

## TERMS AND CONDITIONS GOVERNING SALES

**1. GOVERNING PROVISIONS.** TECHFILM, LLC ("TechFilm") is offering to provide the goods and/or services described herein (the Products") to the buyer to which this offer is addressed ("Buyer"), subject to the terms and conditions set forth herein (the "Agreement"). Buyer may not modify, change, renounce or waive any term or condition hereof without TechFilm's express written consent. TechFilm agrees to provide to Buyer the Products and Buyer accepts the Products only on the terms of this Agreement. Buyer may not amend, modify or replace the terms of this Agreement in any agreement or purchase order (oral or written), if one exists, or other writing or oral representation previously or hereafter received by TechFilm purporting to amend, modify or replace the terms of this Agreement with any conflicting, different or additional terms or reciting that any action or inaction by TechFilm constitutes agreement or consent by TechFilm to such amendment, modification or replacement. If this document is deemed an acceptance of a prior offer by Buyer, such acceptance is limited to the express terms contained herein. TechFilm hereby objects to and rejects any additional, different or varying terms proposed by Buyer, unless TechFilm expressly assents to such terms in writing. Such proposal of additional, different or varying terms by Buyer shall not operate as a rejection of TechFilm's offer unless such variances are in the terms of the description, quantity, price or place or date of delivery of the Products, and TechFilm's offer shall be deemed accepted without such additional, different or varying terms.

**2. ACCEPTANCE.** Buyer shall be deemed to have made an unqualified acceptance of this Agreement, and the terms and conditions herein, on the earliest to occur of the following (a) TechFilm's receipt of a copy of this Agreement signed by Buyer; (b) Buyer's payment of any amounts due under this Agreement; (c) Buyer's delivery to TechFilm of any material to be furnished by Buyer; (d) TechFilm's delivery of the Products; (e) Buyer's failure to notify TechFilm to the contrary within ten days of receipt of this Agreement, or (f) any other event constituting acceptance under applicable law. Written quotations are void unless accepted within 45 days from date of issue. Other TechFilm publications are maintained as sources of general information and are not quotations or offers to sell.

**3. CANCELLATION OR MODIFICATION; RETURNS.** Buyer may not cancel or modify its order except upon terms accepted by TechFilm in writing. In the event of any cancellation or modification, Buyer shall compensate TechFilm for all costs and damages resulting there from, including, but not limited to, out-of-pocket expenses and lost profits. No Products may be returned to TechFilm without its prior, written authorization and Products may be returned only on the terms or conditions specified in such authorization. Returned Products must be of current manufacture, unused, in resalable condition, and securely packed to reach TechFilm without damage. Any cost incurred by TechFilm to put Products in first class condition will be charged to Buyer. All Product returned to TechFilm shall be subject to a 25% restocking charge plus the costs of freight, packaging, insurance and any import or export costs.

**4. TAXES.** Buyer shall pay any tax (including sales tax), duty, custom, inspection or testing fee or any other fee or charge imposed on, in connection with or measured by the transaction between TechFilm and Buyer in addition to the prices quoted or invoiced.

### **5. DELIVERY.**

**(a) Generally:** TechFilm shall deliver the Products F.O.B TechFilm's facility at 31 Dunham Road, Billerica, MA 01821 (the "Facility")., or the equivalent INCOTERMS "EX WORKS" TechFilm's facility at 31 Dunham Road, Billerica, MA 01821 (the "Facility"). For purposes of this Agreement, "EX WORKS" shall be construed in accordance with INCOTERMS 2000 of the International Chamber of Commerce, as amended from time to time. All risk of loss, damage or delay, and title to Products, shall pass from TechFilm to Buyer from the shipping point. Partial shipments shall be permitted. Buyer shall accept overrun and/or under runs not exceeding 10 % of quantity ordered, to be paid for or allowed pro rata.

**(b) Delivery Dates:** All delivery dates are approximate. Delivery dates given by TechFilm are based on prompt receipt of all necessary information regarding the order. TechFilm will use reasonable efforts to meet such delivery dates, but does not guarantee to meet such dates. Failure by TechFilm to meet any delivery date does not constitute a cause for cancellation and/or for damages of any kind. Time for delivery shall not be of the essence.

