

TERMS & CONDITIONS OF SALE

1. TITLE AND RISK OF LOSS: Title to and all risk of loss of any material sold hereunder shall pass to buyer at the point of shipment. F.O.B. Western Distribution Center, California.

2. CREDIT: Each delivery to be made hereunder shall be subject to receipt of cash or to credit arrangements made by Buyer with Seller. If payment is not made in accordance with the terms thereof, or if at any time in Seller's judgment Buyer's credit standing has been impaired, Seller may withhold delivery of any material to be sold hereunder until, in the case of future deliveries, satisfactory cash or credit arrangements have been made and, in the case of goods already delivered, satisfactory security arrangements have been made for payment of all outstanding balances, including the use of a credit card on file with Seller. If Buyer fails, neglects, or refuses to make cash or credit arrangements satisfactory to Seller, or to comply with the terms thereof, then Seller may, without waiving any other remedies it may have against Buyer, terminate the contract without further liability on Seller's part. **CHARGE ACCOUNT TERMS: NET 30 DAYS. 1 1/2% SERVICE CHARGE ON ALL ACCOUNTS NOT PAID ACCORDING TO TERMS.**

3. FORCE MAJEURE: Deliveries may be reduced or suspended by either party in the event of Act of God, war, riot fire, explosion, accident, flood, sabotage; lack of adequate fuel, power, raw materials, labor, containers, or transportation facilities; compliance with governmental requests, laws, regulations, orders or action; breakage or failure of machinery or apparatus, national defense requirements, or any other event beyond the reasonable control of such party or in the event of labor trouble, strike, lockout, or injunction (provided that neither party shall be required to settle a labor dispute against its own best judgment); which event makes impracticable the manufacture, transportation, acceptance, or use of a shipment of the material or of a raw material or intermediate upon which the manufacture of the material is dependent. If, because of any such event, it is impracticable for Seller to supply the total demand for the material, Seller may allocate its available supply of material, without obligation to purchase similar material from other sources, among itself and its customers on such a basis as it determines to be equitable. Deliveries suspended under this section shall be canceled without liability, but this contract shall otherwise remain unaffected, in the event that deliveries hereunder have been suspended due to force majeure for any consecutive three (3) month period, either party may cancel this contract upon thirty (30) days written notice.

4. GENERAL WARRANTIES OF SELLER: Seller warrants as follows: (a) all material supplied hereunder will conform to the description stated on the front side hereof; (b) upon payment of the purchase price Buyer will receive good title of all such material free from any lien, encumbrance or lawful security interest; and (c) the material sold hereunder shall be of merchantable quality. Except for the foregoing warranties, **SELLER MAKES NO OTHER WARRANTIES EXPRESS OR IMPLIED. SELLER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.** Seller, upon request, may furnish to Buyer such technical advice as it may be able to supply with reference to the use by Buyer of any material delivered hereunder. Seller, however, assumes no obligation or liability for the advice given or result obtained. Buyer expressly agrees that it will implement any advice thus given at its own risk and agrees to indemnify and hold harmless Seller against any liabilities, costs, or expenses resulting therefrom.

5. THE PRODUCTS OF ENVIRONMENTAL COATING SYSTEMS, INC. and the recommendations for their use, are based on many years of experience and on tests which we and others have developed and believe to be reliable. However, since the application of our products and the condition of the surface to be coated are beyond our control, our liability shall be limited to materials only, to replace material, exchange materials, or refund the purchase price of materials at our discretion.

6. MATERIAL SAFETY DATA SHEET: Seller will make available to Buyer upon request a MSDS which sets forth information concerning the material and describes certain precautions to be taken in the storage and handling of the same. Buyer shall be responsible for knowing all such information and precautions disclosed in said MSDS and conveying the same to persons who may be exposed to the material.

