

IdeaPaint, Inc. Terms and Conditions of Sale (IdeaPaint™ CREATE)

These terms and conditions are a legal agreement between you (either an individual or an entity on whose behalf you are acting) ("Buyer") and IdeaPaint, Inc., with offices at 290 Eliot Street, 2nd Floor, Ashland, Massachusetts 01721 ("IdeaPaint") and/or IdeaPaint's authorized distributors, establishing terms and conditions under which Buyer purchases IdeaPaint™ paint and related Products ("Products") directly from IdeaPaint or its distributors or otherwise.

BEFORE YOU OPEN THE CAN OF IDEAPAINTE PRODUCT INCLUDED IN THIS PACKAGE, CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY OPENING, ANY CAN OF IDEAPAINTE'S PRODUCT, YOU (AS BUYER) ARE AGREEING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT. YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO AGREE TO THESE TERMS ON BEHALF OF BUYER, IF YOU (ON BEHALF OF BUYER) DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, DO NOT OPEN THE CAN. IF YOU DO NOT AGREE TO THESE RESTRICTIONS, YOU MAY RETURN THIS PRODUCT, SO LONG AS IT IS UNOPENED, FOR A FULL REFUND, INCLUDING SHIPPING COSTS, TO AN ADDRESS PROVIDED BY THE PARTY THAT SOLD THIS PRODUCT TO YOU. IF YOU DO NOT HAVE THAT ADDRESS, CONTACT THAT SELLING PARTY AND THEY WILL PROVIDE IT TO YOU.

Unless otherwise expressly agreed in writing, Buyer's use or distribution of the Products is subject exclusively to the following terms and conditions:

1. General. This Agreement contains all the terms and conditions governing the Buyer's purchase of Products from IdeaPaint or its authorized distributors. Any additional terms or conditions (preprinted or otherwise) proposed by Buyer shall not become a part of this Agreement, unless signed by IdeaPaint or its authorized distributors. Terms or conditions contained in Buyer's purchase order or other form containing terms and conditions shall have no force or effect.

2. Price and Payment. The price(s) for the Products will be those you have separately paid or agreed to pay for the Products.

3. Limited Warranty. The following Limited Warranties are dependent upon whether you purchased your IdeaPaint CREATE Paint Products directly from IdeaPaint, or whether you purchased your IdeaPaint CREATE Product from one of our authorized distributors.

a. Limited Warranty.

(i) If you purchased your IdeaPaint CREATE Product directly from IdeaPaint, then The IdeaPaint CREATE Paint Products are warranted for a period of ten (10) years from shipment by IdeaPaint not to crack or peel; to resist staining and yellowing and to show no appreciable fade when used with the appropriate dry erase markers and when properly installed, cleaned and maintained in conformance with the installation instructions accompanying the Product. The

limited warranties set forth herein apply only to the original Buyer of the Product from IdeaPaint, may be acted upon only by such Buyer, and may not be assigned, sold or transferred to any third party. The limited warranties herein shall not apply to (i) any Product that has not been applied to a surface within six months of delivery by IdeaPaint or has been altered by any person or entity other than personnel of IdeaPaint, (ii) any Product that has been subjected to abuse, misuse, damage, neglect, or accident beyond IdeaPaint's published limitations for the Product or other causes external to the Product (including, without limitation, environmental conditions), (iii) any defects caused by the materials on the surface to which the Product is applied, other than those specified in this warranty, (iv) any non-conformities or defects disclosed by Buyer to IdeaPaint with respect to a Product after the expiration of the applicable warranty period for such Product, (v) any Product that has not been maintained and utilized pursuant to IdeaPaint's instruction or (vi) surface performance.

(ii) If you purchased your IdeaPaint CREATE Paint Product from one of our authorized distributors, all Product surfaces are warranted for a period of ten (10) years from your purchase from an authorized distributor not to crack or peel; to resist staining and yellowing and to show no appreciable fade when used with the appropriate dry erase markers and when properly installed, cleaned and maintained in conformance with the installation instructions accompanying the Product. The limited warranty set forth herein is made only to the original Buyer of the Product from distributor, may be acted upon only by such Buyer, and may not be assigned, sold or transferred to any third party. The limited warranty herein shall not apply to (i) any Product that has not been applied to a surface within six (6) months of delivery by distributor or that has been altered by any person or entity other than distributor or IdeaPaint, Inc., (ii) any Product that has been subjected to abuse, misuse, damage, neglect, or accident beyond published limitations for the Product or other causes external to the Product (including, without limitation, environmental conditions), (iii) any defects caused by the materials on the surface to which the Product is applied, other than those specified in this warranty, or (iv) any non-conformities or defects disclosed to distributor with respect to a Product after the expiration of the ten (10) year warranty period for such Product.

b. Remedies. Buyer's sole and exclusive remedy and IdeaPaint's and/or its authorized distributors and its suppliers' sole and exclusive liability for a breach of this limited warranty shall be, at IdeaPaint's and/or its authorized distributor's option (i) IdeaPaint's and/or its authorized distributor's use of their commercially reasonable efforts to replace the non-conforming Product, or (ii) refund to the Buyer an amount not to exceed the actual payments received by IdeaPaint or its authorized distributors for such non-conforming Product. Buyer shall return any remaining quantities of non-conforming Product to IdeaPaint or its authorized distributors if so requested.

