

For a perfect finish !



## NUTECH PAINT LLC

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**Tel: 1 714 557 4180**

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18 February 2014

### **NUTECH PAINT® REGISTERED ROOFING PROFESSIONAL MEMBERSHIP TERMS AND CONDITIONS AGREEMENT**

**You have either applied on Nutech's web site or in person to become a Nutech Registered Roofing Professional of Nutech roofing products. Below are Nutech's standard terms and conditions of membership**

**1. The Nutech Registered Roofing Professional ("NRRP") agrees to:**

- A Use your best efforts to sell and promote Nutech Paint® products ("Products") exclusively
- B. Apply all Nutech Products (Products) only in the manner prescribed by Nutech for their proper use as detailed in Nutech Product Info Sheets, MSDS, Guidelines and Membership manual.
- C Ensure that all Products at all times prior to being sold/used display Nutech trademarks as provided by Nutech on Products without any alteration;
- D. Provide a high standard of service at least equal to that established by Nutech and communicated to NRRP from time to time;
- E Advise Nutech of (i) problems experienced by consumers or by the NRRP; and (ii) other matters NRRP may learn that affect the sales or reputation of Products including activities of competitors and infringement of Nutech's trademarks and brands.
- F Respond to Nutech's reasonable requests for information about sales, marketing, and inventory levels.
- G Comply with local applicable laws, regulations and codes;
- H Not modify or alter Products in any way without Nutech's prior written consent which may be withheld at its absolute discretion;
- I Keep accurate records of all jobs completed where Nutech Products have been used exclusively including but not limited to installations, inquiries, damage, complaints, quotations, time and date of all Product application, weather conditions, temperature and relative humidity, amount and type of all Product used on each job, total roof area coated, condition of roof prior to coating, photographic records of roof before and after application of Products and other matters relating to Products;
- J. Allow Nutech, upon reasonable notice, to inspect any of the NRRP's operations, materials and records relating to NRRP's use of Products;
- K Make no promises, representations, warranties or guarantees in relation to the Products other than those authorized by Nutech;
- L. Process customer orders and provide services promptly;
- M. Make clear, in all dealings with customers and others that NRRP is an independent contractor business that is a Registered Nutech Roofing Professional and Applicator of Nutech Roof Coating Products and that the NRRP is not an agent of Nutech for any purpose that can pledge Nutech's credit or commit Nutech to any contract or otherwise incur any liability on behalf of Nutech.
- N. Maintain and have in force at all times for the life of this agreement, all and any contractor licenses necessary to undertake roofing, roofing repair and roof painting as applicable to your state and local area.

**2. Nutech Agrees to:**

- A. Sell Products to NRRP at prices stated on the NRRP price schedule supplied either by Nutech or it's local distribution agent.
- B. Make available at Nutech's offices such training and technical assistance as will, in Nutech's opinion, assist NRRPs in fulfilling membership obligations and provide information via e-mail advisories that Nutech deems useful in furtherance of NRRP's business.
- C Make available Nutech Trademark branding, logos and artwork for use within the NRRP business for the life of this. Agreement, also make available to NRRP such sales materials, display materials, clothing bearing Nutech logos, decals, and similar items at approximately Nutech's cost for the same for use in NRRP's performance of this agreement as Nutech determines to make available from time to time.
- D Manufacture Products in accordance with written specifications provided to NRRP by Nutech from time to time.
- E. Fill NRRP orders in accordance with ordering lead times published by Nutech and it's appointed distributors.

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### 3. Product Orders and Payment

- A. NRRP is responsible for ensuring the accuracy and completeness of any order submitted by NRRP. No order which has been accepted by Nutech may be cancelled by NRRP without the express prior written approval of Nutech.
- B. The NRRP agrees to make full payment for all Products ordered from Nutech before any Product is shipped. At its discretion Nutech may approve a 14 day Credit Account for the NRRP subject to satisfactory completion of the Nutech Credit Application Form which includes suitable Referees details and a Personal Guarantee. If a Credit Account is approved, the NRRP agrees to make full payment within 14 days of the Invoice Date by cash or bank transfer to Nutech's bank account, details of which will be provided by Nutech to the NRRP from time to time.
- C. All Product is provided ex Factory, freight collect from Nutech's factory in California with all freight charges invoiced to the NRRP as required. If product is supplied from an appointed distributor, freight will be charged from that distributors location.

### 4. Liability of Nutech

Nutech warrants that materials sold and delivered to the NRRP will be in conformity with Nutech's product specifications as it publishes them from time to time. Nutech cannot be held responsible for the use of its Products on any individual project because the surface conditions, Product application, weather conditions before during and after application, correct product selection, application equipment, applicator skills and a number of other factors are beyond the control of Nutech Paint LLC. The NRRP agrees to advise all customers that Nutech Paint LLC is not liable or responsible for the manner in which its products are applied, as discussed above, but that Nutech's liability is limited to the warranty stated herein which is printed on Nutech's paint drums and other Nutech materials and NRRP agrees to provide a copy of the same to its customers.

Nutech's liability for breach of warranty is the replacement of any Product proven to be faulty or defective with conforming products. "Replacement," for this purpose means the delivery of replacement Product to the NRRP or customer, not including the application of the Product to customer's roof. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IN NO EVENT SHALL NUTECH BE LIABLE FOR ANY GENERAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS RESULTING FROM ANY BREACH OF WARRANTY OR ANY OTHER ACT OR OMISSION OF NUTECH INCLUDING ITS NEGLIGENCE. NRRP also have access to Nutech's exclusive NRRP labour and material (L & M) warrantee on set products within Nutech's product range.

