



# DISCLAIMER

## CLEAR & WHITE; DRY ERASE PAINT; 1-PART

These terms and conditions are a legal agreement between you (either an individual or an entity on whose behalf you are acting) ("Buyer") and Whitey Board Company, with offices at 5030 Parkway Calabasas, Calabasas, California, 91302, establishing terms and conditions under which Buyer purchases Whitey Board Company and related products ("Products") directly from Whitey Board Company or its distributors or otherwise.

BEFORE YOU OPEN THE CAN OF WHITEY BOARD COMPANY PRODUCT INCLUDED IN THIS PACKAGE, CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY OPENING, ANY CAN OF WHITEY BOARD COMPANY 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, EXCLUDING 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 of 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 Whitey Board Company. Any additional terms or conditions (preprinted or otherwise) proposed by Buyer shall not become a part of this agreement, unless signed by Whitey Board Company. Terms or conditions contained in Buyer's purchase order or other form contained in Buyer's purchase order or other form containing terms and conditions shall have no force or effect. We warrant that our products are manufactured to strict quality assurance specifications and that the information supplied by us is accurate to the best of our knowledge. Such information supplied about our products is not a representation or a warranty. Test to determine the suitability of the product for each surface, usage rate and volume. Listed physical properties are typical and should not be construed as specifications.
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.**
  - a. **Limited Warranty.** Whitey Board Company products are warranted for ten (10) years from shipment by Whitey Board Company 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 provided by Whitey Board Company. The limited warranties set forth herein apply only to the original Buyer of the Product from Whitey Board Company, 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 Whitey Board Company or has been altered by any person or entity other than personnel of Whitey Board Company, (ii) any Product that has been subjected to abuse, misuse, damage, neglect, or accident beyond Whitey Board Company 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 Products is applied, other than those specified in this warranty, or (iv) any non-conformities or defects disclosed by Buyer to Whitey Board Company with respect to a Product after the expiration of the applicable warranty period for such Product.
  - b. **Remedies.** Buyer's sole and exclusive remedy and Whitey Board Company sole and exclusive liability for a breach of this use of its commercially reasonable efforts to replace the non-conforming Product. If Whitey Board Company is unable, after reasonable efforts, to replace such nonconforming Products, Whitey Board Company, may, at its sole discretion, elect to refund to Buyer of an amount not to exceed the actual payments received by Whitey Board Company for such non-conforming Product. Buyer shall return any remaining quantities of non-conforming Product to Whitey Board Company if requested by Whitey Board Company.
  - 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 WHITEY BOARD COMPANY (OR ITS 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 WHITEY BOARD COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.
  - b. **Limited Direct Damages.** WHITEY BOARD COMPANY (AND ITS 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 OF 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 Product prior to their uses 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, shall not permit others to do so.
6. **Resale.** 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 Whitey Board Company and the Product than Sections 3,4,5, this Section 6 (with respect to further resale's) and 7, (b) Buyer makes no representation or warranty on behalf of Whitey Board Company, (c) Buyer fairly and accurately represents the Product at all times only in accordance with the express statements in Whitey Board Company written documentation, and (d) Buyer ensures that all Product documentation and all applicable warning are delivered to each and every End User of the Product.
7. **Miscellaneous.** This Agreement constitutes the entire agreement between Buyer and Whitey Board Company 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 matter hereof; provided that any payment obligations of Buyer and any written express warranty of Whitey Board Company 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 Whitey Board Company. 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 California, 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 Whitey Board Company 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. Whitey Board Company 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.