

Eagle Materials Inc. Website Terms of Use

Last Updated: October 29, 2024

Our Website Terms of Use Have Recently Changed.

1. Introduction. Eagle Materials Inc. (“our,” “us,” or “we”) and our subsidiaries, collectively the “Company,” is pleased to provide you with this website <https://www.eaglematerials.com/> (the “Website”). These Terms of Use, together with any terms expressly incorporated by reference, including the Eagle Materials Inc. Privacy Policy (“**Privacy Policy**”), govern your access to and use of the Website. By clicking the “I agree” language if prompted or otherwise accessing or using the Website, you agree to these Terms of Use. If you do not agree to these Terms of Use, you should not access the Website. Capitalized terms used but not defined in these Terms of Use have the meaning given to them in our Privacy Policy. Please refer to our Privacy Policy to learn about our privacy practices with respect to your Personal Information.

PLEASE NOTE THAT THESE TERMS OF USE CONTAIN A DISPUTE RESOLUTION PROVISION THAT REQUIRES ARBITRATION, WAIVES YOUR RIGHT TO TRIAL BY JURY, AND WAIVES YOUR RIGHT TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING IN THE EVENT OF DISPUTES, AS SET OUT IN MORE DETAIL BELOW.

2. Eligibility and Availability.

In order to access the Website, the following must be true:

- You are at least 18 years of age; and
- You live in a territory where the Website is made available.

If you do not meet these requirements, you must not access or use the Website. You understand and agree that satisfying the above requirements does not guarantee that you will receive access to the Website. In addition to the above requirements, the Company reserves the right to change or include new requirements as deemed appropriate in its sole discretion without providing prior notice to you.

3. Relationship to Other Terms and Policies. Our Privacy Policy describes in detail our online information practices and how we gather, use, share, and protect your information when you use, access, or visit the Website. By accessing or using the Website, you agree to our information collection and use practices as disclosed in our Privacy Policy. You may review the Privacy Policy by clicking on the above link.

If there are additional terms associated with a specific online service or portion of the Website, such as contests, sweepstakes, and other promotions, you will be presented with those additional terms at the time you access the online service or portion of the Website (the “Additional Terms”). Those Additional Terms supplement these Terms of Use and are incorporated herein. To the extent there is any conflict between these Terms of Use and any Additional Terms, the Additional Terms

shall control with respect to the specific online service or portion of the Website provided subject to those Additional Terms.

4. Restrictions on Use. You may use the Website only for lawful purposes and in accordance with these Terms of Use. You will comply with all applicable laws, including any and all laws in your relevant states and localities, pertaining to the use of the Website. You agree not to use the Website:

- In any way that violates any applicable federal, state, local, or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the United States or other countries);
- To impersonate or attempt to impersonate us, our employees, or any other person or entity (including, without limitation, by using e-mail addresses or screen names associated with any of the foregoing); and
- To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Website, or which, as determined by us, may harm us or other users of the Website, or expose them to liability.

Additionally, you agree not to:

- Use the Website in any manner that could disable, overburden, damage, or impair the Website or interfere with any other user's use of the Website, including his or her ability to engage in real time activities through the Website;
- Provide information that is inaccurate, obsolete, or untrue;
- Post Content to the Website that is illegal, unreliable, or inappropriate, or that violates another person's or entity's rights;
- Use any robot, spider, or other automatic device, process, or means to access the Website for any purpose, including monitoring or copying any of the material on the Website;
- Use any manual process to monitor or copy any of the material on the Website or for any other unauthorized purpose without our prior written consent;
- Use any device, software, or routine that interferes with the proper working of the Website;
- Introduce any viruses, Trojan horses, worms, logic bombs, keystroke logging, or other material which is malicious or technologically harmful;
- Attempt to gain unauthorized access to, interfere with, damage, or disrupt any part of the Website, the server on which the Website is stored or hosted, or any server, computer, or database connected to the Website;

- Attack the Website via a denial-of-service attack or a distributed denial-of-service attack; and
- Otherwise attempt to interfere with the proper working of the Website.

5. Intellectual Property. The Website and the entirety of its contents, features, and functionality (including, but not limited to, all information, software, text, displays, images, video, and audio, and the design, selection, and arrangement thereof), are owned, controlled, or licensed by us, our licensors, suppliers, or by other third parties who have licensed their materials to us and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws. No right, title, or interest in or to the Website or any content on the Website is transferred to you, and we reserve all rights not expressly granted herein.

