



## **IMAGE INDUSTRIES, INC.**

1515 Desoto Ave, Clarksdale, MS 38614  
Tel: (847) 659-0100 • Fax: (847) 659-0108

### **TERMS AND CONDITIONS OF SALE 2021-06-23**

#### **1. ACCEPTANCE OF TERMS**

All sales transactions between Image Industries Inc. of 1515 Desoto Ave, Clarksdale, MS 38614, (hereinafter referred to as "we" or "our") and our customer (hereinafter referred to as "Buyer") are expressly subject to these terms and conditions ("Terms") unless otherwise stated. Modifications or additions will be recognized only if in writing by an authorized representative of Image Industries or a representative legally designated by us. If the provisions of the Buyer's Purchase Order ("Order") or other documents differ from these Terms, then those differences are expressly rejected. Our failure to object to any terms and conditions contained in any purchase order or other document from you will neither be construed as our acceptance of such terms and conditions, or a waiver of these Terms.

As used herein, the term "Contract" shall mean any Quotation, Purchase Order, Order Confirmation, or other document, in whatever written form, that represents the parties' agreement concerning the purchase and sale of products from us.

In the event of a conflict, a Quotation takes precedence over these Terms, and a written contract covering the same subject matter signed by both parties takes precedence over both. If one or more of these Terms are held invalid, illegal, or unenforceable by a court of competent jurisdiction, the remaining Terms will be unimpaired.

#### **2. QUOTATIONS**

Our formal Quotations note the length of time they are valid; otherwise, any Quotation that does not explicitly state this timeframe automatically expires 15 calendar days from the date of issue. However, if the Buyer requests an extension, we will review and notify Buyer in writing whether and an extension of the Quotation is acceptable, and if so, for what term.

#### **3. ORDER ACCEPTANCE**

All Orders are subject to our acceptance. Any changes Buyer may propose to the specifications, quantities, method of shipment, schedule or place of delivery of products must be provided to us in writing and may be accepted by us at our discretion.

We will issue a Sales Order Confirmation after receiving, at minimum, the following information from the Buyer:

- 1) Image Industries' Credit Application completed and signed;
- 2) Written Order authorization consistent with our Quotation(s).

Upon receipt and approval of both, we will issue a Sales Order Confirmation to confirm the following terms of Buyer's Order, including, at minimum, part number(s); part revision(s); order quantities; anticipated shipping or delivery dates; shipping method; and approved credit terms.

The Buyer's Order is considered firm, and any changes thereafter may be subject to modification or cancellation





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fees per Section 6.

4. TAXES AND OTHER CHARGES

Unless otherwise noted, our quoted and invoiced prices do not include any taxes, duties, levies or other government feeds that may apply to Buyer's Order. If they apply, it will be Buyer's responsibility to pay them. Unless Buyer has furnished us with a valid tax exemption certificate prior to shipment, the amount of any such tax will be added to each applicable invoice and will be paid by the Buyer.

5. TERMS OF PAYMENT

A. Purchases by Credit Cards

We offer major credit cards, including American Express®, MasterCard®, and VISA®, as a form of payment. All credit card transactions are subject to a 4% credit card fee.

B. Purchases with Approved Credit Terms

Buyer may request credit terms from us if their corporate headquarters is located within the United States. If interested, Buyer must complete, sign and return our Credit Application prior to, or along with, receipt of the initial Purchase Order. Credit terms are normally provided to organizations with at least three acceptable Credit References and acceptable credit agency ratings. Please allow 48 hours for this Credit Application to be processed. The acceptance of any credit terms is based entirely on our discretion and may be changed at any time without prior written notification. If we deem the financial condition of the Buyer, or otherwise that the continuance or production or shipment on the terms specified is not justified, we may require partial or full payment in advance.

Unless otherwise approved by us in writing, invoices shall be paid in U.S. dollars within 30 days from the invoice date. Each order is a separate transaction, and you may not set-off payments from one order against another. If Buyer is late in making payment, without affecting our other rights, we may suspend delivery or cancel the order or Contract, reject Buyer's future orders, and charge a late-payment charge, from the due date until paid, at the rate of 1% per month (12% per year) or, if less, the maximum amount allowed by law.

