

# TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT

*Agile Display Solutions Co. Ltd.*

## **1. GENERAL**

1.1. These general conditions are applicable to the formation, the content and the implementation of contracts (hereinafter referred to as "the Contract") for the delivery of goods and/or the rendering of services by the vendor (hereinafter referred to as: "the Vendor") to the buyer (hereinafter referred to as: "the Buyer"), as well as all other juristic acts and legal relationships between the Vendor and the Buyer.

1.2. The applicability of the Buyer's general conditions or any other general conditions is expressly rejected. The general conditions of the Vendor may only be departed from if agreed expressly to in writing by the Vendor.

1.3. In cases where these general conditions require a notification to be given 'in writing', this shall mean by document signed by parties, or by letter, fax, electronic mail and by such other means as are agreed by the parties.

1.4. Insofar as these general conditions are also drawn up in a language other than English, in the event of any conflict the English text shall always prevail.

## **2. QUOTATIONS AND OFFERS**

2.1. All quotations, offers, and details in price lists, brochures and so on shall be free of obligation.

2.2. The Vendor can revoke quotations or offers within 2 working days of receiving its acceptance, even if a term for acceptance has been stipulated.

2.3. Samples and models are shown or issued to the Buyer exclusively by way of indication. Only sample of a limited commercial value will be issued free of charge.

## **3. CONTRACTS**

3.1. Any order placed in verbal or written form shall be confirmed by the Vendor in writing. Contracts shall be formed exclusive if and once the Vendor has confirmed a delivery order in writing to the Buyer.

3.2. Any offer made or undertaking given by a representative of the Vendor shall only be binding insofar as the latter confirms this in writing.

3.3 In the event that agreement is reached to effect payment by means of a letter of credit, the Contract concerned shall only come into effect once the Vendor accepts the relevant irrevocable (confirmed) letter of credit in writing according to UCP 600.

#### **4. PRICES**

4.1. Unless otherwise agreed in writing prices shall be stated in U.S. Dollar, exclusive of VAT or other governmental levies and are based on 'free on Board', Taiwan ROC (FCA, Incoterms® 2010). The prices advertised by the Vendor are subject to change without prior announcement.

4.2. Any price cited by the Vendor shall be based on the existing monetary conditions, the prices of materials and raw materials or wages, salaries, social or governmental contributions, freight charges, exchange rates, insurance premiums, import and export duties or other national or international cost-determining factors, prevailing at the time the Contract concerned is concluded. In the event that one or more of these cost price components increase after an order has been confirmed but before the relevant goods have been delivered, the Vendor shall be entitled to pass on any reasonable price increase to the Buyer.

4.3. If prices are in another currency than U.S. Dollar and, after the conclusion of the Contract, there is a change in the U.S. Dollar exchange rate, thereby putting the Vendor into an unfavourable financial position, prices will be increased accordingly by the Vendor so that the equivalent in U.S. Dollar will then be equal to the value at the time of the execution of the Contract.

#### **5. DELIVERY PERIOD AND DELIVERY**

5.1. A specified delivery time shall under no circumstances be deemed to constitute a fatal date. The Vendor shall not be in default in respect of such delivery time until the Buyer notifies it in writing that it is in default, in doing so stipulates a reasonable period of time within which the Vendor has the opportunity to effect delivery, and the latter still fails to do so.

5.2. The delivery time shall commence at such time as the relevant Contract is concluded in accordance with the provisions of Article 3 and the Vendor has also accepted any security for payment which may have been agreed or have received any prepayment.

5.3. The delivery time shall be based on the circumstances prevailing when the relevant Contract is concluded. In the event that a delay occurs as a result of a change in the aforementioned circumstances, the Vendor shall inform the Buyer within five working days and indicate the expected duration of the delay. The parties shall then determine a new delivery date.

5.4. If the time for delivery is exceeded, the Buyer shall not be entitled to cancel or terminate the Contract, unless the time for delivery is exceeded with more than eight weeks, without the Buyer being entitled to any compensation.

