



## CHROMA COLOR CORPORATION TERMS AND CONDITIONS OF PURCHASE

The purchase order ("Purchase Order") is an offer by buyer, Chroma Color Corporation ("Chroma"), to the seller ("Seller") for the purchase of goods ("Goods"), and is made expressly subject to these additional Terms and Conditions for the Purchase of Goods (these "Terms"). This agreement is comprised solely by the Purchase Order and these Terms (collectively, this "Agreement"), and supersedes all other written or verbal agreements on the same subject matter. This Agreement expressly limits Seller's acceptance to the terms of this Agreement, and Chroma objects to and rejects any additional or different terms in Seller's acceptance or acknowledgment. In the event a written contract signed by both parties exists covering the sale of the same goods, the terms and conditions of the contract shall prevail to the extent it is inconsistent with these Terms.

1. **Acceptance.** By shipping the Goods, Seller accepts this Agreement and agrees to be bound by the Purchase Order and these Terms. No changes or revisions to a Purchase Order or these Terms is valid unless it is in writing signed by an authorized representative of Chroma, provided that clerical errors are subject to correction.
2. **Time for Delivery.** Seller acknowledges and agrees that time is of the essence for the delivery of the Goods within the time frame specified in the Purchase Order or as otherwise agreed in writing by the parties (the "Delivery Date"). If Seller fails to deliver the Goods in full on the Delivery Date, Chroma may terminate this Agreement upon written notice to Seller. Seller shall indemnify Chroma against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date, except to the extent the failure or delay is caused by a Force Majeure event.
3. **Delivery and Packaging.** Seller shall deliver all Goods to the address specified in the Purchase Order (the "Delivery Point"). Seller shall pack all Goods for shipment according to Chroma's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Chroma prior written notice if it requires Chroma to return any packaging material. Any return of such packaging material shall be made at Seller's risk of loss and expense.
4. **Quantity.** If Seller delivers more than ten (10) percent or less than ten (10) % of the quantity ordered, Chroma may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's sole risk and expense. If Chroma does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

5. **Change Notification.** Prior to shipping Goods to Chroma, Seller shall notify Chroma of any changes including raw materials and changes to manufacturing location or processes. Chroma may, within fourteen (14) days of receiving a change notification, cancel this Agreement in its discretion, in full or part, subject to the provisions of Section 16.

6. **Shipping Terms.** Freight charges and shipping terms shall be as designated on the Purchase Order. The Purchase Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Purchase Order.

7. **Title and Risk of Loss.** Title and risk of loss passes to Chroma upon delivery of the Goods at the Delivery Point.

8. **Inspection and Rejection of Nonconforming Goods.** Chroma shall inspect the Goods within a reasonable time of the Delivery Date. Chroma, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Chroma rejects any portion of the Goods, Chroma has the right, effective upon written notice to Seller, to: (a) rescind this Agreement in its entirety; (b) accept the Goods at a mutually agreed upon reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Chroma requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming or defective Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Goods and the delivery of replacement Goods. If Seller is unable to or fails to timely deliver replacement Goods, Chroma may replace them with goods from a third party, charge Seller the cost difference, and terminate this Agreement for cause. Any inspection or other action by Chroma under this Section shall not reduce or affect Seller's obligations under the Agreement, and Chroma shall have the right to conduct further inspections after Seller has carried out its remedial actions.

9. **Price.** The price of the Goods is the price stated in the Purchase Order (the "Price"). Unless otherwise specified in the Purchase Order, the Price includes all packaging, transportation costs to Delivery Point (unless the PO provides otherwise), 2 of 3 insurance, customs charges and duties, and all fees and applicable taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Chroma.

10. **Payment.** Payment terms are as set forth in the Purchase Order. Chroma reserves the right to set off at any time any amount Seller owes to Chroma against any amount Chroma owes to Seller. Where any item or items on an invoice is disputed, Chroma may withhold payment for the disputed charges until the dispute is resolved. The parties shall seek to resolve all such disputes promptly and in good faith. Seller shall continue performing its obligations under this Agreement notwithstanding any such dispute.

11. **Warranties and Remedy.** Seller warrants to Chroma that all Goods will be free and clear of all liens, security interests or other encumbrances; conform to applicable specifications, drawings, designs, or other written requirements; be free from any defects in workmanship, material and design; and not infringe any third-party's patent or intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Chroma. The warranties set forth in this Section 11 are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Chroma's discovery of the noncompliance of the Goods with the foregoing warranties. If Chroma gives Seller written notice of nonconformance of Goods, Seller shall, at its own cost and expense, within fourteen (14) days replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming Goods to Seller and the delivery of repaired or replacement Goods to Chroma.

