

INX International Ink Co. ("Seller") Terms and Conditions of Sale

- 1. Buyer's Acceptance of Seller's Conditions.** These Terms and Conditions of Sale ("Terms") are the only terms that govern all purchases of products by Buyer from Seller. Seller's willingness to enter into this sale is expressly conditioned upon Buyer's assent to these Terms. Buyer's receipt of these Terms without prompt written objection thereto or the acceptance of products by Buyer shall be deemed an acceptance of said Terms in their entirety.
 - 2. Seller's Objection to Inconsistent Terms.** Buyer is hereby notified of Seller's objection to any terms inconsistent with these Terms or to any additional terms proposed by Buyer when ordering products, including as set forth in any purchase order, and such terms shall not become a part of this contract unless accepted in writing by Seller. Neither Seller's subsequent lack of objection to any terms nor the delivery of products shall constitute or be deemed an agreement by Seller to any such terms; furthermore, no such action by Seller shall be considered a course of performance, course of dealing, usage of trade or a waiver of any of the Terms hereunder.
 - 3. Delivery.** Delivery of all products shall be FOB Seller's place of shipment unless otherwise agreed in writing by Seller. Title and risk of loss shall pass to Buyer upon tender to the carrier at Seller's place of shipment. Any delivery dates requested or stated shall be deemed estimates only. Seller reserves the right to make partial shipments and the contract price shall be adjusted to reflect actual quantities shipped.
 - 4. Inspection and Returns.** Buyer shall inspect all products within five (5) business days of receipt thereof ("Inspection Period") and may reject any products which fail in any significant respect to meet Seller's specifications. In its sole discretion, Seller shall replace or credit Buyer's account for the invoice price of such products. Credits against the purchase price will only be accepted on products rejected on Buyer's initial inspection and provided that Buyer delivers written notification to Seller during the Inspection Period. Buyer shall obtain a Return Material Authorization ("RMA") number and a shipping address from Seller before returning any products. The products shall be shipped to Seller prepaid at Buyer's expense. Warranty replacement items will be returned to Buyer at Seller's expense. Buyer shall be charged Seller's standard evaluation fee for all items determined by Seller to be out-of-warranty or non-defective plus all transportation charges. Under no circumstances shall Seller accept returns of non-defective custom designed products.
 - 5. Advanced Replacement Policy.** Seller may ship warranty replacement items to Buyer in advance of its receipt of the defective product. Buyers who do not return defective products within thirty (30) days after receipt of warranty replacement items will be billed in full for all items plus the cost of all transportation charges.
 - 6. Payment.** Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of Seller's invoice or greater per Seller's invoice or Seller's order confirmation. Any invoiced amount which is not paid when due will bear interest as of the due date at the lesser of either 18% APR or the maximum rate permitted by law. Buyer shall pay all costs and expenses incurred by Seller in collection of any past due amounts, including collection agency and reasonable attorneys' fees. Seller may suspend or terminate performance on any of Buyer's orders in the event of Buyer's failure to pay any amount when due (or other breach by Buyer). Buyer has no right to withhold or offset payment under this contract against any other contract or obligation.
 - 7. Taxes.** Prices are exclusive of, and Buyer shall be responsible for, all federal, state, municipal and other taxes (such as sales, use, value added, or similar taxes) and similar charges.
 - 8. Security Interest.** Buyer grants Seller a continuing purchase money security interest in the products, and any proceeds thereof, until payment of the full purchase price is received by Seller. Buyer shall not grant any lien or other interest in the products contrary to Seller's security interest. If Buyer fails to make any payment of or on account of the purchase price when due, Seller may, at its option, take exclusive possession of the products wherever found and remove the products without legal process, and Buyer shall reimburse Seller for all removal fees, expenses or costs of repossession and collection, including reasonable attorneys' fees.
 - 9. Limitation of Liability.** IN NO EVENT SHALL SELLER OR ITS SUBSIDIARIES BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, DOWNTIME, DELAY OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS CONTRACT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE PRODUCTS SOLD HEREUNDER.
