

## CUSTOMER APPLICATION TERMS AND CONDITIONS

### 1. Application.

These Customer Application Terms and Conditions (“Terms and Conditions”) apply to PolyGuard UV™ and other coating product(s) (as applicable, the “Coating”), produced by PolyAll Roof Coatings, LLC, a Michigan, USA limited liability company (“PolyAll”), that was purchased by or for a person or entity (the “Customer”) that owns a building on which the Coating has been or will be applied (the “Building”). The Customer and the party that purchased the Coating for or on behalf of the Customer (the “Contractor”) shall be deemed to have accepted and agreed to these Terms and Conditions by directly or indirectly purchasing, applying and/or using the Coating. If Customer or Contractor does not agree to these Terms and Conditions, the Coating must be returned, unopened and in the original packaging, as provided in Section 2.

To the extent any legal relationship exists between PolyAll and the Customer and/or the Contractor, it is governed exclusively by these Terms and Conditions, which constitute the entire agreement with respect to this subject matter and supersede any and all prior understandings and agreements, written or unwritten, express or implied.

Any terms or conditions of Customer, Contractor or any other party which are contradictory or supplementary to, or which deviate from these Terms and Conditions, or any objection, agreement or other attempt purporting to add to or modify these Terms and Conditions, shall not apply or be binding upon PolyAll unless expressly approved in writing by PolyAll. To the extent Customer’s or Contractor’s terms and conditions, purchase order(s) or any other documents include or reference additional or conflicting terms or conditions, these Terms and Conditions shall control and supersede such terms and conditions, and all such terms and conditions are hereby rejected, are not part of these Terms and Conditions and are expressly objected to by PolyAll without further notification. Under no circumstances is the sale or provision of the Coating, or the receipt of any payment for the Coating, shall be construed as acceptance of any of the Customer’s, Contractor’s or other party’s terms or conditions. Any reference to PolyAll’s Customer Application Terms and Conditions shall be construed to be the reference to these Terms and Conditions.

2. Returns. PolyAll does not and will not accept any returns or make any replacements of the Coating that PolyAll did not sell directly to the Customer or the Contractor. If the Coating is being returned as provided in Section 1 or is being returned or replaced without a defect covered by the Limited Warranty described in Section 5, all such returns and replacements shall be made and coordinated directly with the party from which the Coating was purchased, following that party’s applicable return and replacement policies and procedures. The party returning or replacing the Coating under this Section shall be responsible for all costs incurred in returning and/or replacing the Coating.

### 3. Application of the Coating.

(a) Customer is solely and exclusively responsible to arrange and pay for application of the Coating and for any and labor, transportation and other goods, services and costs in connection with the application of the Coating. Except as otherwise provided, PolyAll shall not be liable for labor, transportation or other charges for repair, replacement, application, or other goods, services or costs which may be provided or incurred in connection with the Coating.

(b) Customer is responsible to ensure that the Coating is applied by a professional, licensed and insured party as required by the applicable application instructions and requirements, available at [www.PolyAllRoofCoatings.com/](http://www.PolyAllRoofCoatings.com/) (collectively, the “Application Requirements”). PolyAll may revise any or all Application Requirements from time to time without notice, and such revisions shall be effective and apply prospectively to the affected Coating(s), including the Coating(s) that were purchased but not yet applied on or before the effective date of the revisions. PolyAll shall not be responsible or liable to Customer or any other party for any claims, losses, costs or other damages resulting or arising out of any failure to apply the Coating as required by the Application Requirements and/or other acts of omissions of the Customer or any third party in connection with the Coating.

