

# PIXUS TECHNOLOGIES STANDARD TERMS AND CONDITIONS OF SALE

## (1) ACCEPTANCE AND CANCELLATION OF ORDERS

Each order for goods is subject to acceptance in writing by a duly authorized agent of Pixus Technologies ("Seller"). Any written acknowledgement of receipt of an order shall not, in and of itself, constitute such acceptance. Orders accepted by Seller may be cancelled by Buyer only upon written consent of Seller. In the event of cancellation or other withdrawal of an order for any reason, and without limiting any other remedy which Seller may have as a result of such cancellation or order withdrawal, reasonable cancellation or stocking charges, which shall include all expenses then incurred and commitments made by the Seller, shall be paid by Buyer to Seller. Special orders for items not normally stocked are non-cancellable and non-refundable.

## (2) DELIVERY

All prices quoted and goods shipped are F.O.B. Seller's facility. Title to and risk of loss of all goods shall pass upon Seller's delivery to carrier for shipment to Buyer, unless otherwise agreed by Seller in writing. Buyer shall pay all freight handling, delivery and insurance charges for shipment of goods. Choice of carrier and shipping method and route shall be at the election of Seller unless specifically designated by Buyer. Seller shall not be liable for delays in delivery or for failure to perform due to causes beyond reasonable control of Seller, which causes shall include, without limitation, acts of God, acts or omissions of Buyer or civil or military authorities, fires, strikes, epidemics, quarantine restriction, flood, earthquakes, riot, war, delays in transportation or inability to obtain necessary labor, materials or supplies. In the event of any delay, the contractual date of delivery, if any, shall be extended for a period equal to the time lost as a consequence of such delay without penalty to Seller. Seller shall be entitled to refuse or to delay shipments upon failure by Buyer to pay promptly any payments due Seller, whether on this or any other contract between Seller and Buyer. Seller shall have the right to deliver all goods covered hereby at one time or in portions from time to time within the time for delivery provided in such order. Buyer must notify Seller 60 days in advance of any delivery date change request.

## (3) TERMS

- a) Unless otherwise specified by Seller in writing, payment in full of net amount owing, without offset or deduction, is due 30 days from date of invoice. If payment is not received within such 30 day period, a late payment charge of 1% per month of the unpaid balance or the maximum amount allowed by law, whichever is less, shall be paid by Buyer;
- b) All cheques are subject to collection, and Buyer agrees to pay all costs of collection, including reasonable attorney fees and costs. Any cheque received from Buyer may be applied by Seller against any obligation of Buyer to Seller under this or any other agreement, notwithstanding any statement appearing on or referring to such cheque. Acceptance of any partial payment shall not constitute a waiver of Seller's right to payment in full of all amounts owing from Buyer to Seller; and
- c) Seller shall have the right to refuse to ship to Buyer on credit at anytime and shipments made to Buyer on C.O.D. or other basis shall be subject to the terms and conditions of sale contained herein. Seller shall retain a purchase money security interest in all goods sold to Buyer until the full purchase price therefore and any late payment charges have been paid.

## (4) INSPECTION AND ACCEPTANCE OF GOODS

Buyer is deemed to have accepted products unless notice of rejection is given within a reasonable time, which is agreed to be within (10) days after receipt. Claims of late delivery are void unless made prior to receipt of products, and receipts of products shall constitute a waiver of any claim of late delivery. No return will be accepted without prior authorization from Seller. Material must be returned as directed by Seller and be in its original packaging. Returns of product packaged in electrostatic packaging will not be accepted if electrostatic packaging has been opened.

## (5) SELLER'S RIGHT TO INCREASE PRICES

Unless otherwise specified on the face of this agreement, Seller reserves the right to increase the selling price of any and all goods ordered by Buyer but not shipped yet from Seller's place of business prior to an increase in Seller's cost of such goods by Seller's suppliers. The selling price quoted to Buyer shall upon an increase in price by Seller's suppliers be increased by the same percentage of increase price in accordance with the terms hereof.

## (6) TAXES

Seller's prices do not include sales, use, excise, or similar taxes. Accordingly, Buyer shall in addition to prices specified by Seller, pay any sales, use, excise or similar tax attributable to the sale of goods covered hereby, or, in lieu thereof, provide Seller with tax exemption certificates acceptable to the taxing authorities.

