



## DHSCO Terms of Sale

These terms and conditions (the "Terms") constitute a legally binding agreement between David H. Sutherland & Co., Inc. (the "Company") and the buyer of the Company's product (the "Customer"). These Terms apply to any transaction pursuant to any sales order confirmation (the "SOC") the Company provides to the Customer. These Terms are subject to change at any time with prior notice to the Customer.

1. **Change Orders; Cancellations.** The Customer may change or cancel a SOC within forty-eight (48) hours of the Company's issuance of an associated sales order confirmation, provided that the products on the SOC or original sales quote are not non-cancellable/non-changeable special orders.
2. **Packaging.** Product(s) shall be preserved and packed in accordance with standard commercial practice.
  - a. **Outer Packaging Label:** The outer packaging label will provide information sufficient to meet any regulatory or product specification requirements.
  - b. **Product Packaging Label:** The product packaging label will be in compliance with product specification requirements.
3. **Temperature Control Items.** Product(s) will be packaged and shipped within the parameters of a Manufacturer's temperature control requirements.
4. **Shelf Life Products.** The Company passes through all shelf life parameters and expiration dates from the Manufacturer to the Customer. To the degree shelf life requirements stipulated in a SOC are longer and or broader than those offered by the Manufacturer, the Manufacturer's shelf life provisions shall prevail.
5. **Availability/Shipping.** All shipping dates are estimates rather than fixed dates. Due to the nature of its business, the Company cannot guarantee shipping or delivery dates to the Customer. The Customer may not make any claims against the Company based on a failure to ship or deliver product on any particular date.
6. **Title.** Title shall pass from the Company to the Customer when product is shipped from the Company's warehouse or otherwise specified point of origin, regardless of which party arranges and/or pays for the freight.
7. **Taxes.** Unless otherwise specified in writing, the sale price for goods does not include any applicable sales, uses, gross receipts, governmental, value added, or other taxes imposed. All such taxes, duties and/or service charges imposed are the Customer's sole responsibility. The Company shall pay no taxes on the Customer's behalf.
8. **Returns / Claims.** Products may not be returned to the Company without Company's prior written authorization. Customer may submit to the Company its claims for damages, shortages, or discrepancies in product quantity and or specification within thirty (30) days of the date of the related invoice. In its discretion the Company may issue a refund, credit of the amount paid, or replace any deficient products based on valid claims.
9. **No Warranty; Limitation of Liability.** COMPANY DOES NOT PROVIDE ANY WARRANTIES OF ANY KIND TO THE CUSTOMER. THE COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE PRODUCTS AND OR SERVICES IT SELLS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. MANUFACTURER WARRANTIES, INDEMNITIES OR REMEDIES PROVIDED TO THE COMPANY, IF AUTOMATICALLY TRANSFERABLE, WILL PASS THROUGH TO THE CUSTOMER. THE COMPANY'S LIABILITY TO THE CUSTOMER FOR ANY CLAIMS AGAINST IT SHALL BE LIMITED TO A REFUND OF THE PRICE PAID BY THE CUSTOMER TO THE COMPANY FOR ANY PRODUCTS OR SERVICES, WITHOUT ANY INTEREST, OR, REPLACEMENT OF ANY PRODUCTS OR SERVICES THAT ARE THE SUBJECT OF CUSTOMER'S CLAIM. IN NO EVENT SHALL THE COMPANY BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT DAMAGES, ARISING FROM THE COMPANY'S SALE OF ANY PRODUCT TO THE CUSTOMER, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO THE CUSTOMER, SOME OR ALL OF THE ABOVE DISCLAIMERS OR LIMITATIONS MAY NOT APPLY TO THAT CUSTOMER, AND THAT CUSTOMER MAY HAVE ADDITIONAL RIGHTS. IF THE CUSTOMER IS A CALIFORNIA RESIDENT, THE CUSTOMER WAIVES CALIFORNIA CIVIL CODE SECTION 1542, WHICH



SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

9.1 *PPG Aerospace - Deft Products: No Warranty/Limitation of Liability.* All PPG Aerospace - Deft Products ("PPG Products") include specific and unique warranty disclaimers and liability limitations which will be provided upon request. PPG Products include only a warrant as to the title to the PPG Products and that PPG Products shall meet the standard specifications for such PPG Products. THESE ARE THE ONLY REPRESENTATIONS OR WARRANTIES THAT PRC MAKES AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, UNDER STATUTE OR ARISING OTHERWISE IN LAW FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING, WITHOUT LIMITATION, THAT OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, ARE HEREBY DISCLAIMED. In the event that the PPG Products fails to conform to the warranties herein given, the written limited remedies will be provided upon request. The supplier of PPG Products shall not be liable in contract or in tort (including negligence of any kind or strict liability) or under any other theory or cause of action for special, direct, indirect, incidental or consequential damages such as, but not limited to, lost profits, or injury or damage caused to property or persons by reason of the possession, application or use of any PPG Products.

10. **Export/Import Controls; Regulatory Compliance; Foreign Corrupt Practices Act.** The Customer will comply fully at all times with all applicable laws, including those relating to obtaining licenses and other import certifications. Customer shall be solely responsible for any import-oriented documentation, duty and or tax relating to products and or services sold by the Company to the Customer.

10.1 *Export / Import Controls.* Customer shall not assist or engage in the diversion of products to any country to which the United States has embargoed or restricted the export of goods or services. Customer shall not to export or re-export products originating in the United States to any person or entity that has been prohibited from participating in United States export transactions by any federal agency of the United States government. Unless otherwise specified in writing, the Company or its agents will complete all export documentation.

