



**TERMS AND CONDITIONS FOR RX ORDERS : REV 10/25/2011**

Opticote, Inc., an Illinois corporation ("**Opticote**") agrees to provide to Customer and Customer agrees to purchase and accept from Opticote, a coating application (the "**Coating Application**") to be applied to material substrates provided by Customer to Opticote ("**Customer Provided Materials**"), subject to these Terms and Conditions contained herein. The Coating Application and the Customer Provided Materials together shall be referred to as the "**Coated Materials**".

**GENERAL.** These Terms and Conditions supersede all prior and contemporaneous oral and written representations, warranties, communications and agreements regarding the Coated Materials. Acceptance by Opticote of any order or purchase order from Customer is expressly conditioned upon Customer's acceptance of all of these Terms and Conditions, which may not be changed, modified, waived or cancelled, except in a writing signed by Opticote. Any additional, inconsistent or different terms, conditions or provisions contained in Customer's order, purchase order or other documents shall be of no force or effect whatsoever. No course of prior dealings between Customer and Opticote and no usage, custom or practice of the trade shall supplement or modify any of these Terms and Conditions.

**SHIPMENT AND DELIVERY.** Shipment and delivery dates for the Coated Materials is not guaranteed by Opticote and Opticote shall not be liable for any losses, damages or penalties arising from delay in shipment or delivery or failure to give notice of such delay. Outbound shipping will be sent via the shipping method selected by the Customer. UPS Ground is the default for ground transportation/UPS SAVER is the default for overnight air service unless otherwise requested by Customer. All shipping charges are subject to change without notice to Customer. FedEx or UPS charges imposed upon Opticote for improper packaging or unauthorized shipping charges will be passed through to Customer. All Coated Materials will be packed for delivery to Customer in accordance with Customer's instructions.

**RISK OF LOSS.** Risk of loss shall pass to Customer when the Coated Materials are delivered to the carrier chosen by Customer. All shipments are F.O.B. carrier. Opticote disclaims and assumes no liability with shipment once the Coated Materials are delivered to the carrier and all claims by Customer must be against the carrier. Customer shall be responsible for all freight, shipping, insurance and similar costs and expenses.

**CANCELLATION.** Opticote may terminate, cancel or refuse to fill any order or purchase order from Customer at any time upon notice to Customer.

**INSPECTION BY CUSTOMER.** Customer shall, at its own expense, promptly inspect the Coated Materials and notify Opticote of any alleged unsatisfactory or non-conforming Coated Materials within three (3) calendar days of delivery or Customer will be deemed to have accepted the Coated Materials in the condition received.

**TITLE/SECURITY INTEREST.** Opticote retains title to the Coated Materials until the purchase price has been paid in full by Customer.

**PAYMENT TERMS.** All shipments are accompanied by a packing invoice which itemizes all coating work shipped. Prices are subject to change without advance notice. Payment must be made within 10 days after the end of the month to receive any available discounts and shipping allowances. Accounts unpaid after 30 days from statement may be subject to a 1.5 % finance charge per month or partial month, or the maximum charge allowable by law. Coating Applications for Customers with a statement 60 days past due will be placed on CREDIT HOLD until past due amount is paid in full or will be shipped COD for the entire balance. A minimum charge of \$50.00 will be made for any checks returned for insufficient funds. Customer cannot set-off, offset or contra any amounts due Opticote for any reason, including, without limitation, Customer's belief it is entitled to credit for alleged unsatisfactory or non-conforming Coated Materials. All Payments shall be made in US Dollars. For the convenience of its Customers, Opticote offers payment by telephone using an acceptable credit card. A convenience fee of 4% of the amount due will be added to any payment of \$250.00 or more if the Customer pays by credit card.

**TAXES AND CUSTOMS.** The prices for Coating Application do not include taxes, duties, levies and related charges or similar costs, including, without limitation, any value added taxes (collectively, "**Taxes**"). Customer will be responsible for and will reimburse Opticote for all Taxes (excluding US income taxes) and all expenses related to any importation and exportation of the Coated Materials.



