



The Chemical Company

Material Applicator Agreement

Senergy Wall Systems

AGREEMENT made and entered into as of the _____ day of _____, 20_____, by and between BASF Corporation (by and through its Wall Systems division)" (herein referred to as BASF), having its principal place of business at 3550 St. Johns Bluff Road, Jacksonville, Florida 32224 ("BASF"), and _____

having its principal place of business at _____ ("APPLICATOR")

1. APPLICATOR shall have the non-exclusive right to order, sell and install the Systems.

2. APPLICATOR will:

- a. Exercise its best efforts to promote the Systems.
- b. Comply with all federal, state and local laws, regulations and governmental orders including but not limited to the Fair Labor Standards Act, Walsh-Healy Act, Equal Employment Act of 1972 and Occupational Safety and Health Act.
- c. Install the Systems on any project (hereinafter a "Project") strictly in accordance with the current specifications, application instructions and procedures specified by BASF, and in accordance with good practice in the industry.
- d. Submit to BASF in writing any specifications for any proposed installation of the Systems that differ from the standard specifications for the Systems and install the Systems with such different specifications only after approval thereof by BASF in writing.
- e. Upon BASF request, provide BASF with information requested by it reasonably necessary to enable BASF to evaluate all specifications submitted to it by APPLICATOR.
- f. Purchase all materials with respect to the Systems from BASF or authorized suppliers (all such purchases from BASF shall be in accordance with and pursuant to the standard sales terms of BASF with respect to such products).
- g. Permit and assist BASF inspection of any Project at any time during installation and at any time thereafter in which APPLICATOR's warranty for work performed is in effect.
- h. Warrant and be responsible for any and all expenses, costs, damages and any other items arising as a result of any repairs that are necessary to be made to any Project as a result of faulty workmanship by APPLICATOR or any employee or subcontractor thereof for a period of ONE year after completion of a Project.
- i. Notify BASF, in writing upon completion of the installation with respect to a Project.
- j. Ensure that personnel installing the BASF are knowledgeable in the application of the Systems they are installing. Sub-contractors that are not approved by BASF should not be used to install the Systems materials without receiving prior written approval from BASF.
- k. Pay for all materials purchased from BASF. Payment to a BASF representative or distributor by APPLICATOR will be deemed to constitute payment to BASF for the purposes of this paragraph. Provide to Building Owner, BASF Warranty. If BASF'S specifications, details, installation procedures and instructions were not followed, or if BASF or BASF'S distributor has not been paid for BASF materials, BASF reserves the right to refuse to issue the Warranty. Applicator to remedy the situation so that the Warranty can be issued.

3. GENERAL CONDITIONS:

- a. Applicator shall not use the BASF'S logo or any other BASF trademark or trade name in Applicator's firm name or assumed name or in any other manner, provided, however, Applicator may indicate in correspondence or advertising related to the BASF that it is a BASF Approved Applicator. Upon expiration or termination of this Agreement for any reason Applicator shall immediately discontinue any use of any name, logo, trademark or trade name used by BASF. Applicator shall act only in Applicator's legal capacity as an independent contractor. In no event shall Applicator be an employee, franchisee or agent of BASF. BASF is not a franchiser. Applicator has no authority to act for, or on behalf of BASF or to bind BASF in any way whatsoever and Applicator shall not so hold itself out as having such authority. Applicator is not authorized to make or extend any promises, representations or warranties with respect to the



The Chemical Company

Material Applicator Agreement

Senergy Wall Systems

BASF except as set forth in BASF'S product literature or specifications.

- b. Neither party shall be held responsible for delays or failure to perform hereunder, (except for payment of monies when due), caused by fires, floods, strikes, labor disputes, accidents, acts of war, priorities required or requested by governmental authority, and any resultant consequential costs due to transportation delays, restrictions imposed by federal, state or local law, regulations or ordinances, or BASF'S inability to secure raw materials or energy or for any other causes beyond a party's control.

4. **BASF will:**

- a. Promote and develop the sale and use of the Systems.
- b. Furnish for use by APPLICATOR sales literature and promotional aids which BASF may have available from time to time and upon request of Applicator to provide the APPLICATOR current information relating to application.

5. **TERM:**

- a. This Agreement may be terminated by either party at any time, without cause, on thirty (30) days prior written notice. Such right to termination is absolute and unrestricted.
- b. Applicator recognizes that this Agreement is based upon such key elements as ownership, management and financial condition. Therefore, it is agreed that notwithstanding 4(a) above, BASF may terminate this Agreement immediately by notice to Applicator upon the occurrence of any of the following concerning Applicator: (1) any assignment to or composition with creditors, or failure or inability to pay its debts as they mature; (2) file or have filed against it a petition in bankruptcy, reorganization or other similar debt or receivership law under any law or statute; (3) a change in the control, in ownership or now current active management of Applicator; (4) the sale or other transfer of a significant portion of Applicator's stock or assets; or (5) failure to make any payment for the Products upon the terms stated herein.
- c. Parties acknowledge and agree that neither shall be liable to the other for damages by reason of the termination of this Agreement pursuant to its terms; provided, however, that termination of this Agreement shall not relieve Applicator from its obligations and liabilities hereunder including but not limited to its obligations to repair Products as provided in Paragraph 1j, to complete the installation of Products undertaken and not completed by Applicator by the date of the termination notice, and to make all payments due or accrued to BASF and other material suppliers.

