

Terms and Conditions of Sale

KYOCERA Display America, Inc. ("Seller") offers to sell to Buyer ("Buyer") Seller's goods and services ("Goods") only on the following terms and conditions, which shall become part of any purchase order and/or sales contract.

1. **Purchase Orders.** All purchase orders of Buyer shall, unless otherwise agreed in writing by Seller, be in writing and shall set forth the quantity of the Goods desired, the model number or type of Goods, the desired delivery date, the price, and all relevant information necessary to effectuate shipment of the Goods by Seller. All purchase orders shall be subject to acceptance of these terms and conditions of sale, and no additional, inconsistent or contrary terms shall become part of this agreement or any sale of Goods to Buyer. The terms and conditions listed herein shall be made a part of any agreement made between Buyer and Seller and shall have precedence over any terms and conditions proposed by Buyer in a purchase order or other writing.
2. **Acceptance.** Seller accepts purchase orders by return of an acknowledgment copy of a purchase order, Seller's order acknowledgment, or by shipment of any of the Goods. All orders are subject to acceptance or rejection by Seller, at its sole discretion.
3. **Cancellation.** With written notice of intent to cancel the order and payment of a cancellation charge to the Seller of 15% of the purchase amount of the canceled Goods, Buyer may cancel Standard Goods, as defined by the Seller's Standard Parts List, that have no scheduled shipment dates or have scheduled shipment dates more than 120 days from the cancellation date, unless otherwise specified in negotiated agreements (i.e., a non-cancelable, non-stock adjustable purchase agreement is specified.) Buyer may not cancel Non-Standard Goods, as defined by the Seller's Standard Parts List, at any time after order placement and will be liable for the entire purchase amount.
4. **Changes.** Subject to acceptance or rejection by Seller, Buyer may issue written change notices relating to the volume of the Goods ordered. Such changes issued by Buyer are restricted to: (a) increases in required quantity; (b) shipment schedule changes falling outside the Seller's production cycle (i.e., schedule changes must be implemented no earlier than the previously committed delivery date); (c) changes in place of delivery (with one week prior notice) and (d) changes in method of shipment or type of packaging (with one week prior notice). Shipments on an order may be "pushed out" or delayed one time only, up to a maximum of two weeks. No other change orders shall be permitted without prior written approval of Seller.
5. **Taxes.** All prices are exclusive of federal, state, local and other excise, sales, use, property, transportation, occupational and other taxes relating to the sale, together with penalties and expenses, all of which shall be paid by Buyer. Buyer shall be responsible for collecting and/or paying any and all such taxes whether or not they are stated in any invoice for Goods

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shipped and shall indemnify Seller with respect thereto. Seller, at its option, may at any time separately bill Buyer for any taxes not included in Seller's invoice, and Buyer shall pay said taxes, or in lieu thereof, shall provide Seller with a tax exemption certificate acceptable to the taxing authorities.

6. **Delivery and Risk of Loss.** All shipments shall be Ex-works, Plymouth, MI., unless otherwise agreed upon in writing. Buyer assumes risk of damage or loss of Goods at the time Seller delivers such Goods to the first common carrier at Seller's facility.
 - a. All freight damage claims, incurred after material title transfer, are the responsibility of the Buyer and their freight carrier. Upon acceptance of a shipment with visible damage, the damage must be noted on the carrier's delivery record in order to file a claim. The Seller must be notified of any damaged shipments within two days of receipt of shipment.
 - b. All product receipt shortages or discrepancies must be communicated to the Seller, in writing within 48 hours of receipt. Claim validation requires Buyer to hold all packaging materials for verification of Supplier markings.

7. **Limited Warranty.** Seller warrants that the Goods shall be free from defects in workmanship and materials for a period of one (1) year from the date of shipment from Seller to Buyer. If during the warranty period the Goods should prove defective as determined by the Seller, the Seller shall have the right at the Seller's option to either (i) repair or replace the Goods or any defective part; or (ii) refund the purchase price of the Goods upon its receipt by Seller. Seller shall have the option of requiring the return of the defective Goods, transportation prepaid, to establish any claim. Seller and Buyer acknowledge that Seller's sole and exclusive obligation shall be to repair, replace or refund the purchase price of the Goods as provided herein.
 - a. SELLER'S LIMITED WARRANTY HEREIN IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES OF SELLER (AND THE MANUFACTURER OF THE GOODS AND THEIR SUBSIDIARIES AND AFFILIATED COMPANIES), WHETHER EXPRESS, IMPLIED, OR STATUTORY, OR OTHERWISE CREATED UNDER APPLICABLE LAW INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY AND ANY WARRANTY OF FITNESS FOR PARTICULAR PURPOSE OR USE. IN NO EVENT SHALL SELLER, THE MANUFACTURER OF THE GOODS, THEIR SUBSIDIARIES AND AFFILIATED COMPANIES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, WHETHER OR NOT CAUSED BY OR RESULTING FROM THE NEGLIGENCE OF SELLER, UNLESS SPECIFICALLY AGREED TO IN WRITING BY SELLER. IN ADDITION, THIS WARRANTY SHALL NOT APPLY TO ANY GOODS OR PORTIONS THEREOF WHICH HAVE BEEN SUBJECTED TO ABUSE, MISUSE, IMPROPER INSTALLATION, MAINTENANCE OR OPERATION, ELECTRICAL FAILURE OR

