



**WATERPROOFING, CONCRETE COATINGS, POOL RESTORATION, & STUCCO SYSTEMS**

## **TERMS & CONDITIONS**

The following Sale Order Terms and Conditions (hereinafter "Agreement") between MC Products Inc. DBA Multicoat Corporation. (hereinafter "Seller") and you (hereinafter "Buyer") are incorporated into any order placed by the buyer ("Sale Order") between Seller and Buyer. All sales to the Buyer are expressly conditioned on Buyer's assent to the terms of this Agreement including any additional or different terms, Buyer and Seller understand that each other may, from time to time, use forms or other documents which may contain terms purporting to govern the rights of the parties, and each agree expressly those terms are superseded by the terms contained in this Agreement. Buyer's acceptance of goods pursuant to any Sales Order shall operate as assent and an agreement by Buyer to all terms and conditions contained in this Agreement.

**1. Sales Prices:** Prices on the goods specified in the Sale Order do not include any city, state, or federal excise taxes, including, without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use, and similar taxes, fees, or other charges imposed by governmental entities. When applicable, taxes will be added to the invoice as a separate charge to be paid by Buyer. If an exemption from a tax is claimed; supporting documents must be furnished by Buyer prior to delivery. Any and all sales quotations provided by Seller to Buyer shall automatically expire thirty (30) calendar days from the date issued, and are subject to termination by Seller by notice to Buyer at any time.

**2. Minimum Order:** The Sale Order minimum is one unit if purchased by the container.

**3. Late Payments:** All payments made thirty (30) calendar days after the due date of the invoice shall be subject to a full service charge of one and one-half percent (1.5%) per month (or portion of month) based on the outstanding balance. In addition, Buyer's failure to make any payment when due may justify suspension of performance by Seller of any other sale orders.

**4. Cancellations:** Buyer may not change a Sale Order without the written consent of Seller. If Buyer desires to cancel or change a Sale Order, Buyer must deliver a written request for cancellation of the Sale Order to Seller's Rancho Santa Margarita office.

**5. Ownership of Product:** When Sale Order is for product by square footage, Seller will provide all product necessary to ensure adequate coverage under Seller's requirements for a valid warranty. Seller retains legal title to all goods shipped until applied. All unapplied product remaining after application (for a sale by square footage) will be returned to Seller upon completion of job. When Sale Order is for product by container, defined as one (1) gallon container, five (5) gallon pail, twenty (20) liter pail, fifty-five (55) gallon drum, or two hundred seventy five (275) gallon tote, the product becomes the property of the Buyer at Seller's ship point.

**6. Security Interest:** To secure the payment of Seller's invoice, Buyer grants to Seller a security interest in all goods sold to Buyer under the Sale Order made for goods by the container including all proceeds therefrom. Buyer authorizes Seller to perfect its security interest through a filing of a financing statement pursuant to the Uniform Commercial Code and shall reimburse Seller for any fees incurred in filing the financing statement, which may be added by Seller to the amount of Seller's invoice to Buyer. If the buyer defaults in payment, becomes insolvent or Seller reasonably believes that the Buyer will default, Seller shall have all

the rights and remedies available to it as a secured creditor under the U.C.C. or any other applicable law, including the right to take possession of the goods and the Buyer agrees to facilitate and cooperate. Buyer understands and agrees that Buyer will not request lien waivers in any form, and Seller will not sign lien waivers in any form, until Seller has received payment in full for the respective invoice. Seller agrees to execute and return lien waivers on any fully paid invoice within 1-2 business days of receiving a request.

**7. Delivery and Risk of Loss:** All shipments under the Sale Order for product purchased by container are F.O.B. Seller's ship point and all risk of loss shall pass to Buyer at that time regardless of the method of shipment that may be elected by Buyer.

**8. Delays:** Seller will not be liable for any delay in the performance of its obligations under the Sale Order, or for any damages suffered by Buyer due to such delay, if the delay is, directly or indirectly, caused by a fire, flood, accident, civil unrest, act of God, war, governmental interference or embargo, labor strike, shortage of materials, or any other cause beyond Seller's control.

**9. Materials:** The Sale Order is conditional upon Seller's ability to obtain the necessary raw materials at a reasonable price, and all shipments under the Sale Order are subject to Seller's supply schedules and any government regulations, orders, directives, and restrictions that may be in effect.

**10. Nonconforming Goods:** Buyer shall inspect all goods upon tender and delivery by Seller, and should any of the goods be nonconforming goods, Buyer must notify Seller, in writing, within ten (10) days of Seller's tender and delivery of the goods describing the nature of any nonconformity. Seller shall have the right and option to repair or replace any nonconforming goods. The failure of buyer to notify Seller in writing that the goods are nonconforming within ten (10) days of Seller's tender and delivery of the goods, shall constitute acceptance of the goods and Buyer shall be liable to Seller for the total Sale Order price.