Buyer shall pay all of our costs, charges and expenses, including court costs and attorneys' fees, relating to Buyer's obligations, payment and/or litigation, negotiation or transaction in which Buyer causes Image Industries to become concerned or involved.

The parties agree the Circuit Courts of Mississippi shall have jurisdiction over any dispute, and the parties expressly waive any objection to the Circuit Courts of Mississippi asserting jurisdiction over them.

6. ORDER MODIFICATION OR CANCELLATION

An Order may not be modified or canceled by the Buyer without our written acceptance.

In the event we have any reason to believe Buyer is unwilling or unable to pay, we reserve the right to request immediate assurance of payment with proof in the form satisfactory to us or we may cancel the Buyer's order.





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In the event of a cancellation of an Order by either party, for any reason except product non-conformity (Section 10), the Buyer shall pay us the costs and expenses including, but not limited to, material purchased, work in progress, engineering time, programming and set-up time, subcontractor costs and any other costs incurred by the company prior to receipt of notice of any such cancellation, plus our usual rate of profit for similar work. The minimum cancellation charge is 35% of any Order value.

### **7. DELIVERY**

Ship dates or delivery dates reflected on our Order Confirmation are approximated and are based on best estimates at time of order acceptance. We will use all reasonable efforts to meet the indicated delivery dates, but we cannot be held responsible for its failure to do so. We may make partial shipments and bill for those shipments. In any event, the Buyer will make payment in accordance to terms referenced in Section 5.

All of our products are sold INCOTERMS F.O.B. our facility from which they ship. Products are considered delivered when they are loaded onto the chosen carrier at our facility. At this point Buyer becomes responsible for risk of loss and damage. Title to products will pass to you upon our delivery of the products to the carrier.

### **8. FREIGHT & DECLARED VALUE**

All shipments will be FOB Image Industries' facility, with declared value of the shipment equal to the invoiced price of the parts, equipment and/or accessories, unless otherwise specifically agreed upon in writing. In the case of a rental, the declared value of the equipment will be noted in our "Equipment Rental Agreement".

### **9. LIMITED WARRANTY**

We warrant that products provided to Buyer will conform to drawings, materials, descriptions and specifications designated by the Buyer, and in accordance with our Quotation and/or Order Confirmation for a period of twelve (12) months from the date of Buyer's receipt of such products.

THIS WARRANTY IS EXCLUSIVE, AND WE MAKE NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OF NON-INFRINGEMENT, OR REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT, WHETHER ARISING FROM A STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF PERFORMANCE, DEALING OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. IF WE MANUFACTURE CUSTOM GOODS FOR YOU BASED ON INSTRUCTIONS, SPECIFICATIONS, OR OTHER DIRECTIONS YOU PROVIDE TO US, WE WILL NOT BE LIABLE FOR THE LACK OF SUFFICIENCY, FITNESS FOR PURPOSE OR QUALITY OF THE GOODS TO THE EXTENT ATTRIBUTABLE TO SUCH INSTRUCTIONS, SPECIFICATIONS, OR OTHER DIRECTIONS.

Our warranty will not be effective if we determine Buyer has mixed shipping lots, altered the products, or if the defects to the products result from neglect or accident caused by Buyer. Our sole and exclusive liability, and Buyer's exclusive remedy with respect to products returned within the warranty period and proved to our satisfaction (applying analytical methods reasonably selected by us) to be defective or nonconforming, will be the replacement of the products free of charge upon your return of the products in accordance with our instructions, although at our discretion we may provide a credit or refund in accordance with Section 10 below. Warranty





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claims must be made within 30 days after you discover that the product does not conform.

Unless otherwise agreed, all technical assistance and information we provide Buyer regarding the products will be provided gratis, and Buyer assumes sole responsibility for results obtained in reliance thereon. We make no warranty regarding such technical assistance or information.

