

TERMS AND CONDITIONS OF SALE

All references to "Seller" refer to the Metal Coaters and/or Metal Prep divisions of NCI Group, Inc. SELLER'S ACCEPTANCE OF ANY ORDER(S) SUBMITTED BY BUYER IS EXPRESSLY CONDITIONED UPON BUYER'S UNCONDITIONAL ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS AND THOSE CONTAINED IN SELLER'S PROCESSING AGREEMENT(S), IF ANY. ANY AND ALL OTHER TERMS AND CONDITIONS, WHETHER FROM BUYER OR OTHERWISE, ARE HEREBY EXCLUDED AND DISCLAIMED AND SHALL BE CONSIDERED NULL AND VOID FOR ALL PURPOSES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ANY AGREEMENT BETWEEN BUYER AND ANY THIRD PARTY, SELLER SHALL NOT BE SUBJECT TO ANY PROVISIONS OF ANY SUCH AGREEMENT(S) UNLESS SELLER AGREES TO SAME IN WRITING.

A. ACCEPTANCE, RESPONSIBILITIES AND OBLIGATIONS:

1. All orders are subject to final acceptance by Seller at Seller's Headquarters.
2. By entering an order with Seller, Buyer agrees that:
 - a. The terms and conditions set forth herein shall automatically apply to, control and be incorporated by way of reference into said order(s).
 - b. Buyer shall be solely responsible and liable for the selection of all processing ("Processing"), materials purchased from Seller ("Materials") and/or conforming, non-defective material supplied by Buyer ("Buyer Material"), the use of the Materials or Buyer Material and the results obtained or resulting therefrom, as well as the use or nonuse of any other products or services used in conjunction with Processing, Materials or Buyer Material, to achieve the intended results.
 - c. A Processing Order shall be for Processing of Materials or Buyer Material of a single thickness, width, substrate and coating.
 - d. All Buyer Material shall be delivered to Seller's Processing plant at least two (2) weeks prior to the Processing date scheduled by Seller.
3. The terms and conditions set forth herein may be modified only in writing signed by an executive officer of Seller.

B. PRICE, CHARGES, INVOICES, FEES AND PAYMENT:

1. All prices and delivery charges are subject to change without notice. All orders for delivery within thirty (30) days are accepted by Seller at the prices and delivery charges in effect at the time of such acceptance. Prices and delivery charges for all other orders shall be those in effect at time of delivery to Buyer. Buyer agrees to be bound by and pay Seller for any and all resulting increases in price and/or delivery charges.
2. Seller shall invoice Materials and Processing at "painted" weights, which shall include the weight of paint applied to Materials or Buyer Material.
3. Seller may invoice all orders when completed and ready for shipment. Payment terms are net due upon date of invoice unless otherwise specified in writing by Seller's Credit Department in its sole discretion.
4. Buyer shall pay for Materials and Processing in United States funds without offset or deduction at the place designated by Seller in writing.
5. If Buyer fails to make payment in accordance with the terms of this Agreement or any other agreement between Buyer and Seller, or fails to comply with any provision of such agreements, Seller may, at its option (and in addition to any other remedies), cancel its obligations to provide Processing or to deliver Materials or other products or provide services under such agreement(s) and Buyer shall remain liable for all unpaid accounts and/or amounts in connection therewith.
6. Buyer agrees to pay Seller's attorneys' fees and a finance charge from the date of invoice(s) on all past due accounts/amounts at the highest rate(s) allowable by law by the State of Texas.

C. SHIPMENT AND DELIVERY, CLAIMS OF SHORTAGE AND DAMAGE:

1. All Materials and/or Buyer Material shall be shipped F.O.B. Seller's plant unless otherwise agreed to by Seller in writing.
2. Shipping dates are Seller's estimates only and shall not operate to bind Seller to ship on any such date(s).
3. In any event, Seller shall not be liable for any damages, direct or indirect, incidental, consequential, exemplary or otherwise, for any failures or delays in delivery.
4. Buyer shall, within forty-eight (48) hours after receipt of Materials or Buyer Material, give written notice of any alleged shortage, non-conformity or damage, as the case may be, to Seller and to the delivering carrier in order to permit verification of same. In the event Buyer fails to timely provide such notice, Seller shall not be liable for any alleged shortage, non-conformity or damage and Buyer will be deemed to have irrevocably accepted the subject Materials and/or Buyer Material and fully released and waived any such claim(s).
5. Buyer shall not be permitted to return any Materials or Buyer Material or receive credit for same unless Seller agrees to and approves same in writing in advance.