4. Maintenance. Customer is responsible to ensure that the surface where the Coating was applied is maintained as required by the applicable maintenance instructions and requirements, available at [www.PolyAllRoofCoatings.com/](http://www.PolyAllRoofCoatings.com/), including without limitation inspecting and cleaning the roof of the Building of debris at least twice a year and regularly freeing all drains of any biodegrading materials (collectively, "Maintenance Requirements"). PolyAll may revise any or all Maintenance Requirements from time to time without notice, and such revisions shall be effective and apply prospectively to the affected Coating(s), including the Coating(s) that were purchased and/or applied on or before the effective date of the revisions. Customer shall document in writing the performance of all of the Maintenance Requirements, and provide copies of this documentation to PolyAll upon request. Failure to document performance of any Maintenance Requirements or provide copies of the documentation of performance of any Maintenance Requirements to PolyAll shall be conclusive evidence that Customer has not complied with the Maintenance Requirements. PolyAll shall not be responsible or liable to Customer or any other party for any claims, losses, costs or other damages resulting or arising out of any failure to comply with the Maintenance Requirements.

5. PolyAll's Limited Warranty.

(a) POLYALL WARRANTS THAT FOR A PERIOD OF FIFTEEN (15) YEARS FROM THE DATE OF PURCHASE, THE COATING WILL BE FREE FROM DEFECT IN THE COATING MATERIAL THAT AFFECTS PERFORMANCE OF THE COATING(the "Limited Warranty").

(b) THE LIMITED WARRANTY IS ONLY FOR THE BENEFIT OF THE CUSTOMER AND IS NOT AVAILABLE TO AND MAY NOT BE TRANSFERRED, WITHOUT POLYALL'S PRIOR WRITTEN CONSENT, TO ANY OTHER PARTY, SUCH AS FOR EXAMPLE AND WITHOUT LIMITATION A PURCHASER OF THE BUILDING OR SOME OR ALL OF THE INTEREST IN THE BUILDING OR A PURCHASER OF ANY ASSETS OR OWNERSHIP INTEREST OF THE CUSTOMER.

(c) This Limited Warranty shall apply only if:

(i) The Coating is applied as required by the Application Requirements;

(ii) The surface where the Coating was applied is maintained as required by the Maintenance Requirements; and

(iii) PolyAll receives a written notice from Customer without unreasonable delay and in any event within ten (10) business days after Customer knows or, by exercising reasonable diligence, should have known of a defect in the Coating, together with proof of purchase with original receipt and a description of the defect.

(d) The Limited Warranty does not apply to any defect or any other failure of the Coating caused in whole or in part, directly or indirectly, by:

(i) Installation, erection or construction of any equipment and/or structure on or through a roofing substrate or flashing after application of the Coating;

(ii) Failure of, or repairs to, substrate and/or defects in any component underlying the roofing substrate or flashing, or caused by faulty construction and/or design thereof;

(iii) Application of, or repairs to, the roofing substrate and/or flashing after application of the Coating;

(iv) Use of the Coating for any unintended purpose;

(v) Exposure to chemicals and/or other harmful substances or use of any substance other than water to clean the surface where any Coating was applied;

(vi) Negligence, abuse, neglect, accidents, intentional damage, vandalism, falling objects, civil disobedience, war or any other acts or events beyond the control of PolyAll;

(vii) Movement or deterioration of material adjacent to or through the Coating;

(viii) Any repair or alteration to the surface where any Coating was applied or to the Coating;

(ix) Any excessive accumulation of water at low-lying areas on the surface where any Coating was applied that remains after 168 hours after precipitation under conditions conducive to drying; and/or

(x) A party that sells the Coating to the Customer, applies the Coating for or on behalf of the Customer and/or performs any maintenance to the surface where any Coating was applied.

(e) PolyAll has a right to inspect the surface where any Coating was applied to determine the cause(s) of a defect before incurring any obligation under the Limited Warranty, and may charge an inspection fee in the event a reported defect is not covered by the Limited Warranty.

(f) EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY STATED HEREIN, POLYALL MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, REGARDING OR RELATED TO THE COATING, AND HEREBY DISCLAIMS TO THE EXTENT ALLOWED BY LAW ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES, EXPRESS AND IMPLIED.

