

Terms & Conditions

TERMS and CONDITIONS of SALE

- 1. PRICE.** The prices of the product purchased (the "Equipment") in the listing are F.O.B. Einstein Graphic Services, (the "Seller"), Freedom Wisconsin, UNLESS NOTED OTHERWISE. All transportation, license fees, custom duties and other such charges shall be paid by Buyer and added to the total purchase price shown in the listing UNLESS NOTED OTHERWISE. If applicable, there shall also be added to the prices shown on the listing the amount of any applicable sales, use or other taxes, however designated, levied or based on such prices or on this agreement or the sale or use of the Equipment, including state and local privilege or excise taxes based upon gross revenue, and any taxes or amounts in lieu thereof. Any personal property taxes assessable on the Equipment after delivery to the carrier shall be borne by the Buyer. Terms are subject to change without notice. In the event that any item(s) are for any reason out of stock, discontinued, or not available for delivery, Seller's liability shall be limited to a house credit or refund of any monies Buyer may have paid for such items that are not deliverable. If the User's Manual is not included in the purchase price of the Equipment, it is the obligation of the end user of the Equipment to obtain the User's Manual and other necessary operating documentation directly from the equipment manufacturer.
- 2. SECURITY INTEREST AND TITLE.** Seller retains, until Buyer performs all of its obligations hereunder, all security interest and right of title in said Equipment. Buyer agrees, upon demand by Seller, to promptly execute any security agreement, financing statement, application, registration or other documents necessary and to take any other action deemed necessary or desirable by Seller in order to evidence or perfect Seller's security interest. Buyer hereby appoints Seller as its attorney-in-fact to prepare, sign and file or record for the Buyer, in Buyer's name, any such documents. Buyer agrees to keep the Equipment in good order and repair until the full purchase price has been paid. Buyer shall not attempt to transfer an interest in the Equipment until said purchase price has been paid in full.
- 3. COPYRIGHT PROTECTION.** As the Buyer, you have purchased graphic equipment that may contain copyright protected software. This software may be subject to a licensing agreement placing restrictions on its sale and use. It is Buyer's responsibility to ascertain and comply with any such restrictions contained in any applicable licensing agreement and to avoid violating U.S. copyright law.
- 4. DEFAULT.** Failure of Buyer to perform its obligations hereunder, including, but not limited to, payment in full of purchase price, as a result of insolvency, bankruptcy, assignment for the benefit of creditors or dissolution, liquidation, or closing of business by Buyer, shall constitute a default under this Agreement and shall afford the Seller all remedies or a secured party under the Uniform Commercial Code of the State of Wisconsin.
- 5. EVENTS BEYOND CONTROL.** Fulfillment of this order is contingent upon the availability of materials. Seller shall not be liable for any delay in delivery or for non-delivery in whole or in part caused by the occurrence of any contingency beyond the control of either the Seller or suppliers to the Seller, including, but not limited to, war, sabotage, acts of civil disobedience, failure or delay in transportation, act of any government or agency for subdivision thereof, judicial action, labor dispute, fire, accident, explosion, quarantine, restrictions, storms, flood, earthquake, or acts of God, shortage of labor, fuel, raw materials, or machinery or technical failure where Seller has exercised ordinary care in the prevention thereof. If any contingency occurs, allocation of product and delivery thereof will be at the discretion of Seller.
- 6. RISK OF LOSS AND INSURANCE.** Risk of loss or damage to the Equipment shall pass to Buyer upon delivery of the Equipment to a common carrier at Seller's shipment facility, or, if drop shipped, the manufacturer's shipment facility. Seller will insure to full value the Equipment shipped or declare full value thereof to the transportation company at the time of the shipment. Buyer shall provide and maintain at its sole expense from the time of such delivery of the Equipment until payment by Buyer of the full amount due hereunder, for the Equipment insurance against loss, theft, damage or destruction of the Equipment for its full replacement value, with loss payable to Seller or its assignee. Confiscation or destruction of, or damage to, the Equipment following shipment shall not in any way affect the liability of Buyer to pay the purchase price. Buyer shall inspect the Equipment upon receipt and notify Seller within 24 hours following delivery when there is evidence of shipping damage. Buyer's failure to notify Seller of shipping damage within 24 hours of delivery shall constitute a waiver by Buyer of any such claim.
- 7. ASSIGNMENT.** This Agreement may not be assigned, in whole or in part, without the written consent of the non-assigning party.
- 8. INDEMNIFICATION.** Buyer shall indemnify and hold Seller harmless (including, without limitation, Seller's reasonable attorney fees and costs) from any claim arising out of or relating to (a) damage, injury or claim arising from any fault or neglect of Buyer, Buyer's employees, agents and licensees, or any person not a party hereto, (b) damage, claim, or liability arising by reason of Buyer's breach of any of its obligations as set forth in the Agreement, or (c) to the extent that Equipment is manufactured according to Buyer's specifications and/or drawings, any charge that said Equipment infringes any patent or other proprietary right of any other person.
- 9. DISPUTE RESOLUTION.** Should any dispute arise between the parties to this Agreement, as a result or relative to this Agreement, and such dispute cannot be resolved informally, the parties agree to submit such dispute to the exclusive jurisdiction of the District Court in Outagamie County, Wisconsin. The prevailing party in such action shall be entitled to recover its reasonable attorney fees and other costs and expenses.

