

# Diamond-MT, Inc.

## Terms and Conditions for Conformal Coating Services

### Prices and Quotes

All quotes for coating services are valid for ninety (90) days, unless otherwise stated in writing. List prices do not include shipping, crating, packaging, storage charges, in-transit insurance, sales and other taxes, local delivery, uncrating or installation. Prices are subject to review and may be updated by Diamond-MT, Inc. ("DMT") upon written notice to customer ("Customer"). Certificates of Compliance will be supplied upon written request.

### Acceptance

The Customer's order is being accepted by DMT on the condition that the Customer agrees to the terms and conditions contained herein ("Agreement") and the pricing and terms provided on the Quotation. The Customer's failure to object in writing to the terms and conditions of this Agreement either prior to the delivery to Customer of the goods serviced by DMT, or prior to the Customer's receipt of the confirmation of Customer's order from DMT, whichever event occurs first, shall constitute the Customer's agreement to all of the terms and conditions contained herein. The terms and conditions of this Agreement shall prevail over any conflicting terms and conditions contained in any order submitted by Customer.

Any modification of the terms and conditions contained herein will be effective only if it is in writing and signed by both DMT and the Customer.

### Description of Services

Upon acceptance of the Customer's order, DMT agrees to perform conformal coating services to goods provided to DMT by Customer for coating, as more fully described in the Quote attached herein. Unless otherwise provided for in the Quote, no modifications or alterations to the conformal standard coating specifications shall be made. Unless otherwise provided for in the Quote, DMT shall only provide Conformal coating services consistent with DMT's standard coating specifications. A copy of DMT's standard coating specifications shall be provided upon written request.

### Limited Express Warranty – For Conformal Coating Services Only

PLEASE READ THIS LIMITED EXPRESS WARRANTY CAREFULLY TO UNDERSTAND YOUR RIGHTS AND OBLIGATIONS!

THIS EXPRESS WARRANTY IS APPLICABLE ONLY TO COATING SERVICES DMT PROVIDES TO CUSTOMER.

THIS LIMITED EXPRESS WARRANTY IS THE ONLY WARRANTY APPLICABLE TO THE COATING SERVICES, AND WHERE ALLOWABLE BY LAW, REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.

Subject to the terms and conditions of this limited express warranty ("Limited Warranty"), DMT expressly warrants that it will recoat or otherwise correct any defects in workmanship by DMT in the Conformal coating services provided to Customer ("Coated Items"), for a period of

thirty (30) days starting from the date Customer receives the Coated Items (the "Warranty Period"). This Limited Warranty only covers any materials and labor needed to correct defects in materials or workmanship provided in the process of coating of the Coated Items by DMT for Customer. If the Quote provides that the coating applied by DMT shall meet with the specifications provided by the Customer to DMT, then DMT warrants that the coating applied by DMT to the Customer's parts shall meet with the specifications provided by Customer to DMT for the coating process. Otherwise, DMT shall only warrant that the coating applied by DMT shall meet with Diamond-MT's standard specifications. This Limited Warranty does **not** cover, and DMT is **not liable** for the Coated Items performing in any particular manner or for the Coated Items being suitable for any specific or intended use by Customer or by any other third party.

This Limited Warranty shall not apply, and DMT has no liability under this Limited Warranty, if:

1. Defects were discovered after the Warranty Period ends;
2. The Coated Items were modified, tampered with, repaired, or altered by Customer or anyone other than DMT; and/or
3. The Coated Items are damaged by Acts of God, power surge, misuse, abuse, negligence, accident, mishandling, misapplication, wear and tear, or other causes unrelated to defective parts and/or workmanship.

In order to obtain warranty service during the Warranty Period, the Customer must contact DMT during the Warranty Period to inform DMT of any defect(s) in workmanship of the Coated Items. The Customer may then send the Coated Items to DMT's facility in Johnstown, Pennsylvania, at the Customer's sole expense paid in advance; and if DMT determines that the Coated Items are covered under the Limited Warranty and that the work that needs to be performed on the Coated Items is covered by the Limited Warranty, then the Customer will be refunded the shipping charges incurred in sending the Coated Items to DMT's plant.

The Customer may also have DMT send an employee of DMT to the Customer to determine whether any defects in the Coated Items are covered under the Limited Warranty. The Customer must pay DMT's round-trip travel, lodging, and transportation expenses, and anticipated employees' labor charges for repairs, in advance of sending an employee of DMT to the Customer; but if DMT determines that the work needed to be performed on the Coated Items is covered by the Limited Warranty, then the Customer will be refunded for said round-trip travel, lodging, transportation, employees' labor charges, and expenses.

