



TERMS AND CONDITIONS

1. **Final Agreement.** This agreement may contain schedules related to the products sold by Photo Tex Group, Inc. as such products are specifically identified on the Photo Tex Group, Inc. Invoice, all of which products and invoices are hereby incorporated into this agreement by this reference (collectively, this "Agreement"). Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void. No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these Terms and Conditions or any purchase order or invoice, or any document in electronic or written form that is signed and delivered by each of the parties for the performance of Services. This Agreement is the final, complete and exclusive statement of the entire agreement between Photo Tex Group, Inc. and Customer, and supersedes any prior and contemporaneous: requests for proposals, proposals, purchase orders, and all other communications relating to the subject matter of this Agreement, whether oral or written. No terms or conditions, other than those contained in this Agreement, and no other agreement or understanding which in any way modifies these terms and conditions, shall be binding upon either party unless made in writing and signed by an authorized representative of both parties. Terms and conditions contained in schedules shall be controlling only to the limited extent which such terms and conditions are express and specific.

2. **Definitions.** The definitions below may be more fully identified and/or supplemented in the Photo Tex Group, Inc. Invoice.

a. (i) "Project" means all goods and/or services rendered, delivered or required to be rendered or delivered by Photo Tex Group, Inc. arising from or related to this Agreement, including, but not limited to, the following: providing goods and/or services, proposing, planning, project management, development, programming, integration, analysis, design, testing, conversion, implementation, maintenance, consulting, and support services. (ii) "Product" or "Products" mean any goods and/or services not created, authored, manufactured, or performed, as the case may be, by Photo Tex Group, Inc. (iii) "Business Days" means Monday through Friday, with the exception of Federal holidays, 8:00A.M.–4:30P.M., prevailing Eastern time, unless otherwise specified in this Agreement. (iv) "Change Control" means the process by which Photo Tex Group, Inc. and Customer modify this Agreement by mutual agreement.

3. Fees and Invoicing.

a. **Payment Terms.** Orders are not binding upon Seller until accepted by Seller. Customer agrees to pay the total purchase price for the Products plus shipping (to the extent shipping is not prepaid by Customer), including shipping charges that are billed to Seller as a result of using Customer's carrier account number. Terms of payment are within Seller's sole discretion. Invoices are due and payable within the time period specified on the invoice, measured from the date of invoice, subject to continuing credit approval by Seller. Invoices not containing a specific time period for payment shall be paid by Customer within thirty (30) calendar days from the date of invoice. Customer agrees to pay interest on all past-due sums at the lower of one and one-half percent (1.5%) per month or the highest rate allowed by law. Customer will pay for, and will indemnify and hold Seller and its Affiliates harmless from, any applicable sales, use, transaction, excise or similar taxes and any federal, state or local fees or charges (including, but not limited to, environmental or similar fees), imposed on, in respect of or otherwise associated with the Products or the Services. Customer must claim any exemption from such taxes, fees or charges at the time of purchase and provide Seller with the necessary supporting documentation. In the event of a payment default, Customer will be responsible for all of Seller's costs of collection, including, but not limited to, court costs, filing fees and attorneys' fees. In addition, if payments are not received as described above, Seller reserves the right to suspend Services until payment is received. Customer hereby grants to Seller a security interest in the Products to secure payment in full. Customer authorizes Seller to file a financing statement reflecting such security interest.

b. **Change Control Adjustments.** At all times, the Fee is subject to adjustments resulting from Change Control.

4. Warranties and Remedies.

a. **Warranty.** Customer understands that Seller is not the manufacturer of the Products purchased by Customer hereunder and the only warranties offered are those of the manufacturer, not Seller or its Affiliates. In purchasing the Products, Customer is relying on the manufacturer's specifications only and is not relying on any statements, specifications, photographs or other illustrations representing the Products that may be provided by Seller or its Affiliates. SELLER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES EITHER EXPRESS OR IMPLIED, RELATED TO PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF NONINFRINGEMENT, OR ANY WARRANTY RELATING TO THIRD PARTY SERVICES. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY MANUFACTURER'S WARRANTY. Customer expressly waives any claim that it may have against Seller or its Affiliates based on any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property rights (each a "Claim") with respect to any Product and also waives any right to indemnification from Seller or its Affiliates against any such Claim made against Customer by a third party. Customer acknowledges that no employee of Seller or its Affiliates is authorized to make any representation or warranty on behalf of Seller or any of its Affiliates that is not in this Agreement.

