

A&A Coating, Inc., Standard Terms and Conditions

1. **Applicability.** These Standard Terms and Conditions apply to all Quotes issued by A&A Coating, Inc. ("A&A") relating to any proposed sale of goods and/or incidental services ("Products") to any third party ("Buyer"), and are incorporated into each such Quote by reference.
2. **Acceptance.**
 - 2.1. A&A's offer to sell Products to Buyer is expressly subject to Buyer's acceptance of these Standard Terms and Conditions.
 - 2.2. Buyer's submission of a purchase order in response to any A&A Quote constitutes Buyer's acceptance of these Standard Terms and Conditions, in their entirety, and precludes Buyer's objection to A&A's Standard Terms and Conditions and/or Buyer's inclusion of any different or additional terms, items or conditions in any resulting order except as set forth in a written amendment referencing these A&A Standard Terms and Conditions and signed by both A&A and Buyer. If Buyer has previously made A&A an offer with respect to the Products, no A&A Quote will operate as an acceptance of Buyer's offer, but instead will be deemed a counteroffer. Buyer agrees that A&A is not bound by any term or condition of Buyer that is inconsistent with or in addition to the terms and conditions hereof. All sections of the Uniform Commercial Code that expressly or implicitly protect A&A and are not inconsistent with any term hereunder are incorporated by reference, whether it be construed as an offer or acceptance.
3. **Payment.** Buyer shall pay for the Products within 15 days of A&A's invoice date.
4. **Warranty**
 - 4.1. For one year following the delivery date, A&A warrants to Buyer as follows:
 - 4.1.1. A&A and/or Buyer shall have good title to the Products at the time of delivery.
 - 4.1.2. All pipe coatings have been applied in conformity to the specification(s) stated in A&A's Quote and A&A's standard manufacturing practices.
 - 4.1.3. Except to the extent the Products are manufactured in accordance with the Specifications of Buyer, the manufacture, assembly, use, sale, and distribution of the Products will not infringe on the patent, trademark, copyright or other proprietary or intellectual property rights of any third party, worldwide, including but not limited to, any trade secret or duly issued domestic or foreign patents.
 - 4.1.4. The Products will have been manufactured, sold, and shipped in accordance with all applicable federal, foreign, state and local laws, rules and regulations.
 - 4.1.5. The Products will be free from defects and of good quality, material, and workmanship.
 - 4.2. **Warranty Limitations and Exclusions.**
 - 4.2.1. The warranties set forth herein shall not apply to the non-conformity or failure of any Product due to (i) normal wear and tear; (ii) misuse, abuse, negligence or improper installation or repair; (iii) acts of God or other casualty losses beyond A&A's control such as collision, accident, theft, vandalism, riot, war, terrorism, fire, freezing, lightning, earthquake, windstorm, volcanic eruption, flooding, tornado or hurricane; (iv) misapplication; (v) A&A's adherence to pipe coating specifications specified by the Buyer and/or end-Buyer that are contrary to A&A's standard manufacturing practices; or (vi) the failure or non-conformity of any pipe coating material supplied by third party suppliers, in which case Buyer's warranty rights

shall be determined by the warranties provided by said third-party suppliers, if any.

- 4.2.2. **THE WARRANTIES SET FORTH HEREIN ARE COMPLETE AND IN LIEU OF ALL OTHER CONDITIONS, REPRESENTATIONS, EXPRESS WARRANTIES, AND IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES IMPLIED BY STATUTE, USAGE, CUSTOM OF THE TRADE OR OTHERWISE. A&A MAKES NO WARRANTIES REGARDING THE PRODUCTS EXCEPT AS SET FORTH HEREIN. ALL WARRANTIES NOT STATED HEREIN ARE SPECIFICALLY DISCLAIMED.**
- 4.3. **Warranty Claim Procedures.**
 - 4.3.1. **Initiation of Warranty Claims.** Buyer shall initiate any Warranty Claim (i) by sending written notice of any potential claim to A&A within seventy-two (72) hours of any incident Buyer alleges is caused by a breach of warranty, and (ii) by submitting all pertinent information regarding the Warranty Claim to A&A in writing within thirty (30) days of the incident, including but not limited to a description of each involved Product and its part number, the Product's location, the date the Product was first placed in service, the Product's alleged failure date, a description of the Product's failure, A&A invoice number and date, description of defect, results of testing performed by Buyer or its representatives, service tickets, warranty claim records, the total cost of the claim being asserted, and all documentation supporting the claim.
 - 4.3.2. **Inspection by A&A.** Any Product for which Buyer makes a Warranty Claim must be made available to A&A for examination, inspection, and testing by A&A, at Buyer's expense. The location of the inspection shall be determined by A&A in A&A's discretion. If A&A determines a Product is defective and covered by the terms of this warranty, A&A shall reimburse Buyer for any costs incurred to produce the Product to A&A for examination, inspection, and testing.
- 4.4. **Damages and Limitations of Liability.**
 - 4.4.1. **Limited and Exclusive Remedy – Repair, Replacement, or Refund.** If A&A determines that a Product is defective and covered by the terms of this warranty, then A&A shall repair the covered Product, replace the covered Product, or refund the purchase price paid for the Product to Buyer, at A&A's discretion. If A&A elects to repair the covered Product and receives a reasonable good faith estimate that the required repair will require work of two (2) hours or less, A&A may elect to authorize Buyer to make such repair, in which event (i) Buyer shall submit appropriate documentation to A&A to confirm the repair has been made, which documentation shall include a time sheet itemizing all labor costs incurred to make the repair, and (ii) A&A shall reimburse the Buyer for the actual cost to complete the repair, subject to a maximum of two hours of labor and a maximum labor rate of \$150 per hour, for a total maximum reimbursement of \$300.
 - 4.4.2. **IN NO EVENT SHALL A&A BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND ARISING FROM, CONNECTED WITH OR RELATING TO ANY BREACH OF ANY WARRANTY SET FORTH HEREIN, INCLUDING BUT NOT LIMITED TO: LOSS OF REVENUE OR PROFITS; LOSS OF GOODWILL; ATTORNEYS' FEES; DAMAGE TO BUSINESS OR BUSINESS RELATIONS; LOSS OF USE OF EQUIPMENT; COST OF CAPITAL; COST OF SUBSTITUTED FACILITIES**