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c. Disclaimers. THE LIMITED WARRANTY SET FORTH HEREIN IS IN LIEU OF ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL (INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT) WITH RESPECT TO THE PRODUCT, THE MANUFACTURE, SALE, SUPPLYING OR FAILURE OR DELAY IN SUPPLYING OF THE PRODUCT, SERVICES RELATED THERETO OR THE USE OR RESULTS OF THE PRODUCT.

4. Limitation of Liability.

a. No Indirect Damages. IN NO EVENT SHALL DEAPAIN (OR ITS AUTHORIZED DISTRIBUTORS, SUPPLIERS OR LICENSORS) BE LIABLE TO BUYER OR ANY THIRD PARTY FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, MULTIPLE OR OTHER INDIRECT DAMAGES, OR FOR LOSS OF PROFITS OR LOSS OF USE DAMAGES, ARISING OUT OF THE PRODUCTS, MANUFACTURE, SALE, SUPPLYING OR FAILURE OR DELAY IN SUPPLYING OF THE PRODUCTS, SERVICES RELATED THERETO OR THE USE OR RESULTS OF THE PRODUCTS, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF IDEAPAIN AND/OR ITS AUTHORIZED DISTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

b. Limited Direct Damages. IDEAPAIN (AND ITS AUTHORIZED DISTRIBUTORS', SUPPLIERS' AND LICENSORS') LIABILITY ARISING OUT OF PRODUCTS, THE MANUFACTURE, SALE, SUPPLYING OR FAILURE OR DELAY IN SUPPLYING OF THE PRODUCTS, SERVICES RELATED THERETO OR THE USE OR RESULTS OF THE PRODUCTS, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE APPLICABLE PURCHASE PRICE PAID BY BUYER FOR THE APPLICABLE PRODUCT.

c. Use of Results at Buyer's Risk. BUYER ASSUMES SOLE AND EXCLUSIVE RESPONSIBILITY AND LIABILITY FOR ANY CLAIMS OR DAMAGES OF BUYER OR ANY THIRD PARTY ARISING FROM USE OF THE PRODUCT.

5. No Reverse Engineering. Buyer agrees that it will not, directly or indirectly, alter or remove, and shall abide by, any patent, trademark, copyright, trade secret, proprietary or other notices contained on the Product containers. Buyer agrees to hold in confidence the Products prior to their use and not to disclose or make available in any form the same, except to Buyer's employees and agents. The Buyer shall not disassemble, decompile or reverse engineer or otherwise derive the components of the Products, and shall not permit others to do so.

6. Resale. If you purchased your IdeaPaint CREATE Paint Product directly from IdeaPaint (and not from one of its authorized distributors), subject to the terms and conditions of this Agreement, Buyer shall have the right to resell or transfer the Product to any third party (an "End User"), provided that (a) Buyer makes such sale pursuant to binding terms and conditions no less protective of IdeaPaint and the

Product than Sections 3, 4, 5, this Section 6 (with respect to further resales) and 7, (b) Buyer makes no representation or warranty on behalf of IdeaPaint or its authorized distributors, (c) Buyer fairly and accurately represents the Product at all times only in accordance with the express statements in IdeaPaint's written documentation, and (d) Buyer ensures that all Product documentation and all applicable warnings are delivered to each and every End User of the Product.

7. Miscellaneous. This Agreement constitutes the entire agreement between Buyer and IdeaPaint and its authorized distributors with respect to the subject matter hereof and is the final, complete, and exclusive statement of the terms of the Agreement, superseding all prior written and oral agreements, understandings and undertakings with respect to the subject matter hereof; provided that any payment obligations of Buyer and any written express warranty of IdeaPaint and its authorized distributors shall continue to the extent effective regardless of this Agreement. Modifications to this Agreement may be made only in writing, signed by an authorized corporate officer of IdeaPaint and/or its authorized distributors, as applicable. The waiver of any term or condition or any breach thereof shall not affect any other term of condition of this Agreement. The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, excluding: (i) its conflicts of laws principles; (ii) the United Nations Convention on Contracts for the International Sale of Goods; (iii) the 1974 Convention on the Limitation Period in the International Sale of Goods; and (iv) the Protocol amending the 1974 Convention, done at Vienna April 11, 1980. Buyer shall not assign this Agreement without IdeaPaint's and/or its authorized distributors' prior written consent. Termination of this Agreement will not relieve Buyer of any payment obligations. Sections 2, 3, 4, 5, 6 and 7 shall survive this termination of this Agreement. If any provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law of any authority having jurisdiction over this Agreement, the validity of the remaining portions or provisions hereof shall remain in full force and effect. IdeaPaint and/or its authorized distributors shall not be liable for failure to perform any of its obligations hereunder by reason that are beyond its reasonable control, including, without limitation, fire, flood, earthquake, interruptions in supply, other natural disaster, war embargo, riot or acts of terrorism. The customer is also encouraged to register their warranty with IdeaPaint or its authorized distributors in order to validate the warranty with the enclosed product registration card.