

COATING SERVICES TERMS AND CONDITIONS**1. General**

1.1. These terms and conditions (“**Terms and Conditions**”) apply to coating services (“**Coating Services**”) to be provided by SP3 Diamond Technologies (“**SP3**”) with respect to customer (“**Customer**”)’s substrate products (“**Substrates**”). Any other document containing any term that is additional to or not identical with these Terms and Conditions is hereby rejected by SP3 unless such term is expressly agreed to in writing by SP3. These Terms and Conditions shall apply to every order for Coating Services whether or not an order acknowledgment accompanies or is provided in response to the order.

1.2. The precise scope of Coating Services will be described in SP3’s order acknowledgement.

2. Pricing

2.1. Pricing and terms of payment for Coating Services will be set out in SP3’s quotation, which will be valid for 30 days.

2.2. All taxes, fees, duties, tariffs are the responsibility of Customer and will be added to the price or billed separately to Customer.

2.3. SP3 will deliver all orders FOB SP3 and choose the method of shipment unless otherwise specified and arranged for by Customer.

2.4. Customer shall pay all shipping and packaging costs.

3. Substrates

3.1. Customer shall deliver Substrates to SP3 in suitable packaging that SP3 may use to return coated Substrates to Customer. Customer assumes all responsibilities for shipping damage. If SP3 deems incoming packaging not to be suitable, it will advise Customer and use suitable packaging at Customer’s cost.

3.2. Customer must supply Substrates to SP3 “**Fit for Coating**”. Fit for Coating means the Substrates must be:

(a). Of materials suitable for coatings by SP3;

(b). Clean of all contaminants that could affect the coating process;

(c). Accurately labeled; and

(d). Compliant with pre-coating dimensional requirements.

4. Coating Services

4.1. SP3 will provide Coating Services as detailed in SP3’s order acknowledgement.

4.2. SP3 will perform a limited sample inspection of incoming Substrates for:

(a). Material type;

(b). Dimensional measurements; and

(c). Fitness for Coating.

Notwithstanding this limited sample inspection, Customer is fully responsible for any Substrate that is not Fit for Coating.

4.3. SP3 will perform an inspection of coated Substrates for compliance with the coating requirements prior to shipment to Customer.

4.4. If SP3 encounters any coating defect, SP3 reserves the right to correct the defect.

4.5. If SP3 is not able to correct any coating defect, it will identify the defect and mark the Substrate. SP3 will not charge the Coating Services fee for these marked Substrates.

4.6. If, after performing the Coating Services, SP3 encounters Substrate defects exceeding a 3% yield loss, then:

(a). If the defect is caused by the Coating Services, SP3 will not charge the Coating Services fee for the defective Substrates.

(b). If SP3’s mishandling damaged any Substrate, SP3 will not charge the Coating Services fee and will reimburse Customer for its actual Substrate cost up to a maximum value of the Coating Services fee for the damaged Substrate.

4.7. For any coating defects or Substrate defects with respect to any of the following situations, SP3 will charge the Coating Services fee:

(a). Incorrect substrate material;

(b). Defective Substrates;

(c). Defects outside the functional area of any Substrate;

(d). Cosmetic defects that do not affect Substrate performance;

(e). Substrates treated by Customer that affect Coating Services; and

(f). Yield loss of 3% or less.

5. Acceptance

5.1. Inspections. Customer shall promptly upon receiving each Substrate for which SP3 has provided Coating Services, perform all necessary inspections to determine whether any Substrate fails to meet the warranty set out in Section 8.

5.2. Damage. Customer shall be fully responsible for any damage caused to SP3’s equipment attributable to inaccurate labelling of any Substrate, any defective Substrate or any residue or foreign substance on any Substrate at the time received by SP3. **CUSTOMER IS FULLY RESPONSIBLE IN ALL RESPECTS FOR ALL THIRD PARTY CLAIMS ARISING IN ANY WAY FROM USE OF ANY SUBSTRATE AFTER IT HAS BEEN DELIVERED TO CUSTOMER FROM SP3.**

6. Invoice; Payment; Right of Lien

6.1. Provisions for SP3’s invoicing and Customer’s payment shall be as set out in SP3’s order acknowledgment. All amounts not paid when due shall incur a late payment charge of 10% per annum or the highest rate allowable by law, whichever is lower. If Customer does not pay an invoice as required, then, upon completing the applicable Coating Services, SP3 may notify Customer that the Coating Services have been completed and that, SP3 will be entitled to sell the Substrates covered by the order to satisfy the invoice if Customer does not pay for the Coating Services (such notice being a “**Default Notice**”).