**11. LIMITATIONS ON DAMAGES:** SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY LOST PROFITS OR OTHER ECONOMIC LOSS OF BUYER, OR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER SIMILAR DAMAGES ARISING OUT OF ANY BREACH OF THIS AGREEMENT BY SELLER, ANY OBLIGATIONS OF SELLER PURSUANT TO THIS AGREEMENT OR THE FAILURE OF THE GOODS TO PERFORM IN ANY PARTICULAR MANNER. Except for intentional wrongdoing, fraud or criminal conduct; the obligations of the parties under any sales contract with Seller shall not constitute the personal obligations of their shareholders, or of their directors, officers, employees, consultants, agents or invitees, and each party shall look only to the assets of the other party for the satisfaction of any liability with respect to any such sales contract; and shall not seek recourse against the shareholders of the other party, or against the directors, officers, employees, consultants, agents, or invitees of the other party, or against their personal assets for such satisfaction.

**12. Warranties:** Seller warrants that goods supplied pursuant to the Sale Order shall conform to the description therein stated and shall be free from defects in material or workmanship for the period stated in each applicable warranty. Warranties are job specific. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**13. Special Orders:** If any goods are manufactured by Seller to meet Buyer's particular specifications or requirements, Buyer shall indemnify and hold Seller harmless from any and all claims arising from the purchase, use, or sale of the special goods, and from any related costs, attorneys' fees, expenses, or liabilities incurred by Seller therefrom.

**14. Law and Procedure:** The Sale Order, this Agreement and the transaction described therein shall be subject to, construed under and enforced according to the laws of the State of California. ANY ACTION IN REGARD HERETO OR ARISING OUT OF THE TERMS AND CONDITIONS HEREOF SHALL BE INSTITUTED AND LITIGATED IN THE COURTS OF THE

STATE OF CALIFORNIA AND NO OTHER. IN ACCORDANCE HERewith, THE UNDERSIGNED HEREBY SUBMITS TO THE JURISDICTION AND VENUE OF THE COURTS WITHIN THE ORANGE COUNTY, STATE OF CALIFORNIA. BUYER AND SELLER HEREBY WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTION) PROCEEDING OR COUNTERCLAIM ARISING OUT OF THE SALE ORDER, THIS AGREEMENT OR THE TRANSACTION DESCRIBED THEREIN.

**15. Remedies:** In the event that Buyer is in default or otherwise breaches the Sale Order or this Agreement, Seller shall be entitled to pursue any and all remedies, legal or equitable including an action to recover the total Sale Order price, as well as its costs of enforcing the Sale Order, including, without limitation, its attorneys' fees. In the event that Seller is in default or otherwise breaches the Sale Order, the liability of Seller to Buyer for such breach or default shall be limited to the replacement value of the goods under the Sale Order which is the sole and exclusive remedy of Buyer for any such breach or default.

**16. Entire Agreement:** This Agreement is intended by the parties as a final expression of the terms and conditions of the Sale Order. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein. This Agreement can only be modified in a writing signed by both parties. No previous course of dealing between the parties or trade usage may be used to interpret, limit, or otherwise impair the operation of this agreement.

**17. Waiver & Severability:** Seller shall not be deemed to have waived any rights under this Agreement or the Sale Order unless such waiver is given in writing and signed by Seller. No delay or omission on the part of Seller in exercising any right shall operate as a waiver of such right or any other right. A waiver by Seller of a provision of this Agreement or the Sale Order shall not prejudice or constitute a waiver of Seller's right otherwise to demand strict compliance with that provision or any other provision of this Agreement or the Sale Order. Neither prior waiver by Seller nor any course of dealing between Buyer and Seller, shall constitute a waiver of any of Seller's rights or of any of Buyer's obligations as to any future transactions. Whenever the consent of Seller is required under this Agreement or the Sale Order, the granting of such consent by Seller in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Buyer. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision, which most closely approximates the intent and economic effect of the invalid provision.

**18. Notices:** All notices required to be given under this Agreement shall be given in writing and shall be effective when a record has been actually delivered, deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown upon the Sale Order, received by telecopy or received through the Internet. Any party may change its address for notices under this Agreement by giving formal written notice to the other party, specifying that the purpose of the notice is to change the party's address.

**19. Interest and Fees:** In the event of any dispute arising out of the Sale Order, this Agreement or the transaction described therein, in addition to an award of damages, the Seller shall be entitled to recover: (1) pre-judgment interest on any amount awarded at a rate of one and one-half percent (1.5%) per month, (2) all expenses of litigation, including without limitation all filing fees and court costs; and (3) all attorneys' fees incurred regardless of whether such fees or expenses are incurred before or after the initiation of litigation, and regardless of whether Seller is successful in obtaining any judgment against Buyer.