(g) THE SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE LIMITED WARRANTY AND/OR ANY OTHER DEFECT OR FAILURE OF THE COATING IS POLYALL'S REPLACEMENT OF THE QUANTITY OF THE COATING DIRECTLY AFFECTED BY THE DEFECT WITHIN A REASONABLE PERIOD OF TIME AFTER RECEIPT OF THE NOTICE OF DEFECT FROM THE CUSTOMER. THE LIMITED WARRANTY DOES NOT COVER OR APPLY TO ANY REPAIR OR REIMBURSEMENT OF ANY DAMAGE RESULTING FROM ANY DEFECT OF THE COATING, ANY LABOR COSTS FOR INSPECTION, TESTING OR REPAIR OF THE COATING, OR ANY OTHER COSTS.

6. Limitation of Liability. TO THE EXTENT ALLOWED BY LAW, POLYALL SHALL NOT BE LIABLE TO THE CUSTOMER, CONTRACTOR OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, STATUTORY, PUNITIVE OR EXEMPLARY DAMAGES IN CONNECTION WITH ANY COATING OR ARISING FROM ITS OBLIGATIONS UNDER THESE TERMS AND CONDITIONS, EVEN IF POLYALL HAS BEEN PUT ON NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL POLYALL'S LIABILITY EXCEED THE AMOUNT THAT CUSTOMER OR CONTRACTOR HAS ACTUALLY PAID FOR THE DEFECTIVE COATING, WHICHEVER IS LESS.

7. Acknowledgment. The parties acknowledge and agree that the provisions of these Terms and Conditions that limit liability and remedies, disclaim warranties, and exclude consequential and other damages, are essential terms of and are fundamental to the parties' understanding regarding allocation of risk. Such provisions shall be severable and independent of any other provisions of these Terms and Conditions and shall be enforced to the fullest extent permitted by law, even under circumstances that cause any exclusive remedy to fail of its essential purpose, regardless of the form of action. Without limiting the generality of the foregoing, THE PARTIES AGREE THAT ALL LIMITATIONS OF LIABILITY AND REMEDIES, DISCLAIMERS OF WARRANTIES, AND EXCLUSIONS OF DAMAGES SHALL REMAIN FULLY VALID, EFFECTIVE AND ENFORCEABLE IN ACCORDANCE WITH THEIR RESPECTIVE TERMS, and shall apply regardless of the form of action, including actions in contract, tort (including negligence), and strict liability.

8. Status of the Parties. PolyAll does not have a direct sales or service relationship with the Customer or the Contractor and, to the extent any legal relationship exists between PolyAll and Customer and/or Contractor, it shall be at all times that of an independent contractor, and nothing contained in these Terms

and Conditions shall be construed to create any joint venture, partnership, or other association other than that of independent contractor.

9. Confidentiality, Intellectual Property Rights.

(a) Any and all Intellectual Property Rights in and to the Coating are and shall remain the exclusive property of PolyAll. Neither the Customer nor Contractor shall, directly or indirectly, (i) acquire any rights, either express or implied, under or in any Intellectual Property Rights in or to the Coating, (ii) transfer any Intellectual Property Rights in or to the Coating, in whole or in part, to any third party, and/or (iii) reverse engineer the Coating or any component thereof, in whole or in part, or alter, adapt, or modify the Coating, or otherwise create any derivative works from the Coating.

(b) The parties acknowledge that upon a breach of Section 9(a), PolyAll's damages may be irreparable or impossible to measure. PolyAll shall therefore be entitled to equitable relief upon any breach or a threatened breach of that Section, including but not limited to an *ex parte* temporary restraining order, or a temporary or permanent injunction to enforce the terms of that Section. Further, any breach or threatened breach of Section 9(a) by the Customer or Contractor, directly or indirectly, shall render the Limited Warranty null and void.

(c) For purposes of these Terms and Conditions, "Intellectual Property Rights" means the rights to, in, and under any inventions, patents (pending patent applications and issued patents), creative works, works of authorship (in whatever medium), trademarks (registered and unregistered), trade secrets, know-how, utility models, drawings, specifications, copyrights (registered and unregistered), and/or industrial design rights (registered and unregistered), including all rights in and to any applications, renewals, extensions and restorations of any of the foregoing, and improvements to any of the foregoing, which was, were or will be created at any time anywhere in the world.