D. STORAGE, DEFECTS IN BUYER MATERIAL AND SALE

1. Seller shall not be liable for deterioration of Materials or Buyer Material awaiting Buyer's processing or delivery instructions.
2. Seller may, in its sole discretion, charge and Buyer shall promptly pay reasonable storage fees for all Materials or Buyer Material awaiting Buyer's

processing or delivery instructions for ninety (90) days or more. Additionally, Seller may, in its sole discretion, sell all Materials or Buyer Material awaiting Buyer's processing or delivery instructions for one hundred and eighty (180) days or more, with no recourse or liability to Buyer.

3. Notwithstanding Subparagraph "D.2." hereof, in the event Seller, in its sole discretion, determines that Buyer Material is defective and/or non-conforming, Seller shall notify Buyer of same and Buyer shall remove such Buyer Material from Seller's premises within thirty (30) days of notice. Seller may charge and Buyer shall promptly pay Seller a reasonable storage fee for such defective and/or non-conforming Buyer Material stored by Seller for thirty (30) days or more.

4. The proceeds of any sale of Materials or Buyer Material shall be applied: first, to Seller's cost of such sale; second, to storage fees owed by Buyer to Seller; third, to any debt owed by Buyer to Seller; and fourth, the remaining balance, if any, to Buyer. Should a deficiency exist after any such sale with respect to existing debts still owed by Buyer to Seller, Buyer agrees to pay and be liable to Seller for said amount(s).

E. TAXES: All taxes on Processing, Materials or Buyer Material, other than income taxes resulting from the sale hereunder, shall be paid by Buyer. Buyer agrees to indemnify and hold Seller harmless from any liability for taxes, other than taxes on net income, assessed in connection with this Agreement and the legal fees or costs incurred by Seller in connection therewith.

F. LIMITED WARRANTY/DISCLAIMERS:

1. Seller warrants that the Processing will substantially meet published specifications applicable thereto for a period of one (1) year from the date of completion of Processing, provided that:

- a. Buyer, within one (1) year after date of completion of Processing, provides Seller with samples of defective Materials or Buyer Material with Processing sufficiently evidencing Buyer's claim(s) and a precise written statement detailing the nature of Buyer's claim, including job, invoice and coil identification numbers.

- b. Buyer preserves such Materials and/or Buyer Material for Seller's inspection; and

- c. Buyer has not altered, modified or attempted repair of any such Materials or Buyer Material prior to Seller's inspection thereof.

2. Notwithstanding Subparagraph "F.1." hereof, Seller disclaims any and all warranties regarding Buyer Material and only warrants, as set forth above, the Processing of Buyer Material to the extent such Processing is not affected by defects or non-conformities in Buyer Material. If Buyer's claim is valid, in Seller's sole judgment, Seller shall replace or repair, at Seller's sole discretion, F.O.B. its factory or on site, at Seller's sole option, any Materials or Buyer Material subject to Buyer's claim properly brought subject to Subparagraph "C.4." and Paragraph "F" hereof. In no event and under no circumstances shall Seller's liability hereunder exceed the cost of Processing or Materials supplied hereunder (dismantling & installation not included) or extend to or include any property of the Buyer, other than Materials or Buyer Material, or any property of any third party, whether exterior or interior or whether pertaining to past, present or future water leaks, moisture intrusion, damage to subject building(s) or any contents therein or components thereof, including claims pertaining to mold, mildew of fungi or any personal injury or property damage claims in connection therewith, or interruption in the use of the subject building(s). As a condition precedent to the effectiveness of the any such warranty, however, all amounts due and owing to Seller under this or any other agreement with Seller or Seller's affiliates, whether disputed or not by Buyer, must be fully paid. Seller's liability shall be strictly limited to the written express warranties specified herein, and Buyer agrees and stipulates that Seller shall not be liable for any other damages, whether direct or indirect, incidental, consequential, liquidated, punitive or exemplary, which Buyer may suffer for any reason, including reasons known and/or attributable to Seller.

3. Products, including coating and materials, not directly manufactured by Seller are only warranted by Seller if and to the extent that the original manufacturer(s) thereof provide an available and/or applicable remedy under such original manufacturer's warranty for such products, if any, that Seller can pass through to Buyer.