10.2 *Regulatory Compliance.* The Company and the Customer shall comply with all applicable laws, regulations, rules, requirements or ordinances of all governmental authorities, including but not limited to ISO requirements, the U.S Department of State and Department of Commerce or their foreign equivalent(s), that are applicable to the use, re-use, manufacture, sale, distribution, transportation, exportation or importation of products and services.

10.3 *Foreign Corrupt Practices Act.* Customer represents and warrants that it shall comply with the U.S. Foreign Corrupt Practices Act and shall not offer, promise or give, directly or indirectly, through a third party or otherwise, anything of value to any government official, political party official or candidate, or any relative, business associate or employee thereof, for the purpose of obtaining or retaining any business involving the Company or its products.

Further, the Customer represents and warrants that it will comply fully with all Local, State, and Federal laws and regulations relating to bribery, corruption, and ethical business practices within the jurisdictions in which it operates and otherwise purchases or sells products.

11. **Assumption of Risk; Waiver and Release.** THE CUSTOMER VOLUNTARILY ASSUMES ALL RISK AND OR DANGER OF PROPERTY DAMAGE, INJURY, DEATH, AND ANY OTHER HAZARDS THAT MAY ARISE FROM THE CUSTOMER'S USE OF THE PRODUCTS PURCHASED FROM THE COMPANY. THE CUSTOMER HEREBY WAIVES ANY AND ALL CLAIMS AGAINST THE COMPANY, INCLUDING THOSE BASED ON NEGLIGENCE OR CONTRACT, AND RELEASES THE COMPANY FROM ANY AND ALL LIABILITY FOR ANY LOSS, DAMAGE, EXPENSE OR INJURY, INCLUDING DEATH, THAT THE CUSTOMER OR ITS EMPLOYEES, CONTRACTORS, REPRESENTATIVES OR ANY OTHER PERSON ASSOCIATED WITH THE CUSTOMER'S PRODUCTS MAY SUFFER AS A RESULT OF THE USE OF THOSE PRODUCTS OR SERVICES PURCHASED FROM THE COMPANY. WITH REGARD TO PPG – Deft PRODUCTS, SPECIFIC AND UNIQUE ASSUMPTIONS OF RISK, WAIVER AND RELEASE WILL BE PROVIDED UPON REQUEST.

12. **Indemnification.** The Customer shall defend, indemnify and hold the Company, its subsidiaries, and affiliates, and their respective officers, agents, managers, members, partners and employees, harmless from and against, any loss, damage, liability, claim, or



demand, including reasonable attorneys' fees and expenses, made by any third party due to or arising out their use of the products sold by the Company to the Customer.

13. **Entire Agreement.** These Terms constitute the entire agreement between the Company and the Customer and supersede all prior correspondence, negotiation and understandings between the parties with respect to it.
14. **Customer's Terms and Conditions Not Applicable.** These Terms are the only Terms that apply to this SOC. None of Customer's terms or conditions, including but not limited to those listed on the Customer's purchase orders, invoice, confirmations or other documents generated by the Customer ("Customer Documents") apply. If a contact is not earlier formed by mutual agreement in writing, acceptance by the Customer of any products or services shall be deemed acceptance by the Customer of these Terms.
15. **Compliance with Applicable Laws.** The Customer shall be in compliance with all applicable laws and regulations relating to the purchase and use of the products associated with its purchase order and DHSCO's associated SOC.
16. **Arbitration.** Any dispute between the Company and the Customer concerning these Terms shall be settled by arbitration before a single arbitrator, using the rules of commercial arbitration of the Arbitration Service of Portland. Arbitration shall occur in Portland, Oregon. The parties shall be entitled to conduct discovery in accordance with the Federal Rules of Civil Procedure, subject to limitation by the arbitrator to secure just and efficient resolution of the dispute. If the amount in controversy exceeds \$10,000.00, the arbitrator's decision shall include a statement specifying in reasonable detail the basis for and computation of the amount of the award, if any. A party substantially prevailing in the arbitration shall also be entitled to recover such amount for its costs and attorneys' fees incurred in connection with the arbitration as shall be determined by the arbitrator. Judgment upon the arbitration award may be entered in any court having jurisdiction. Nothing herein, however, shall prevent the Company from resort to a court of competent jurisdiction in those instances where injunctive relief may be appropriate, but the parties hereby agree that they have waived any rights to a jury trial for any reason.
17. **Governing Law.** These Terms shall be governed by Oregon Law.
18. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions.
19. **Waiver.** No failure to exercise any right, remedy, power or privilege under these Terms shall operate as or be construed as a waiver thereof.
20. **Interpretation.** These Terms and all related Customer Documents shall be interpreted in English. The Company recognizes that from time-to-time there may be communication with a Customer in a language other than English; it is understood that the non-English language is for convenience only.
21. **Force Majeure.** The Company shall not be liable to the Customer for any failure or delay in fulfilling any product or service delivery when such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; and (i) shortage of adequate power or transportation facilities.
22. **Third Party Beneficiaries.** These Terms are intended solely for the benefit of the Customer and the Company and shall create no rights or obligations enforceable by any third party, including creditors of the Company, except as otherwise provided by applicable law.
23. **Amendment.** These Terms may not be modified except by an amendment executed in writing between the Company and the Customer and appended to the SOC.