**(c) Delivery Delays:** Any delay in delivery due to causes beyond TechFilm's reasonable control, or due to any priorities or allocations necessitated by governmental orders or regulations, or due to any causes specified in the following sentence, shall extend the term of delivery by a period equal to the length of such delay. In the event of delay in delivery requested by Buyer or caused by Buyer's (a) failure to supply adequate instructions; (b) failure to arrange for pickup; (c) failure to supply or approve necessary data in a timely manner; (d) requested changes; or (e) failure to provide documents required for TechFilm to effect delivery, TechFilm will store all Products at Buyer's risk and expense. Buyer shall pay all storage costs and expenses upon TechFilm's demand.

**(d) Claims:** Claims for shortages or other errors must be made in writing to TechFilm within ten days after TechFilm's delivery. Failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer.

**(e) Orders:** Buyer shall ensure that its orders are received by TechFilm not less than [20] working days before the requested delivery dates. Buyer's orders or mutually agreed change orders shall be subject to all provisions of this Agreement, whether or not the order or change order so states. Minimum order quantity is \$75 per order or blanket release.

**6. TERMS OF PAYMENT.** Unless otherwise stated on the face hereof, payment terms are as follows. If Buyer resides in the United States, payment terms are net 30 days from TechFilm's invoice date. If Buyer resides outside the United States, Buyer shall pay TechFilm by irrevocable Letter of Credit, including such provisions as are determined by TechFilm at time of quote. All banking and other charges for any Letter of Credit are the responsibility of Buyer. Credit terms are subject to the approval TechFilm's credit department and may be changed at any time and from time to time by TechFilm in its sole discretion.

## 7. SECURITY.

**(a) Generally:** If, during performance of this Agreement, Buyer's financial condition does not justify the terms of payment specified, TechFilm may (a) demand, before proceeding with delivery of Products, full or partial payment in advance, satisfactory security or guaranties that invoices will be promptly paid when due or (b) at its option and without prejudice to other remedies, defer delivery of the Products or cancel this Agreement. Buyer agrees to reimburse TechFilm for all costs and fees including, but not limited to attorneys' fees and repossession fees, incurred by TechFilm in collecting any sums owed by Buyer to TechFilm. Buyer agrees to pay a late payment charge of 1-1/2% per month, or the maximum amount allowable by law, on all amounts not paid in full when due, payable on TechFilm's demand. Buyer shall not set off amounts due to TechFilm against claims or other amounts.

**(b) Security Interest:** In partial consideration for TechFilm's sale of Products to Buyer, Buyer hereby grants to TechFilm and TechFilm hereby retains a security interest in all Products sold to Buyer and documents relating to such Products now or hereafter in the possession of or under the control of Buyer, title to which might at any time be determined to have passed to Buyer, including, without limitation, all inventories of the Products or any other product bearing any trademark or trade name of TechFilm, returns or repossessions and the proceeds, including insurance proceeds and proceeds from products in which the Products were an input, of all of the foregoing, together with the additions and accessions thereof, to secure all of Buyer's obligations to TechFilm under this Agreement and all other obligations of Buyer to TechFilm. Buyer agrees to execute such financing statements, continuation statements and other documents including, but not limited to pledge agreements, and to take such actions as may be required by TechFilm to evidence or perfect the security interest granted herein and the interest of TechFilm. TechFilm is authorized in Buyer's name or otherwise to take such actions as permitted under this Agreement or applicable law, including, without limitation, signing Buyer's name, and Buyer hereby appoints TechFilm as its attorney-in-fact for such purpose.

## 8. WARRANTIES AND REMEDY.

**(a) Products In Original Packaging and not Manufactured by TechFilm:** IF BUYER IS PURCHASING PRODUCTS IN THEIR ORIGINAL PACKAGING AND NOT MANUFACTURED BY TECHFILM, THE ONLY WARRANTY AVAILABLE TO BUYER AS TO THE PRODUCTS SHALL BE ANY MANUFACTURER'S WARRANTY WHICH MAY APPLY AND TECHFILM MAKES NO INDEPENDENT WARRANTIES. TechFilm does not adopt, guarantee or represent that the manufacturer will comply with any of the terms of the warranty of such manufacturer.

