



MBA Terms and Conditions of Sale

1. Offer and Acceptance. These Terms and Conditions of Sale (these "Terms") shall apply to all sales of products (the "Products") and services ("Services") by MBA Design And Display Products Corp. ("MBA") to the buyer thereof ("Buyer"). All quotations and price lists issued by MBA are offers to supply the Products and/or Services described therein under and subject to these Terms, and Buyer's purchase order issued to MBA for Products and/or Services, if any, shall be considered an acceptance of MBA's offer set forth in its quotation or price list, as the case may be, under and subject to these Terms. No other terms and conditions, including the terms and conditions set forth or referenced in Buyer's purchase order, shall be effective between MBA and Buyer in relation to the purchase and sale of Products and/or Services unless such other term and condition is specifically agreed to in a writing signed by both MBA and Buyer, which writing must reference the specific section of these Terms being amended or superseded. If, notwithstanding the foregoing, Buyer's purchase order is construed to be an offer and MBA's activities are deemed to be an acceptance, MBA's acceptance is expressly conditioned on Buyer's agreement to these Terms as the sole and exclusive statement of the contract between Buyer and MBA with respect to the Products and/or Services specified in the purchase order. None of the terms and conditions contained in these Terms may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of MBA and Buyer.

2. Orders and Prices. All prices set forth in MBA's quotations, price lists, invoices and other documents are stated in U.S. dollars and, unless otherwise indicated, are based on EXW (Incoterms 2000) MBA's warehouse. All quotations and price lists are valid for thirty (30) days from the date thereof unless the quotation or price list states otherwise. Orders placed after the expiration of the quotation or price list will be invoiced at MBA's then-current rate. Unless otherwise stated in the applicable quotation or price list, any and all sales, excise, value-added and other taxes related to the Product and/or Services (other than taxes on MBA's net income) and all out-of-pocket costs and expenses incurred by MBA, including, but not limited to, packing, freight, insurance and bank charges are not part of the price for the Products and/or Services and will be added to MBA's invoice for the Products and Services.

3. Payment. Buyer shall pay the net amount shown on each invoice from MBA no later than thirty (30) calendar days after the date shown on each such invoice without setoff of any kind. Such invoice may include an option by which Buyer may obtain a discount from the net amount of the invoice by paying with cash or check (not credit card) within fifteen (15) calendar days of the date of such invoice. Notwithstanding the foregoing, MBA may require that payment be made in advance (such as by credit card) or on a C.O.D. basis. Buyer hereby irrevocably and unconditionally grants MBA a purchase money security interest in all Products delivered to Buyer until the entire balance of the invoice price and all other monies payable pursuant to these Terms for such Products and/or Services are paid in full. MBA may suspend performance of any order (including suspension of any Services), require full payment in cash or require security or other assurance satisfactory to MBA when, in MBA's opinion, based on Buyer's financial condition or any other reason, such action is warranted or advisable.

4. Special/Non-Standard Products. A minimum order may be required for special or non-standard products. Buyer will accept and pay for all overruns and underruns on special or non-standard products not exceeding 10% of the quantity ordered. MBA reserves the right to require an advance deposit on orders for special or non-standard products. Special or non-standard products may not be returned by Buyer.

5. Changes. MBA shall have the right to make changes in design or specifications at any time without the requirement to seek consent from, or provide notice to, Buyer thereof; provided that no such change shall materially adversely affect the performance of the Products, in which case MBA shall only be required to provide Buyer with notice of such change. MBA will attempt to accommodate changes to specifications and/or scheduled release dates requested by Buyer in writing; provided, however, that MBA may charge Buyer for any services, labor, material, or storage costs arising from such requested changes.

6. Cancellations. Buyer may cancel its order for Products and Services other than orders for special or non-standard Products, subject to approval by MBA in its sole and absolute discretion. In the event of an approved cancellation, Buyer must pay for all Products and Services delivered to Buyer or performed by or on behalf of MBA before MBA receives written notice of such cancellation as well as MBA's restocking charge for any Products in MBA's possession but not yet delivered to Buyer. All cancellations must be submitted to MBA at its U.S. headquarters in Exton, Pennsylvania in writing.

7. Title and Risk of Loss; Delivery. Title to the Products and risk of loss shall pass to Buyer upon delivery (EXW (Incoterms 2000)). All Products will be delivered in accordance with the shipment clause specified in Section 2. All dates quoted or referred to in the acknowledgement for delivery are good faith estimates only and not binding on MBA. Any claims for shortage shall conclusively be deemed waived unless written notice of such claims is received by MBA within eight calendar days after delivery to Buyer.