b. **Product Warranty.** Photo Tex Group, Inc. will not be responsible for physical or monetary replacement/reimbursement of any surface such as walls, windows, doors, floors and vehicles to which the product is adhered, including, but not limited to adhesive residue or paint damage upon removal. Photo Tex Group, Inc. will replace defective material only after inspection from the factory.

c. **Limitation of Remedies.** Except as otherwise expressly and specifically provided herein in Section 4.a., regardless of the form of action (whether in contract or in tort, including negligence and misrepresentation), neither party shall be liable for special, indirect, consequential, punitive or exemplary damages, or for any claim for the loss of profits, business, use of data or information, or damage to good will.

5. **Risk of Loss.** If Customer provides Seller with Customer's carrier account number or selects a carrier other than a carrier that regularly ships for Seller, title to Products and risk of loss or damage during shipment pass from Seller to Customer upon delivery to the carrier (F.O.B. Origin, freight collect). For all other shipments, title to Products and risk of loss or damage during shipment pass from Seller to Customer upon delivery to the specified destination (F.O.B. Destination, freight prepaid and added). Notwithstanding the foregoing, title to software will remain with the applicable licensor(s), and Customer's rights therein are contained in the license agreement between such licensor(s) and Customer.

6. **Export Sales.** If this transaction involves an export of items subject to the Export Administration Regulations, such items were exported from the United States by Seller in accordance with the Export Administration Regulations. Customer agrees that it will not divert, use, export or re-export such items contrary to United States law.

7. **Confidentiality.** Photo Tex Group, Inc. and Customer acknowledge that, during the term of this Agreement, both parties may be entrusted with the other party's confidential and proprietary business information. Neither party shall, during this Agreement or thereafter, use or disclose such confidential and proprietary information for any purpose except the performance of this Agreement.

8. Issue and Dispute Resolution.

Any and all disputes, claims and controversies between the parties arising out of or related to this Agreement (a "Dispute") shall be determined as follows:

a. **Abatement of Project.** During the procedure for resolving a Dispute pursuant to this Section, any deadlines provided in this Agreement affected by the Dispute, as determined at Photo Tex Group, Inc.'s reasonable discretion, shall abate and be adjusted into the future a number of Business Days equal to the number of Business Days during which such Dispute procedure occurs; provided, however, that, unless the Dispute is for the non-payment of invoices by Customer, then Photo Tex Group, Inc. shall use its best efforts to continue its performance of any unrelated aspects of the Project. If the parties cannot resolve the Dispute within five (5) Business Days after written notice of the Dispute, it shall be deemed to be an "Unresolved Dispute" and either party may make a written demand for arbitration.

b. **Unresolved Disputes and Arbitration.** An Unresolved Dispute arising within the United States of America shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The Arbitrator(s) shall have no authority to award punitive or exemplary damages. An unresolved dispute arising outside of the United States shall be settled by binding arbitration in accordance with the JAMS International Arbitration Rules. The parties may agree to one (1) arbitrator. However, if the parties cannot so agree within ten (10) Business Days after the written demand for arbitration, then three (3) arbitrators shall be appointed in accordance with AAA Commercial Rules or JAMS International Rules from a panel of arbitrators knowledgeable in business information and manufacturing. Any arbitration necessary shall be conducted in Pittsburgh, Pennsylvania.

9. **Pricing Information; Availability Disclaimer.** Seller reserves the right to make adjustments to pricing, Products and Service offerings for reasons including, but not limited to, changing market conditions, Product discontinuation, Product unavailability, manufacturer price changes, supplier price changes and errors in advertisements. All orders are subject to Product availability and the availability of Personnel to perform the Services. Therefore, Seller cannot guarantee that it will be able to fulfill Customer's orders. If Services are being performed on a time and materials basis, any estimates provided by Seller are for planning purposes only.