 - 10. Force Majeure and other Contingencies.** Seller shall not be liable for delays in delivery or performance, or for failure to deliver or perform, due to (i) causes beyond its reasonable control, or (ii) acts of God, acts of Buyer, acts of civil or military authority, governmental priorities, strikes or other labor, disturbances, floods, epidemics, war, terror, riot, delays in transportation or car shortages, or (iii) the inability on account of causes beyond the reasonable control of Seller's suppliers to obtain necessary materials, components, services or facilities. Seller also reserves the right to suspend performance or cancel accepted orders, without liability to Buyer, if causes beyond Seller's reasonable control lead to increases in the costs of production or performance, including, without limitation, the imposition or increases in tariffs or taxes, raw material price increases or labor shortages. In the event of any such delays, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay.
 - 11. Proprietary Information.** "Proprietary Information" shall mean all technology, concepts, product design, research and development data, formulae, methods, techniques, know-how, processes, information, trade secrets, inventions (whether or not patented or patentable) and similar information. Seller shall have exclusive right, title and interest in and to all Proprietary Information of Seller (whether or not paid for by Buyer in connection with the price of the products or otherwise). Buyer shall not copy, reproduce, reverse engineer, transfer, assign, sublicense, loan, disclose or otherwise make available any Proprietary Information of Seller to any person or other entity, without the prior written consent of Seller. Any and all Proprietary Information which Seller may provide to Buyer shall be in Buyer's possession pursuant only to a restricted nontransferable, nonexclusive license under which Buyer may only use such Proprietary Information for the purpose of installing, using, servicing and repairing the products purchased hereunder.
 - 12. Limited Warranty and Disclaimers.** Seller warrants to Buyer that for a period of ninety (90) days from the date of shipment of the products covered by this contract, or otherwise stated per the subject product technical data sheet as supplied by Seller ("Warranty Period"), that such products will meet Seller's subject specifications and will be free from defects in material and workmanship. EXCEPT FOR THE FOREGOING EXPRESS WARRANTY, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. Seller shall not be liable for a breach of the express warranty set forth in this Section 12 unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within five (5) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such products and Buyer (if requested to do so by Seller) returns such products to Seller's place of business at Seller's cost (if defective) for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the products are defective. Furthermore, Seller shall not be liable for a breach of the express warranty set forth in this Section 12 if: (i) Buyer makes any further use of such products after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, use or maintenance of the products; or (iii) Buyer alters or repairs such products without the prior written consent of Seller.
 - 13. Buyer's Remedies.** Subject to the limitations in Section 12, with respect to any products that fail to conform to the Limited Warranty during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such products; or (ii) credit or refund the price of such products at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such products to Seller. THE REMEDIES SET FORTH IN THIS SECTION 13 SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 12.
 - 14. Legal Compliance.** Buyer at its expense, shall comply with all federal, state and local laws, statutes, rules, regulations, codes, orders and standards applicable to the products, including as to use, service and disposal, including, but not limited to, the Occupational Safety and Health Act of 1970 and all laws and regulations relating to hazardous substances, including, but not limited to, E.P.A. and Department of Transportation rules on handling, disposal, transport and emission of hazardous wastes and substances. Seller and its subsidiaries are not responsible for the generation, characterization, management, treatment, storage, handling, disposal or release of any chemicals or hazardous materials from or related to the products. Seller and its subsidiaries shall not be responsible for compliance with any local laws, ordinances, codes or the interpretation thereof which may be in effect at Buyer's plants. Buyer shall comply with all Seller specifications and recommendations concerning the products, including as set forth in any Safety Data Sheet ("SDS")
 - 15. Indemnification and Hold Harmless.** Buyer shall indemnify, defend and hold harmless Seller and its subsidiaries and their respective employees and agents (collectively, "Seller Indemnitees") from and against any and all losses, damages, liabilities, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees and costs of litigation (collectively, "Losses"), relating to, arising out of or resulting from any claim (i) arising out of or occurring in connection with Buyer's negligence, willful misconduct, breach of these Terms or failure to comply with applicable law, (ii) that any products provided to Buyer infringe upon or misappropriate any third party patent, copyright, trademark or other intellectual or proprietary right, if the products are manufactured to Buyer's design or specifications or if any claim is based upon use of the products with other products, services or processes not supplied by Seller, and/or (iii) brought by any dealer, distributor or reseller of Buyer or downstream customer of any of the foregoing contrary to or inconsistent with these Terms.
