



TERMS AND CONDITIONS | PRODUCT WARRANTY

1. **PRICES** – As used herein, Seller shall mean the Engineered Solutions Group of Shurtape Technologies, LLC, of Hickory, NC, USA, and Buyer shall mean the person or entity purchasing, ordering, or otherwise acquiring goods or services from Seller under this contract. Prices are based upon costs to Seller as of the date of this contract from Seller's customary sources of raw materials and energy.
 - a. Prices are subject to change without notice and orders will be billed at prevailing prices as of the time of shipment. Any unfilled portion of this contract may be subject to increase to the extent of added costs to Seller for raw materials and energy, or to the extent of added costs caused by governmental action or legislation. The amount of any such increase as computed by Seller shall be binding upon Buyer except for clerical or mathematical errors.
 - b. Prices are subject to all federal, state and local taxes and these charges will be billed to or assumed by the Buyer.
 - c. Prices are stated in United States dollars (USD).
2. **ACCEPTANCE OF ORDERS** - All orders are subject to acceptance by Seller. Seller reserves the right to over-ship or under-ship by 10% on all purchases and to adjust roll quantities up to the nearest full case. Delivery or tender of a quantity which does not vary more than 10% of the contract amount shall constitute performance under this contract, and payment shall be made on the actual amount invoiced. Contract coating services are subject to +/- 20% of full quantity of material supplied by or on behalf of Buyer.
3. **LEAD TIMES** – Lead times are determined on a product-by-product basis and are subject to variation. Unless otherwise specified by Seller in writing, lead times are confirmed at the time of order receipt. Lead times for Buyer-supplied materials may be longer depending on when Seller physically receives such materials.
4. **CANCELLATION OF ORDERS** - Cancellations will be allowed only (a) for **non-custom items**, if notification is received prior to the processing of the order by Seller, or (b) for **custom items**, prior to the purchase by Seller of raw materials. Cancellations are valid only if confirmed in writing by an authorized Seller representative. **Specialty orders** are non-cancellable and non-returnable.
5. **PAYMENT** - Payment terms for orders to be delivered within the continental US are Net 30 days. All invoices are payable in USD. No discounts may be taken unless specified on the face of this contract. On any invoice not paid by its maturity date, Buyer shall pay a service charge of one and one-half percent (1.5%) per month or portion thereof from the maturity date of said invoice, but in no event shall said service charge exceed the maximum lawful interest rate applicable. Any check or remittance received from or for the account of Buyer may be accepted and applied by Seller or its factor against any indebtedness or obligation owing by Buyer, as shown by the books and records of Seller or its factor, without prejudice to or the discharge of the remainder of any such indebtedness or obligation, regardless of any condition, provision, statement, legend or notation appearing on, referring to, or accompanying such check or remittance. For payment terms for delivery outside the continental US, contact Shurtape.
6. **CREDIT AND DEFAULT** - Seller or its factor may, at any time and from time to time, in its sole discretion limit, alter or cancel the credit of Buyer and, as a consequence, may declare payment due immediately in cash before delivery on any unfilled portion of this contract. By placing an order, Buyer represents and warrants to Seller that it is solvent at the time this contract is made and Buyer hereby makes a continuing representation and warranty of its solvency at the time of each tender of delivery or delivery hereunder. Approval of credit for one or more installments, by partial deliveries or tenders thereof, under this contract shall not be deemed a waiver of the provisions of this paragraph. Upon failure of Buyer to make payment to Seller or Seller's factor when due, or in the event of any default, breach or repudiation by Buyer of this or any other contract with Seller, or if Buyer shall become insolvent, call a meeting of its creditors, or make a general assignment for the benefit of its creditors, or if a bankruptcy, insolvency, reorganization or arrangement proceeding shall be commenced by or against Buyer, Seller may:
 - a. cancel this and/or any other contracts or any part thereof with Buyer and Buyer shall remain liable for damages;
 - b. defer any shipments or other tenders hereunder;
 - c. declare forthwith due and payable all outstanding invoices to Buyer under this or any other contract;
 - d. obtain damages from Buyer, including Buyer's overhead and cost of resale or disposal, including costs of sale and overhead