5.5. In cases where delivery on demand has been agreed, the Buyer shall arrange the demands in such a way that all goods have been demanded within 3 months of the Contract being formed unless a different demand period has been agreed in writing. If the Buyer fails to meet the above obligation, the Vendor shall be entitled to offer the remaining goods to the Buyer and demand immediate payment or dissolve the Contract without any notice or legal intervention being required and to claim full compensation for all losses suffered.

5.6. Unless agreed upon otherwise in writing, deliveries of Vendor to the Buyer are made 'free on board' Taiwan ROC (FCA, Incoterms® 2010).

5.7. The Buyer is obliged to accept the agreed performance. All additional costs incurred by the Vendor as a result of the Buyer's non-acceptance or late acceptance shall be for the Buyer's account. In the event that the Buyer has not accepted the goods at the time that these are delivered to him, the goods will be stored at the expense and risk of the Buyer. The Vendor shall be entitled to consider the Contract as dissolved with immediate effect, all this while reserving all other rights of the Vendor.

5.8. The Vendor reserves the right to affect a delivery in parts. Each partial delivery shall be deemed to represent a separate Contract. The Vendor shall be entitled to demand payment for each partial delivery before proceeding with any other.

## **6. FORCE MAJEURE**

6.1. In the event of war, civil unrest, rioting, fire, other disasters and any other circumstances beyond Vendor's control irrespective of whether or not this occurs on its premises or those of its suppliers or in the event of any change in circumstances of such a nature that the Vendor cannot reasonably be required to fulfil its obligations, the Vendor shall be entitled to withdraw its quotations, suspend deliveries or terminate any relevant Contract without judicial intervention, and it shall not be required to provide any compensation. Failure by the Vendor's suppliers to meet its delivery obligations or to meet them correctly or in full, shall be deemed to be a case of force majeure.

6.2. In the event that the Vendor relies on force majeure, it shall immediately notify the Buyer thereof in writing, and also of the cessation thereof.

6.3. Where the Vendor has already executed part of a Contract, the Buyer shall pay the purchase price for any goods that have been delivered.

## **7. TRANSPORT CLAIMS**

7.1. If according to the incoterm agreed upon, Buyer bears the transport risk, the Buyer is obliged to check the goods upon delivery for any visible and/or immediately observable defects. Consequently, in case of damage of the packaging and/or of the goods caused by transport or in case of missing goods, the Buyer must always make a remark on the CMR and shall report losses and damages to the Vendor in writing, presenting a photo in case of damage on the

goods, within 24 hours of actual receiving the goods.

## **8. PRODUCT CLAIMS**

8.1. All goods are guaranteed for a period of 2 years from date of purchase, unless specified differently in writing by Vendor. Claims regarding defects must be made in writing as soon as possible but at the latest within the period of guarantee; all right of action shall be null and void if this period is exceeded.

8.2. The Vendor will only reverse the defect in question in cases where the defect is identified and reported within the period provided for in the first paragraph, the Contract price has been fully paid to the Vendor and in the manner provided for therein and provided that the claim demonstrable relates to a culpable breach on the part of the Vendor, in the form of – at the Vendor's discretion – an additional delivery, replacement, repair or repossession upon crediting the Buyer for the payable amount. Customized goods will not be taken back. Any parts that become available as a result of a replacement, shall remain/become Vendor's property.

8.3. All claim rights shall be null and void if the goods have been fully or partially put into use. For the purpose of this provision, each partial delivery shall be deemed to be a separate delivery. The Buyer is not entitled to return goods about which he has made a claim without the permission of the Vendor.

8.4. Returns are not permitted without the prior written permission of the Vendor. If goods are none the less returned, the Vendor shall be free to store the goods at the Buyer's expense and risk and/or to keep them available to the Buyer. In the absence of evidence to the contrary, the Vendor's specification of the actual costs of or related to returns shall be binding to the Buyer.