6.2. If Customer does not pay an invoice within 30 days after SP3 delivers a Default Notice, SP3 shall be fully entitled to sell some or all of the Substrates covered by the Order to satisfy the invoice and all costs and expenses, including legal fees reasonably incurred by SP3 in issuing the Default Notice and selling the Substrates.

7. Risk of Loss; Insurance; Security Interest; Indemnification

7.1. SP3 will maintain, at its own expense, insurance adequate to cover the value of Substrates while in its possession, and if any Substrate is lost or damaged from fire, flood or any other insured event, SP3 shall reimburse Customer the value of the lost or damaged Substrate to the extent covered by such insurance, and except for this coverage, Customer retains ownership and all risks of loss with respect to all of its Substrates and shall insure them against loss at all times.

7.2. Customer hereby grants SP3 a possessory security interest and lien in the Substrates sufficient to cover all costs of the Coating Services, all ancillary expenses arising from Customer’s non-payment timely of any invoice and all other amounts that may be due to SP3 from Customer, and SP3 may file a financing statement and take all other recommended steps to perfect such security interest.

7.3. CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD SP3 HARMLESS AGAINST ALL COSTS, LIABILITIES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS’ FEES, RESULTING FROM EVERY CLAIM, SUIT, ACTION AND PROCEEDING BROUGHT BY ANY THIRD PARTY FOR PERSONAL INJURY, INCLUDING DEATH, PROPERTY DAMAGE OR INTELLECTUAL PROPERTY INFRINGEMENT, RELATED IN ANY WAY TO THE SALE, USE, COATING OR TRANSFER OF ANY SUBSTRATE, BUT CUSTOMER SHALL NOT BE LIABLE TO THE EXTENT THE DAMAGE IS CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF SP3.

8. Limited Warranty; Remedies; Exclusions and Limitations of Liability

8.1. SP3 warrants that for 90 days from the date it delivers coated Substrates to Customer (the "Warranty Period"), it will either remedy the Coating Services or refund the cost of the Coating Services, as SP3 in its sole discretion decides, with respect to any Substrate for which the thickness resulting from the Coating Services varies more than 20%, in either direction, from the thickness specified in the order acknowledgment, subject to Customer having notified SP3 of such issue within the Warranty Period and subject to the variation not being attributable to something other than purely the Coating Services. SP3 shall have no responsibility to remedy, and Customer shall not be entitled to any refund as the result of, any defect attributable to Customer having not met the requirements of Sections 3 and 4 or if the Substrate has any of the defects indicated in Section 8.2.

8.2. Customer acknowledges that the nature of the Coating Services varies depending upon many circumstances, not the least of which are the surfaces of, condition and quality of, and materials comprising, the Substrates. Consequently, SP3 shall have no liability of any nature for Coating Services issues attributable in any way to Substrates having any crack, residue, foreign substance or defect in material, or having suffered any manufacturing defect, excessive temperature variation or any other similar issue.

8.3. Customer assumes all liability attributable to any inaccurate Substrate labelling.

8.4. Other than liability expressly assumed by SP3 pursuant to these Terms and Conditions, Customer assumes all liability arising from SP3's storage of Substrates.

8.5. Unless SP3 is grossly negligent or intentionally wrongful in its actions:

(a). Customer shall be fully liable for all damages and changes in dimensions arising during the Coating Services; and

(b). SP3 shall have no liability for:

(i). cosmetic issues, immaterial defects outside of the functional area of the Substrate, color variations, shrinkage, expansion or rupture;

(ii). damage to carbide tools caused by handling, the Coating Services or hardness tests subsequent to the Coating Services; or

(iii). any Substrate that cannot be used because SP3 is unable to remedy a defect referred to in Section 8.2.