### **(b) Repackaged Products and TechFilm's Products:**

(i) Repackaged Products. If Buyer is purchasing Products not manufactured by TechFilm, but repackaged by TechFilm, causing the original manufacturer's seal to be broken, TechFilm warrants to original user only that the Products will be free from material defects in materials and workmanship attributable to the repackaging process under normal use and service for the shelf life of the Product as described in the technical data sheet, but no event longer than one year from the date of TechFilm's delivery of such Product hereunder.

(ii) TechFilm's Products. If Buyer is purchasing Products manufactured by TechFilm, TechFilm warrants to original user only that the Products will be free from material defects in materials and workmanship under normal use and service for the shelf life of the Product as described in the technical data sheet, but no event longer than one year from the date of TechFilm's delivery of such Product hereunder.

(iii) Limitations and Remedies. There is **NO WARRANTY** in cases of damage in transit, negligence, abuse, abnormal usage, misuse, accidents, normal wear and tear, damage due to environmental or natural elements, failure to follow TechFilm's instructions or improper installation, storage or maintenance. Buyer must make claims for defects in writing within 10 days after discovery of such defects. Buyer's failure to make such claim within the warranty period and within 10 days after discovering a defect shall constitute Buyer's irrevocable acceptance of the Products and Buyer's acknowledgement that the Products fully comply with the terms and conditions of this Agreement. TechFilm shall repair or replace, at its expense, any covered Products proved to TechFilm's satisfaction to be defective within the warranty period. Such warranty satisfaction shall be available only if: (i) TechFilm is notified in writing within 10 days after discovery of an alleged defect; (ii) the defect has not been caused by Buyer's misuse, neglect or alteration or by physical environment; and (iii) the manufacturer's shelf life of the Product (as indicated on the Product's packaging has not expired when the alleged defect is discovered. **TECHFILM'S SOLE OBLIGATION AND BUYER'S EXCLUSIVE REMEDY HEREUNDER SHALL BE LIMITED TO REPLACEMENT OR REPAIR OF DEFECTIVE PRODUCTS.** Notice of any warranty claim or request for warranty service should be sent to TechFilm at the following address: TechFilm Corporation, 31 Dunham Road, Billerica, MA 01821, Attention: Customer Service. Any assistance TechFilm provides to or procures for Buyer outside the terms, limitations or exclusions of this warranty will not constitute a waiver of the terms, limitations or exclusions of this limited warranty, nor will such assistance extend or revive the warranty. TechFilm will not reimburse Buyer for any expenses incurred by Buyer in repairing, correcting or replacing any defective Products, except for those incurred with TechFilm's prior written permission.

This warranty gives Buyer specific legal rights, and Buyer may also have other rights which vary from state to state.

**(c) NO LIABILITY FOR OTHER OBLIGATIONS OR INCIDENTAL OR CONSEQUENTIAL DAMAGES:** TECHFILM SHALL NOT BE LIABLE TO BUYER, OR TO ANYONE CLAIMING UNDER BUYER, FOR ANY OTHER OBLIGATIONS OR LIABILITIES, INCLUDING, BUT NOT LIMITED TO, OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORT OR ANY THEORY OF STRICT LIABILITY, WITH RESPECT TO THE PRODUCTS (WHETHER THE PRODUCTS ARE IN ORIGINAL PACKAGING OR HAVE BEEN REPACKAGED) OR TECHFILM'S UNDERTAKINGS, ACTS OR OMISSIONS. IN NO EVENT SHALL TECHFILM BE LIABLE FOR INCIDENTAL, COMPENSATORY, PUNITIVE, CONSEQUENTIAL, INDIRECT, SPECIAL OR OTHER DAMAGES. TECHFILM'S AGGREGATE LIABILITY WITH RESPECT TO A DEFECTIVE PRODUCT AND THIS AGREEMENT SHALL BE LIMITED TO THE MONIES PAID TO TECHFILM FOR THAT DEFECTIVE PRODUCT.