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**METHOD AND MANNER OF WORK.** Opticote shall not be obligated to disclose the manner or method of its work to the Customer and the Customer specifically acknowledges that the manner, methods and other know-how employed in the Coating Application process are, and shall remain, the sole property and trade secret of Opticote. Additionally, Customer acknowledges and agrees any Coating Application or deliverables are not "works made for hire" and Opticote asserts all "moral rights" to any Coating Application or deliverables and Opticote has not and shall not assign or transfer to Customer any worldwide right or title or interest to the Coating Application process.

**CONFIDENTIALITY.** "Confidential Information" means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation documents and equipment) that is either marked "confidential" or "proprietary" or would reasonably be assumed to be confidential based on its content or the context surrounding its disclosure. Confidential Information does not include information that: (a) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (b) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (c) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure; (d) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; or (e) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession. Each party will not use the other party's Confidential Information and will not disclose such Confidential Information to any third party outside the scope of this Agreement. Each party will use all reasonable efforts to maintain the confidentiality of all such Confidential Information in its possession or control, but in no event less than the efforts that such party ordinarily uses with respect to its own proprietary information of similar nature and importance. The foregoing obligations will not restrict either party from disclosing Confidential Information of the other party: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body of any jurisdiction, provided that the party required to make such a disclosure gives reasonable notice to the other party to contest such order or requirement; and (b) on a confidential basis to its affiliates or its legal or financial advisors.

**COATING WARRANTY.**

- All Opticote coatings are warranted against defective coatings for the life of an average lens, not to exceed one (1) year, from the original coating date. Normal wear and tear shall not be considered a defect nor shall Customer or patient abuse.
- All lenses must be returned along with at least the following: original bar code or patients name/tray number with date of coating sufficient to identify the original bar code, for warranty to be valid.
- Defective coatings will be stripped and re-coated at no charge. Opticote is not responsible for the cost of the lenses damaged in the normal stripping process. This is the only warranty available for defective coatings.
- The life of anti-reflective coatings on lenses without a hard-coat is significantly less than average.
- Shipping charges apply on all warranty coatings.
- Stripping and or tinting of hi-index and polycarbonate lenses is done at the Customers risk.

**Lens Breakage In Processing:**

- Lenses damaged by Opticote during processing will be vouchered per stated voucher schedule which is available upon request and subject to change without notice.
- Voucher coating envelopes will be issued based upon lens material and type.
- Vouchers are worth a value of \$18.00 and are redeemable for either one Illusion AR, one standard solid mirror coating (silver, gold, or blue) without backside AR. They also may be used towards a greater purchase, maximum credit will not exceed \$18.00 per coating job.
- All vouchers may be used at Customer's discretion and are valid for six (6) months from issue date.

**Custom Coating Changes & Remakes:**

Contact Opticote's sales department or customer service department for current prices of changes and remakes.

- Doctors changes up to ninety (90) days from original invoice.
- Half-pair replacements and matching half-pairs.

**LIMITATION OF LIABILITY.** Notwithstanding anything in any order, purchase order or document to the contrary, Customer acknowledges and agrees Opticote shall not be liable for any indirect, special or consequential damages (including loss of profits) of any kind even if advised of the possibility of such damages. Additionally, for a period of one (1) year from the date of delivery of the Coated Materials, Customer acknowledges and agrees Opticote's



**total liability for any and all acts or omissions related to the Coating Application shall be limited to a re-application of Opticote's Coating Application. The cost of shipping shall be borne by the Customer at all times. This limitation of liability applies to the Customer and Customer's clients or customers and anyone who is damaged or had to pay expenses of any kind because of acts and/or omissions in the Coated Application process or the Coated Materials. This limitation of liability is binding on Customer and Customer's heirs, principals, assigns and anyone else who may otherwise make a claim relating to the Coating Application provided by Opticote. Customer assumes the risk of all losses greater than the fee paid for the Coating Application.**

