

ELECTRONIC COATING TECHNOLOGIES TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND SERVICES

These Electronic Coating Technologies Terms and Conditions for Purchase of Goods and Services ("Terms") shall govern all goods and services ("Services") purchased by Electronic Coating Technologies, its affiliates, subsidiaries and successors ("ECT") from a third-party service provider or vendor ("Service Provider"). In the event of any dispute between the parties, Service Provider's recourse shall be limited to the ECT entity that purchased the Services and entered into the Purchase Order. These Terms, including each purchase order entered into by the parties pursuant to these Terms ("Purchase Order"), constitute the entire agreement between the parties in relation to the Services, and supersede any and all prior agreements between them regarding the Services. ECT rejects any additional, different or inconsistent terms delivered with or contained in Service Provider's order acknowledgment forms, correspondence, or other standard forms, and no terms in such documents shall alter these Terms unless specifically agreed to by ECT in writing.

1. **Relationship.** The relationship of Service Provider to ECT is that of an independent contractor, and nothing in these Terms or the Purchase Order shall create an agency, partnership, joint venture or any other form of enterprise, employment or fiduciary relationship between ECT and Service Provider, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. ECT shall not withhold any Social Security, unemployment insurance, federal or local payroll or employment taxes from any fees or amounts payable to Service Provider. Service Provider acknowledges that it is not eligible for and ECT will not provide workers' compensation insurance or unemployment insurance, qualified retirement plan benefits, health, or any other fringe benefits available to ECT's employees.
2. **Acceptance.** Service Provider's confirmation, order acknowledgement or performance of the Services shall constitute acceptance of the Purchase Order and these Terms. No acknowledgment or other document written or executed by Service Provider shall be binding on ECT with respect to the Services or Purchase Order, unless any such instrument is signed by a ECT representative. The rendering of Services by Service Provider is based solely upon the terms and conditions and specifications as set forth in the Purchase Order.
3. **Service Provider's Obligations.** Service Provider shall provide the Services to ECT as described in the Purchase Order in accordance with these Terms. Service Provider shall:
 - (i) maintain complete and accurate records relating to the provision of the Services, including records of the time spent and materials used in providing the Services in such form as ECT shall approve. Upon ECT's written request, Service Provider shall allow ECT to inspect and make copies of such records and interview Service Provider personnel;
 - (ii) obtain ECT's written consent prior to entering into agreements with or otherwise engaging any person, entity, subcontractor or affiliate of Service Provider to provide any Services to ECT (each such approved other third party, a "Permitted Subcontractor"). ECT's approval shall not relieve Service Provider of its obligations pursuant to these Terms and the Purchase Order, and Service Provider shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees for their compliance with these Terms. Nothing contained in these Terms or the Purchase Order shall create any contractual relationship between ECT and any Service Provider subcontractor or supplier;
 - (iii) require each Permitted Subcontractor to be bound in writing by the confidentiality and intellectual property assignment or license provisions of these Terms;
 - (iv) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Service Provider, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services;
 - (v) ensure that all of Service Provider's equipment used in the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by ECT; and
 - (vi) keep and maintain any ECT equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with the ECT's written instructions or authorization.
4. **Compliance with Law and ECT Policies.** Service Provider shall comply with all applicable federal, state and local laws, rules, regulations, and orders, and shall furnish ECT with a warranty in a form satisfactory to ECT containing such specific language as may be requested by ECT. Prior to commencing any Services, the Service Provider shall obtain and at all times maintain all necessary licenses, permits and consents with respect to the provision of such Services. The Service Provider hereunder shall also be subject to the rules, regulations and policies imposed by ECT, including security procedures, ethics policies and general health and safety practices and procedures.
5. **Inspection.** Notwithstanding prior payment and/or inspection by ECT, all Services shall be subject to inspection by and approval of ECT after such Services have been performed. ECT may, at its sole discretion, reject all or any portion of the Services if it determines the Services are non-conforming or defective.
6. **Rejected Services and ECT Remedies.** If the Services are rejected in whole or in part by ECT by reason of Service Provider's failure to (i) comply with any of the Terms or the Purchase Order, (ii) perform the Services in accordance with the terms and conditions and specifications as set forth in the Purchase Order, or (iii) meet ECT's internal quality requirements for Services, ECT may reject the Services and cancel the Purchase Order. ECT shall not be obligated to pay for any Services rendered which are rejected by ECT.