10. RETURNED GOODS POLICY. If Buyer notifies the Seller within 72 hours of receipt of the goods that the goods received are defective, the Seller shall have commercially reasonable time in which to repair or replace them with conforming goods. If Seller is unable to repair or replace the goods, then the goods may be returned to Seller only after Buyer has obtained a Return Merchandise Authorization number from Seller. No credit will be given for items returned without a Return Merchandise Authorization number. Buyer is responsible for the shipping costs related to the returned goods. Buyer will be charged a minimum 50% fee for all returned goods to cover Seller's restocking costs and fees, shipping and other expenses incurred by the Seller as a result of this sale. Notwithstanding anything to the contrary contained herein, Buyer acknowledges that unless Buyer strictly complies with the returned goods policy set forth in this paragraph, Buyer's purchase shall be deemed final and Buyer shall be deemed to have released Seller from (i) any claim for refund or credit, and (ii) any type of damages whatsoever.

11. VALIDITY. If any provision(s) of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12. DISCLAIMER OF WARRANTIES. THE SELLER SPECIFICALLY DISCLAIMS ANY AND ALL LIABILITY OR WARRANTY FOR THE PERFORMANCE OF THE EQUIPMENT (INCLUDING HARDWARE AND SOFTWARE PRODUCTS) UNLESS SPECIFICALLY NOTED IN WRITING. SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABLE. BUYER AGREES THAT IT HAS SELECTED EACH ITEM OF EQUIPMENT BASED UPON ITS OWN JUDGMENT AND DISCLAIMS ANY RELIANCE UPON ANY STATEMENTS OR PRESENTATIONS MADE BY SELLER. SELLER SHALL NOT IN ANY CASE BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR OTHER SIMILAR DAMAGES ARISING OUT OF OR RELATING IN ANY WAY TO OR FROM BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR ANY OTHER THEORY, EVEN IF SELLER OR ITS AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIABILITY FOR PERFORMAING UNDER ANY MANUFACTURER WARRANTY PROGRAM RESTS SOLELY WITH THE SUBJECT MANUFACTURER AND SELLER HAS NO LIABILITY OR RESPONSIBILITY FOR PERFORMANCE THEREUNDER. This means that Seller is not responsible for any cost incurred or as result of lost profits or revenue, loss of use of the Equipment, loss of data or the cost of any substitute Equipment.

13. GOVERNMING LAW. This Agreement and attachments thereto and enforcement thereof shall be governed by, and construed in accordance with, the laws of the State of Wisconsin.

14. ENTIRE AGREEMENT. This Agreement (which collectively consists of the Agreement and any addendums thereto, these Terms and Conditions, and the Equipment Condition statement) constitutes the entire understanding between the parties and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter. Any modification to this Agreement must be in writing and signed by all parties to this Agreement. This Agreement and the Terms and Conditions herein will govern Buyer's order. By signing this Agreement, Buyer expressly agrees to be bound by the terms and conditions hereof. Seller's acceptance of Buyer's order is expressly made conditional of Buyer's assent to the terms of this Agreement. Any acknowledgment, which in any manner differs from or is in addition to the provision(s) of this Agreement, other than approved addendums thereto, shall be of no force or effect.