#### **Disclaimers of Implied Warranties**

TO THE FULLEST EXTENT ALLOWED BY LAW, THIS AGREEMENT EXPRESSLY EXCLUDES ALL IMPLIED WARRANTIES, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION: (a) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY; AND (b) ANY AND ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.

TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED UNDER APPLICABLE LAW, THE IMPLIED WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY, AND OTHER RIGHTS MAY EXIST AND MAY VARY FROM JURISDICTION TO JURISDICTION.

#### **Disclaimer of Liabilities**

TO THE FULLEST EXTENT ALLOWED BY LAW, UNDER NO CIRCUMSTANCES SHALL DMT, OR ANY OF DIAMOND-MT'S CURRENT OR FORMER OWNERS, OFFICERS, DIRECTORS, SHAREHOLDERS, SUCCESSORS, PREDECESSORS, AFFILIATES, PARENTS, DIVISIONS, SUBSIDIARIES, BRANCHES,

UNITS, PARTNERS, JOINT VENTURERS, CONTRACTORS, AGENTS AND ASSIGNS BE LIABLE FOR LOST REVENUE, PROFIT, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES UNDER OR ARISING FROM THIS AGREEMENT.

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, DMT SHALL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY AMOUNTS IN EXCESS OF THE AMOUNT CUSTOMER PAID FOR THE COATING SERVICES.

BECAUSE SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

### **Disclaimer of Liabilities Regarding Conformal Coating Removal**

Removal of conformal coating is an inherently dangerous process for the assembly, whether the removal is performed via abrasion or chemical. As a result of this inherent danger, the Customer by placing a purchase order with DMT for conformal coating removal service assumes all liabilities for damages caused as a direct result of assemblies going through the coating removal process. This includes but is not limited to; substrate, solder joints, labels, silkscreen or markings, molded components, connector bodies, pins and cups, flexible cables and wires, potting / epoxies or glues.

Coatings removal process will be considered complete when; all coating has been removed from substrate and major component(s) surfaces with minimal residues between close proximity surface mount components, connector leads, fine pitch leads in that Customer can successfully remove, rework / replace components without coating impeding rework and recoating assembly.

### **Insurance Requirements**

If the Customer is using or will use the Coated Items (including, but not limited to, any medical item, product, or device) that is to be implanted in humans or animals, then the Customer shall procure and maintain an insurance policy, at Customer's sole expense, at all times the Customer has possession or ownership of the Coated Items, the Customer is selling the Coated Items to a third party, and/or the Coated Items are under any type of warranty provided by Customer. Customer shall then be required to maintain the following types of insurance(s):

#### **A. Products Liability Insurance**

Customer shall have Products Liability Insurance Coverage with limits of not less than two million dollars (\$2,000,000) for each occurrence and two million dollars (\$2,000,000) annual aggregate. Any exclusions or amendments to the policy form must be disclosed to DMT. The policy shall specifically include DMT, its subsidiaries, and its directors, officers and employees, as additional named insured. The policy shall also specifically waive Customer's rights of subrogation against DMT, its subsidiaries, and its directors, officers, and employees.

#### **B. Miscellaneous**

All insurance companies must be authorized to do business in the states where business is being transacted covering all operations under this Agreement. All insurance policies shall provide for thirty days (30) days prior written notice to DMT of cancellation or non-renewal. All insurance companies must be rated "A" or better in the most recent *A.M. Best's Rating Guide*.

The Customer shall supply DMT with the above proof of insurance and forms as required prior to the Coated Items being delivered to Customer, but the failure of DMT to request or demand such proof or forms shall not waive DMT's rights to have Customer maintain insurance coverage under this Agreement. Copies of the required endorsements to the policies shall also be provided to DMT upon DMT's request.

### **Packaging**

Unless otherwise noted, it is standard procedure for DMT to return product(s) in the same container as received. Therefore, it is the Customer's sole responsibility to ship product in a package that is considered acceptable to protect the product during shipment and is reusable to return the product to the Customer after processing.

### **Crating, Shipping, Shipping Insurance, & Freight**

Crating, shipping, shipping insurance, and freight shall be paid by the Customer. Crating charges will be invoiced at cost of material and labor.

DMT may decide to ship merchandise via UPS or Fed Ex prepaid. Merchandise shipped via other carriers will be sent freight and in-transit insurance charges collect. If the Customer does not provide specific written instructions as to the method of shipment the Customer desires, then shipment will be DMT's default method (UPS Ground).

All prices quoted are FOB DMT's facility in Johnstown, PA, freight collect. This means that the Customer bears the freight charges and shall pay the freight charges to the carrier, title to the Coated Items transfers to the Customer once the Coated Items leaves DMT's facility, the Customer assumes all of the risk of transportation, and the Customer is responsible for filing any claims for loss and/or damage to the Coated Items once the Coated Items leave DMT's facility.