Any use of the Website not expressly permitted by these Terms of Use is a breach of these Terms of Use and may violate copyright, trademark, and other laws. Company names and logos and all related product and service names, brand colors, design marks, and slogans are the trademarks or service marks of the Company. No trademark or service mark license is granted in connection with the materials contained within the Website. Access to the Website does not authorize anyone to use any Company name, logo, or mark in any manner.

6. Links to Other Sites. In an effort to provide you with additional information, the Website may include links to third-party websites. We make no representations about any third-party website. A hyperlink to another party's website does not mean that the Company endorses or accepts the content or use of the site or its privacy practices. The privacy practices of linked sites could be different from those of the Company. If you access third-party linked sites from the Website, you are solely responsible for the access and use of the third-party linked sites.

7. Access, Correction, and Data Integrity. You agree that the information you provide to us will be accurate, complete, and current at all times. Inaccurate, incomplete, or obsolete information may result in the immediate termination of your account on the Website.

Although we attempt to maintain the integrity and accuracy of the information on the Website, we make no guarantees as to its correctness, completeness, or accuracy. The Website may contain typographical errors, inaccuracies, or other errors or omissions, including related to product pricing and availability. If you believe that information found on the Website is inaccurate or unauthorized, including information provided by you, please inform us by contacting us at the contact details provided in Section 20 "Contact Information."

8. Security. We implement reasonable and appropriate security measures to protect your Personal Information from loss, misuse, unauthorized access, disclosure, alteration, and destruction, taking into account the risks involved in processing and the nature of such data, and we comply with applicable laws and regulations. However, no security system is impenetrable. We cannot guarantee the security of our databases, nor can we guarantee that the information you supply will not be intercepted while being transmitted to and from us over the Internet. Also, no data transmission over the Internet is 100 percent secure. You should take appropriate precautions to protect personal and confidential information, including any passwords or account information,

and to use the Website and your devices or applications in a secure and responsible manner. You, not the Company, are responsible for the security of your account/password and devices, and your transmission of information over the Internet, and if you have any concerns about the transmission of your information over the Internet, you should use other means of communication. You are also responsible for any and all activities or actions that occur under your account, and agree to notify us immediately upon becoming aware of any breach of security or unauthorized use of your account by contacting us at the contact details provided in Section 20 “Contact Information.”

9. Electronic Communications. You agree to receive invitations, notifications, reminders, and other communications from the Company (and any of its agents) by e-mail, phone, or other method of communication. These communications may include (but are not limited to):

- Subscription alerts;
- Marketing or promotional materials and offers; and
- Website updates.

By providing your e-mail address, phone number, or other method of communication, you are agreeing to be contacted by or on behalf of the Company to receive marketing-related information and other operational services. These communications may not be secure. Unsecured communications pose a risk to the confidentiality and privacy of information being sent because they might be intercepted by a third party. You can opt out of receiving one of our electronic communications by following the unsubscribe link or instructions contained in the electronic communication. Please allow us ten (10) business days from when the request was received to complete the removal. Please note that even if you unsubscribe from commercial electronic communications, we may still e-mail you non-commercial (transactional) electronic communications related to your account and your transactions with the Website.

10. Disclaimer of Warranties. You understand and agree that we do not provide any warranty with respect to the Website. Instead, you agree that your use of the Website is at your own risk and that the Website is provided on an “as is” and “as available” basis, with all faults, and with no representations or warranties of any kind, either express or implied, including with respect to the completeness, security, reliability, quality, accuracy, or availability of the services.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND RELATED TO ITS WEBSITE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. WITHOUT LIMITATION TO THE ABOVE, THE COMPANY DOES NOT PROVIDE ANY REPRESENTATION OR WARRANTY THAT (I) THE WEBSITE WILL MEET YOUR REQUIREMENTS, (II) THE WEBSITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (III) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE WEBSITE WILL BE ACCURATE OR RELIABLE, (IV) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED THROUGH THE WEBSITE WILL

MEET YOUR EXPECTATIONS, NEEDS, OR REQUIREMENTS, AND (V) ANY ERRORS ASSOCIATED WITH THE WEBSITE WILL BE CORRECTED.