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7. **Intellectual Property.** All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and any and all other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the associated goodwill, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all Services, documents, work product and other materials that are delivered to ECT under the Purchase Order or prepared in the course of performing the Services (collectively, the "Deliverables") shall be owned solely and exclusively by ECT. Service Provider agrees, and shall cause its employees and Permitted Subcontractors (collectively, "Service Provider Personnel") to agree, that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables are deemed a "work made for hire" for ECT. To the extent that any of the Deliverables do not constitute a "work made for hire," Service Provider irrevocably assigns, and shall cause its Service Provider Personnel to irrevocably assign to ECT, without additional consideration, all right, title and interest to the Deliverables, including all Intellectual Property Rights. The Service Provider shall cause its Personnel to irrevocably waive all claims they may now or hereafter have to so-called "moral rights" with respect to the Deliverables. Upon ECT's request, Service Provider shall, and shall cause its Personnel to promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist ECT to prosecute, register, perfect or record its rights in or to any Deliverables. For the avoidance of doubt, Service Provider and its licensors are the sole and exclusive owners of all right, title and interest in all documents, data, know-how, methodologies, software and other materials provided or used by Service Provider in connection with performing the Services developed by the Service Provider prior to the commencement of the Services (collectively, the "Pre-Existing Materials"), including all Intellectual Property Rights. Service Provider grants ECT an irrevocable license, in each case without additional consideration, to any Pre-Existing Materials to the extent incorporated in, combined with or otherwise necessary for the use of the Deliverables for any and all purposes.
8. **Indemnification.** Service Provider shall indemnify, defend and hold ECT Corporation, its affiliates, subsidiaries and successors, and its and their respective shareholders, officers, directors, managers, members, agents and employees, as applicable, harmless against any and all losses, injury, damages, liabilities, claims, actions, judgments, settlements, penalties, fines or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under these Terms or the Purchase Order and the cost of pursuing any insurance providers (collectively, "Losses") incurred, arising out, relating to, or resulting from:
- (i) any breach, misrepresentation in or non-fulfillment of any of Service Provider's representations, warranties, covenants or agreements herein or in the Purchase Order;
 - (ii) any negligent act or omission of Service Provider or any of its shareholders, members, managers, officers, directors, employees, agents, subsidiaries, affiliates, Permitted Subcontractors or assigns;
 - (iii) any bodily injury, death of any person or damage to real or tangible personal property caused by the acts or omissions of Service Provider (iv) any failure by Service Provider to provide the Services, or
 - (iv) any claim that any of Service Provider's intellectual property used in the Services infringes any intellectual property right of any third party. In no event shall Service Provider enter into any settlement without ECT's prior written consent.
9. **Representations and Warranties.** Service Provider represents and warrants to ECT that:
- (i) it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services and shall devote adequate resources to meet its obligations under the Purchase Order;
 - (ii) it is in compliance with, and shall perform the Services in compliance with, all applicable laws;
 - (iii) ECT will receive good and valid title to all Deliverables, if applicable, free and clear of all encumbrances and liens of any kind;
 - (iv) none of the Services, Deliverables and ECT's use infringe or will infringe any Intellectual Property Right of any third party arising under the laws of the United States, and as of the date of the Purchase Order, there are no pending or, to Service Provider's knowledge, threatened claims, litigation or other proceedings pending against Service Provider by any third party based on an alleged violation of such Intellectual Property Rights; and
 - (v) the Services will be in conformity in all respects with all requirements or specifications stated in the Purchase Order. If ECT determines that a defect exists in any of the Services within ninety (90) days of Service Provider's completion of the Services, ECT shall notify the Service Provider of the defect within sixty (60) days after ECT's discovery of the defect. Within fifteen (15) days following ECT's notification of such defect, Service Provider shall perform the Services, at Service Provider's sole cost and expense, to correct the defect in accordance with the terms and conditions and specifications as set forth in the Purchase Order.
10. **Health and Safety.** All items to be supplied by Service Provider in connection with the Services shall conform in all respects to the requirements of applicable insurance and governmental health and safety regulations, including regulations, including regulations administered by OSHA.

