injury of any kind or nature whatsoever (including personal injury and/or death resulting there from), to all persons, whether employees of Vendor or otherwise, and to all property (including loss of use thereof), and (b) all damage, injury, expense, or loss that HPC or its employees and/or agents may sustain as a result of any claim pertaining thereto caused by, resulting from, arising out of or occurring in connection with, Vendor's duties and/or obligations under the Purchase Order, and/or any sale, resale, delivery, use and/or consumption of any Goods. Vendor shall indemnify and hold HPC harmless from and against any claims, liability, damage, costs, expenses, or losses (including, without limitation, reasonable attorney's fees and expenses (a) incurred by HPC as a result of Vendor's breach of any term, condition or provision of the Purchase Order, or (b) arising out of or in connection with the installation, processing, sale, delivery, use and/or consumption by any Person of any of the Goods, in whole or in part. Further, Vendor agrees to assume, on behalf of HPV and its employees, the defense of any action at law or equity which may be brought against HPC upon indemnification under this provision or, to pay on behalf of HPC or upon HPC's request the amount of any judgment entered against HPC in any such action. This obligation is continuing and shall not be diminished by any approval or acceptance of or payment for work or Goods by HPC.

#### 18. NONCONFORMING GOODS

HPC and Vendor agree that the Goods ordered pursuant to the Order are unique goods. If Vendor fails to deliver or delivers defective or non-conforming Goods (this includes if Vendor should at anytime discover that they have supplied HPC with non-conforming product even after delivery, Vendor must notify HPC immediately), HPC may: (a) accept all or part of the defective or non-conforming Products at an equitable price reduction; (b) reject all or any part of a delivery of defective or non-conforming Products, and demand delivery of conforming Products. All rejected Products shall be shipped to Vendor at Vendor's cost; (c) make, or have a third party make, all repairs, modifications, or replacements necessary to enable such Product to comply in all respects with Order requirements and charge the cost incurred to Seller; or (d) rescind the Order.

#### 19. CHANGES

Vendor must notify HPC immediately at anytime before or after delivery of product and/or services of any changes in product or process definition.

DyClad<sup>®</sup> • Electroless-Nickel • DyCote-C • TeflonNickel • Brite Dip Brass • DyCro-tuff<sup>®</sup>

20. RIGHT OF ENTRY

HPC reserves the right to enter Vendor's facilities and that of their sub-tier suppliers to review parts, processes, tooling, equipment and related paperwork with adequate notice to Vendor for review of contracted work. This right will be extended also to HPC's customers, based upon requirements by said parties to review pertinent information.

21. SAFETY PROTECTIVE MEASURES AND PRECAUTIONS

Vendor shall take such safety protection measures and precautions as are required by law, ordinances, industrial codes, applicable municipal, state and federal safety regulations, or otherwise, and shall cooperate fully with and comply with all reasonable recommendations of HPC and any insurance carrier to insure that all work transactions contemplated under the Purchase Order are completed with the greatest degree of safety.

22. JURISDICTION AND VENUE

This Purchase Order shall be governed by and construed in accordance with the laws of the State of Ohio without regard to conflict of laws principles. The parties hereby consent to the exclusive jurisdiction and venue of the courts located in Lucas County, Ohio. In the event any provision hereof shall be deemed to be invalid or unenforceable by a court of competent jurisdiction. The remainder of the provisions shall continue in full force and effect.

23. ATTORNEY FEES

Should HPC take any measures to enforce its rights under the terms of this Purchase Order, HPC shall be entitled to its reasonable attorney fees and costs incurred in bringing its claims.

24. MISCELLANEOUS

The headings contained in this Purchase Order are asserted for convenience only and in no way define, limit, or extend the scope or intent of any provisions of these Terms and Conditions. Failure of HPC to insist on performance of any of the Terms and Conditions or requirements of the underlying Purchase Order shall not be construed of a waiver of such Terms and Conditions or requirements and shall not affect the right of HPC thereafter to enforce each and every term, condition or requirement hereof.

VENDOR: \_\_\_\_\_

HALE PERFORMANCE COATING: \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_  
<sup>®</sup>

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

# HALE

## PERFORMANCE COATINGS

ISO 9001 : 2000  
ISO 14001 : 2004

2282 Albion Street  
Toledo, Ohio 43606  
(419) 244-6451  
1-800-293-2505  
FAX: (419) 244-7801

DyClad<sup>®</sup> • Electroless-Nickel • DyCote-C • TeflonNickel • Brite Dip Brass • DyCro-tuff<sup>®</sup>

