

## **General Terms and Conditions of Sale**

THESE GENERAL TERMS AND CONDITIONS OF SALE ("TERMS AND CONDITIONS"), TOGETHER WITH ANY ADDITIONAL TERMS WHICH MAY SEPARATELY BE MADE APPLICABLE IN WRITING BY THE FUJIFILM U.S. ENTITY CONTRACTING TO PROVIDE PRODUCTS AND/OR SERVICES ("VENDOR") TO CUSTOMER ("BUYER"), GOVERN THE SALE BY VENDOR OF ITS PRODUCTS ("PRODUCTS") AND/OR SERVICES ("SERVICES"). NOTWITHSTANDING ANY DIFFERENT, CONFLICTING OR ADDITIONAL TERMS OR CONDITIONS WHICH APPEAR ON ANY PURCHASE ORDER OR OTHER BUSINESS FORM SUBMITTED BY A BUYER, SUCH DIFFERENT, CONFLICTING OR ADDITIONAL TERMS WILL NOT BECOME A PART OF THE CONTRACT OF SALE BETWEEN VENDOR AND BUYER.

**FORMATION OF CONTRACT:** A contract for the sale of Products and/or Services will be formed only if and when purchase orders from Buyer are accepted in writing by an authorized representative of Vendor, an invoice is issued by Vendor for Products and/or Services, or Vendor ships Products or undertakes performance of Services ordered ("Contract").

**SHIPPING, PACKAGING, CREDIT AND PAYMENT TERMS:** Unless otherwise provided by Vendor in writing, all prices stated are in U.S. dollars. Prices are subject to change without notice. Vendor reserves the right to change specifications, package and/or design at its sole discretion.

Obligations of Vendor to perform hereunder are subject to the strict observance of Buyer of the credit or payment terms established by Vendor in its sole discretion. Vendor reserves the right to change its credit, payment and shipping terms upon advance notice to Buyer and may require payment in advance as a condition of shipment and/or performance of Services. Vendor reserves the right, among other remedies, to terminate any Contract for Products or Services, suspend deliveries of Products or performance of Services and/or to recall Products in transit, retake the same and/or repossess all Products which may be stored with Vendor for Buyer's account if at anytime in Vendor's sole discretion Buyer's credit worthiness is impaired or in the event Buyer fails to make a payment when due.

Any claims for prices, trade allowances, cash discounts, sales and use taxes, or other benefits pertaining to this Contract will be deemed waived unless submitted along with appropriate proof of performance within one (1) year from date of invoice.

Title to Products and risk of loss shall pass to Buyer when Products are made available to Buyer or the carrier at Vendor's facility or Vendor's other designated shipping point. Buyer shall be responsible for arranging and paying for all freight and transportation from Vendor's facility or Vendor's other designated shipping point and any related insurance. In the event Products are shipped outside of the United States, the terms of delivery for such Products shall be Ex Works (INCOTERMS 2000). Buyer shall defend, indemnify and hold harmless Vendor and its affiliates from and against any and all claims (including third party claims), liabilities and costs (including reasonable attorneys' fees) in any way related to Products, which arise after passage of title to Buyer, and/or the Services, including for personal injury and/or property damage when such claims or liabilities arise out of, relate to, or are imposed by reason of, Buyer's negligence or willful acts.

Buyer is responsible for storage charges in the event Products are held by Vendor at the request of Buyer. However, Vendor is under no obligation to store Products.

Notwithstanding any passage of title, Vendor shall retain a purchase money security interest in all Products sold by Vendor to Buyer, and to all Products now or hereafter acquired by Buyer and to any proceeds thereof, until the purchase price and any other amounts due Vendor have been paid in full. Buyer agrees, upon request by Vendor, to execute any financing statements or other documents to protect Vendor's security interest.

**RETURNED PRODUCTS:** Any Product returns must be authorized in advance by Vendor and a Return Authorization ("RA") form and RA number must be obtained from Vendor and included with any return. All authorized returns must be shipped, freight paid, to the destination specified by Vendor. Buyer shall bear the risk of loss for, and shall retain title to, all returns until accepted by Vendor at Vendor's specified destination. Products to be returned shipped freight collect will not be accepted. Products returned to Vendor without a RA number and form shall not constitute an authorized return and no credit shall be given. Vendor shall make one attempt to return an unauthorized Product return and thereafter such Products shall be sold or destroyed at Vendor's sole discretion. All returned Products may be subject to a restocking charge. Vendor will invoice or credit Buyer for appropriate adjustments resulting from returns, and Buyer may not make any deduction from invoiced amounts except upon receipt of such adjustments.