7. **SECURITY INTEREST; BILL AND HOLD** - Buyer hereby grants Seller a continuing security interest in all goods at any time in the possession, custody or control of Seller, or of any parent, subsidiary or affiliate of Seller, held for Buyer including without limitation goods covered by bill and hold invoices, whether paid for or not. This security interest shall secure Seller for all existing or future obligations of Buyer to Seller, however arising, and may at Seller's option be set off against any and all obligations of Buyer. Buyer agrees that any act on its part, either to sell, hypothecate or otherwise dispose of any interest in any goods described in this or any other contract with Seller, which are in the possession, custody or control of Seller, or any act on Buyer's part to buy or acquire any interest in any goods in the possession, custody or control of Seller described in any contract of Seller with any third party, without, in each case, receiving Seller's written release, shall constitute a violation of and interference with Seller's security interest established by this and/or any other such contract. The provisions of this clause shall survive performance by the parties of all other terms of this contract. Buyer authorizes Seller to release to public warehouse, with all freight, storage, and other charges for account of Buyer, all billed and held goods, and Buyer agrees to indemnify and hold Seller harmless from all claims or causes of action asserted against Seller after such goods have been released. All goods billed and held for Buyer's account are held at Buyer's risk or loss or damage from theft or casualty, including sprinkler damage. Buyer should provide its own insurance coverage on goods billed and held under this contract. Buyer authorizes Seller as its attorney to execute and file on Buyer's behalf all documents Seller deems necessary to perfect such security interest.
8. **SELLER'S REMEDIES** - All rights and remedies of Seller under this contract shall be in addition to all other rights and remedies of Seller under any other contract under the Uniform Commercial Code and other applicable law, all of which rights and remedies shall be nonexclusive and cumulative and may be exercised or asserted as Seller shall elect.
9. **FREIGHT & DELIVERY** - Terms are Free Carrier (FCA) Seller warehouse, 2020 Incoterms.
 - a. Shipments will be made as nearly as practicable in accordance with dates specified in Seller's acceptance of order, subject to causes beyond Seller's control.
 - b. The acceptance of shipment by a common carrier or delivery person, the allocation of goods to Buyer, or the mailing of an invoice by Seller to Buyer, shall constitute tender of delivery and performance by Seller. Thereupon, title and risk of loss shall pass to Buyer subject to (i) Seller's rights under Article 2 of the Uniform Commercial Code, including but not limited to the rights to withhold or refuse delivery, stop in transit and/or reclaim, and (ii) Seller's security interest in property in the possession, custody or control of Seller in accordance with Item 3 above. Buyer shall be responsible for insuring the goods upon delivery to the common carrier. With respect to goods for which payment is to be made on or before delivery or tender, title passes only upon receipt of full payment in the instance of goods held subject to Buyer's instructions, or in the case where Seller has failed to supply shipping instructions, or in the case where Seller pursuant to this contract determines that any part of the goods and Buyer agrees to make payment at the maturity of the invoice so rendered. Goods invoiced and held at any location, for whatever reason, shall be at Buyer's risk and expense and Seller may charge storage at prevailing rates.
 - c. Installments shall be accepted by Buyer and paid for at contract prices and terms. All samples furnished may be billed to Buyer at contract price. Delay in delivering samples or any sample requirements shall not constitute a breach of this contract. Any defect in quality or delay in performance by Seller shall not affect the balance of this contract. Any installment of goods not in dispute shall be paid for on the due date as provided in this contract, without offset, defense or counterclaim and regardless of controversies relating to other goods. Where Buyer has declared or manifested an intention that it will not accept goods in accordance with the provisions of this contract no tender shall be necessary, but Seller may, at its option, give notice in writing to Buyer that Seller is ready and willing to perform in accordance with this contract and such notice shall constitute valid tender of delivery and performance by Seller.
 - d. Seller shall not be liable if any aspect of performance by Seller under this contract is delayed or prevented due to casualty, accident, labor disturbance, embargo, lack of shipping facilities, delay or inability to obtain supplies, labor, raw materials or energy through Seller's usual and regular sources, fires, floods, war, government requests, requirements or regulations or by Seller's acceptance of government contract or subcontracts, Act of God, or any cause or circumstance whatsoever, whether like or unlike the foregoing, beyond Seller's control. In such event, Seller may, in its discretion:
 - (i) extend Seller's time for performance for a time which is reasonable under all of the circumstances; (ii) cancel all or any portion of this and any