## (7) WARRANTIES

Seller warrants that for a period of 12 months from shipment of the products by Seller, that same shall be free from defects in materials and workmanship. The foregoing warranty shall not apply and Seller shall have no liability thereunder in the event of (i) failure to follow Seller's instructions for installation or use of the products, or (ii) alteration or misuse of the products in any way, or (iii) the use of any materials or parts not manufactured or approved by Seller with or in the products without the express written consent of Seller. In addition, the foregoing warranty is subject to the following disclaimers and limitations:

- a) Seller disclaims any warranty respecting the merchantability or the fitness for a particular purpose of the products sold to Buyer; and
- b) Seller's liability arising out of any sale of goods to Buyer is expressly limited to either (1) Refund of the purchase price paid by Buyer for such goods (without interest), or (2) Repair and/or replacement of such goods, at Seller's election, and such remedies shall be exclusive and in lieu of all others. In no event shall Seller be liable for indirect, special, incidental or consequential damages of any nature, including, but not limited to, personal injury or property damage. Buyer's recovery from Seller for any claim shall not exceed the purchase price paid by Buyer for the goods, irrespective of the nature of the claim, whether in warranty, contract or otherwise.

Seller's sole obligation with respect to the warranty noted herein shall be to repair or replace (at Seller's option) at the delivery point noted on the Purchase Order any defective products or to remedy any non-conformance of the products to enable such products to materially conform to functional specifications.

## (8) INFRINGEMENTS

Seller makes no representations that any goods sold to Buyer are free of the rightful claim of any third person by way of infringement, or of infringement of patent, copyright or trademark or the like and disclaims any warranty against infringement with respect to any goods. Buyer agrees to protect, defend, indemnify and hold harmless Seller from all sums, costs, expenses and attorney fees which Seller may incur or be obligated to pay as a result of any and all claims and demands, causes of action or judgements arising out of or relating to any use, modification or enhancement of the goods purchased by Buyer unless such use, modification or enhancement is approved in writing by the Seller.

## (9) INSTALLATION

Buyer shall be solely responsible for the installation and operation of the goods covered hereby, including without limitation the obtaining of all permits, licenses or certificates required for the installation or use of such goods.

## (10) USE OF PRODUCTS IN LIFE SUPPORT APPLICATIONS

Goods sold by Seller are not authorized to be used in life support equipment or for applications in which the failure or malfunction of the goods would create a situation in which personal injury or death is likely to occur. Any such use or sale of goods sold by Seller is at the sole risk of Buyer, and Buyer agrees to indemnify and defend Seller against and hold Seller harmless from all damages, costs and expenses, including without limitation attorney fees and costs relating to any lawsuit or threatened lawsuit, arising out of such use or sale.

## (11) TECHNICAL ADVICE AND DATA

Without Seller's prior written consent, Buyer shall not publicize any performance data and shall not use, duplicate or disclose any technical data delivered or disclosed by Seller to Buyer for any purpose other than for installation, operation or maintenance of goods purchased by Buyer.

## (12) ADDITIONAL SOFTWARE PROVISIONS

All computer software, including upgrades (collectively, the "Software") delivered by Seller to Buyer, and whether imbedded in hardware, or not, is subject to the following additional terms and conditions unless same is licensed pursuant to a separate written licensing agreement between Buyer and Seller or a third party:

- a) **Ownership:** The Software and all intellectual property rights therein and relating thereto shall remain the exclusive property of Seller (or if third party software is included in the Software, such software shall remain the exclusive property of such third party) including, without limitation, all algorithms, programs, whether in source code or object code form, procedures and documentation and is protected by Canadian copyright laws and international treaty provisions;
- b) **Sublicense, etc.:** Without the prior consent of Seller (or such third party, as the case may be), Buyer shall have no authority or right to sell, sublicense, disclose, reveal or otherwise communicate directly or indirectly the Software or information about the Software to any person, firm, corporation or other entity. Other than as provided herein, Buyer shall not copy, modify, alter, reverse engineer or decompile the Software. In addition, Buyer shall only be permitted to use the Software for the use, by the party and with the hardware as specified by Seller;
- c) **Warranties:** Seller warrants that it has the right to grant to Buyer the rights and the license to use the Software. The foregoing warranty does not extend to all or any portion of the Software which has been damaged as a result of accident, misuse, abuse, or as a result of service or modification by anyone other than Seller. Except as set forth herein, Seller makes no representation, warranty or condition, express or implied, and specifically excludes any warranties which would otherwise be implied by law, custom or usage including, without limitation, any warranties implied by the United Nations Convention on Contracts for the International Sale of Goods and any warranty that the Software is fit for any particular purpose or is of saleable quality. Buyer assumes the entire risk as to the quality and performance of the Software. Should the Software prove defective, Buyer shall assume the entire cost of necessary servicing, repair or correction. Buyer and Seller agree that any liability to each other:

- i) for breach of the warranties contained herein or any of the other provisions of this Agreement or any other breach giving rise to liability, including a breach of a condition or fundamental term or fundamental breach or breaches; or
- ii) in any other way arising out of or related to this Agreement,

for any cause of action whatsoever and regardless of the form of action (including breach of contract, strict liability, tort including negligence or any other legal or equitable theory), shall be limited to Buyer's and Seller's actual, direct and provable damages in an amount not to exceed a value equal to the total amount paid to Seller herein.