Unless the Customer advises DMT in writing, DMT reserves the right to make partial shipments, and invoices covering these partial shipments are to be paid by Customer as they are issued.

### **Changes to Customer's Order**

DMT is not required to accept requested order changes after the order has been accepted. However, reasonable changes will be considered, under the following conditions: 1) The request for change must be submitted in writing and received in time to be implemented, and 2) All changes may be subject to additional charges for material, labor, and administrative costs.

### **Cancellation**

Prior to shipment of the Coated Items by DMT to Customer, the Customer may cancel Customer's order upon written notice to Diamond-MT. The Customer shall then pay DMT a cancellation charge. Cancellation shall be implemented and based on the following criteria:

1. If the cancellation notice is received prior to DMT commencing the Conformal coating services, the cancellation charge shall be either the costs incurred and provided by DMT with a normal profit for work performed prior to DMT's receipt of the cancellation notice, or 20% of the total order price, whichever is greater;
2. If the cancellation notice is received after DMT commences the Conformal coating services, but before completed, the cancellation charge shall be either the costs incurred and provided by DMT with a normal profit for work performed prior to DMT's receipt of the cancellation notice, or 35% of the total order price, whichever is greater;

3. If the cancellation notice is received after DMT completes the Conformal coating services, the Customer shall forfeit any right to cancel their order, and Customer shall be liable for all charges under the order.

### **Tools & Fixtures**

Any special tools or fixtures used in the coating of the Coated Items ordered are considered the exclusive property of DMT. Payment by the Customer for tools and fixtures is due upon submission of satisfactory samples and invoices. Payment of charges by the Customer shall not convey ownership, right to use, or right of removal to the Customer.

### **Material and Design**

DMT reserves the right to make changes in design, construction, materials and dimensions of DMT's products, or discontinue products or services without prior notice. All dimensions and weights are to be considered approximate.

### **Ownership of Intellectual Property**

All of the intellectual property rights to any inventions, improvements, modifications, or ideas made or conceived by DMT, shall exclusively belong to DMT. DMT shall retain all of its intellectual property rights. This Agreement does not, and shall not be read or interpreted to, assign any intellectual property rights whatsoever to Customer. DMT does not assign, transfer, and/or confer any intellectual property rights to Customer.

All data ("Data" shall mean any and all data and records required to be made pursuant to the sale and/or services under this Agreement, including but not limited to all reports, specifications, drawings, models, engineering work, and the like, whether in written printed, graphic, video or audio form, or maintained in any computer database or computer readable form, which are a direct result of the sale and/or services provided by DMT) shall be the exclusive property of DMT. Any copyrightable work, whether published or unpublished, created by DMT in connection with or during the performance of any engineering work, sale and/or services by DMT, shall belong exclusively to DMT and all right, title and interest therein, including, without limitation, worldwide copyrights, shall be the exclusive property of DMT.

These provisions regarding ownership of intellectual property rights shall survive the termination of this Agreement.

### **Terms of Payment**

An invoice will be issued upon completion of the order, and final payment is due within DMT's standard payment terms. Standard payment terms are "Net 30", which indicates that full payment is expected within 30 days. Any offer at deviation from these terms will be entertained by DMT provided Customer notifies DMT in writing 30 days prior to commencement as well as accepts increased charges to offset payment delays. When an extended delivery is necessary, a 30% deposit is required with the order. If the balance due is not received within thirty-days (30) from the date of the invoice, the merchandise will be deemed delivered, and late fees will then be applied. A service charge of 10 percent per month will be assessed on all overdue invoices.

If delivery is delayed at the Customer's request beyond terms outlined in the order, DMT reserves the right to transfer the goods that are to be coated, or the Coated Items, to storage with the costs of transfer and storage to be charged to the Customer. The Customer shall bear all of the risk of loss or damage during such transfer and storage.

### **Force Majeure**

DMT shall not be liable for any failure or delay in its performance under this Agreement due to causes which are beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authority, fires, epidemics, floods, earthquakes, riots, wars, sabotage, labor shortages or disputes, strikes, lockouts or other labor difficulties, accidents, and/or governmental actions.

### **Indemnification**

Customer agrees to assume the defense of DMT, and to fully indemnify and to fully hold DMT harmless, in any legal proceeding naming DMT as a defendant when the legal proceeding involves allegations of:

1. The alleged willful misconduct or negligent acts or omissions of Customer's directors, officers, agents, or employees;
2. Customer's alleged defective specifications provided by Customer to DMT for the Coated Items;
3. Customer's alleged fraud, misleading statements, misrepresentations, or deceptive or unfair trade practices; and/or
4. Customer's alleged negligent or willful violation of the law.