THE COMPANY IS NOT RESPONSIBLE FOR ANY INACCURACIES OR DEFECTS IN THE INFORMATION, SOFTWARE, COMMUNICATION LINES, INTERNET OR YOUR INTERNET SERVICE COMPANY, COMPUTER HARDWARE OR SOFTWARE, OR ANY OTHER SERVICE OR DEVICE THAT YOU USE TO ACCESS OUR WEBSITE.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE COMPANY OR THROUGH OR FROM THE WEBSITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS OF USE.

You understand that **the Company** cannot guarantee that use of our Website will be free from technological difficulties including, but not limited to, unavailability of information, downtime, service disruptions, viruses, or worms. Additionally, you understand that we cannot and do not guarantee or warrant that files available for downloading from the Website will be free of viruses or other destructive code. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for accuracy of damage input and output, anti-virus protection, and for maintaining a means external to our site for any reconstruction of any lost data.

11. Indemnification. You agree to indemnify and hold harmless the Company, its licensors and licensees, and its service companies from and against any and all claims and expenses, including attorneys' fees, whether made by you, or on your behalf, or by any third party arising out of your use of or access to the Website (or access or use by anyone using your account and password), including but not limited to claims arising out of (i) your violation of these Terms of Use; (ii) your violation of any third-party right including any copyright, trademark, trade secret, or privacy right; or (iii) any misrepresentation made by you. You agree to promptly notify the Company and cooperate fully with the Company in the defense of any claim. The Company reserves the right to assume the exclusive defense and control of any claim indemnified under this section by you.

12. Waiver, Release, and Limitation of Liability. YOU AGREE THAT, TO THE FULLEST EXTENT ALLOWED BY LAW, THE COMPANY, ANY LICENSOR, LICENSEE, OR SUPPLIER, OR ANY THIRD PARTY WHO PROMOTES OR PROVIDES A LINK TO THE WEBSITE SHALL NOT BE LIABLE TO YOU FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, LOST PROFITS, OR CONSEQUENTIAL DAMAGES, LOSSES, FEES, CHARGES, EXPENSES, OR LIABILITIES RELATED TO THE OPERATION OF OR YOUR ACCESS TO AND USE OF THE WEBSITE.

TO THE FULLEST EXTENT PERMITTED BY LAW, WITH RESPECT TO DIRECT DAMAGES, AND WHERE THE ABOVE EXCLUSIONS OF INDIRECT, CONSEQUENTIAL, AND OTHER DAMAGES ARE LIMITED OR PROHIBITED UNDER LAW, YOU AGREE THAT ANY AND ALL DAMAGES, LOSSES, FEES, CHARGES, EXPENSES, OR LIABILITIES YOU SUFFER OR INCUR RELATED TO YOUR ACCESS TO AND USE OF THE WEBSITE THAT RESULT FROM ANY ACT OR

OMISSION OF THE COMPANY, ANY OF THE COMPANY'S LICENSORS, LICENSEES, OR SUPPLIERS, OR ANY THIRD PARTY WHO PROMOTES OR PROVIDES A LINK TO THE WEBSITE SHALL BE LIMITED TO THE FEES PAID BY YOU DURING THE THREE MONTHS PRECEDING THE EVENT GIVING RISE TO LIABILITY, OR IF NO FEES WERE PAID OR PAYABLE BY YOU FOR SUCH PERIOD, \$100.00.

THE ABOVE LIMITATIONS AND EXCLUSIONS TO LIABILITY APPLY REGARDLESS OF THE TYPE OF DAMAGES OR CLAIMS, INCLUDING, WITHOUT LIMITATION, DAMAGES OR CLAIMS RELATED TO (I) PERSONAL INJURY, WRONGFUL DEATH, LOSS OF USE, LOSS OF PROFITS, INTERRUPTION OF SERVICE, OR LOSS OF DATA; OR (II) MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION OR TRANSMISSION; OR (III) ANY FAILURE OF PERFORMANCE, WHETHER OR NOT LIMITED TO ACTS OF GOD, COMMUNICATION FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO YOUR RECORDS, PROGRAMS, OR SERVICES; OR (IV) OTHERWISE ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF, OR THE INABILITY TO USE, THE WEBSITE. YOU AGREE THAT THIS LIMITATION APPLIES EVEN IF THE COMPANY, ANY LICENSOR, LICENSEE, OR SUPPLIER, OR ANY THIRD PARTY WHO PROMOTES OR PROVIDES A LINK TO THE WEBSITE IS NEGLIGENT OR HAS BEEN ADVISED OF THE LIKELIHOOD OR POSSIBILITY OF SUCH DAMAGES, LOSSES, FEES, CHARGES, EXPENSES, OR LIABILITIES.