### 5. Insurance and Indemnity.

- A. NRRP will have in force at all times while it is a Nutech Registered Roofing Professional a policy of Commercial General Liability Insurance with aggregate and single occurrence coverage of not less than \$1.5 million dollars. NRRP will provide proof of insurance as and when requested by Nutech.
- B. NRRP shall indemnify, defend with competent outside counsel reasonably satisfactory to Nutech, protect and hold harmless Nutech, its officers, directors, employees, attorneys and assigns from and against all claims in any administrative, judicial or other forum to the extent that such claims arises out of NRRP's performance of this agreement and/or the use of Products, including without limitation awards of damages, interest, fines, charges, penalties and expenses resulting therefrom (including all expenses, but not limited to, attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in asserting or enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against Nutech or its officers, directors, employees, attorneys or assigns.

### 6. Term and Termination of Membership as Nutech RRP

- A. Applicant's membership as an NRRP begins when the applicant has done all of the following (a) indicated on the Nutech website that he, she or it has read all of the terms and conditions of membership as an NRRP and agreed to them, (b) paid any one time membership fee if applicable, and (c) provided Nutech with proof of insurance. Nutech has the right to amend its Membership Terms and Conditions from time to time and require the NRRP to agree to the same as a condition of continued membership as discussed in paragraph 7.D. hereof.
- B. Nutech retains the right to terminate the membership of an NRRP, or to terminate the NRRP program, in Nutech's unfettered discretion for such reasons as Nutech deems appropriate in its sole judgment. Nutech may terminate the membership of an NRRP, or terminate the NRRP program in its entirety, by (a) giving the affected NRRP three business days' notice of termination of membership, and (b) refunding to the affected NRRP such portion of its membership fee if applicable, as determined by multiplying it by a fraction whose numerator is the number 365 minus the number of days the NRRP has been an NRRP (the numerator cannot be less than zero) and the denominator is 365. Upon termination of an NRRP's membership, Nutech has the right to require the NRRP to resell any Products in its possession in good saleable condition to Nutech at invoiced cost plus transportation and insurance.
- C. The NRRP's obligations respecting insurance, indemnity, trademarks, logos, trade secrets, and choice of law and forum survive the end of membership as an NRRP

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### 7. Additional Provisions

- A. Trademarks and Logos:** Nutech hereby licenses NRRP to use Nutech's trademarks, logos, brands, sales materials, and other items created by Nutech and/or bearing Nutech brands and/or promotional copy (collectively "Nutech Promotional Properties") during the term of NRRP's membership to promote the sale and proper use of Products under such rules as Nutech may prescribe from time to time. NRRP shall not acquire any ownership interest or other legal rights of use of any Nutech Promotional Properties other than is granted to NRRP under this agreement and all of NRRP's right to use any Nutech Promotional Properties at all for any purpose shall expire at such time, if any, that the NRRP is no longer an NRRP.
- B. Intellectual Property and Trade Secrets:** NRRP may, during the time it is an NRRP, learn Nutech trade secrets which shall at all times remain the Intellectual Property of Nutech Paint LLC. NRRP may use this information to sell and use Nutech Products while an NRRP, and will not disclose the same to any third party, and the NRRP will return all said information to Nutech at such time, if any, that NRRP is no longer an NRRP. Nothing in this agreement respecting confidential information displaces applicable state or federal law and Nutech reserves all its rights under this agreement and applicable state and federal law respecting trade secrets, its remedies under this agreement, state law, and federal law being cumulative and Nutech may select among them for enforcement purposes as it may choose.
- C. Assignment:** NRRP may not transfer, assign, sublicense, or encumber in any way any of its rights or obligations under this agreement without the prior written consent of Nutech. Nutech shall be entitled to transfer, assign, sublicense or encumber any of its rights or obligations under this agreement without the prior written consent of the NRRP.
- D. Amendment of NRRP Membership Terms:** Nutech may revise the terms of NRRP membership at such time or times as it deems reasonably appropriate by giving notice of the same to the NRRP membership. If any NRRP member wishes to no longer be an NRRP, it may give notice of the same to Nutech who will promptly terminate the membership and refund the *pro rata* membership fees as calculated in paragraph 6.B. hereof.
- E. Choice of Law and Forum:** This agreement shall be construed under the Law of California without reference to its choice of law principles. Any litigation arising from this agreement shall be filed and tried in either (a) the Central District of the County of Los Angeles, California, or (b) the Federal District Court for the Central District of California.
- F. Relationship of Parties:** NRRP is an independent contractor as respects Nutech and this agreement does not create, and shall not be construed as creating a relationship of employer and employee, joint venturers, principal and agent, or a partnership between NRRP and Nutech.
- G. Modification of Agreement:** This agreement may be modified, amended, or cancelled, or a provision hereof waived, in whole or in part, only by means of a written instrument executed by all of the parties hereto expressly stating an agreement to so modify, amend, cancel, or waive.
- H. No Effect of Waiver:** The waiver by any party to this Agreement of a breach of any provision of this Agreement committed by any other party hereto shall not operate to create a waiver as to any subsequent breach of this agreement.
- I. Entire Agreement:** This instrument contains the parties' entire agreement respecting the subject matter hereof and it supersedes any and all other agreements, either oral or in writing, between the parties hereto regarding the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter, and each party to this agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party to any other party, or to anyone acting on behalf of any party, which are not embodied herein, and that no agreement, statement, or promise not contained in this agreement shall be valid or binding.

**END OF NRRP TERMS AND CONDITIONS OF MEMBERSHIP**