8. Force Majeure. MBA shall not be liable for delays, defaults or failures in rendering performance if such delays, defaults or failures are due to causes beyond the reasonable control of MBA including (a) acts of God, (b) terrorism, war or acts of public enemy, (c) acts of any governmental authority, (d) fires, explosions or other casualty, (e) infectious disease, epidemics and quarantine restrictions, (f) strikes, slowdowns or labor strife of any kind, (g) freight embargoes, (h) delays or failures by suppliers and (i) shortages including those that cause exceptional price increases. If MBA is unable to fulfill its total delivery commitment to Buyer for any of the above specified reasons, Buyer agrees to accept partial deliveries as they become available from MBA, without any further recourse.

9. Limited Warranty. MBA warrants that: (a) the Products will be free from material defects in material and workmanship under normal use and service for a period of twelve (12) months after delivery to Buyer; and (b) all Services will be performed in a professional and workmanlike manner. The warranty in clause (a) does not cover third party products, such as light fixtures, that are attached to Products. MBA's sole obligation with respect to such third party products shall be to pass through to Buyer any warranty on such third party products received from the supplier or manufacturer thereof, to the extent legally permitted to do so. All claims for breach of the foregoing warranty must be made within twelve (12) months after delivery of the Products or supply of the Service to Buyer. MBA's sole obligation and Buyer's sole and exclusive remedy for breach of the foregoing warranties shall be for MBA, at its option, to replace or repair the non-conforming Product or re-perform the affected Service, at MBA's cost and expense other than shipping. MBA shall be given reasonable opportunity to investigate any and all claims concerning allegedly non-conforming Products and Services, and no Products shall be returned to MBA until after MBA has had a reasonable opportunity to investigate. The foregoing warranties shall be void with respect to Products that (a) have been repaired or altered by anyone other than MBA, (b) have not been maintained and serviced in accordance with any handling or operating instructions supplied by MBA, or (c) have been subject to unusual physical or electrical stress, misuse, abuse, negligence or accidents.

EXCEPT AS SET FORTH IN SECTION 9, MBA MAKES NO, AND HEREBY DISCLAIMS ANY AND ALL, REPRESENTATIONS AND WARRANTIES CONCERNING THE PRODUCTS AND SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND, SUBJECT TO SECTION 13, NON-INFRINGEMENT.

10. LIMITATIONS OF LIABILITY. SUBJECT TO SECTION 13, IN NO EVENT SHALL MBA'S LIABILITY TO BUYER EXCEED 40% OF THE PRICE PAID BY BUYER ALLOCABLE TO THE SPECIFIC SHIPMENT OF PRODUCTS OR APPLICABLE SERVICES THAT GIVES RISE TO THE CLAIM, WHETHER THE LIABILITY ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND WHETHER ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THE DESIGN, MANUFACTURE, ASSEMBLY, INSTALLATION, DELIVERY, SALE OR USE OF MBA'S PRODUCTS AND/OR SERVICES, OR OTHERWISE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY THAT MAY BE SET FORTH IN THESE TERMS OR ELSEWHERE, IN NO EVENT SHALL MBA BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF REVENUE OR PROFITS OR DAMAGES BASED ON MULTIPLES OF ANY

KIND. THIS FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY EVEN IN INSTANCES IN WHICH MBA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Indemnification. Buyer shall defend, indemnify and hold MBA and its directors, officers, employees, representatives and agents, and those of its affiliates (collectively, "MBA Indemnitees") harmless from and against any and all claims (including, without limitation, third party claims), demands, actions, causes of action, damages, losses, judgments, and costs and expenses, including reasonable attorneys' fees (collectively, "Losses"), attributable to: (a) bodily injury, sickness, disease or death of any person or persons, including employees, customers, clients, suppliers, representatives or agents of Buyer (collectively, "Buyer Parties"), or to property damage to a third party, that are brought against and/or incurred by any MBA Indemnitee and which arise out of or result in any way from any Buyer Party's willful misconduct, negligence or breach of any of the Terms; (b) use of any Product or Service in a manner that is not in strict compliance with any Product installation instruction, user guide or any other use, assembly or installation instructions provided by or on behalf of MBA; and/or (c) the actual or alleged infringement of any patent, trade secret, copyright or trademark or suit in the nature of unfair competition resulting from products manufactured, packaged or labeled in accordance with Buyer's patterns, plans, drawings, or specifications (collectively, "Buyer Infringing Products"). If MBA is enjoined from the manufacture or delivery of such Buyer Infringing Products, MBA is entitled to stop the production and/or the delivery – without the obligation to examine the legal situation – to the exclusion of any damages and to charge Buyer the compensation of the incurred expenses.

12. Loss to Buyer's Property. MBA shall not be liable for, and shall have no duty to provide insurance against any damage or loss to any goods or materials of Buyer that are used by MBA in connection with MBA's performance of its obligations under these Terms.

