



## 1. Application of Terms and Conditions of Sale

These terms and conditions of sale ("**Terms**") shall apply to any quote, purchase order, order acknowledgement, invoice and any other document used to place an order ("**Order**", the Terms and Order together referred to as the "**Agreement**") which is issued or accepted by either party for the sale by Vendor of Goods to Purchaser, to the entire exclusion of all other terms and conditions. The Agreement represents the entire agreement between the Purchaser and Vendor with respect to the Goods. If there is a conflict or inconsistency between these Terms and any other part of an Order, these Terms shall prevail. No additional or differing terms communicated by Purchaser shall be binding and Vendor shall not be deemed to accept any such other terms for failure to object to them in any communication received from Purchaser. Any purchase order or other document sent by Purchaser to Vendor shall be for its own internal purposes and shall not constitute part of the agreement between the parties.

## 2. Price and Payment

The purchase price ("**Price**") for the Goods shall be specified on the Order. Unless otherwise specified in the Order, the Price is to be paid in US dollars. The Price is payable without offset, back charge, retention, holdback or withholding of any kind. All invoices are due on the due date specified on the Vendor's invoice, in adherence to the agreed-upon payment terms, with an interest charge of 1.5% per month applying on past due invoices, unless other terms have been arranged in writing between Vendor and Purchaser. If Purchaser defaults on any payment when due or refuses to accept delivery or becomes insolvent, Vendor may at its option, without prejudice to other lawful remedies, defer deliveries or cancel the remainder of the Order under the Agreement.

## 3. Title, Delivery and Inspection

3.1 *Title and Delivery.* Title, ownership and risk of loss or damage to the Goods shall pass to Purchaser immediately upon Vendor packaging the Goods unless otherwise specified as being on delivery. The date of delivery of Goods is an estimate based upon, among other things, availability and production schedules. Vendor shall use commercially reasonable efforts to deliver the Goods within the time agreed but shall in no circumstance be liable for any loss or damage, consequential or otherwise, caused directly or indirectly by any delay in delivery.

3.2 *Inspection.* Purchaser is obligated to inspect the Goods as promptly as practicable upon receipt thereof. Purchaser shall notify Vendor of any visible defects, quantity shortages or incorrect product shipments within 30 days of receipt. Failure to notify Vendor in writing of any visible defects in the Goods or of quantity shortages or incorrect shipments within such period shall be deemed a waiver of any rights to return Goods or to not pay for the Goods on the basis of visible defects, shortages or incorrect shipments.

## 4. Cancellation or Changes

Purchaser expressly acknowledges that all Orders are firm and no Order may be

cancelled or altered, in whole or in part, by Purchaser unless agreed-upon in writing by Vendor. Vendor's interpretation of a verbal Order shall be final and binding in the absence of a written confirmation. Any changes to an Order requested by Purchaser may affect or delay the delivery and the Price of the Goods and must be agreed to by the parties in writing and signed by Vendor.

## 5. Acknowledgment and Limited Warranty

5.1 *Acknowledgment.* Purchaser expressly acknowledges that: (i) Vendor is solely a distributor of Goods & Services; and (ii) it may consult with Vendor's employees for assistance, recommendations or instructions in selecting Goods, but that it is solely Purchaser's responsibility to determine the appropriate specifications and materials for its particular purpose.

5.2 *Warranty.* Vendor warrants the Goods solely in accordance with the manufacturer's warranty and only to the extent that the manufacturer honors any applicable warranty. Vendor also warrants that the Goods shall conform to the specifications supplied by Purchaser and that all processing applied by Vendor shall be performed in a good workmanlike manner in accordance with applicable industry trade standards and practices subject to any tolerances and variations consistent with the usual trade practices. Vendor is not responsible for normal wear and tear or damages caused by improper installation, maintenance, handling, transportation, storage or operation or by overloading, accident, neglect or harmful alterations or repairs made by Purchaser or any other person. THE WARRANTIES CONTAINED IN THIS SECTION 5.2, CONSTITUTE THE SOLE AND EXCLUSIVE WARRANTIES IN RESPECT OF THE GOODS AND THE PARTIES EXPRESSLY DISCLAIM ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS, GUARANTEES AND/OR ASSURANCES, WHETHER BASED IN TORT, CONTRACT, LAW EQUITY OR OTHERWISE OR ARISING FROM A COURSE OF CONDUCT, DEALING OR TRADE INCLUDING WITHOUT LIMITATION, ANY IMPLIED REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS AND/OR GUARANTEES AS TO MERCHANTABILITY, MERCHANTABLE QUALITY OR FITNESS FOR PURPOSE.