**TAXES AND OTHER CHARGES:** The price of Products and/or Services does not include any taxes which may apply to the sale or use of those Products and/or Services, including but not limited to sales, use, privilege, excise or property taxes, and Vendor will invoice Buyer for such applicable taxes. Buyer is solely responsible for the payment of all such taxes, whether or not invoiced. Unless otherwise provided by Vendor in writing, prices are also exclusive of installation, packaging, crating, handling and other similar charges, payment of which shall be the sole responsibility of Buyer. If Vendor pays any such tax or charge, Buyer will promptly reimburse the same.

**BUYER'S MATERIAL:** Buyer warrants that any designs, drawings, instructions or other material furnished or given by Buyer to Vendor (the "Buyer's Material"), and used by Vendor in executing Buyer's order shall not cause Vendor to infringe on or otherwise contribute to any infringement of, any patents, trade secrets, trade names, copyrights, logos, service marks or trademarks or other intellectual property right of a third party, and Buyer agrees to defend, indemnify and hold harmless Vendor and its affiliates from and against any and all claims (including third party claims), liabilities, and costs (including reasonable attorneys' fees) resulting from any actual or claimed infringement of any such rights. Vendor shall not be liable for any loss which Buyer or the owner of the Buyer's Material may suffer by reason of loss, destruction or damage to Buyer's Material, however caused, while in the possession or under the control of Vendor, and Vendor shall not be required to repair or replace any Buyer's Material or copies thereof.

**WARRANTY; WARRANTY DISCLAIMER:** EXCEPT FOR THE WARRANTIES, IF ANY, PRINTED ON OR PACKAGED WITH PRODUCTS WHEN SOLD, VENDOR MAKES NO WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, REGARDING ANY PRODUCTS, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SUITABILITY FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. THE WARRANTIES SHIPPED WITH THE PRODUCTS PROVIDE BUYER'S EXCLUSIVE REMEDIES IF PRODUCTS ARE DEFECTIVE OR NON-CONFORMING.

VENDOR MAKES NO WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, REGARDING ANY SERVICES.

**LIMITATION OF LIABILITY:** VENDOR SHALL NOT BE LIABLE TO BUYER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSS OF REVENUE), ARISING OUT OF OR RELATED TO PRODUCTS OR SERVICES DELIVERED OR PERFORMED UNDER THIS CONTRACT, WHETHER BASED IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, OR FOR THE COST OF SUBSTITUTE GOODS, EVEN IF A PARTY HAS BEEN ADVISED OF SUCH DAMAGES IN ADVANCE. VENDOR'S MAXIMUM LIABILITY FOR ANY CLAIM ARISING OUT OF OR RELATED TO THIS CONTRACT SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNTS RECEIVED BY VENDOR FROM BUYER FOR THE SPECIFIC PRODUCTS AND/OR SERVICES TO WHICH ANY SUCH CLAIM RELATES.

If any court having jurisdiction finally holds that this limitation of remedies is void or unenforceable, Vendor's liability for any claim shall be limited to the invoice price of the Products and/or Services giving rise to the claim.

Buyer shall inspect for defects or non-conformity upon receipt of Product and/or Services. Any claim relating to Products and/or Services shall be deemed waived unless made in writing and received by Vendor within fourteen (14) days of Buyer's receipt of the Products or Services to which such claim relates, as applicable.

Buyer shall defend, indemnify and hold harmless Vendor and its affiliates from and against any third-party claims, liabilities and costs (including reasonable attorneys' fees) arising from representations by Buyer to the effect that Vendor has made any warranty, or will allow any remedy, with respect to Products and/or Services other than as expressly stated hereunder.

**COSTS AND EXPENSES OF COLLECTION:** In the event that Buyer fails to make full payment for the Products and/or Services, in the manner and within the time specified by Vendor in its payment terms, Buyer shall be liable to Vendor for payment of all costs and expenses incurred by Vendor or its affiliates in seeking collection of the amounts owed by Buyer, including but not limited to the costs of collection agencies and reasonable attorneys' fees incurred by Vendor or its affiliates. In addition, in the event of Buyer's default in payment for Products or Services when due, Vendor shall be entitled to collect an interest charge of the lesser of 1.5% of the outstanding balance per month or the maximum amount allowed by applicable law.