- In consideration of Seller's provision to Buyer of (a) Seller employee(s) stationed at Buyer's location ("Inplant Technician(s)") or (b) equipment provided at no/reduced cost or on a cost-sharing basis ("Equipment"), Buyer shall hold harmless Seller Indemnitees from and against all Losses relating to, arising out of or resulting from (i) the acts or omissions of Inplant Technician(s) and/or (ii) the installation or operation of the Equipment, and, as to both (i) and (ii), regardless of the negligence or fault of Buyer, the Seller Indemnitees and the Equipment manufacturer. Buyer hereby waives its rights to subrogation against Seller as to any such Losses.
- 16. Miscellaneous.**
 - (a) Entire Agreement.** Seller's Order Confirmation and these Terms constitute the entire agreement between Buyer and Seller concerning the subject matter hereof and any representation, promise, course of dealing or trade usage not contained herein will not be binding on Seller. No modification, amendment, rescission, waiver or other change of this contract or any part hereof shall be binding on Seller unless agreed in writing by an authorized officer of Seller.
 - (b) Waiver.** The failure of Seller to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this contract or to exercise any right hereunder shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenant or condition or the future exercise of such rights, not shall it be deemed to be a waiver or relinquishment of any other term, covenant or condition, or the exercise of any other rights under this contract.
 - (c) Severability.** If any term or provision herein is deemed invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this contract or invalidate or render unenforceable such term or provision in any other jurisdiction.
 - (d) Governing Law, Choice of Forum and Jury Waiver.** These Terms and each order made hereunder is deemed to be made in, and shall be construed and interpreted in accordance with the laws of the State of Illinois, without giving effect to any principles of conflicts of law. Any suit, action or proceeding arising out of or relating to these Terms and each order made hereunder shall be instituted in a state or federal court located in the County of Cook, State of Illinois, and Buyer irrevocably consents and waives all objections to the jurisdiction and venue of such courts in any such suit, action or proceeding. In the event Seller brings any proceeding to enforce its rights hereunder including for any breach of any of the provisions of these Terms or any order made hereunder, Seller will be entitled in such proceeding to recover its reasonable attorneys' fees together with the costs and expenses of such proceeding. **BUYER AND SELLER HEREBY AGREE TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY DISPUTE CONCERNING THE PRODUCTS OR THIS CONTRACT.**
 - (e) All Rights Reserved.** All rights and remedies of Seller provided in these Terms are cumulative and not exclusive, and the exercise by Seller of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute or in any other agreement between the parties.
 - (f) No Assignment.** The rights and responsibilities of Buyer hereunder may not be assigned to any third party without the written consent of Seller.
 - (g) Notice to Resellers.** It is the responsibility of Buyer and Buyer's dealers, distributors and other resellers to inform their customers of these Terms, including the warranty, disclaimer, limitation of liability, legal compliance and indemnity policies of Seller as described herein and provide copies of all applicable SDS. Buyer shall indemnify, defend and hold harmless Seller and its subsidiaries and their respective employees and agents from and against any claims brought by downstream customers if (i) Buyer or the customer fails to comply with these Terms, (ii) any customer uses any products contrary to Seller specifications or recommendations, or (iii) if such claims are contrary to or inconsistent with these Terms. The relationship of the parties shall be that of buyer and seller only and shall not be deemed to give rise to any distributorship, dealership, franchise or other relationship.
 - (h) Time Limit for Bringing Cause of Action.** No action, whatever its form, which arises out of or is related to the order confirmation or these Terms may be brought by Buyer more than one (1) year after such cause of action has accrued.