other contract with Buyer; or (iii) apportion Seller's available supply among its customers in any reasonable manner if embargo or lack of shipping facilities prevents or delays shipment of any goods ready for shipment. Seller may immediately invoice the goods, at which time title to the goods shall pass to Buyer, subject to Seller's right referred to herein, and Seller shall hold the goods for the account of Buyer, who shall pay the invoices rendered when due. Buyer shall not be entitled to damages for late delivery or nonperformance unless Buyer actually purchases the same merchandise elsewhere at a higher price, which is the fair market price.

10. LIABILITY FOR FRAUDULENT ORDERS - Buyer is solely responsible for confirming the validity of an order, the ship-to location, and the authenticity of a drop ship end-user prior to placing the order with Shurtape and after receipt of confirmation from Seller. Shurtape has no responsibility for confirming the terms of an order and no liability for losses sustained by a distributor as a result of a fraudulent order. Distributor is responsible for confirming the validity of drop ship locations and end users.

11. WARRANTY; EXCLUSION OF WARRANTIES –

- a. SELLER WARRANTS PRODUCTS TO BE FREE OF DEFECTS FOR THE SHELF LIFE SPECIFIED ON THE APPLICABLE CERTIFICATE OF ANALYSIS OR IN THE SPECIFIC PRODUCT INFORMATION. SELLER'S RESPONSIBILITY FOR ANY CLAIM UNDER THIS WARRANTY SHALL BE LIMITED TO REPLACEMENT OF THE NON-CONFORMING DEFECTIVE PRODUCT OR, AT SELLER'S OPTION, REIMBURSEMENT OF THE PURCHASE PRICE, PROVIDED THE CLAIM IS MADE WITHIN THE APPLICABLE SHELF LIFE. ONLY PRODUCT RETURNED TO SELLER WITHIN THE APPLICABLE SHELF LIFE IN CONDITION SUITABLE FOR INSPECTION AND TESTING, AND FOUND BY SELLER TO BE NON-CONFORMING OR DEFECTIVE, SHALL BE ELIGIBLE FOR THIS WARRANTY.
- b. PRODUCT LITERATURE, SPECIFICATIONS, PRODUCT AND TEST REPORTS, AND OTHER SELLER MATERIAL AND INFORMATION ARE BASED ON DATA AVAILABLE TO SELLER AND ARE BELIEVED TO BE CORRECT AND RELIABLE, BUT DO NOT CONSTITUTE A GUARANTEE OR LEGAL REPRESENTATION AND CONSTITUTE NO PART OF THIS WARRANTY, WHICH IS EXCLUSIVELY AND STRICTLY LIMITED AS STATED HEREIN.
- c. SELLER NEITHER MAKES, NOR AUTHORIZES, NOR SHALL BE BOUND BY ANY OTHER WARRANTY OR CONDITIONS, EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OR ANY WARRANTY ARISING OUT OF CUSTOM, USAGE IN TRADE, OR COURSE OF DEALING. BUYER AGREES THAT IT SHALL BE SOLELY RESPONSIBLE FOR DETERMINING THE SUITABILITY OF THE GOODS FOR ANY PARTICULAR PURPOSE OR USE.
- d. NO AGENT OR REPRESENTATIVE IS AUTHORIZED TO GIVE ANY WARRANTY OR GUARANTEE OR MAKE ANY STATEMENT OR REPRESENTATION CONTRARY TO OR INCONSISTENT WITH THE FOREGOING.

12. CLAIMS -

- a. All claims of any kind, nature or description are barred and waived unless made in writing, and Buyer shall be deemed to have accepted the goods and its right to cancel, reject, claim damages or take any action at law or in equity shall expire unless Buyer's written and particularized claim is received by Seller within forty-five (45) days from date of delivery of the goods.
- b. The limit of Seller's liability for defective goods shall be the difference, if any, in value on the contract date for performance between the goods specified and the goods actually tendered or delivered. The limit of liability of Seller for late performance or nonperformance shall be the difference, if any, between the contract price and the fair market value on the contract date for delivery of the goods in question.
- c. Notwithstanding the foregoing or any other provision herein or in any other contract, purchase order, invoice or other document of Buyer, or Seller, Seller's liability shall not exceed the purchase price of goods actually paid by Buyer and under no circumstances shall Buyer be entitled to claim or receive any consequential, indirect and/or special damages of any nature, in tort, contract or otherwise, including loss or inability of use, lost opportunity or loss of profit on contemplated use or profit of any description.
- d. Notwithstanding any other provision herein and in any contract, purchase order, invoice or other document of Buyer or Seller, Seller, including its agents, representatives or otherwise shall not have, and does not accept, assume or undertake, any responsibility or liability to indemnify, defend, save or hold harmless Buyer or any other person, firm or party from or against any loss, damage or injury, regardless of any language by which such acceptance, assumption or undertaking purports to be expressed or implied. Buyer agrees to save Seller harmless and indemnify it against any claims of third persons for injuries or damages resulting in whole or in part from fault of Buyer in the use of the goods covered by this contract or in the manufacture, sale or use of any product made from the goods covered with this contract.