**PERMITS, LICENSES, TARIFFS, DUTIES AND TRANSFER LAWS:** Buyer shall be responsible for and pay any and all applicable tariffs, duties and clearance charges imposed by any governmental entity upon the Products, Services and/or any technology sold or otherwise transferred hereunder and shall obtain and pay for any and all export and import licenses or permits necessary for shipment and/or delivery of such Products, Services and/or technology. Buyer acknowledges that the Products, Services and/or any technology sold or otherwise transferred hereunder may be subject to U.S. and other governmental export and import control laws applicable to the purchase, sale, use, export, re-export, import or other transfer (collectively, "transfer") of such Products, Services and/or technology, in whole or in part, including, without limitation, Export Administration Regulations and Executive Orders and regulations administered by the Office of Foreign Assets Control of the U.S. Department of Treasury (referred to as the "Transfer Laws"). Buyer warrants that it is familiar with the requirements and restrictions of all Transfer Laws, and shall comply with such laws at all times. Buyer will defend, indemnify and hold harmless Vendor and its affiliates from and against any and all claims (including third party claims), liabilities and costs (including reasonable attorneys' fees) arising out of or in connection with any violation of the Transfer Laws or otherwise in connection with any transfer of the Products, Services and/or technology, whether direct or indirect, by Buyer.

**UNLOADING AND DEMURRAGE:** Vendor's delivery equipment, if any, is furnished with the understanding that Buyer will use all reasonable effort to unload and return same to the delivering carrier within the tariff or contracted period free of demurrage and extra detention charges. Any demurrage and extra detention charges on such equipment are for Buyer's account.

**CONFIDENTIALITY:** Except to the extent expressly permitted otherwise by Vendor in writing, Buyer agrees not to disclose to any person outside of its employ, nor to use for any purpose other than for its procurement of Products and/or Services hereunder, any information which is received by Buyer from or on behalf of Vendor or its affiliates and which relates to the Products or Services, or which is developed hereunder, until such information is made publicly available by Vendor or its affiliate.

**COMPLIANCE:** Buyer agrees that, in the event it is expressly authorized by Vendor to resell Products or Services procured hereunder, it and its agents will comply with all applicable federal, state, local, provincial and other governmental laws and regulations relating to such resale and its business.

**INTELLECTUAL PROPERTY:** No rights in patents, trade secrets, trade names, copyrights, logos, service marks or trademarks or other intellectual property are granted by Vendor under these Terms and Conditions. Buyer acknowledges and agrees that it shall not use Vendor's name, trade name, copyrights, logos, service marks or trademarks in any manner, including, without limitation, in any press release, advertising or for promotional purposes, without the prior written consent of Vendor.

**GENERAL:** Vendor shall not be liable in any way for failure or delay in carrying out the terms of any Contract for Products and/or Services resulting from any cause or circumstance beyond its reasonable control, including, but not limited to, any act of God, fire, flood, war, explosion, labor difficulties, inability to obtain necessary labor or materials, interruption of transportation, civil commotion, and acts of any governmental authority. In no event will Vendor be required to purchase any products and/or services in the marketplace to meet its obligations hereunder or be required to purchase materials and/or services necessary upon unreasonable terms and/or at unreasonable prices. During any shortage of Products and/or Services, Vendor may apportion and allocate Products and/or Services among itself and its subsidiaries, affiliates and customers as Vendor deems fit in its sole discretion. Vendor reserves the right to cancel, without liability, any order, the shipment of which is or may be delayed by reason of any cause or causes beyond its control as aforesaid.

If any provision of these Terms and Conditions conflicts with any other terms or conditions separately made applicable in writing and signed by an authorized representative of Vendor to particular Products and/or Services, such separately applicable terms and conditions shall govern to the extent of such conflict.

If any provision of these Terms and Conditions (as supplemented by any additional terms separately made applicable by Vendor in writing to particular Products and/or Services) is finally determined to be invalid or unenforceable by any court of competent jurisdiction, such determination shall not affect any other provision hereof, and all such other provisions will remain in full force and effect.

Any Contract formed between Buyer and Vendor may not be assigned by Buyer except with the prior written consent of Vendor.

Vendor's waiver of any breach or failure to enforce any of Buyer's obligations under these Terms and Conditions at any time shall not limit or waive Vendor's right thereafter to enforce strict compliance with the terms and conditions hereof.

The validity, construction and performance of these Terms and Conditions and the Contract formed between the parties shall be governed by the laws of the State of New York (without giving effect to its principles of conflict of laws). Buyer by submitting an order for Products and/or Services or otherwise entering into a Contract with Vendor irrevocably and unconditionally submits and waives any objection to the jurisdiction of the federal and state courts located in Westchester County, New York for purposes of any suit, action or proceeding arising out of or relating to these Terms and Conditions or the Contract formed between the parties, and agrees to take any and all future action necessary to submit to the jurisdiction of such courts. However, Vendor may at its option bring suit, or institute other judicial proceedings, against Buyer in any court in any place where Buyer or any of its assets may be found. The United Nations Convention on Contracts for the International Sale of Goods shall not govern these terms and conditions or any sales contract formed between the parties.