### **10. INSPECTIONS AND RETURNS**

Buyer can return products that are damaged or defective upon delivery based on the following process. Buyer's inspection and claims must be completed in writing and received by us within 30 days of receipt of the product; beyond 30 days we will not consider a claim, receive any returned product or replace any product. Authorization for all returns must be pre-approved by our Quality Department, and a "Returned Material Authorization" (RMA) number provided to the Buyer prior to any return of product. We may require Buyer to provide a representative part, photo and/or description for evaluations prior to issuing an RMA number. An RMA number will remain valid 30 days from issuance; we will not receive, replace or credit parts that are not delivered within 30 days from issuance of the associated RMA number.

### **11. CREDITS AND REFUNDS**

For any properly returned products that we deem to be damaged or defective, we may, at our discretion, replace the products free of charge or issue a product credit for material only. For products that are returned and not replaced, a "re-stocking" fee equal to a minimum of 35% of the Order value will apply, and will be invoiced if payment for the product hasn't been received, or will be credited if payment for the product has been received. No product credit will be available for use if a past due balance is outstanding on the account. Any product credit not used within six (6) months of the date of issue will expire.

### **12. INDEMNITY**

For To the extent allowed by applicable law, and except where a claim arises as a result of our gross negligence or willful misconduct or that of its affiliates, you will indemnify, defend and hold harmless Image Industries, its officers, agents, employees, distributors and affiliates ("Indemnified Party") for any claim, loss, damage, expense or other liability (including reasonable attorneys' fees and costs) which may be made against an Indemnified Party as a result of

- a) Buyer's acts, omissions, use or modification of a product,
- b) our manufacture or sale of a product we make under your instructions, specifications, or other directions,
- c) Buyer's failure to comply with the Contract,
- d) Buyer's failure to acquire any applicable additional rights related to your use of the products, or
- e) our use of materials you provide to us.

### **13. LIMITATIONS OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE WILL NOT BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO COSTS OF COVER, LOST PROFITS, LOST DATA, LOSS OF BUSINESS, LOSS OF GOODWILL OR LOSS OF REVENUE) THAT YOU MIGHT INCUR UNDER THE CONTRACT, OR THAT MAY ARISE FROM





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OR IN CONNECTION WITH OUR PRODUCTS OR SERVICES, EVEN IF WE HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, OUR MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT, OR ANY PRODUCT, IS LIMITED TO THE AMOUNT YOU PAID TO US FOR THE PRODUCT PURCHASED.

DELIVERY DATES AND TIMES ARE ESTIMATES ONLY AND WE WILL NOT BE LIABLE (IN CONTRACT, TORT OR OTHERWISE) FOR ANY LOSSES, EXPENSES, CLAIMS OR DAMAGES CAUSED BY A LATE SHIPMENT.

**14. EXPORT CONTROL**

Buyer acknowledges that products received from us are subject to U.S. export control laws and regulations. You represent and warrant to us that you will not, directly or indirectly, use the product for any use prohibited by the laws or regulations of the U.S. and/or your local jurisdiction, without obtaining prior authorization from the competent government authorities as required by those laws and regulations.

**15. MISCELLANEOUS**

We will not be responsible or liable for failing to perform our obligations under the Contract to the extent caused by circumstances beyond our reasonable control. Our exercise of any option or failure to exercise any rights hereunder will not constitute a waiver of our rights to damages for breach of contract and will not constitute a waiver of any subsequent failure, delay, or breach by you. If any provision or part of the Contract is found by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of the Contract. Headings are for convenience only and will not be used in the interpretation of these Terms. The Contract will be governed by and construed in accordance with the laws of the State of Mississippi, USA, without regard to conflicts of law provisions. We may assign our rights and/or obligations under the Contract to any person in whole or in part. Buyer agrees to keep confidential any non-public technical information, commercial information (including prices, without limitation) or instructions received from us as a result of discussions, negotiations and other communications between us in relation to our products or services. We reserve the right to change these Terms at any time. Any changes made to these Terms will not apply to the Contract between us for any order we receive before the changes are made.

