

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the California Air Resources Board (CARB), with its principal office at 1001 I Street, Sacramento, California, and Tamiya America, Inc. (Tamiya) with its principal place of business at 36 Discovery #200, Irvine, California 92618.

### RECITALS

1. The Aerosol Coating Products Regulation, title 17, California Code of Regulations, section 94520 et seq. (17 CCR section 94520 et seq.) applies to any person who sells, supplies, offers for sale, or manufactures aerosol coating products for use in California.
2. 17 CCR section 94522(a)(2) sets forth in the Table of Reactivity Limits the maximum limit for aerosol coating categories, in grams of ozone formed per grams of product, sold after the specified effective date. The Product-Weighted Maximum Incremental Reactivity (PVMIR) values for aerosol coating products must meet the applicable Reactivity Limit.
3. 17 CCR section 94524(b)(1) requires a manufacturer of an aerosol coating product subject to the Aerosol Coating Products Regulation to display on each product container: the applicable Reactivity Limit for the product that is specified in section 94522(a); and the aerosol coating category as defined in section 94521, or an abbreviation of the coating category.
4. 17 CCR section 94524(b)(2) requires a manufacturer of an aerosol coating product subject to section 94522 to display on each aerosol coating product container or package, the day, month, and year on which the product was manufactured or a code indicating such date.
5. 17 CCR section 94526(b) requires the Responsible Party to provide the exact product formulation and any other information necessary to determine compliance for products selected for testing. 17 CCR section 94526(b)(1)(E) states that providing incomplete or inaccurate formulation data are violations and subject to penalties.
6. Failure to comply with the Aerosol Coating Products Regulation is a violation of state law resulting in penalties. Among other penalties, Health and Safety Code (H&SC) sections 42400-42403 authorize strict liability penalties up to \$10,000 for each day that the violation occurs.
7. CARB alleges that Tamiya sold, supplied, and offered for sale in California, Surface Primer for Plastic & Metal (Gray), Fine Surface Primer for Plastic & Metal (White), Tamiya Color for Plastics TS-2 Dark Green, Tamiya Color for Plastics TS-12 Orange, and Tamiya Color for Plastics TS-13 Clear that are subject to the

Reactivity Limit for the applicable aerosol coating category specified in 17 CCR section 94522(a)(2).

8. CARB alleges that the Tamiya products referenced in Recitals paragraph 7 did not display on each product container, as specified in 17 CCR section 94524(b)(1): the applicable Reactivity Limit for the product that is specified in section 94522(a); and the aerosol coating category as defined in section 94521, or an abbreviation of the coating category.
9. CARB alleges that the Tamiya products referenced in Recitals paragraph 7 did not display on each aerosol coating product container or package, the day, month, and year on which the product was manufactured or a code indicating such date as specified in 17 CCR section 94524(b)(2).
10. CARB alleges that Tamiya, as the Responsible Party specified in 17 CCR section 94526(b), did not provide the information necessary to determine compliance for the Tamiya products referenced in Recitals paragraph 7. Due to providing incomplete or inaccurate formulation data, Tamiya is subject to penalties as specified in 17 CCR section 94526(b)(1)(E).
11. CARB alleges that if the allegations described in Recitals paragraphs 8, 9, and 10 were proven, civil penalties could be imposed against Tamiya as provided in H&SC section 42402 et seq. for each and every unit involved in the violations.
12. Tamiya admits the allegations described in Recitals paragraphs 8, 9, and 10, but denies any liability resulting from said allegations.
13. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violation and voluntarily agree to resolve this matter by means of this Agreement, without the need for formal litigation. Tamiya has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. CARB accepts this Agreement in termination and settlement of this matter.

### **TERMS AND CONDITIONS**

In consideration of CARB not filing a legal action against Tamiya for the violations referred to above, CARB and Tamiya agree as follows:

14. Tamiya shall not manufacture, sell, supply, or offer for sale in California, any consumer products in violation of CARB consumer products regulations set forth in 17 CCR section 94500 et seq.; the terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.

15. Tamiya, in settlement of the above-described violations of 17 CCR section 94520 et seq., agrees to pay a penalty to CARB in the amount of six thousand seven hundred fifty dollars (\$6,750) payable to the California Air Pollution Control Fund, concurrent with the execution of this Agreement. Payment and the signed Agreement shall be mailed to the address specified on the Payment Transmittal Form enclosed with this Agreement.
16. This Agreement shall apply to and be binding upon Tamiya and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this settlement.
17. The parties stipulate that this Agreement shall be the final resolution of CARB claims regarding the above-described violations and shall have the same res judicata effect as a judgment in terms of acting as a bar to any civil action by CARB against Tamiya, its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations. This Agreement shall be deemed the recovery of civil penalties for purposes of precluding subsequent criminal action as provided in H&SC section 42400.7(a).
18. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.
19. This Agreement constitutes the entire agreement and understanding between CARB and Tamiya concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between CARB and Tamiya concerning these claims.
20. The Effective Date of this Agreement shall be the date upon which it is fully executed.
21. This Agreement is deemed to have been drafted equally by CARB and Tamiya; it will not be interpreted for or against either Party on the ground that said Party drafted it.
22. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
23. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
24. It is further agreed that the stipulated penalties described in this Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7).

## 25. **Penalty Determination**

H&SC section 39619.7 requires CARB to provide information on the basis for the penalties it seeks. This Agreement includes this information, which is also summarized here.

### **The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.**

The penalty provision being applied in this case is H&SC section 42402 et seq. because Tamiya sold, supplied, offered for sale, or manufactured for sale aerosol coating products for commerce in California in violation of the Aerosol Coating Products Regulation (17 CCR section 94520 et seq.). The penalty provisions of H&SC section 42402 et seq. apply to violations of the Aerosol Coating Products Regulation because the regulations were adopted under authority of H&SC section 41712, which is in Part 4 of Division 26.

### **The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit or per vehicle basis for the penalty.**

H&SC section 42402 et seq. provides strict liability penalties of up to \$10,000 per day for violations of the Aerosol Coating Products Regulation with each day being a separate violation. In cases like this, involving unintentional violations of the Aerosol Coating Products Regulation where there are administrative penalties and the violator cooperates with the investigation, CARB has obtained penalties based on at least three days of violations (the day the product was purchased by CARB, the day it was supplied to the retailer, and the day it was manufactured for sale).

In this case, the total penalty is \$6,750 for administrative violations. The penalty in this case was reduced because this was a strict liability first-time violation and Tamiya made diligent efforts to comply and to cooperate with the investigation.

Final penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar negotiated cases, and the potential cost and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per day or per ton basis.

The final penalty in this case was based in part on confidential financial information or confidential business information provided by Tamiya that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and Tamiya that CARB does not retain in the ordinary course of business. The