8.5. Unless otherwise agreed in writing, a claim shall not suspend the Buyer's payment obligation.

8.6. Returns shall be transported at the Buyer's risk and expense unless they were sent as a result of a culpable error made by the Vendor.

## **9. LIABILITY**

9.1. The Vendor's liability is restricted to the fulfilment of the obligations under article 8.

9.2. Except in the case of legal liability pursuant to provisions of mandatory law and a deliberate act or omission, or gross negligence on the part of the Vendor, any liability of the Vendor for any damage, among which any direct or indirect damage, consequential damage or lost profits, is excluded.

9.3. The aggregate liability of the Vendor to the Buyer under any theory or ground shall at all times be confined to the net invoice value of the goods concerned or to that part of the net invoice value to which a claim for compensation is directly or indirectly related. Total

compensation for damage payable by the Vendor shall in no event exceed \$1,000.000 per event, whereby a series of related events will be considered as a single event.

9.4. Under no circumstances the Vendor will be liable for any loss or damage if the goods have been used for purposes for which they are not intended.

9.5. The Buyer shall indemnify The Vendor against any claim made by a third party in respect of which the Vendor is not liable under these terms and conditions.

9.6. The Buyer shall forfeit his right to claim compensation for damages if he has not lodged a claim in writing within one year after the delivery of the goods.

## **10. PAYMENT**

10.1. In the absence of written agreement to the contrary, due amounts are payable within 30 days after date of invoice, without any discount, suspension or claim of compensation.

10.2. In cases of late payment, the Buyer shall be deemed to be in default without the need for any notice of default or judicial intervention, and he shall be charged the statutory interest rate of 12% per year from the due date to the date of payment of the amount owed, as well as all the expenses involved in collecting his debt, both judicial and extrajudicial. The extrajudicial costs owed will never be less than 15% of the sum to be collected.

10.3. In cases of late payment, the Vendor shall be entitled to suspend his obligations under the relevant Contract or to fully or partially dissolve the Contract entered into with the Buyer without the need for a notice of default or legal intervention being required and to claim full compensation for damages from the Buyer, without prejudice to the Vendor's other rights under the Contract or by law.

10.4. If the Vendor suspects or receives indications during the implementation of the Contract that the Buyer's credit worthiness has reduced, the Vendor shall be entitled to cease further deliveries. The Vendor further reserves the right (also if the contract of sale has been entered into under other conditions) to require cash on delivery or advance payment for the goods.

10.5. If a charge is made for packaging, those charges shall be payable together with payment for the principal amount as provided for in this article.

10.6. Upon or after entering into the Contract and before its implementation, the Vendor will be entitled to demand a guarantee from the Buyer that both the payment obligations and any other obligations arising from this Contract will be fulfilled. Refusal by the Buyer to provide the required security gives the Vendor the right to suspend its obligations and ultimately, without any notice of default or legal intervention, the right to dissolve the Contract wholly or partially, without prejudice to his right to compensation for any damages suffered by him.

## **11. TERMINATION AND SUSPENSION**

11.1. All amounts owed by the Buyer by virtue of the Contract shall become immediately due and payable in the event of (a) suspension of payment or bankruptcy of the Buyer or if the Buyer applies for his own bankruptcy, (b) dissolution of the Buyer's company, (c) (a decision of the Buyer to) discontinue or transfer his company in full or in part, (d) an attachment being imposed on a significant part of the Buyer's assets, (e) the Buyer failing to meet any contractual obligation to the Vendor in full or in part, also after receiving written notice of default, (f) failing to remit payment on time more than twice in a period of 4 months. In the cases set out above the Vendor shall be authorized to dissolve all Contracts with the Buyer with immediate effect in full or in part by means of a written notification to that effect, without a duty to provide any form of compensation, if the Buyer fails to furnish, within 3 calendar days of a request to that effect from the Vendor, security for all amounts that he owes and will owe in the future, without prejudice to the Vendor's other rights.