Some states do not allow the exclusion or limitation of incidental and consequential damages, so the above limitation or exclusion may not apply to Buyer.

**9. DISCLAIMER OF IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.** TECHFILM AND BUYER AGREE THAT THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TECHFILM HEREBY DISCLAIMS ALL OTHER EXPRESS WARRANTIES. For commercial Products, all warranties, including without limitation, the implied warranties of merchantability and fitness for a particular purpose, are disclaimed. For consumer Products, warranties implied by law, including those of merchantability and fitness for a particular purpose, are expressly limited to the period of the warranty stated above for the relevant Product. Any oral or written description of the Products is for the sole purpose of identifying the Products and shall not be construed as an express warranty. Prior to using or permitting use of the Products, Buyer shall determine the suitability of the Products for the intended use and Buyer shall assume all risk and liability whatsoever in connection therewith. Buyer agrees that TechFilm has no post-sale duty to warn Buyer or any other party about any matter or, if such duty exists, TechFilm satisfies that duty by providing any required warnings only to Buyer. Buyer assumes all post-sale duty to warn its customers and indemnifies TechFilm against any Damages in connection with such duty or failure to warn. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to Buyer.

**10. ASSIGNMENT.** Neither party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party; provided, however, TechFilm may assign, without Buyer's consent, this Agreement or its interest herein to any affiliate or to any corporation succeeding to TechFilm's business Subject to the foregoing. This Agreement shall bind and inure to the benefit of TechFilm and Buyer and their successors and assigns.

**11. GOVERNING LAW.** The internal laws of the State of Wisconsin shall govern the rights and obligations of TechFilm and Buyer under this Agreement. Neither this Agreement nor sales hereunder shall be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Any cause of action, claim, suit or demand by Buyer allegedly arising from or related to the terms of this Agreement or the relationship of the parties shall be brought in a Court situated in the State of Wisconsin. Both parties hereby irrevocably admit themselves to and consent to the jurisdiction of said Court. Upon termination of this Agreement for any reason, TechFilm shall have all of the rights and remedies provided by law, including, without limitation, the rights of a secured party under Chapter 409, Wisconsin Statutes or any successor statute or similar statute in the jurisdiction where Buyer is located or stores the Products.

**12. MISCELLANEOUS.** TechFilm reserves the right to correct clerical or similar errors relating to price or any other term shown in this Agreement. The failure of TechFilm to insist, in any one or more instances, upon performance of any of the terms, covenants and conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or the future performance of any such term, covenant or condition. The invalidity of any provision or clause of this Agreement shall not affect the validity of any other provision or clause hereof. Buyer agrees to comply with all laws and regulations applicable to the purchase, transport, use, storage, sale, lease and/or disposal of the Products including, without limitation, to the extent applicable, the U.S. Export Administration Act and all regulations thereunder. Buyer is an independent contractor and neither Buyer nor any of its employees or agents shall be considered an employee or agent of TechFilm. Neither Buyer nor any of its employees or agents is authorized to incur any obligations or make any promises or representations on TechFilm's behalf. The provisions found in sections 11, 12, 16, 18, 19 and 20 and the warranty and damage limitations in sections 8 and 9, and any other provision the performance or effectiveness of which naturally survives, shall survive expiration or termination of the parties' agreement for any reason. All of TechFilm's remedies herein are cumulative and not exclusive of any other remedies available to TechFilm at law, by contract or in equity.