10. Risk of Loss. Customer shall at all times bear the risk of loss and damage with respect to the Building, and with respect to the Coating from and after the date of purchase, application and/or use of the Coating, whichever comes first.

11. Indemnification. To the fullest extent permitted by law, Customer shall indemnify, defend and hold harmless PolyAll, PolyAll's affiliated business entities and their respective members, managers, shareholders, officers, directors, employees and representatives, from and against any and all claims, actions, liabilities, losses, expenses, penalties, fines, damages and costs including reasonable attorneys' fees (as applicable, "Losses"), which any of them may at any time incur, suffer or be required to pay, that arise from or are in connection with (a) any breach of these Terms and Conditions by Customer, (b) any act or omission by Customer, (c) any act or omission of any third party engaged by Customer in connection with the application, use, maintenance and/or any other matter related to the Coating, (d) any personal injury, death or damage to tangible or intangible personal or real property, including claims of any employee of Customer or of any occupant of the Building, (e) any failure by Customer, or any third party directly or indirectly selected and/or utilized by Customer, to comply with any Application Requirements and/or Maintenance Requirements, (f) any damage resulting from a leak to the Building, roof, insulation, ceilings, walls or any other components, systems or items within the Building, or replacement of any of the foregoing, and/or (g) watertight integrity of walls, parapet walls, vents, rooftop equipment, gutters and/or adjacent structure(s) of the Building. This provision shall survive indefinitely any purchase, application, use and/or replacement of the Coating for any reason.

12. Force Majeure. PolyAll shall not be liable for any delay in or impairment of performance resulting in whole or in part from any act of God or the public enemy, severe weather conditions, fire, flood, earthquake, governmental actions regardless of legal validity, or inability to obtain any necessary government permits, licenses, supplies or raw materials, or any other circumstances or causes beyond the reasonable control of PolyAll in the conduct of its business. PolyAll shall use commercially reasonable efforts to resume performance of its obligations as soon as practicable following cessation of such a condition.

13. Product Availability and Suitability. Customer acknowledges that PolyAll is not responsible, and that Customer is solely responsible, for how the Coating is used. Customer is solely responsible to review the applicable Coating information and the applicable national and local codes and regulations and to ensure that the purchase, application, maintenance and/or use of the Coating will comply with the same. PolyAll may change the specifications of any Coating and/or discontinue any Coating at any time without prior notice.

14. Stated Remedies are Non-exclusive. PolyAll's remedies stated in these Terms and Conditions are not exclusive of any other remedies provided for by law or at equity, and nothing in these Terms and Conditions shall be deemed a limitation of rights or remedies which PolyAll may have under any applicable law.

15. Amendments and Modifications. PolyAll may amend or modify these Terms and Conditions at any time without notice, provided however that except for revisions to the Application Requirements and Maintenance Requirements, such amendments and modifications shall not apply to any Coating that has been purchased, applied and/or used by or on behalf of Customer.

16. Number And Gender. Where appropriate, words that reflect the masculine, feminine, or neuter gender shall be construed to also reflect the other genders; and words that reflect either the singular or plural shall also be construed to reflect the other.

17. Section Headings. The Section headings contained in these Terms and Conditions are for reference purposes only and shall not in any way affect the meaning or interpretation of these Terms and Conditions.

18. Assignment. Neither these Terms and Conditions, nor the rights and/or obligations set forth herein, may be assigned or transferred by Customer or Contractor, in whole or in part, without the prior written consent of PolyAll. PolyAll shall have the right to subcontract or delegate some or all of its obligations hereunder.

19. Severability. If any provision of these Terms and Conditions shall be held to be legally invalid or unenforceable by the arbitrator or any court of competent jurisdiction, such illegality or unenforceability shall not affect the validity and enforceability of any other provisions hereof, which together shall be construed as if such illegal and unenforceable provision or provisions had not been included herein.