6. **WARRANTY:**

BASF warrants its material to be free from manufacturing defects. BASF'S liability and Applicator's remedies are limited to BASF'S replacement of defective material, F.O.B. factory. Replacement of defective material will be made only upon BASF'S inspection of the material. Applicator shall return defective material and BASF shall pay the cost of shipping only after BASF'S inspection of the material. Applicator shall return defective material and BASF shall pay the cost of shipping only after BASF has sent definite shipping instructions. THERE ARE NO WARRANTIES, WHICH EXTEND BEYOND THE FACE HEREOF. THE IMPLIED WARRANTIES OF FITNESS FOR PURPOSE AND MERCHANTABILITY ARE EXCLUDED. BASF SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES; NOR SHALL BASF BE LIABLE FOR ANY DAMAGES WHICH ARE BASED ON NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY, OTHER THAN THE LIMITED LIABILITY SET FORTH HEREIN. RESULTING FROM ANY BREACH OF WARRANTY, IN NO EVENT SHALL BASF'S LIABILITY EXCEED THE ORIGINAL PURCHASE PRICE FOR THE MATERIAL.

7. **MISCELLANEOUS:**

APPLICATOR agrees to indemnify, defend and save BASF harmless from any and all damages,

Material Applicator Agreement

Senenergy Wall Systems

losses or expenses including reasonable attorney's fees, direct or indirect, including settlement of any claim which BASF may be subjected to because of Applicator's negligence or failure to perform any term or condition of this Agreement. BASF shall not be obligated to appeal any judgment, which would impose liability on Applicator.

- a. (i) Except for a approval for the term of this Agreement to use in the Territory any patents and trademarks related to the Products, the Applicator shall not acquire any rights to or under any good will, trademark, copyrights, or other property of BASF except where specifically or expressly licensed by BASF to the Applicator in writing. If, during the term of this Agreement, any such rights should become vested in the Applicator by operation of law or otherwise, the Applicator shall, on BASF'S request, or, on termination or expiration of this Agreement, forthwith assign any and all such rights, together with any good will appurtenant thereto, to BASF.
(ii) The Applicator will not alter, remove or deface a trademark applied to the Products.
- b. The rights created by this Agreement are personal and not assignable, and the obligations imposed upon Applicator are not delegable without the written consent of BASF which consent can be unreasonably withheld, provided, however, that BASF may assign this Agreement to its successors as well as to any entity or corporation now or hereafter owned or controlled by or affiliated with BASF (defined as any corporation controlling or under common control with BASF).
- c. The Applicator agrees that during the term of this Agreement it will not assist in any way, any company to research, develop, manufacture, sell or distribute any products similar or competitive to the Products.
- d. During the continuance of this Agreement, the Applicator shall maintain suitable comprehensive insurance with an insurance company of repute to cover the Applicator against liability arising out of the negligence or defective workmanship in relation to the application of the Product. The Applicator shall make details of the insurance and evidence of payment of the premium available to BASF on request.

8. CONSTRUCTION:

This Agreement constitutes the entire Agreement between the parties and the parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Agreement or any representation inducing the execution and delivery hereof except as specifically set forth in this Agreement. No change, alteration, modification or addition to this Agreement shall be effective unless in writing and signed by an authorized BASF employee. A mere acknowledgement or acceptance of any acts or performance by either party inconsistent with the terms of this Agreement shall not be deemed an acceptance or approval by BASF of such inconsistent acts or performance with respect to subsequent transactions. This Agreement supersedes and is in lieu of all prior agreements or arrangements between the parties. The captions in this Agreement are for convenience only and shall not affect the interpretation hereof.

9. GOVERNING LAWS:

This Agreement is made and issued from BASF principal office located in Jacksonville, Florida, U.S.A. This Agreement shall be governed and construed in accordance with the procedural and substantive laws of the State of Florida, without regard to the principle of conflicts of law.



The Chemical Company

Material Applicator Agreement

Senergy Wall Systems

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in duplicate by their representatives duly authorize as of the day and year first above written. This Agreement shall become effective on date of execution by BASF.

Applicator:

Officer's Name (please print)

Officer's Title (please print)


Officer's Signature

Date

BASF:

William Egan
Officer's Name

Manager Engineering and Technical Service
Officer's Title



Officer's Signature