13. RETURN POLICY - Only non-custom products are eligible for return. Non-custom merchandise shall not be returned without proper authorization from Seller. Seller must assign a return authorization number and the authorization number must be clearly marked on the merchandise to be returned. Seller is under no obligation to accept returns of non-defective merchandise, but may do so at its discretion within 30 days of purchase. Returns accepted for tape that is non-defective will be charged a 15% restocking fee. Returns made without an authorization number may be refused or charged a restocking fee of up to 30%.

14. PATENTS - Seller, at its option, may cancel this or other contracts with Buyer for the sale of any goods, the manufacture, sale or use of which, in Seller's opinion, infringes any patent under which Seller is not licensed. Buyer agrees to hold Seller harmless against all damages and expenses arising from claims for infringement of patent rights on goods specifically produced at Buyer's request and against all damages or expenses arising from any infringement or from any misuse of any trade name, trademark, symbol, identification of material content or other labeling used by Seller at Buyer's instructions.

15. TECHNICAL ADVICE - Seller may, upon Buyer's request, furnish technical advice, without charge, with respect to the goods sold hereunder to the extent that Seller has such advice conveniently available. However, it is expressly understood by Buyer that Seller is under no obligation to furnish technical advice and it is further understood by Buyer that such advice is given by Seller and accepted by Buyer at Buyer's sole risk. Under no circumstances shall Seller be responsible to Buyer or liable for the advice or assistance given or the results thereof.

16. BUYER REQUIRED TEST METHODS - Any test methods, standards, requirements, or criteria supplied, requested, specified, or required by Buyer may, at Buyer's request or requirement, be listed by Seller on the applicable Certificate of Analysis solely as reference data for Buyer's convenience. Buyer is solely responsible for determining the suitability, adequacy, accuracy, applicability, interpretation, and use of any such Buyer-supplied, Buyer-requested, or Buyer-required test methods, standards, requirements, or criteria. Seller makes no representation, warranty, guarantee, condition, or legal representation regarding the same, and Seller shall have no liability or responsibility for any claim, loss, damage, or expense arising out of or relating to the selection, suitability, performance, results, interpretation, reliance upon, or use of any such test methods, standards, requirements, criteria, or reference data.

17. PRODUCT MATERIAL CHANGES – It may become necessary for Seller to make changes to product materials. Such material changes will be technically equivalent in fit form and function and will meet the stated performance criteria as shown on the current Shurtape Technical Data Sheet. For any such product material changes, Seller will notify Buyer in writing of the change and Buyer will have thirty (30) days to acknowledge and accept the change. If Seller does not receive Buyer's approval within sixty (60) days, the change will be deemed accepted by Buyer.

18. NOTICES - All communications provided for hereunder shall be in writing and if to Seller, mailed or delivered to Seller at the address stated on the face hereof, or to such other address as Seller may designate, or if to Buyer, mailed or delivered to Buyer at its address designated on the face of this contract or at such other address as Buyer may hereafter designate.

19. CHANGES - This contract contains all of the terms and conditions of the contract between Buyer and Seller. It may not be altered or modified by Buyer except in writing, signed by Seller. No waiver by either party of any default shall be deemed a waiver of any subsequent default. There are no options, warranties or conditions, express or implied, statutory or otherwise except those herein specifically contained.

20. ASSIGNMENT - No rights of Buyer under or arising out of this contract may be assigned without the express written consent of Seller.

21.

LIMITATION OF ACTIONS

- Any action for any loss or damage with respect to the goods covered under this contract must be commenced by Buyer within one year after delivery or, in the case of non-delivery, within one (1) year after the earlier to occur of notice from Seller of non-delivery or the delivery date specified in the Purchase Order.
22.

GOVERNING LAW

- This contract shall be governed by, construed, and enforced in accordance with the laws of the State of North Carolina.
23.

SEVERANCE

- In the event that any provision of this contract is found void or unenforceable, such provision shall be deemed severed from this contract and this contract shall otherwise remain in full force and effect as though such void or unenforceable provision had never existed in this document.
24.

ARBITRATION

- Any dispute arising hereunder shall be resolved by arbitration in Charlotte, North Carolina, pursuant to the rules of the American Arbitration Association. Buyer agrees that this is the sole method and venue for resolving disputes under this agreement.

SHURTAPE TECHNOLOGIES
ENGINEERED SOLUTIONS GROUP

US, Engineered Solutions Headquarters
Shurtape Technologies, LLC
Engineered Solutions Group
29 Industrial Park Road
New Hartford, CT 06057 USA
Phone (828) 315-7700
Toll Free (844) 843-2238
Fax (860) 738-6590

Distribution Center
Shurtape Technologies, LLC
3422 Catawba Industrial Place
Catawba, NC 28609 USA
Phone (828) 322-2700
Toll Free (800) 624-6466
Fax (828) 241-3216