7. LIMITATION OF REMEDY: Promptly upon receipt of all material delivered hereunder, Buyer shall inspect such material for any damage, defect, or shortage. All claims for shortage or non-delivery, and any claim for damage or defect which would reasonably be discoverable in the course of such investigation shall be waived unless Buyer shall notify Seller of the same within thirty (30) days after receipt of the material to which the claim relates. In any event, Buyer's exclusive remedy for shortage or damaged or defective material (whether or not occurring as a result of Seller's alleged negligence or gross negligence) or any other cause whatsoever shall be for damages and Seller's liability shall in no event exceed the purchase price of the material in respect of

which the claim is made, or, at Seller's option, the repair or replacement of such material. However, under no circumstances will Seller be obligated to Buyer, in any way whatsoever, unless material is paid for in full. Seller shall not be liable for, and Buyer assumes responsibility for all personal injury and property damage resulting from the handling, possession, use or resale of the material, whether the same is used alone or in combination with other substances. In no event shall Seller be liable for incidental or consequential damages, whether Buyer's claim is in contract, negligence or otherwise. Transportation charges for the return of material shall not be paid unless authorized in advance by Seller. Buyer hereby represents and warrants that Buyer has no claims of any kind against Seller and assumes responsibility for any claims arising out of Buyer's purchase or use of any of Seller's goods or services.

8. ENTIRE AGREEMENT; MODIFICATION; GOVERNING LAW: These Terms & Conditions of Sale and any other written contract, executed by both Buyer and Seller, under which this sale is made constitute the full understanding of the parties and a complete and exclusive statement of the terms of the agreement. No modification or waiver of any of such terms and conditions shall be of any force or effect unless made in writing and signed by the party claimed to be bound thereby nor shall any modification of the same be effected by the acknowledgment or acceptance of purchase orders or shipping instruction forms or any other document containing terms or conditions at variance with or in addition to those set forth herein or in any such contract, all such varying or additional terms being hereby objected to. **BY ORDERING FOR SHIPMENT OR ACCEPTING ANY MATERIAL, BUYER AGREES TO ALL THE TERMS AND CONDITIONS CONTAINED HEREIN AND IN ANY SUCH CONTRACT THIS CONTRACT SHALL BE GOVERNED BY THE LAWS OF CALIFORNIA.**

9. ATTORNEY'S FEES; VENUE: If either party becomes involved in litigation arising out of this contract or the performance thereof, the court in such litigation, or in a separate suit, shall award attorney's fees to the justly entitled party. Unless judgment goes by default, the attorney's fee award shall be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorney's fees actually incurred in good faith, regardless of the size of the judgment, it being the intention of the parties to fully compensate for all attorney's fees paid or incurred in good faith. The parties agree that litigation arising out of this contract or the performance thereof may be brought only in the courts located in South Orange County, California. All other sites of venue are waived.

10. COLORS: It is the customer's responsibility to check batch numbers to ensure that all containers of Finish Resin are from the same batch. Colors may vary slightly because of varying surface conditions, methods of application, lighting, and type of finishes. If exact shades and matches are important, small test samples should be applied on surface to be coated, and adjustments made as necessary, before proceeding with job.

11. CONCERNING RETURNS: Return Policy:
A RETURN MATERIAL AUTHORIZATION (RMA) MUST BE OBTAINED FROM MANUFACTURER PRIOR TO RETURNING MATERIALS. Absolutely no walk-in returns allowed or accepted. The Original Invoice must accompany all returns. Purchases over 90 days old are not returnable. Only unused goods, in unopened, undamaged, original containers are returnable. All returned items are subject to a 25% restocking charge. Customer must insure all returned materials. Customer must pre-pay all freight charges on returned materials. *Non-returnable items are:* Custom Colors, Special Order Items, Splatter Finish, Confetti Finish, Sure-Foot Top Coat, Enviro-Max Great Finish, and Hi-Flex Laminating Resin. Upon receipt, inspection, and approval of returned merchandise, a credit will be issued to the original purchaser only, approximately 30 days from date of approval of returned goods. Returns will affect volume discounts. There are absolutely No Exchanges.

12. ALL ORDERS SUBJECT TO ACCEPTANCE BY ENVIRONMENTAL COATING SYSTEMS, INC., AND SUBJECT TO PRICE CHANGES IN EFFECT AT THE TIME OF ORDER.

13. RETURNED CHECKS: A \$25.00 fee will be charged for any checks returned due to insufficient funds, unsigned, uncollected funds, or closed account.

14. SECURITY INTEREST: Seller retains a security interest in all materials purchased by Buyer until such materials are paid for in full. Buyer is responsible for all collection costs incurred by Seller, including but not limited to attorney's fees.

15. LIMITED ALL DECK MATERIAL WARRANTY is not valid unless issued in writing by manufacturer and signed by a Corporate Officer. To apply for a valid warranty, submit project information, including material purchase records and project documents, to Environmental Coating Systems, Inc. at the completion of the project.