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11. **Insurance.** Service Provider shall, at its own cost and expense, maintain and carry in full force and effect with financially sound and reputable insurers, commercial general liability insurance including products liability insurance and such other coverages, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) reasonably acceptable to ECT. Service Provider shall be responsible for all Losses (including payment of any deductible) arising out of or caused by the perils or causes of loss covered thereby. Upon ECT's request, Service Provider shall provide ECT with a certificate of insurance evidencing all insurance coverages. Service Provider shall provide ECT with thirty (30) days' advance written notice in the event of a cancellation or material change in Service Provider's insurance policy.
12. **Force Majeure.** "Force Majeure Event" means (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies; (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war; (iii) riot, commotion, disorder, strike or lockout by persons other than the Service Provider, affiliates or subsidiaries of the Service Provider or the employees of the Service Provider; (iv) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity; (v) natural catastrophes such as earthquake and volcanic activity, in each case only to the extent such event or circumstance is an exceptional event or circumstance; and (vi) extreme weather (including hurricanes) for which an evacuation is ordered, which is beyond the intermediate and direct control of Service Provider. Without limiting the generality of the foregoing, the term "Force Majeure Event" *excludes*: (A) changes in applicable law, (B) changes in financial markets or market conditions generally, (C) the occurrence of any shortages of manpower or supplies; or (D) any delay, default or failure (direct or indirect) in obtaining supplies in connection with the Services, or of any Permitted Subcontractor or worker performing the Services or any other delay, default or failure (financial or otherwise) of a Permitted Subcontractor, vendor or supplier. Should a Force Majeure Event prevent the total or partial (i) taking of Services by ECT or (ii) the total or partial performance of the Services by Service Provider, ECT may, by giving fifteen (15) days' prior written notice to Service Provider: (i) cancel the Purchase Order in whole or in part as to any unrendered portion of the Services, or (ii) suspend in whole or in part, the rendering of the Services during the continuance of such Force Majeure Event.
13. **Time of Essence.** Time is of the essence with respect to the Service Provider's performance, and ECT shall have the right to cancel all or part of the Purchase Order without penalty if the Services are not rendered by the date specified in the Purchase Order.
14. **Confidentiality.** "Confidential Information" means any information disclosed, whether orally or in written, electronic or any other form or media, by either party, including, without limitation, documents, prototypes, samples, photographs, video and other visual and graphic representations, which is designated as "Confidential" or "Proprietary", or be reasonably considered by ordinary business or technical persons to be confidential or proprietary. Confidential Information does not include information which:
- (i) was publicly known or available in the public domain prior to the time of disclosure;
 - (ii) becomes publicly known or generally available after the disclosure through no action or inaction of the receiving party in violation of these Terms or the Purchase Order; or
 - (iii) was or is obtained by the receiving party from a source other than the disclosing party not in violation of any contractual or legal obligation of confidentiality to the disclosing party.
- Neither party shall use any Confidential Information of the other party for any purpose other than the performance of its obligations under the Purchase Order. The receiving party may disclose the Confidential Information only to those of its shareholders, members, managers, officers, directors, employees, agents, subsidiaries, affiliates, representatives, Permitted Subcontractors or assigns, as applicable, who need to know such information, and who have signed confidentiality agreements. The receiving party shall not reverse engineer, disassemble or decompile any prototypes, or samples, and may not analyze any samples for chemical composition. The receiving party shall protect the secrecy of the Confidential Information and take at least those measures that it takes to protect its own most highly confidential information. All documents and other objects containing Confidential Information shall remain the property of the disclosing party and shall be promptly returned upon termination of the Purchase Order, or upon written request. Nothing in these Terms shall grant any rights in any intellectual property rights of the disclosing party, nor shall these Terms grant any rights in or to the Confidential Information. ECT shall, in addition to any other rights at law or in equity, be entitled to injunctive relief for any violation of this Section.
15. **Assignment.** Service Provider shall not assign, delegate or subcontract the Purchase Order or any part, without the prior written consent of ECT, and not unless the assignee or subcontractor agrees to be bound by these Terms. Any purported assignment or delegation in violation of this section shall be null and void.
16. **Price.** In consideration for the satisfactory provision of the Services by Service Provider, ECT agrees to pay the fees set forth in the Purchase Order at the price specified on the Purchase Order. Unless specified in the Purchase Order, price includes insurance, fees and applicable taxes. Prices may decrease but may not increase during the term of the Purchase Order.
17. **Governing Law and Jurisdiction.** These Terms and the Purchase Order shall be governed under the laws of the state or province in which ECT sits without regard to the conflicts of law provisions. Any legal suit, action or proceeding arising out of or relating to these Terms or the Purchase Order shall be instituted in the jurisdiction of, and venue in, such courts and Customer waives any objection that such courts are an inconvenient forum.

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18. **Entire Agreement.** The Purchase Order may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of which together constitute one and the same instrument. No waiver by ECT of any of these Terms is effective unless explicitly set forth in writing and signed by ECT. If any term or provision herein is to be held invalid, illegal, or unenforceable, such invalidity, illegality or unenforceability shall not affect any other term or provision herein. Provisions of these Terms, which by their nature should apply beyond the termination or expiration of these Terms, will remain in force after any such termination or expiration.
19. **Change Notification by Service Provider.** Service Provider shall provide ECT with ninety (90) days' prior written notice prior to making any modifications to Services listed on the Purchase Order. ECT may, at its sole discretion, accept or reject any such change notification. Any rejection by ECT may include a termination of all or any part of the Purchase Order, without any cost, penalty or other expense to ECT.
20. **Change Notification by ECT.** ECT may, at any time by written instructions and/or drawings issued to Service Provider, order changes to the Purchase Order. Service Provider shall within ten (10) days of receipt of any change order, submit a firm cost proposal for the change order. If ECT accepts such cost proposal, Service Provider shall proceed with the changed order subject to the cost proposal and the Terms. Service Provider acknowledges that a change order may or may not entitle Service Provider to an adjustment in the Service Provider's compensation or the performance deadlines.
21. **Termination.** In addition to any remedies that may be provided under these Terms, ECT may terminate the Purchase Order, in whole or in part, either before or after Service Provider's delivery of the Services; (i) immediately, in the event of Service Provider's breach of any of these Terms or the Purchase Order, in whole or in part, (ii) upon thirty (30) days' prior written notice to Service Provider, if Service Provider becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors; or (iii) without cause and for any reason whatsoever upon at least thirty (30) days' prior written notice to Service Provider. If ECT terminates the Purchase Order for any reason, Service Provider's sole and exclusive remedy is payment for the Services accepted by ECT prior to the termination.