

## Electronic Coating Technologies Terms and Conditions for Services

These Electronic Coating Technologies Terms and Conditions for Services ("Terms") govern all services ("Services") provided by Electronic Coating Technologies, its affiliates, subsidiaries and successors ("ECT") to you, the customer ("Customer"). In the event of any dispute between the parties, Customer's recourse shall be limited to the ECT entity that is providing 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 ECT'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 ECT to Customer 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 Customer, 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 Customer. Customer 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 Customer's employees.

2. **Acceptance.** ECT'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 ECT shall be binding on ECT with respect to the Services or Purchase Order, unless any such instrument is signed by an authorized ECT representative. The rendering of Services by ECT is based solely upon the terms and conditions and specifications as set forth in the Purchase Order.

3. **ECT's Obligations.** ECT shall provide the Services to Customer as described in the Purchase Order in accordance with these Terms. ECT shall:

- (i) maintain records relating to the Services, including records of materials used and work process.
- (ii) obtain Customer's written consent prior to entering into agreements with or otherwise engaging any person, entity, subcontractor or affiliate of ECT to provide any Services to ECT (each such approved other third party, a "Permitted Subcontractor"). Customer's approval shall not relieve ECT of its obligations pursuant to these Terms and the Purchase Order, and ECT 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 ECT 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 ECT, 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 ECT'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.

4. **Customer Obligations.** Customer shall provide ECT with:
- (i) Clear specification and direction required to perform the Services;
  - (ii) Product in a useable condition that will support the application of the Services, and
  - (iii) Product consisting of a substrate that is compatible with the material specified.
  - (iv) Applicable product forecasts needed to meet Customer delivery requirements.

In the event where ECT is required to make advance inventory purchases to meet Customer delivery requirements, Customer shall be responsible for the cost of all material purchased to support Customer's forecast.

5. **Compliance with Law and ECT Policies.** ECT shall comply with all applicable federal, provincial, 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 ECT shall obtain and at all times maintain all necessary licenses, permits and consents with respect to the provision of such Services.

6. **Inspection.** All Services shall be subject to inspection by and approval of Customer. Customer may reject all or any portion of the Services if it determines the Services are non-conforming or defective within thirty (30) days.

7. **Rejected Services and ECT Remedies.** If the Services are rejected in whole or in part by Customer by reason of ECT'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 Customer's internal quality requirements for Services, Customer may reject the Services. Customer shall not be obligated to pay for any Services rendered which are rejected.

8. **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 Customer under the Purchase Order or prepared in the course of performing the Services (collectively, the "Deliverables") shall be owned solely and exclusively by ECT.

9. **Indemnification.** Customer shall indemnify, defend and hold ECT, 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:

- a. Functionality of the underlying product on which the ECT Services were performed.
- b. Performance of materials applied under Customer's director or approval;
- c. any breach, misrepresentation in of any of Customer's representations, in the Purchase Order;  
or
- d. any bodily injury, death of any person or damage to real or tangible personal property caused by the acts or omissions of Customer, any failure of Customer's products.

10. **Representations and Warranties.** ECT represents and warrants to Customer that:
- a. 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;
  - b. it is in compliance with, and shall perform the Services in compliance with, all applicable laws;
  - c. none of the Services, Deliverables and ECT's use infringe or will infringe any Intellectual Property Right of any third party, and as of the date of the Purchase Order, there are no pending or, to ECT's knowledge, threatened claims, litigation or other proceedings pending against ECT by any third party based on an alleged violation of such Intellectual Property Rights; and
  - d. the Services will be in conformity in all respects with all requirements or specifications stated in the Purchase Order. If Customer determines that a defect exists in any of the Services within thirty (30) days of delivery. ECT shall investigate and at its option replace or rework any Services that did not meet the specification in the Purchase Order.
11. **Health and Safety.** All items to be supplied by ECT 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.
12. **Insurance.** ECT 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).
13. **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 ECT, affiliates or subsidiaries of the ECT or the employees of the ECT; (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 ECT. 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 ECT, ECT may, by giving fifteen (15) days' prior written notice to ECT: (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.
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:
- a. was publicly known or available in the public domain prior to the time of disclosure;

- b. 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
- c. 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.** ECT shall not assign, delegate or subcontract the Purchase Order or any part, without the prior written consent of the Customer, 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 ECT, Customer 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.

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.