THE PARTIES AGREE THAT THE EXCLUSIONS OF REMEDIES AND LIMITATIONS SPECIFIED IN THIS SECTION ARE ESSENTIAL TERMS, WITHOUT WHICH THE SERVICES WOULD NOT BE OFFERED, ARE A REASONABLE ALLOCATION OF RISK AND APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

TO THE EXTENT THE ABOVE LIMITATION OF LIABILITY IS RESTRICTED UNDER LAW, THE ABOVE LIMITATION SHALL BE APPLIED TO THE MAXIMUM EXTENT PERMITTED UNDER SUCH LAW.

13. Governing Law. You and the Company agree that your access to the Website and these Terms of Use, and any dispute between you and the Company relating to your use of the Website and these Terms of Use, will be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflicts of law rules, except for the Dispute Resolution provision in Section 19 below. The Company makes no representation that the information and materials on our Website is appropriate or available for use in locations outside of Texas.

14. Severability and No Waiver. No waiver by the Company of any term or condition set out in these Terms of Use shall be deemed a further or continuing waiver of such term or condition,

and any failure by the Company to assert a right or provision under these Terms of Use shall not constitute a waiver of such right or provision.

If any part of these Terms of Use is held invalid or unenforceable, it will be so held to the minimum extent required by law, or removed from the Terms of Use, and except as set forth in Section 19 (Dispute Resolution), all other parts of these Terms of Use are still valid and enforceable. The parties further agree to replace such invalid or unenforceable provision of these Terms of Use with a valid and enforceable provision that will achieve, to the fullest extent possible, the economic, business, and other purposes of such invalid or unenforceable provision.

15. Modification. The Company may modify these Terms of Use at any time, in its sole discretion, without notice to you, and such modifications will be posted here and become effective upon posting online. You agree to review these Terms of Use regularly because you will be bound by any changes made, and your continued use of the Website constitutes agreement to any modified terms.

16. Term and Termination. The Company can decide to suspend, restrict, limit, or terminate your access to its Website with or without a warning at any time for any reason in the Company's sole discretion. The Company also reserves the right to refuse service, terminate accounts, remove or edit content, or cancel orders placed on our Website in our sole discretion. YOU AGREE THAT WE ARE NOT LIABLE TO YOU OR ANY THIRD PARTY FOR ANY MODIFICATION, SUSPENSION, OR DISCONTINUANCE OF ANY FEATURE OR COMPONENT OF THE WEBSITE. The Company can also assign its rights under the Terms of Use to any other party at any time without notice to you. The provisions of Sections 1 (Introduction), 10 (Disclaimer of Warranties), 11 (Indemnification), 12 (Waiver, Release, and Limitation of Liability), 13 (Governing Law), and 19 (Dispute Resolution) will survive any suspension, restriction, limitation, or termination of access to the Website.

17. Accessing the Website. We reserve the right to withdraw or amend the Website, and any material we provide on the Website, in our sole discretion without notice. We will not be liable if, for any reason, all or any part of the Website is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the Website or the entirety of the Website.

18. Entire Agreement. These Terms of Use constitute the entire agreement between you and the Company pertaining to the subject matter hereof. They supersede all other agreements, communications, or representations, oral or written, between us, past or present.

19. Dispute Resolution. MOST CONCERNS CAN BE RESOLVED QUICKLY AND TO YOUR SATISFACTION BY CONTACTING THE COMPANY'S CUSTOMER SERVICE DEPARTMENT AT info@eaglematerials.com OR BY CALLING (800) 759-7625. IN THE UNLIKELY EVENT THAT OUR CUSTOMER SERVICE DEPARTMENT IS UNABLE TO RESOLVE YOUR CONCERNS, WE EACH AGREE THAT ANY DISPUTE THAT IS NOT RESOLVED BY AN INFORMAL DISPUTE RESOLUTION CONFERENCE (AS DEFINED AND DESCRIBED BELOW) SHALL BE RESOLVED IN CONFIDENTIAL BINDING ARBITRATION CONDUCTED BEFORE ONE ARBITRATOR FROM THE AMERICAN ARBITRATION ASSOCIATION ("AAA") PURSUANT TO THE AAA ARBITRATION RULES, RATHER THAN IN A COURT, AS

DESCRIBED IN THIS ARBITRATION AGREEMENT (THE “ARBITRATION AGREEMENT”).