12. **General Indemnification.** Seller shall defend, indemnify and hold harmless Chroma, its parents, subsidiaries, affiliates, successors or assigns and its respective directors, officers, shareholders and employees (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder (collectively, "Losses") arising out of or occurring in connection with Seller's negligence, willful misconduct or breach of the Terms. Seller shall not enter into any settlement on an indemnified claim without Chroma's or Indemnitee's prior written consent.

13. **Intellectual Property Indemnification.** Seller shall, at its expense, defend, indemnify and hold harmless Chroma and any Indemnitee against any and all Losses arising out of or in connection with any claim that Chroma's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. Seller shall not enter into any settlement of an indemnified claim without Chroma's or Indemnitee's prior written consent.

14. **Insurance.** During the term of this Agreement and for a period of two (2) years thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in commercially reasonable coverage amounts with financially sound and reputable insurers. Upon Chroma's request, Seller shall provide Chroma with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in these Terms. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

15. **Compliance with Law.** Seller shall comply with all applicable laws, regulations, ordinances and executive orders. Seller shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Seller shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Seller. Seller will provide Chroma with the harmonized code number and country of origin for the Goods specified in the Purchase Order. Seller assumes all responsibility for shipments of Goods requiring any –

– government import clearance. Chroma may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

16. **Termination.** Chroma has the right to terminate this Agreement, in whole or part, prior to delivery of the Goods. Seller's sole and exclusive remedy for termination in such a case is payment for Goods delivered and accepted, and payment in an amount negotiated in good faith for Seller's actual costs for work and materials, applicable solely to this Agreement, which was expended prior to Seller receiving notice of termination. Seller shall have no claim for lost profits, consequential or special damages or other costs or damages except as set forth herein. Chroma has the additional right to terminate this Agreement, in whole or in part, without liability (except for Goods delivered and accepted) if (a) Seller fails to meet the Agreement requirements for delivery, price, quality, or quantity; (b) Seller ceases to conduct its operations in the normal course of business; (c) Seller is unable to meet its obligations as they come due; (d) proceedings are instituted against Seller under bankruptcy laws or other laws for the relief of creditors; (e) a receiver is appointed by or applied for by Seller; or (f) an assignment is made by Seller for the benefit of creditors.

17. **Confidential Information and Confidentiality.** All non-public, confidential or proprietary information of Chroma, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer information, pricing, discounts or rebates, disclosed by Chroma to Seller, whether disclosed orally or in written, electronic or other form or media, and whether or not marked, designated or identified as "confidential" is confidential, solely for the purpose of performing this Agreement, and may not be disclosed or copied unless authorized in advance by a Chroma officer in writing. Upon Chroma's request, Seller shall promptly return all documents and other materials received from Chroma. Chroma shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Seller at the time of disclosure; or (c) rightfully obtained by Chroma on a non-confidential basis from a third party. Seller shall not make or publish any notice, advertisement, press release or other public communication about this Agreement without Chroma's prior written consent. Seller shall not use Chroma's name or logo in any of its advertising, client lists, or sales promotional information without Chroma's prior written consent.

18. **Force Majeure.** In the event of the occurrence of fire, explosion, flood, riot, strike, acts of God, energy shortage, war, invasion, acts of government or government agencies or instrumentalities, or other contingencies or causes beyond the control of either Seller or Buyer affecting the performance of either party under this Agreement, such performance shall be suspended or delayed until such contingencies or causes have been terminated. The party impacted by the force majeure event shall give notice to the other Party within ten (10) days of the force majeure event, stating the period of time the occurrence is expected to continue. Diligent efforts shall be made by the impacted party to end the failure or delay of performance and to minimize the effects of a force majeure event. If performance is suspended for a period of ten (10) days or longer, the party affected by the failure of performance or delay has the right to terminate this Agreement upon written notice to the other party at any time thereafter.

19. **Assignment.** Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Chroma. Chroma may assign its rights or delegate its obligations under this Agreement without Seller's prior written consent to any affiliate or in the event of a sale or transfer of substantially all of Chroma's Assets.

20. **Governing Law and Jurisdiction.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of Delaware. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of North Carolina in each case located in the City of Charlotte and County of Mecklenburg and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

21. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

22. **Severability.** If any term of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

23. **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, Confidential Information and Confidentiality.

24. **Waiver.** Chroma's waiver of any of the provisions of this Agreement is effective only if explicitly set forth in writing and signed by Chroma. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.