OR SERVICES OR PRODUCTS; DOWN-TIME COSTS; CLAIMS BY BUYER'S CUSTOMERS; LIQUIDATED DAMAGES; EXPENSES INCURRED BY BUYER IN CONNECTION WITH THE WARRANTY CLAIM; FREIGHT COSTS; REINSTALLATION COSTS (INCLUDING LABOR); AND ANY OTHER DAMAGES FOR ECONOMIC LOSSES OR PROPERTY DAMAGE ARISING FROM, CONNECTED WITH OR RELATING TO A&A'S ACTS OR OMISSIONS, WHETHER UNDER CONTRACT, NEGLIGENCE, STRICT LIABILITY, ENTERPRISE LIABILITY OR OTHER PRODUCT LIABILITY THEORIES. THIS PROVISION APPLIES WHETHER OR NOT (i) SUCH DAMAGES ARE FORESEEABLE, (ii) A&A HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (iii) SAID DAMAGES ARE TO PERSON OR PROPERTY.

Notwithstanding the above, if Buyer provides a written itemization of such damages to A&A in relation to a warranty claim, then A&A will review said itemization for the purpose of deciding whether A&A will voluntarily reimburse Buyer for any amount of said damages. Should A&A voluntarily decide to reimburse Buyer for any amount of said damages, A&A's voluntary reimbursement shall be subject to a maximum limit of one (1) times the purchase price paid by Buyer for the affected Product.

- 4.5. **ANY ACTION ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PRODUCTS MUST BE BROUGHT BY BUYER WITHIN TWO (2) YEARS FROM THE DATE OF DELIVERY, OR THE APPLICABLE STATUTORY PERIOD, WHICHEVER IS SHORTER.**
- 4.6. **THE REMEDIES STATED IN THESE STANDARD TERMS AND CONDITIONS ARE INTENDED TO BE THE SOLE AND EXCLUSIVE REMEDIES OF THE BUYER WITH RESPECT TO THE PURCHASE OF ANY PRODUCTS. THE PARTIES ALSO AGREE THAT, REGARDLESS OF THE FAILURE OF THE SOLE AND EXCLUSIVE REMEDY, A&A WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES OF WHATSOEVER KIND OR NATURE. THE PARTIES INTEND THE EXCLUSION OF CONSEQUENTIAL DAMAGES AS AN INDEPENDENT AGREEMENT APART FROM THE SOLE AND EXCLUSIVE REMEDY HEREIN.**
5. **Force Majeure.** A&A reserves the right to cancel any order of goods from Buyer and shall have no obligation to fulfill the canceled order if A&A's business or operations are interrupted or discontinued in whole or part by acts of God, fire, flood, earthquake, strike, war, civil disorder, government regulation, or any other act or event beyond A&A's reasonable control.
6. **Title and Risk: Shipment.** Unless otherwise indicated on the A&A Quote, title and risk of loss with respect to the Products will transfer to Buyer upon shipment by A&A.
7. **Entire Agreement.** The A&A Quote and any resulting purchase order are together intended by the parties to be a final, exclusive, complete, and fully integrated expression of their agreement and its terms, such that said documents constitute the entire agreement and understanding between the parties and terminate and supersede any prior oral or written agreements, discussions, or understandings relating to the subject matter hereof. There shall be no representations, promises, agreements, warranties, covenants or undertakings other than those expressly contained therein or incorporated therein by reference. NO COURSE OF PRIOR DEALINGS BETWEEN THE PARTIES AND NO USAGE OF TRADE SHALL BE RELEVANT TO SUPPLEMENT OR EXPLAIN ANY TERM USED HEREIN. No waiver, release, amendment or modification of any term shall bind A&A unless set forth in a writing expressly referring to these Standard Terms and Conditions, duly executed by A&A.
8. **Applicable Law.** All A&A Quotes shall be deemed to have been made in the County of Morris, Texas, and shall be governed in all respects by the laws of the United States of America and the laws of the State of Texas, without reference to or application of its conflicts of law provisions.
9. **Dispute resolution.** In the event of any dispute arising from any Products sold by A&A, Buyer consents and agrees to *in personam* or personal jurisdiction and venue in the federal and state courts of Morris County, Texas. Buyer expressly waives any objection thereto on the basis of personal jurisdiction or venue. Buyer further agrees that said courts shall constitute the sole and exclusive jurisdiction for the resolution of any dispute between the parties.
10. **Severability.** If any of the terms of these Standard Terms and Conditions or any Quote in which they are incorporated are held to be illegal, invalid, or unenforceable, in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision or part thereof, and such clause or provision or part thereof shall be severed without affecting the remaining terms, which shall remain in full force and effect.
11. **Headings.** The section headings are for reference only and will not be considered controlling as to the content and/or interpretation of any section.