NON-SOLICITATION OF EMPLOYEES. Customer agrees to not, directly or indirectly, hire or engage, or arrange for or attempt to arrange for or persuade any other person to hire or engage, any employee or consultant of Opticote while such employee or consultant is employed or engaged by Opticote and for a period of one (1) year after the termination of such person's employment or engagement by Opticote, including without limitation, engaging such employee or consultant or former employee or consultant as an independent contractor or as an employee or consultant of any person other than Opticote or any affiliate of Opticote. In addition to all other remedies available to Opticote for breach of this provision, because the parties acknowledge the difficulty of calculating actual damages for breach of this provision, Customer agrees to pay Opticote, as liquidated damages and not as a penalty, the sum of One Hundred Thousand and no/100 Dollars (\$100,000.00) for each employee or consultant hired directly or indirectly by Customer or any other person at Customer's direction, in violation of this paragraph.

NOTICES. Any and all notices, service of process, demands, directions, requests, consents, approvals, designations, waivers and other communications required or desired hereunder shall be in writing and shall be deemed effective upon personal delivery or three (3) days after deposit with a generally recognized international delivery service that maintains records of the time and place to Opticote at 10455 Seymour Avenue, Franklin Park, Illinois 60131 or to Customer at the billing address set forth on the Customer's credit application, or such other person or address as Opticote or Customer may hereafter specify in like manner.

ATTORNEYS FEES AND COSTS. Customer will be liable for and pay to Opticote, upon demand, a sum equal to all attorney's fees, court costs and expenses incurred by Opticote as a result of Customer's breach or default of these Terms and Conditions, including, without limitation, Customer's failure to fully and timely pay the purchase price for Coating Application.

SEVERABILITY. If any provision of these Terms and Conditions is held to be invalid or unenforceable by a court of competent jurisdiction, such provision will be severed herefrom and such invalidity or unenforceability will not affect any other provision of these Terms and Conditions, the balance of which will remain in and have their intended full force and effect; provided, however, if such invalid or unenforceable provision may be modified so as to be valid and enforceable as a matter of law, such provision will be deemed to have been modified so as to be valid and enforceable to the maximum extent permitted by law.

WAIVER. No waiver by Opticote of any breach or default of Customer or any right or remedy which Opticote may have pursuant to these Terms and Conditions, at law, in equity or otherwise, will be effective unless in writing and signed by Opticote. No waiver on any one occasion will constitute a waiver of such or any similar or other breach or default on any future occasion or any other right or remedy Opticote may have.

ASSIGNMENT. This agreement may not be assigned by Customer, in whole or in part, without the prior consent of Opticote, which consent may be withheld or refused for any or no reason whatsoever; Opticote may assign this agreement upon notice to, but without the consent of, Customer.

GOVERNING LAW & VENUE. This agreement and these Terms and Conditions will be construed and interpreted in accordance with the laws of the State of Illinois, United States of America regardless of whether the principles of conflicts of law would require the application of the laws of a different nation, state or jurisdiction. Opticote and Customer each irrevocably agree and hereby consent and submit to the non-exclusive jurisdiction of the Circuit Court of Cook County, State of Illinois, and the United States District Court for the Northern District of Illinois with regard to any actions or proceedings arising from, relating to or in connection with the Coating Application and/or the Coated Materials, including, without limitation, Customer's failure to pay the purchase price therefor. Opticote and Customer each hereby waive their respective right to transfer or change the venue of any litigation filed in the Circuit Court of Cook County, Illinois or the United States District Court for the Northern District of Illinois. The United Nations Convention on Contracts for International Sales of Goods shall not apply to this Agreement.

HEADINGS. Any captions to, or headings of, the paragraphs or subparagraphs of these Terms and Conditions are solely for the convenience of the parties, are not a part of this agreement, and shall not be used for the interpretation or determination of the validity of this agreement or any provision hereof.

**WAIVER OF JURY TRIAL. OPTICOTE AND CUSTOMER EACH VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY IN ANY LITIGATION WITH REGARD TO THE COATING APPLICATION AND/OR COATED MATERIALS, INCLUDING, WITHOUT LIMITATION, CUSTOMER'S FAILURE TO PAY THE PURCHASE PRICE THEREFOR.**