## 6. Limitation of Liability

UNDER NO CIRCUMSTANCE SHALL VENDOR BE LIABLE TO PURCHASER OR ANY OTHER PERSON FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL OR SIMILAR DAMAGES INCLUDING, BUT NOT LIMITED TO, REWORK, INVESTIGATION AND REPAIR OR REPLACEMENT COST, LOSS OF PROFITS, INCREASED COSTS OF OPERATIONS, DIMINUATION IN VALUE OR LOSS OF GOODWILL ARISING OUT OF OR IN CONNECTION WITH THE SALE, INSTALLATION OR USE OF THE GOODS. IN THE EVENT VENDOR IS FOUND TO HAVE ANY LIABILITY FOR ANY REASON WHATSOEVER REGARDLESS OF WHETHER SUCH LIABILITY ARISES IN TORT, CONTRACT, LAW, EQUITY OR OTHERWISE, THE MAXIMUM AGGREGATE LIABILITY OF VENDOR TO PURCHASER SHALL BE LIMITED IN ALL CIRCUMSTANCES TO THE PRICE PAID BY PURCHASER TO VENDOR FOR SUCH GOODS IN THE SPECIFIC TRANSACTION GIVING RISE TO THE DAMAGE OR LOSS. THE LIMITATION OF LIABILITY IS A CONDITION TO THE SALE OF THE GOODS BY VENDOR AT THE PRICE. THE PARTIES ACKNOWLEDGE THAT THE PRICE PAYABLE FOR THE GOODS WOULD HAVE BEEN SUBSTANTIALLY GREATER IN THE ABSENCE OF THIS LIMITATION OF LIABILITY WHICH SHALL APPLY IN ALL CIRCUMSTANCES.

## 7. Indemnity

Purchaser shall be responsible for the installation, maintenance, operation and use of the Goods and for any injury, damage, destruction, loss, damages or

expenses, caused by the Goods and Vendor shall have no liability in relation thereto. Purchaser shall defend, indemnify and hold harmless Vendor from and against any loss, damages, expenses, claims, repairs, suits, causes of action or judgments whether direct or indirect arising from or in connection with the installation, maintenance, operation and use of the Goods. Where Purchaser has supplied the design for all or any part of the Goods, Purchaser also agrees to defend, indemnify and hold harmless Vendor from any against and any loss, damages, expenses, claims, repairs, suits, causes of action or judgments whether direct or indirect arising from or in connection with any claim that the Goods or any part thereof infringe any patent, industrial design or any other intellectual property right.

#### **8. Governing Law**

The Agreement shall be governed by and construed in accordance with the laws of Pennsylvania applicable therein. The parties irrevocably submit to the exclusive jurisdiction of courts of Pennsylvania.

#### **9. Force Majeure**

Vendor shall not be liable for any damage or penalty for delay in delivery or for the failure to give notice of delay when such delay is due to: unusually severe weather conditions; an act of God; an act of civil or military authority; war; riot; fire; explosion; shortage of a utility, facility, material or labor; delay in transportation; breakdown; accident; compliance with any other action taken to carry out the intent or purpose of any law or regulation; or any other causes which are beyond the reasonable control of Vendor. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.

#### **10. Defined Terms**

In these Terms the following words shall have the following meanings:

"**Goods**" means those goods, products and/or services to be supplied and delivered by Vendor to Purchaser as described in the relevant Order.

"**Purchaser**" The person, company, firm, partnership or such other legal entity that places an order for Goods with Vendor and includes Purchaser's divisions, subsidiaries and affiliates.

"**Vendor**" means Value Added Processing, Inc.

#### **11. General Provisions**

Vendor and Purchaser are independent contractors. The Agreement constitutes the final written expression of all of the agreements between the parties with respect to the subject matter herein, and supersedes all understandings and negotiations concerning the matters specified herein. Each of the parties shall at the request of the other without cost or expense execute and deliver any further documents and do all acts and things as reasonably required to carry out the intent of the Agreement. No failure or delay by a party in exercising any right, power or privilege shall operate as a waiver thereof. If any provision or part of a provision of the Agreement shall be found to be invalid or illegal by reason of any determination made by a court of competent jurisdiction or any governmental authority having jurisdiction in the circumstances, such provision or part of such provision shall be severed from this contract to the extent of such invalidity or illegality and the validity, legality or enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired thereby. The subsequent execution by Vendor of any Purchaser's field tickets, forms, receipts, invoices, terms of

services, etc. shall not amend or modify the terms of the Agreement. The Agreement shall not be assignable by either party without the other's prior written consent. The Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.