Within fifteen (15) days of the proper service of any summons and complaint, DMT must promptly deliver to Customer and request in writing a defense and/or indemnification as provided herein. DMT and Customer agree to cooperate fully in the defense of such action, as Customer may reasonably require. DMT shall be entitled to retain counsel of its own choice, at the Customer's expense.

### **Jurisdiction, Governing Law, and Choice of Law**

Customer and DMT unconditionally consent and agree that the jurisdiction and venue of any dispute between the parties regarding the construction, interpretation, performance, and rights and remedies under this Agreement, or any breach or threatened breach thereof, shall be exclusively resolved in a binding arbitration proceeding within Cambria County, Pennsylvania.

The Agreement shall be deemed to have been made and accepted and is to be performed in Cambria County, Pennsylvania, and the construction, interpretation, performance, and rights and remedies under this Agreement shall be construed under and governed by the laws of the State of Pennsylvania, without regard to its internal choice of law rules.

### **Arbitration, Waiver of Trial by Jury**

DMT and Customer hereby waive, to the extent permitted by law, the right to trial by jury, and instead DMT and Customer unconditionally consent and agree that the jurisdiction and venue of any dispute between the parties regarding the construction, interpretation, performance, and rights and remedies under this Agreement, or any breach or threatened breach thereof, shall be submitted and be subject to, the exclusive jurisdiction of the American Arbitration Association ("AAA") for binding arbitration conducted under the AAA's Commercial Arbitration Rules then pertaining (available at [www.adr.org](http://www.adr.org)), except as modified herein with respect to discovery, with a single neutral arbitrator. The arbitrator shall be selected within 30 business days from the date a party receives a demand for arbitration. The arbitration shall take place in Cambria County, Commonwealth of Pennsylvania, and the arbitrator shall apply Pennsylvania law (enforcement of this arbitration provision shall also be governed by Pennsylvania law). Prior to the commencement of arbitration, emergency relief is available from any court to avoid irreparable harm.

Each party shall initially pay all of their respective arbitrator's and arbitration fees and all other costs unique to the arbitration; however, the prevailing party shall be entitled to its reasonable attorney's fees incurred therewith and to be reimbursed for its share of arbitration and arbitrator's fees, costs, and expenses.

Each party shall be entitled to discovery of essential facts, documents and witnesses. Each party shall have

the right to take depositions and to obtain additional discovery regarding the subject matter of the arbitration, and, use and exercise all of the same rights, remedies, and procedures, and be subject to all the same duties, liabilities, and obligations in said arbitration as they would otherwise be entitled to in accordance with Pennsylvania law.

The arbitrator shall have all the powers vested in a judge of the Superior Court of Pennsylvania, including the power to award provisional and equitable remedies.

**THE ARBITRATOR SHALL NOT AWARD EITHER PARTY PUNITIVE, EXEMPLARY, INCIDENTAL, MULTIPLIED OR CONSEQUENTIAL DAMAGES.**

#### **Notices**

Any notice delivered to a party pursuant to this Agreement must be in writing and delivered personally or will be deemed to be delivered when deposited in the U.S. Mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the Party at the address indicated below, or at such other address that may have been specified by written notice delivered in accordance with this provision:

#### **If to DMT:**

**Diamond-MT, Inc.**  
213 Chestnut Street  
Johnstown, PA 15906  
Attention: Melvin Popovich  
With a copy to: Sean Horn

#### **If to Customer:**

To Customer or  
Customer's  
agent, last  
known address

#### **Attorney's Fees**

If any legal action or any arbitration or other proceeding is brought for the enforcement or interpretation of this Agreement, or because of an alleged dispute, breach, threatened breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover their reasonable attorney's fees and other costs incurred in that action or proceeding, including arbitrator's fees and arbitration fees and expenses, in addition to any other relief to which it or they may be entitled.

#### **Remedies**

In the event of a breach or attempted breach of this Agreement, a party shall be entitled to all injunctive and equitable relief available to that party to enjoin the other party's breach or possible future breach, in addition to all remedies available to the party at law. All remedies hereunder shall be cumulative.

#### **Severability**

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, that provision will be removed from this Agreement and this Agreement will be interpreted and enforced as if the illegal, invalid, or unenforceable provision had never been a part of this Agreement and the remaining provisions will remain in effect and will not be affected by the illegal, invalid or unenforceable provision or its removal. Instead of the illegal, invalid or unenforceable provision, there will be added, as part of this Agreement, a provision as similar in terms to the illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable.

**Entire Agreement**

This Agreement is the entire understanding of the parties, and supersedes all prior agreements or understandings, whether written or oral, with respect to this subject matter. No terms, conditions, or warranties, other than those written in this Agreement, and no amendments or modifications of this Agreement will be binding on the parties unless in writing and signed by the parties.