4. THIS WARRANTY IS MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED

WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, AND IS MADE IN LIEU OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SELLER OF ANY NATURE WHATSOEVER. THE FOREGOING WARRANTY SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S SOLE LIABILITY UNDER CONTRACT, WARRANTY OR OTHERWISE, FOR PROCESSING OR MATERIALS. IN NO EVENT WILL SELLER BE LIABLE FOR ANY LOST PROFITS OR INCIDENTAL, SPECIAL, CONSEQUENTIAL EXEMPLARY OR PUNITIVE DAMAGES.

G. INSURANCE AND INDEMNIFICATION:

1. Buyer will, at its sole expense, maintain insurance during the performance of the services covered by this agreement and thereafter, including General Liability Insurance with a per occurrence limit of not less than \$1,000,000 covering Seller with respect to any involvement in the performance and/or services covered by this agreement. This insurance will include product liability and completed operations liability coverage, which will extend for three (3) years after the completion of the services. Buyer agrees to name Seller as an additional named insured with respect to the coverages required to be maintained by this agreement and to provide Seller with a conformed Additional Named Insured Endorsement setting forth the coverages required by this agreement. Buyer agrees that its insurance coverages as required by this agreement shall be primary to and not concurrent with any insurance coverages maintained by Seller and that any such coverage maintained by Seller shall in no way be implicated unless and until all available coverages required by this agreement shall have been fully exhausted.

2. BUYER ASSUMES ENTIRE RESPONSIBILITY AND LIABILITY FOR ANY AND ALL CLAIMS OR ACTIONS BASED ON OR ARISING OUT OF INJURIES, INCLUDING DEATH, TO PERSONS OR DAMAGE TO OR DESTRUCTION OF PROPERTY (WHETHER BELONGING TO BUYER, OWNER(S) AND/OR ANY THIRD PARTY), SUSTAINED OR ALLEGED TO HAVE BEEN SUSTAINED IN CONNECTION WITH OR TO HAVE ARISEN OUT OF OR INCIDENTAL TO THE PERFORMANCE OF THIS CONTRACT BY BUYER, ITS AGENTS AND EMPLOYEES, AND ITS SUBCONTRACTORS, THEIR AGENTS AND EMPLOYEES, INCLUDING CLAIMS OR ACTIONS FOUNDED IN PART UPON THE ALLEGED ACTS, OMISSIONS, NEGLIGENCE OR FAULT OF SELLER, SELLER'S REPRESENTATIVES, OR THE EMPLOYEES, AGENTS, INVITEES, OR LICENSEES THEREOF. BUYER FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER AND ITS REPRESENTATIVES, AND THE EMPLOYEES, AGENTS, INVITEES AND LICENSEES THEREOF WITH RESPECT TO ANY SUCH MATTERS AND AGREES TO DEFEND ANY CLAIM OR SUIT OR ACTION BROUGHT AGAINST SELLER, SELLER'S REPRESENTATIVES, AND/OR THE EMPLOYEES, AGENTS, INVITEES AND LICENSEES THEREOF.

3. Buyer shall defend, indemnify and hold Seller harmless from and against any and all claims, demands, debts, obligations or liabilities arising out of any alleged infringement or contributory infringement of any United States patent(s) in connection with the manufacture, sale or use of any Buyer Material or Materials altered by Buyer; or installed in combination with other devices or products; provided that Seller promptly notifies Buyer in writing of such claim.

H. LIABILITY LIMITATIONS, FORCE MAJEURE AND PRICE INCREASES: Seller shall not be liable to Buyer for liquidated damages, back charges or loss of use to Buyer arising out of any delay or any other reason in carrying out this Agreement. Under no circumstances shall Seller be liable in any way to Buyer, or any other party for water intrusions or the existence of moisture occurring prior to delivery of Materials or Buyer Materials or existing thereafter or any possible effects resulting therefrom (including fungi, mold and/or mildew), delays, failure in performance, or loss or damage due to force majeure conditions including, without limitation: fire; flood; epidemics; quarantine; lightning; strike; embargo; explosion; power surge or failure; acts of God; war; labor or employment disputes; civil disturbances; acts of civil or military authority; inability to secure material, fuel, products or transportation facilities; acts of; omissions of suppliers; or any other causes beyond Seller's reasonable control, whether or not similar or relating to the foregoing. FURTHER, BUYER HEREBY AGREES AND STIPULATES THAT, IN THE EVENT SELLER RECEIVES NOTIFICATION OF A SCHEDULED PRICE INCREASE(S) FROM ANY OF ITS SUPPLIERS BETWEEN THE DATE OF THIS AGREEMENT AND THE DATE SCHEDULED FOR DELIVERY OF THE MATERIAL COVERED HEREBY, SELLER RESERVES THE RIGHT, IN ITS SOLE DISTRECTION, TO INCREASE THE PURCHASE PRICE STATED HEREIN IN AN AMOUNT CORRESPONDING TO SAID PRICE INCREASE(S). Buyer agrees these limitations of Seller's liability are both reasonable and a material part of this Agreement and are to be liberally construed in favor of Seller to eliminate any other

liability of Seller other than repair or replacement of defective, non-conforming and/or damaged parts or products.