YOU ACKNOWLEDGE THAT YOU ARE VOLUNTARILY AND KNOWINGLY FORFEITING YOUR RIGHT TO A TRIAL BY JURY AND TO OTHERWISE PROCEED IN A LAWSUIT IN STATE OR FEDERAL COURT, EXCEPT AS EXPRESSLY PROVIDED HEREIN.

(a) **Definitions.** For the purposes of this Arbitration Agreement, the capitalized terms used herein shall have the following meanings:

(1) “Dispute” means any legal claim or controversy arising out of, or relating to, these Terms of Use or the use of the Website, as well as any claim or controversy regarding the applicability, enforceability, or validity of any provision of these Terms of Use. For purposes of the Arbitration Agreement, the term “Dispute” includes claims or controversies that arose or involve facts occurring before the existence of this or any prior versions of these Terms of Use, claims that are currently the subject of purported class action litigation in which you are not a member of a certified class, as well as claims and controversies that may arise after the termination of these Terms of Use.

(2) “Mass Arbitration” means 25 or more arbitration demands that: (i) are filed within 180 days of each other, (ii) allege similar or identical claims or causes of action, and (iii) either (a) the parties to those arbitration demands seek to simultaneously or collectively administer and/or arbitrate together, or (b) are filed by the same counsel or in coordination with each other.

(b) **Notice of Dispute.** Before the parties may commence arbitration of a Dispute, the party initiating the Dispute must provide a written notice of dispute (“Notice of Dispute”) as follows:

(1) **Disputes Initiated by You.** For a Dispute initiated by you, the Notice of Dispute must include the following information: Your name, residence address, email address associated with your account (if applicable), a detailed description of the Dispute, the specific relief you seek, and the grounds therefor. The Notice of Dispute must be mailed to the Company by certified mail return receipt requested to: 5960 Berkshire Ln., Suite 900, Dallas, TX 75225, ATTN: Notice of Dispute. A Notice of Dispute shall be individualized such that it may only pertain to you and you alone, and may not be combined with a Notice of Dispute by any other individual.

(2) **Disputes Initiated by the Company.** For a Dispute initiated by the Company, the Notice of Dispute must include the following information: Your name, a detailed description of the Dispute, the specific relief sought, and the grounds therefor. The Notice of Dispute must be mailed to you by certified mail return receipt requested to the mailing address on file and, if available, also emailed to your email address associated with your account. A Notice of Dispute shall be individualized such that it may only pertain to you

and you alone, and may not be combined with a Notice of Dispute regarding any other individual.

(c) Pre-Arbitration Informal Dispute Resolution Conference Requirements. Before the parties may commence arbitration of a Dispute, the parties agree to meet and confer by telephone or by videoconference in a good faith effort to informally resolve the Dispute (the “Informal Dispute Resolution Conference”). If you are represented by counsel, your counsel may participate in the Informal Dispute Resolution Conference, but you must also personally participate in the Informal Dispute Resolution Conference.

(1) The party initiating the Dispute agrees to provide a notice of intent to initiate the Informal Dispute Resolution Conference (“Notice of Conference”) as follows:

(A) **Disputes Initiated by You.** For a Dispute initiated by you, the Notice of Conference must include the following information: Your name, telephone number, mailing address, email address, the name, mailing address, and email address of your counsel (if any), and whether you intend to have the conference by telephone or by videoconference. The Notice of Conference must be mailed to the Company by certified mail return receipt requested to: 5960 Berkshire Ln., Suite 900, Dallas, TX 75225, ATTN: Notice of Conference. A Notice of Conference shall be individualized such that it may only pertain to you and you alone, and may not be combined with a Notice of Conference by any other individual. You may, but are not required to, combine in one mailing a Notice of Dispute and a Notice of Conference.