13. Infringement. MBA will indemnify Buyer against any and all claims of third parties that the normal and customary use of the Products or Services, as delivered to Buyer and without modification by any person other than MBA, infringes or misappropriates any United States patent, copyright or trade secret; provided, however, that the foregoing indemnification obligation shall not apply to the extent such a claim arises solely from a portion of any Product that was specifically developed by MBA based on Buyer's specifications. At MBA's sole option, MBA may modify the affected Products and Services so that they become non-infringing or replace the affected Products and Services with non-infringing items that are functionally similar. If MBA determines that neither of the foregoing options is commercially reasonable for MBA, MBA will accept the return of the affected Products and Services and refund a portion of the purchase price paid therefore equal to the remaining book value of the Product or Service assuming a three (3) year depreciation schedule on a straight line basis. This Section 13 states the entire liability of MBA with respect to claims of infringement or misappropriation.

14. MBA's Specifications, Technical Data, Etc. Except to the extent expressly authorized by the prior written consent of MBA, Buyer shall keep confidential and promptly return upon the request of MBA, any specifications, drawings plans, notes, instructions, engineering notices, or technical data furnished by MBA to Buyer. Except for a non-exclusive license of use, MBA hereby retains all intellectual property rights in the Products and/or Services (including, without limitation, rights in copyright, trademark, trade dress, patent and trade secret), including (without limitation) all documentation delivered in connection therewith.

15. Assignment. Neither party shall have the right or power to assign its rights or obligations pursuant to these Terms without the prior written consent of the other party, which consent may be withheld for any reason; provided, however that MBA shall have the right without Buyer's consent to assign its rights and delegate its obligations pursuant to these Terms to any of its affiliates, or to any successor of its business, whether, by merger, sale of stock, sale of assets or otherwise; provided that such affiliate or successor must either assume the obligations of these Terms in writing or by bound by the obligations of these Terms by operation of law.

15. Applicable Law; Jurisdiction And Venue. These Terms and its performance shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania applicable to contracts entered into by residents of Pennsylvania and wholly performed in Pennsylvania, without reference to the conflicts of laws principles of any jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods, the 1974 Convention on the Limitation Period in the International Sale of Goods (the "1974 Convention") and the Protocol amending the 1974 Convention, done at Vienna April 11, 1980, shall not apply to these Terms or its performance. In the event of any dispute or controversy between the parties in connection with this Agreement, both parties irrevocably submit to the exclusive jurisdiction and venue of the state and federal courts with jurisdiction over MBA's then-current headquarters. The prevailing party in any litigation between Buyer and MBA arising out of or relating to MBA's Products and/or Services shall be entitled to an award of its costs and expenses incurred in connection with such litigation or arbitration, including (without limitation) its attorneys' fees and costs and expenses of experts.

16. Insurance. Unless otherwise agreed, in the event that Buyer or any of its representatives or agents are required to be physically located on any of MBA's premises, Buyer shall carry General Liability, Automobile Liability, and Workers' Compensation Insurance at the levels set forth below with insurance carriers that maintain an A.M. Best rating of a least "A" VIII and are qualified to do business in Pennsylvania: (i) commercial general liability with a limit of at least \$5 million per occurrence for bodily injury or property damage and including broad form contractual liability insurance, and broad form property damage and personal injury; (ii) automobile liability insurance for bodily injury and property damage liability with a limit of at least \$2 million per occurrence for bodily injury or property damage; and (iii) statutory workers' compensation insurance. All policies except workers compensation shall be endorsed to name "MBA Design And Display Products Corp." as additional insureds. At the request of MBA, Buyer will provide a certificate of insurance along with copies of the endorsement(s) as required above or a broker statement that the insurance carried by the Buyer complies with these Terms.

17. Relationship. It is understood that Buyer and MBA are independent contractors and engaged in the operation of their respective businesses. Neither Buyer nor MBA is or shall be considered the agent of the other for any purpose whatsoever. Neither Buyer nor MBA has any authority to enter into any contracts or assume any obligations for the other or to make any warranties or representations on behalf of the other. Nothing in the Contract shall be construed to establish a relationship of co-partners or joint venturers between Buyer and MBA.

18. Entire Agreement. MBA's quotation, these Terms and; such other terms and conditions as are specifically agreed to in a writing signed by both MBA and Buyer, which writing references the specific section of these Terms being amended or superseded, constitute the final, complete and fully integrated agreement between Buyer and MBA with respect to the supply of the Products and Services and supersedes all prior and contemporaneous discussions, agreements, negotiations, understandings and documents with respect to the supply of the Products and Services. This Agreement may not be amended except by a writing signed by authorized representatives of Buyer and MBA.