I. CANCELLATION DAMAGES: If Buyer cancels an order or fails to fulfill its obligation under this Agreement for any reason, Seller shall have the right, in its sole discretion, to terminate this Agreement, and Buyer agrees to pay Seller the full purchase price for all Processing and Materials previously delivered and a cancellation charge equal to the greater of the cost of the percentage of completion of the undelivered portion of the order (as estimated solely by Seller); or twenty five percent (25%) of the list price of the Processing and Material included in the undelivered portion of the order. Additionally, Buyer shall pay any cancellation charges which may be charged back to Seller by its suppliers.

J. GENERAL:

1. If any provision of this Agreement is held to be in conflict with, invalid, illegal or unenforceable, under any local, state or federal law, such provision shall be of such force and effect to the maximum extent permissible by such jurisdiction and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

2. Buyer hereby acknowledges, stipulates, and agrees that (i) any and all claims, actions, proceedings or causes of action relating to the validity, performance, interpretation, and/or enforcement hereof must be submitted exclusively to a court of competent jurisdiction in Houston, Harris County, Texas, (ii) to the maximum extent practicable, this Agreement will be deemed to call for performance in Houston, Harris County, Texas, (iii) Buyer irrevocably submits to the exclusive jurisdiction of the State and Federal courts in Houston, Harris County, Texas, (iv) service of process may be made upon it in any legal proceeding in connection with this Agreement or any other agreement as provided by Texas law, (v) Buyer irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any litigation arising out of or in connection with this Agreement or any other agreement or transaction brought in any such court, (vi) Buyer irrevocably waives any claims that litigation brought in any such court has been brought in an inconvenient forum, and (vii) it irrevocably consents to the service of process out of any of the aforementioned courts by the mailing of copies thereof by Certified Mail, Return Receipt Requested, postage prepaid, at its address set forth herein. The scope of each of the foregoing waivers is intended to be all encompassing. Buyer acknowledges that these waivers are material inducements to the agreement of Seller to enter into a business relationship with Buyer, and that Seller has already relied on these waivers in entering into this Agreement. **EACH PARTY HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FULLY WAIVES ANY RIGHT TO TRIAL BY JURY TO THE EXTENT THAT ANY SUCH RIGHT NOW OR HEREAFTER EXISTS WITH RESPECT TO THIS AGREEMENT AND/OR THE AGREEMENTS, INSTRUMENTS AND DOCUMENTS CONTEMPLATED HEREBY OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION HEREWITH. EACH PARTY ACKNOWLEDGES AND AGREES THAT THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY SUCH PARTY AND IS INTENDED TO EMCOMPASS EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO TRIAL BY JURY WOULD OTHERWISE ACCRUE. EITHER PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.**

3. Buyer shall not assign this Agreement without the prior written consent of Seller.

4. The delay or failure of Seller to enforce any provision of this Agreement or to exercise any right occurring from any default of Buyer shall neither be deemed a waiver of any right of Seller to subsequently enforce such provision or right nor a waiver of any other provision of this Agreement or of any other of Seller's rights.

5. Seller neither assumes nor authorizes any person to assume for it any obligations or liabilities not expressly stated herein.

6. If any provision or portion thereof, of these Terms and Conditions is found to be invalid or unenforceable, to any extent, such provision shall be fully severable, and the remaining provisions of this Agreement shall remain in full force and effect. If permitted by law, the Parties agree that the invalid or unenforceable provision shall be enforced to the maximum extent allowable under applicable law or replaced with a valid and enforceable provision that achieves the original intent of the Parties. These Terms and Conditions contain the entire agreement between the Parties and supersede all prior agreements, written or verbal, excepting only Seller's Purchase Order and/or Sales Order and invoice. Neither of the Parties has relied on any statements or representations that have been made by the other Party that are not set forth herein.