20. No Waiver. No waiver by PolyAll of any provision of these Terms and Conditions shall be effective unless it is written and signed by PolyAll. PolyAll's decision to waive any provision herein or to waive any breach by the Customer of any provision herein, either by conduct or otherwise, shall not constitute or be deemed to be a further or continuing waiver of such provision or a waiver of any preceding or succeeding breach of the same provision or to otherwise waive or invalidate any other provision herein. PolyAll's failure at any time to assert or enforce any of the terms, conditions and limitations of Limited Warranty shall not be construed to be a waiver of any such provision.

21. No Third Party Beneficiary. These Terms and Conditions are intended solely for the benefit of PolyAll, the Customer and the Contractor, if any, and PolyAll does not intend to confer any benefits on any person, entity or any other third party, even if such a third party is paying for, applying or using, directly or indirectly, the Coating. No person or entity other than PolyAll, the Customer and the Contractor, if any, shall have any rights under or in connection with these Terms and Conditions.

22. Interpretation. The usual rules of contract construction construing ambiguities against the drafter will not apply, and no presumption or burden of proof shall arise favoring or disfavoring any one party by virtue of the authorship of any of the provisions of these Terms and Conditions. Thus, all terms will be given their fair meaning. When used in these Terms and Conditions, "including" means "including without limitation."

23. Limitations of Actions.

(a) Except as otherwise provided in these Terms and Conditions, all claims against PolyAll must be made in writing and received by PolyAll, within 90 days of the event giving rise to claim; the failure to

give PolyAll timely notice shall be a complete defense to any suit or action commenced with respect to such claim.

(b) All legal actions against PolyAll must be filed and properly served on PolyAll within one year from the date a party adverse to PolyAll knew or should have known, whichever is earlier, of the loss or damage.

24. Governing Law. These Terms and Conditions shall be governed by the law of the State of Michigan, USA without giving effect to any choice or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Michigan. If PolyAll renders performance in any jurisdiction other than Michigan, it shall be entitled to avail itself of the rights and benefits allowed under the laws of that jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply and is excluded from these Terms and Conditions.

25. Dispute Resolution, Binding Arbitration. Except where equitable relief is sought, any dispute, controversy or claim that in any way relates to this Agreement and that cannot be resolved by an agreement of the Parties, shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Rules"). Any arbitration under this Agreement shall be conducted in Oakland County, State of Michigan, USA before one neutral arbitrator to be selected in accordance with the Rules. Any award rendered by the arbitrator shall be final and binding on the parties and any judgment on such arbitration award may be entered and enforced in any court of competent jurisdiction. Each party shall be responsible for one half of the arbitrator's fees, except that the party(ies) adverse to PolyAll shall be responsible for the entire amount of the arbitrator's fees if PolyAll substantially prevails on its claims or in the defense of the other party(ies)' claims. Prior to commencing arbitration, a party will notify the other party in writing of its intent to commence arbitration and the parties will promptly pursue negotiations in good faith through dialogue between the parties' designated representatives for a period of up to thirty (30) days in an effort to resolve the dispute amicably. Except as otherwise provided above, the Customer and the Contractor, if any, will pay or reimburse PolyAll for any and all costs and expenses incurred in the enforcement of any of PolyAll's rights and remedies under these Terms and Conditions including reasonable attorneys' fees and arbitration costs.

26. Notices. Any notice to be given under these Terms and Conditions shall be in writing, and shall be deemed sufficient if personally delivered, sent to the party's last known address, and/or to such other address as to which proper notice has been given, by commercially reputable courier service provided receipt is confirmed, or via facsimile or e-mail provided in either case that proper notice of the facsimile number(s) and e-mail address(es) has been given pursuant to this Section, and receipt is confirmed. Notice shall be deemed to have been given when personally delivered, one (1) business day after being delivered by commercially reputable courier service, one (1) business day after acknowledgment of receipt via facsimile transmission, or one (1) business day after having been sent by e-mail.

27. Electronic Communications. The parties agree to permit binding communications by electronic means. Any requirement that any item be in writing is satisfied if the item is a record, whether electronic or otherwise. Any requirement that any item be signed is satisfied by an electronic signature (with the terms "record" and "electronic signature" having the meanings ascribed to them in the Uniform Electronic Transactions Act).

Rev. October 25, 2013