(B) **Disputes Initiated by the Company.** For a Dispute initiated by the Company, the Notice of Conference must include the following information: Your name, a detailed description of the Dispute, the specific relief sought, and whether the conference shall proceed by telephone or by videoconference. The Notice of Conference must be mailed to you by certified mail return receipt requested to the mailing address on file and, if available, also emailed to your email address associated with your account. A Notice of Conference shall be individualized such that it may only pertain to you and you alone, and may not be combined with a Notice of Conference regarding any other individual. The Company may, but is not required to, combine in one mailing and, if available, email, a Notice of Dispute and a Notice of Conference.

(2) Whether initiated by you or the Company, the Informal Dispute Resolution Conference shall occur within 45 days after the other party receives the Notice of Conference, unless an extension is mutually agreed upon by the parties. Unless all parties agree in writing, the Informal Dispute Resolution Conference shall be individualized such that it may only pertain to you and you alone, and may not be combined with an Informal

Dispute Resolution Conference regarding any other individual. This is so, even if the same law firm or group of law firms represents multiple individuals with similar disputes.

(d) Arbitration.

(1) Conditions Precedent. The sending of a Notice of Dispute and the completion of an Informal Dispute Resolution Conference are conditions precedent to our respective right to commence arbitration. Accordingly, if, but only if, we are unable to resolve a Dispute within 30 days after the Informal Dispute Resolution Conference is completed, we may commence arbitration pursuant to the procedures in this Arbitration Agreement. No arbitration may commence or proceed until the requirements set forth in Sections (b) and (c) (above) are fully satisfied.

(2) Fees. After the Company receives notice that you have commenced arbitration, the Company will promptly reimburse you for the payment of the filing fee. If you are unable to pay this fee, the Company will pay it directly upon receiving a written request from you. Except as otherwise provided for herein, the Company will pay all AAA filing, administration, and arbitrator fees for any arbitration initiated in accordance with the terms of this Arbitration Agreement.

(3) Rules of Arbitration.

(A) The arbitration will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, “AAA Rules”) of the American Arbitration Association, as modified by this Arbitration Agreement, and will be administered by the AAA. If the AAA is unavailable or refuses to arbitrate the parties’ Dispute for any reason, the arbitration shall be administered and conducted by a widely-recognized arbitration organization that is mutually agreeable to the parties, but neither party shall unreasonably withhold their consent. If the parties cannot agree to a mutually agreeable arbitration organization, one shall be appointed pursuant to Section 5 of the Federal Arbitration Act. In all events, the AAA Rules shall govern the parties’ Dispute. The AAA Rules are available online at www.adr.org, or by calling the AAA at 1-800-778-7879. The AAA Rules may change from time to time, and you should review them periodically.

(B) The arbitrator shall be bound by the terms of this Arbitration Agreement and shall follow the applicable law. In this regard, the arbitrator shall not have the power to commit errors of law or legal reasoning, and any award rendered by the

arbitrator that employs an error of law or legal reasoning may be vacated or corrected by a court of competent jurisdiction for any such error.

(C) Unless the parties agree in writing, any arbitration hearings will take place in the country (or parish) of your billing address.

(D) At either party's election, arbitration of any Dispute shall proceed pursuant to the Desk Arbitration rules of the AAA, unless both parties are represented by counsel.

(E) Prior to the appointment of a merits arbitrator, either party may request the appointment of a process arbitrator to determine: (i) whether the conditions precedent set forth in Section d(1) hereof have been satisfied; (ii) whether AAA's filing requirements have been satisfied; (iii) the applicable arbitration agreement; (iv) the applicable AAA rules that apply; (v) the allocation of payment advances on administrative fees, arbitrator compensation, and/or expenses; (vi) any other issue agreed to be addressed by the process arbitrator; and (vii) any other issue regarding the administration of the arbitration.

(F) If the process arbitrator makes an initial determination that the Dispute is frivolous or brought in bad faith, it shall allocate all AAA and arbitrator fees and expenses to the party who initiated the arbitration. If the merits arbitrator subsequently determines that the claims were not frivolous, the Company will reimburse any AAA filing, administration and arbitrator fees that were paid by you.

(G) If the merits arbitrator finds that a Dispute is frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), the prevailing party shall recover all fees paid to AAA, and at the arbitrator's discretion, an award of reasonable attorney's fees and costs.