8.6. Except as expressly set forth in this Article 8, SP3 MAKES NO WARRANTY OF ANY KIND, AND THE PARTIES EXPRESSLY EXCLUDE ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE COATING SERVICES, INCLUDING THE IMPLIED WARRANTIES OF

MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES ALSO SPECIFICALLY EXCLUDE ALL WARRANTIES OF NON-INFRINGEMENT WITH RESPECT TO THIRD PARTY RIGHTS.

8.7. EXCEPT TO REFUND THE CHARGE FOR COATING SERVICES, SP3'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS, CUSTOMER'S ORDER OR ANY OTHER DOCUMENT WITH RESPECT TO COATING SERVICES, WHETHER UNDER CONTRACT, WARRANTY, INDEMNITY, TORT, STATUTE, OR OTHER LEGAL THEORY, SHALL NOT EXCEED \$1,000, AND IN NO EVENT SHALL SP3 HAVE ANY LIABILITY FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING IN ANY WAY OUT OF OR RELATED TO THESE TERMS AND CONDITIONS, CUSTOMER'S ORDER OR ANY OTHER DOCUMENT WITH RESPECT TO COATING SERVICES UNDER ANY CAUSE OF ACTION, WHETHER OR NOT SP3 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. Confidentiality

9.1. Definition. "Confidential Information" means any non-public information that relates to SP3, including its technical data, trade secrets and know-how with respect to the Coating Services. Confidential Information does not include information that (i) is known to Customer at the time of disclosure to Customer by SP3 as evidenced by written records of Customer, (ii) has become publicly known and made generally available through no wrongful act of Customer or (iii) has been rightfully received by Customer from a third party who is authorized to make such disclosure.

9.2. Nonuse and Nondisclosure. Customer shall not, during or after placing an order for Coating Service, (i) use any Confidential Information for any purpose whatsoever other than as may be required under these Terms and Conditions or (ii) disclose any Confidential Information to any third party. All Confidential Information shall remain the sole property of SP3. Customer shall take all reasonable precautions to prevent any unauthorized disclosure or use of Confidential Information.

9.3. Law; Jurisdiction; Attorney Fees. California law governs all matters related to these Terms and Conditions, the Order and the Agreement. The parties submit to the non-exclusive personal jurisdiction of the state court and federal courts located in Santa Clara County, California. The parties specifically exclude the application of the United Nations Convention on Contracts for the International Sale of Goods. The prevailing party in any legal action is entitled to recover reasonable costs and attorney fees.

10. Miscellaneous

10.1. Intellectual Property Rights. SP3 retains and shall own all rights, titles and interests in and to all, and Customer shall have no right,

title or interest in or to any of, the intellectual property, including SP3's patents, copyrights, know-how and trade secrets, in any way comprising or related to the Coating Services.

10.2. Notices. All notices, requests, consents, authorizations and other communications required or permitted under these Terms and Conditions, Customer's order or SP3's order acknowledgment shall be given in writing to chief executive officer of the respective party at the address shown in the order acknowledgment. Either party may change its address or person to receive notice by giving notice to the other party.

10.3. Assignment. Customer may not assign or delegate its order or any element of it, other than the right to payment, to any person or entity without the prior consent of SP3.

10.4. Amendments; Other Terms. No amendment, modification or supplement of any provision of these Terms and Conditions shall be valid or effective unless made in writing and signed by a duly authorized officer of each party.

10.5. Waiver. No provision of these Terms and Conditions will be waived by any act, omission, or knowledge of a party or its agents or employees except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving party.

10.6. Force Majeure. Neither party shall be liable to the other party for any failure to perform or delay in performing when such failure or delay is caused by an event of force majeure.

10.7. Survival. Upon any termination of the Customer's order, all provisions which by their nature would typically survive an agreement such as these Terms and Conditions as well as 2, 7, 8, 9, and 10 shall survive termination of Customer's order.

10.8. Severability. If any provision of these Terms and Conditions is held to be unenforceable under applicable law, the balance of these Terms and Conditions shall be interpreted as if such provision were so excluded.

10.9. Headings. The headings of these Terms and Conditions are a convenience and shall have no effect whatsoever on any construction or interpretation.

Entire Agreement. These Terms and Conditions, along with SP3's order acknowledgment comprise the entire agreement between the parties and supersede all prior negotiations, discussions, agreements and communications with respect to the subject matter of Customer's order.