**13. ENTIRE AGREEMENT.** THIS CONSTITUTES THE ENTIRE AGREEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF. ANY NEGOTIATIONS OR UNDERSTANDINGS BETWEEN TECHFILM AND BUYER WHICH ARE NOT CONTAINED IN THIS AGREEMENT AND ANY AND ALL PURCHASE ORDERS, CORRESPONDENCE OR STATEMENTS THAT CONFLICT WITH, DIFFER FROM OR MODIFY THIS AGREEMENT SHALL HAVE NO FORCE OF EFFECT, UNLESS IN WRITING AND SIGNED BY AUTHORIZED OFFICERS OF TECHFILM AND BUYER. TECHFILM'S SALES REPRESENTATIVES ARE WITHOUT AUTHORITY TO CHANGE THE TERMS OF THIS AGREEMENT.

**14. PRICE; TERMS.** Unless prices are stated on the face hereof, prices shall be the higher of TechFilm's most recent quote to Buyer, prevailing market price, TechFilm's list price, or the last price charged by TechFilm to Buyer for the Products. Unless otherwise stated on the face hereof, prices are in U.S. Dollars, F.O.B. the Facility. TechFilm shall have no obligation to ship Product to Buyer unless TechFilm shall have accepted the order and Buyer shall have paid for such order of Products in full prior to the time of delivery.

**15. SHIPPING; INSURANCE.** Buyer shall pay for all costs of shipping. Buyer shall fully insure all materials delivered to Buyer from F.O.B. shipping point.

**16. PATENT INFRINGEMENT AND DEFECTS IN BUYER'S SPECIFICATIONS.** Orders manufactured to Buyer's specifications, drawings, designs or descriptions are executed only with the understanding that Buyer will indemnify and hold harmless TechFilm from any and all damages sustained by TechFilm, including, but not limited to, reasonable attorneys' fees, resulting from any action or threatened action against TechFilm for (a) infringement of the patents or proprietary right of any other person, or (b) injury to person or property, including death, relating to defects in Buyer's specifications, drawings, designs or descriptions.

**17. FORCE MAJEURE.** TechFilm shall not be responsible for delay in delivery or failure to fill orders or other default or damage where such has been caused by an act of God, war, major disaster, terrorism, third-party criminal acts, insurrection, riot, flood, earthquake, fire, strike, lockout or other labor disturbance, delay by carriers, shortage of fuel, power, materials or supplies, operation of statutes, laws, rules or rulings of any court or government, demand for goods exceeding TechFilm's available supply or any other

cause beyond TechFilm's control. In the event of any delay in delivery, failure to fill orders or other default or damage caused by any of the foregoing, TechFilm may, at its option and without liability, prorate its deliveries, cancel all or any portion of the Agreement and/or extend any date upon which performance is due hereunder.

**18. ENGINEERING DATA.** All engineering data, design information and engineering and shop drawings used in the completion of this order are and shall remain TechFilm's property. Buyer shall not copy, reproduce, distribute, publish or communicate to any third party such data without the prior, written permission of a properly authorized representative of TechFilm. TechFilm hereby gives its permission to the Buyer to distribute product data or operation and maintenance information to the end user.

**19. INDEMNIFICATION.** Buyer hereby releases and agrees to indemnify, defend and hold harmless TechFilm, its shareholders, officers, agents, employees, affiliates, successors, assigns and third-party suppliers ("TechFilm's Indemnified Parties") from and against any and all direct and indirect claims, debts, actions, causes of action, liabilities, loss, suits, demands, fines, penalties, judgments, omissions, damages or expenses whatsoever, including, without limitation, attorneys' fees and costs ("Damages") incurred by or against TechFilm or any of TechFilm's Indemnified Parties due to or arising out of, in connection with, resulting from or relating to (i) misrepresentations, breach of the warranties, representations, covenants or agreement contained in this Agreement or any law by Buyer or any of Buyer's shareholders, directors, officers, employees, affiliates, representatives, agents, successors or assigns ("Buyer's Parties"), or (ii) any damage to or destruction of property, or injury to or death of persons caused, or alleged to have been caused, in whole or in part, by any intentional, reckless, negligent or other act (or failure to act) of Buyer or any of Buyer's Parties, or (iii) losses, damages or injuries caused by Buyer's products, Buyer's specifications, designs, approvals or instructions provided to TechFilm, or due to improper application or use of the Products or otherwise. Prior to settling any claim, Buyer will give TechFilm an opportunity to participate in the defense and/or settlement of such claim. Buyer shall not settle any claim without TechFilm's written consent. In the event of any recall affecting the Products, TechFilm shall have the right to control the recall process and Buyer shall fully cooperate with TechFilm in connection with the recall.