Seller and Buyer agree that in no event will either be liable for damages in respect of incidental, ordinary, punitive, exemplary, indirect, special, or consequential damages even if the other has been advised of the possibility of such damages including, but not limited to, lost business revenue, lost profits, failure to realize expected savings, loss of data, loss of business opportunity or any claim against the injured party by any other party. Seller and Buyer agree that in no event will either party's directors, officers, employees or shareholders be liable for any damages, including direct, incidental, ordinary, punitive, exemplary, indirect, special, consequential or any other damages arising out of or related to this Agreement.

- d) **Indemnity:** Buyer indemnifies and saves Seller and its directors, officers and employees harmless from any and all legal proceedings (commenced or threatened) associated with Buyer's use of the Software; and
- e) **Copyright:** Buyer acknowledges - Copyright © 2010, Pixus Technologies. All rights reserved. No part of this Software may be reproduced, modified, disassembled, transferred, stored in a retrieval system or data base, or transmitted, in any form or by any means, electronic, mechanical, recording, or otherwise, without the prior written permission of Seller. If applicable, Buyer acknowledges receipt of the separate agreement pursuant to which software delivered to Buyer by Seller is licensed for Buyer's use.

## (13) DEFAULT

In the event of any default by Buyer, Buyer shall pay all costs incurred by Seller in collecting any amounts due to Seller by Buyer, including reasonable attorney fees and costs. The waiver by Seller of any breach hereof or default in any payment shall not be deemed to constitute a waiver of any succeeding breach or default. In the event of default Seller shall have all remedies which are available to it at law, in equity, under any agreement of any type or, without limitation, otherwise. Without limiting the generality of the foregoing, upon default by Buyer, Seller may enter the premises where the product is located and take possession and remove all of the products for which Seller has not received payment as its personal property. The exercise or failure to exercise any remedy shall not preclude the exercise of that remedy at any time. No action, regardless of form, arising out of, or in any other way connected with, the goods furnished or serviced rendered by Seller, may be brought by Buyer more than one year after cause of action has occurred.

## (14) INTEGRATION AND ASSIGNMENT

This agreement sets forth the sole and entire agreement between the parties with regard to the subject matter hereof and supercedes any and all prior or contemporaneous oral or written agreements between them regarding the same. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection. No subsequent alteration of this agreement whatsoever shall be binding upon Seller unless reduced to writing and signed both by Seller and Buyer. No agent, employee or representative of the Seller has any authority to bind the Seller to any affirmation, representation or warranty covering the materials sold under this agreement, and unless an affirmation, representation or warranty made by the Seller's agent, employee or representative is specifically included with this agreement, it has not formed a part of the agreement and shall not in any way be enforceable against the Seller. Any assignment of this agreement or any rights hereunder by Buyer shall be void without Seller's written consent.

## (15) BUYER'S TERMS AND CONDITIONS

Seller desires to provide its customers with prompt and efficient service. Accordingly, goods furnished and services rendered by Seller are sold only on the terms and conditions stated herein. Seller's performance of any contract is expressly made conditional on Buyer's agreement to Seller's Terms and Conditions of Sale, unless otherwise specifically agreed in writing by Seller. In the absence of such agreement, commencement of performance and/or delivery shall be for Buyer's convenience only and shall not be deemed or construed to be acceptance of Buyer's terms and conditions, or any of them. If a contract is not earlier formed by mutual agreement in writing, acceptance of any goods or services shall be deemed acceptance of the terms and conditions stated herein.

## (16) GENERAL

This agreement and performance by the parties here under shall be construed in accordance with the laws of the Province of Ontario. All agreements, covenants, conditions and provisions contained herein shall apply to and bind the assignees and successors in interest of Buyer. If any provision or portion of this agreement is held invalid, illegal, unconscionable or unenforceable, the other provisions and portions hereof shall not be affected. The several captions used herein are for the convenience of the parties only and shall not affect the construction or interpretation hereof. Buyer warrants and represents to Seller that all goods shall be purchased for Buyer's business or commercial use and not for Buyer's personal, family or household purposes.

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