11.2. In the event that the Buyer fails to comply with his obligations pursuant to a Contract into which he has entered, or fails to do so properly or on time, if there are grounds to fear that this will occur, the Vendor shall be entitled to suspend the Contract concerned without the need to give notice of default or for judicial intervention, and it shall not have a duty to provide any form of compensation.

11.3. Any claim on the part of the Vendor pertaining to a part of a Contract which has already been executed, or harm suffered as a result of its suspension or termination, which shall be deemed to include loss of profit, shall fall due with immediate effect.

11.4. In case the Buyer annuls the Contract, the Vendor is entitled to charge the expenses, damages, lost profit and, to the Vendor's own choice and depending on the already performed supplies, 30% to 100% of the contract price.

## **12. RETENTION OF TITLE**

12.1. Upon until the Buyer's full and final settlement of the amounts owed to the Vendor in relation to this Contract or any other, entered into between the parties (including any collection costs and interest, as well as any amount payable due to the Buyer's failure to comply with his obligations pursuant to this Contract or any other), the Vendor shall retain the ownership of all goods he has delivered as security for the payment of all amounts owed to him, without exception. Until title to the goods passes to the Buyer, he shall not be permitted to sell, lend, pledge, mortgage or otherwise encumber them or rent or lease them or allow them to leave his company in any manner or under any title other than as part of its normal business operations, the purpose of which is to sell the delivered goods, in which case he shall be entitled to sell them if and insofar as the Buyer stipulates cash payment, adequate security or a retention of title in respect of his customers. This right to sell the goods shall however be null and void if the Vendor denies that right to the Buyer upon expiry of a payment term, or if the Buyer is declared bankrupt or applies for suspension of payment.

12.2. In the case of late payment, the Vendor shall be entitled to repossess the goods to which he has retained ownership, and the Buyer shall cooperate with this in full. In cases of late payment, the Buyer shall further be obliged to furnish additional security to the Vendor on demand.

### **13. INTELLECTUAL PROPERTY RIGHTS**

13.1. The Vendor reserves all of its intellectual property rights to the models, samples, drawings and documents with regard to any goods supplied and/or shown with the offer.

13.2. The models, samples, drawings and documents shall remain the exclusive property of the Vendor.

13.3. Without Vendor's explicit prior written permission, the models, samples, drawings and documents shall not be copied, disclosed to third parties, or used for reference or advertising purposes. or used in any other way.

13.4. The Buyer shall not be permitted to modify all or part of any goods supplied. The Buyer shall not affix any other trademark or trade name to the goods, to use the relevant mark or name in any other way, or to register it in his own name.

### **14. APPLICABLE LAW AND DISPUTES**

14.1. This Contract, these general conditions and all other legal relationships related to them in any way between the parties shall be governed by the laws of Taiwan, ROC.

14.2. All disputes arising from a Contract to which these conditions are applicable in full or in part or from other contracts arising from such Contracts, shall be referred for adjudication to the court with competent jurisdiction in the Vendor's place of establishment unless the Vendor prefers another competent forum.

14.3. The provisions of clause 15.2 leave intact the right of the Vendor to obtain a settlement by means of arbitration of the International Chamber of Commerce under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrator(s). The place of arbitration will be Taipei, Taiwan. The arbitral procedure shall be conducted in the English language.

### **15. FINAL STIPULATION**

15.1. These general conditions are intended as a reasonable provision for the legal relationship between the Vendor and the Buyer. If and insofar as a provision from these general conditions is judged by any competent body to be invalid or unfeasible, the other provisions of these general

conditions shall remain fully in effect. The parties shall in that case enter into reasonable consultation and set out to reach agreement on a valid alternative stipulation that is as close as possible to the intention of the stipulation that is invalid or cannot be implemented with a view to replacing the stipulation in question.