**20. CONFIDENTIAL INFORMATION; TRADEMARKS.**

(a) Confidential Information: Buyer acknowledges that all trade secrets, designs, specifications and other Confidential Information (as defined below) which may be disclosed to it by TechFilm shall at all times, both during and after expiration or termination of this Agreement for any reason, remain the exclusive property of TechFilm and that Buyer shall not acquire any proprietary interest whatsoever therein. "Confidential Information" means all knowledge and information disclosed by TechFilm to Buyer orally or in writing, or acquired by Buyer through observation, regarding TechFilm's products, technology, inventions, formulas, know-how, services, forecasts, sales methods, customer lists, customer usages and requirements, financial information, business plans, strategies and future business relationships, that provides TechFilm with a competitive advantage, with the exception of such information which: (i) was already part of the public domain at the time of the disclosure by TechFilm; (ii) becomes part of the public domain through no fault of Buyer (but only after and only to the extent that it is published or otherwise becomes part of the public domain); (iii) was in Buyer's possession prior to the disclosure by TechFilm and was not acquired, directly or indirectly, from TechFilm or from a third party who was under a continuing obligation of confidence to TechFilm; or (iv) is received (after the disclosure by TechFilm) by Buyer from a third party who did not require Buyer to hold it in confidence and did not acquire it directly or indirectly from TechFilm under a continuing obligation of confidence. Except as necessary to perform its duties under this Agreement, Buyer shall not use or disclose any of such Confidential Information, but shall use the greater of the degree of care required by this Agreement or the same degree of care given its own trades secrets and confidential information. Upon expiration or termination of this Agreement for any reason, Buyer shall, within 15 days, surrender to TechFilm all plans, drawings, specifications, sketches, pictures, films, tapes, computer disks, literature, samples, documents, other tangible objects and all copies thereof relating to trade secrets and other Confidential Information and all of TechFilm's property. Buyer shall be permitted to destroy rather than return all analyses, extracts, and summaries prepared by Buyer which contain Confidential Information, and such destruction shall be certified in writing to TechFilm by an authorized officer of Buyer who has supervised such destruction. Nothing in this Agreement shall be construed to limit or negate the common or statutory law of torts or trade secrets where it provides TechFilm with broader protection than that provided herein.

(b) Trademarks: Any use of TechFilm's trademarks or other intellectual property shall be subject to TechFilm's prior written approval in each instance and such restrictions as TechFilm may, in its sole discretion, impose from time to time. Buyer agrees that neither it nor its affiliates will seek to register any trademark, service mark, or trade dress owned by TechFilm or its affiliates, and if Buyer or any of its affiliates does obtain such a registration, Buyer or its affiliate shall immediately assign the same to TechFilm. Buyer acknowledges and agrees that TechFilm owns all right, title, and interest in and to its trademarks. Except as otherwise agreed by TechFilm, Products sold by Buyer shall bear TechFilm's trademark, and Buyer shall not remove or efface such trademark. Buyer will not repackage the Products in any manner and resell such Products utilizing a different trademark. Any use of TechFilm's trademarks in advertisements or promotion must be preapproved in writing by TechFilm. Buyer and its affiliates agree to take all steps which TechFilm may from time to time consider to be necessary to perfect or protect TechFilm's rights in its trademarks including, without limitation, executing all necessary assignments, declarations, and other documents requested by TechFilm from time to time. Upon expiration or termination of this Agreement for any reason, Buyer and its affiliates shall take such steps and execute such documents as TechFilm requests to cause TechFilm to own all rights in its trademarks and to terminate any rights Buyer may have to use such trademarks. Buyer shall inform TechFilm promptly of any potential or actual infringement of any of TechFilm's trademarks and shall provide all assistance and information required by TechFilm, at TechFilm's expense, in connection with any such infringement.