(4) Class Action Waiver. WE AGREE THAT EACH PARTY MAY BRING DISPUTES AGAINST THE OTHER ONLY IN OUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless all parties agree in writing otherwise (including, but not limited to, as set forth in the procedures below regarding Mass Arbitration), the arbitrator may not consolidate more than one individual's Dispute, and may not otherwise preside over any form of a representative or class proceeding.

(5) Injunctive Relief. The arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual Dispute.

(6). Stay of Non-Arbitrable Disputes. Any Disputes not subject to individual arbitration under applicable law shall be stayed in a court of competent jurisdiction pending completion of the individual arbitration.

(e) Mass Arbitration. THE PARTIES AGREE THAT IN THE EVENT THAT MASS ARBITRATION IS ATTEMPTED OR SOUGHT, SUCH ARBITRATION SHALL BE ADMINISTERED PURSUANT TO AAA'S MASS ARBITRATION SUPPLEMENTARY RULES. NOTWITHSTANDING AAA'S MASS ARBITRATION SUPPLEMENTARY RULES, THE FOLLOWING RULES SHALL APPLY.

(1) In the event that Mass Arbitration is attempted or sought involving 250 Demands or less, the parties agree the arbitration provider shall: (i) group the Demands into batches of no less than 25 Demands per group; and (ii) provide for resolution of each group or batch as a single arbitration with one set of filing and administrative fees and a single arbitrator assigned per group or batch.

(2) In the event that Mass Arbitration is attempted or sought involving over 250 Demands, the parties agree that the arbitration provider shall: (i) group the Demands into batches of no less than 250 Demands per group; and (ii) provide for resolution of each group or batch as a single arbitration with one set of filing and administrative fees and a single arbitrator assigned per group or batch.

(3) All Mass Arbitration shall be subject to all other substantive and procedural terms contained within this Arbitration Agreement.

(4) The parties agree to cooperate in good faith with the arbitration provider to implement the aforementioned protocol for Mass Arbitration with regard to resolution, fees, and administration.

(5) If any part of this Section (e) related to Mass Arbitration is found to be unenforceable, the unenforceable portion shall be stricken, and the remainder of this Section (e) and this Arbitration Agreement shall be enforced to the maximum extent permitted by law.

(6) If the arbitration provider is unwilling or unable to follow the procedures set forth in this Section (e) with regard to Mass Arbitration, the parties may attempt to retain a different, mutually agreeable, and widely-recognized arbitration organization that will agree to follow the procedures set forth in this Section (e). In the event that the parties are unable to retain or agree to such an alternative arbitration provider, the alternative dispute resolution provisions set forth in this Agreement shall not apply to those Disputes within the Mass Arbitration.

(f) Delegation Clause. All issues are for the arbitrator to decide including, but not limited to, (i) all issues regarding arbitrability, (ii) the scope and enforceability of this Arbitration Agreement as well as the Arbitration Agreement's other terms and conditions, (iii) whether you or the Company, through litigation conduct or otherwise, waived the right to arbitrate, (iv) whether all or any part of the Arbitration Agreement or Terms of Use is unenforceable, void, or voidable including, but not limited to, on grounds of unconscionability, (v) any Dispute regarding the payment of arbitration-related fees, (vi) any Dispute related to the Notice of Dispute, Notice of

Conference, and/or Informal Dispute Resolution Conference, and (vii) any Dispute related to Mass Arbitration. Pursuant to this Arbitration Agreement, the arbitrator has been delegated with, and possesses, exclusive authority to resolve all of the above-enumerated types of Disputes. However if putative class or representative claims are initially brought by either party in a court of law, and a motion to compel arbitration is brought by any party, the court shall have the power to decide whether this Arbitration Agreement permits class or representative proceedings.

(g) Right to Elect to Proceed in Small Claims Court. In lieu of arbitration, either party may elect to proceed in small claims court for any Dispute that falls within the jurisdictional limits of that court. In the event such election is made, the party that seeks to initiate arbitration shall commence their action in small claims court and shall be responsible for the payment of any applicable filing fees.

(h) Other Provisions.

(1) These Terms of Use evidence a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. This Arbitration Agreement shall survive termination of these Terms of Use.

(2) The parties agree that, by entering into these Terms of Use, we are each waiving the right to a trial by jury or to participate in a class action to the maximum extent permitted by law.

20. Contact Information. For all questions about these Terms of Use, please contact us at info@eaglematerials.com or by calling (800) 759-7625.