10. **Credits.** Any credit issued by Seller to Customer for any reason must be used within two (2) years from the date that the credit was issued and may only be used for future purchases of Products and/or Services. Any credit or portion thereof not used within the two (2) year period will automatically expire.

11. **Limitation of Liability.** UNDER NO CIRCUMSTANCES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN, WILL SELLER, ITS AFFILIATES OR ITS OR THEIR SUPPLIERS, SUBCONTRACTORS OR AGENTS BE LIABLE FOR: (A) ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, BUSINESS, REVENUES OR SAVINGS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, IN EACH CASE, WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY; (B) ANY CLAIMS, DEMANDS OR ACTIONS AGAINST CUSTOMER BY ANY THIRD PARTY; (C) ANY LOSS OR CLAIM ARISING OUT OF OR IN CONNECTION WITH CUSTOMER'S IMPLEMENTATION OF ANY CONCLUSIONS OR RECOMMENDATIONS BY SELLER OR ITS AFFILIATES BASED ON, RESULTING FROM, ARISING OUT OF OR OTHERWISE RELATED TO THE PRODUCTS OR SERVICES; OR (D) ANY UNAVAILABILITY OF THE PRODUCT. IN THE EVENT OF ANY LIABILITY INCURRED BY SELLER OR ANY OF ITS AFFILIATES, THE ENTIRE LIABILITY OF SELLER AND ITS AFFILIATES FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED THE LESSER OF: (A) THE DOLLAR AMOUNT PAID BY CUSTOMER FOR THE PRODUCT(S) GIVING RISE TO THE CLAIM OR THE SPECIFIC SERVICES GIVING RISE TO THE CLAIM; OR (B) \$50,000.00.

12. Miscellaneous.

a. **Assignment.** Except for the transfer or assignment to or from a wholly owned subsidiary, neither party may assign all or any portion of this Agreement without the other party's prior written consent (which shall not be unreasonably withheld); provided that Photo Tex Group, Inc. may reasonably subcontract any portion of this Agreement if such subcontract incorporates by reference all terms and conditions of this Agreement.

b. **Unforeseen Events.** If either party is unable to perform any of its obligations under this Agreement as a result of acts of God or acts not the preventable fault of such party, such party shall immediately give notice to the other party and shall endeavor to resume performance. Upon receipt of such notice, performance shall be immediately suspended and both parties shall bear their own costs; provided, however, that Customer shall pay for any unpaid portion of the Fee then-rendered. If the period of nonperformance exceeds thirty (30) calendar days from the receipt of such notice, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

c. **Severability.** Terms and conditions of this Agreement shall be severable, and if for any reason any term or condition is determined to be invalid, illegal or unenforceable, the same shall not impair the operation of, or otherwise affect, the valid terms and conditions of this Agreement, so long as the intent of this Agreement is maintained.

e. **Jurisdiction.** This Agreement shall be governed and enforced in accordance with the laws of the State of Ohio. The parties consent to the exclusive personal jurisdiction of such State, with exclusive venue in the City of Youngstown, OH.

f. **Notices; Waiver; Electronic Communication.** All notices required by this Agreement shall be sent by certified or registered mail, return-receipt requested, to the principal office of the other party. A waiver of any breach of this Agreement shall not be construed as a waiver of any subsequent breach. Failure of either party to enforce compliance with this Agreement shall not constitute a waiver of such term or condition. Each party hereby authorizes the other to rely upon electronic communication as to authorship, but such electronic communication shall not be deemed to be "in writing" or "written" as used in this Agreement.

g. **Survival.** The terms and conditions contained in this Agreement, which, by their nature, should survive a termination of this Agreement, shall so survive.

h. **Limitation of Action.** No action, regardless of form, arising out of this Agreement may be brought by either party more than one (1) year after the termination hereof.

i. **Returns.** Maximum of 180 day return policy with a 20% re-stocking fee. Material/Goods must be shipped Prepaid to Ohio Warehouse location for inspection approval prior to issuing credit.