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ABNORMAL CONDITIONS, AND TO GOODS WHICH HAVE BEEN TAMPERED WITH, ALTERED, MODIFIED, REPAIRED OR REWORKED BY ANYONE NOT APPROVED BY SELLER.

- b. No agent, employee or representative of Seller (or any distributor, dealer or sales representative of Seller) has the authority to bind Seller to any affirmation, representation or warranty concerning the Goods and unless such affirmation, representation or warranty is specifically included in these terms and conditions of sale, it will not form a part of the basis of these terms and conditions of sale and shall in no way be binding upon the Seller or enforceable by the Buyer.
 - c. THE TOTAL LIABILITY OF SELLER OR THE MANUFACTURER SHALL NOT EXCEED, UNDER ANY CIRCUMSTANCES, THE AMOUNT ACTUALLY PAID TO SELLER WITH RESPECT TO THE PRODUCT WHICH GIVES RISE TO THE CLAIM, LOSS OR DAMAGE, REGARDLESS OF THE NATURE OF THE DAMAGES OR LOSSES OR THE LEGAL THEORY OR BASIS FOR SELLER'S LIABILITY.
8. **Packaging and Shipping.** All Goods will be prepared and packaged for shipment by Seller in a commercially reasonable manner. All packages should be clearly marked with an appropriate description of the Goods and the part number and quantity within each package. Nominal charges for odd lot size boxing, packaging, or handling may be imposed and included in shipping and handling charges.
- a. Shipment dates for all Goods are approximate only. Seller reserves the right to make partial shipments, but will attempt to minimize such partial shipments as far as possible. Seller reserves the right to withhold shipments or require prepayment of any orders where, in the opinion of Seller, Buyer's payment record or financial conditions warrants. Such action shall not be construed as a breach or cancellation of this agreement.
9. **Invoices and Payments.** Individual invoices will be issued for each shipment, at the time of shipment, under a purchase order. Unless otherwise specified, payment by Buyer shall be made within 30 days of the invoice date. Purchase orders may be accepted subject to any credit terms requested by Seller, including but not limited to cash on delivery or due upon receipt.
- a. At no time will credit terms in excess of net thirty (30) days from the date of Seller's invoice be granted without Seller's written approval. Seller reserves the right to charge interest at the rate of 1.5% per month (but not more than the maximum percentage permitted by law) on all balances not paid by Buyer within the designated net terms. Payments of Seller's invoices are not subject to adjustment for any reason.
10. **Credits and Returns.** Goods may only return to Seller after obtaining a return

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authorization from the Seller. Credit for return of Goods is at the sole discretion of the Seller.

11. **Drawings, Specifications, and Technical Information.** Drawings, specifications, designs, and other technical information furnished to Buyer by Seller shall remain the property of Seller and shall be held in strict confidence by Buyer. Such information shall not be used or disclosed to others by Buyer without Seller's written consent.
12. **Statute of Limitation.** No claim, action or cause of action arising out of or in connection with any sale or use of Goods or any claimed breach of these terms and conditions may be asserted or brought by Buyer, whether in contract, tort or otherwise, no more than one (1) year after the date on which such cause of action or claim has accrued.
13. **Governing Law, Jurisdiction and Venue.** All claims and issues relating to the sale, purchase, or use of the Goods, including but not limited to the interpretation, validity, and enforcement of these terms and conditions, shall be governed by the internal laws of the State of Michigan, without reference to its conflicts of law's provisions. Buyer and Seller hereby agree that the U.N. Convention on the International Sale of Goods shall not apply to these terms and conditions, the purchase, sale or use of the Goods, or any other transaction between them. Buyer consents to the exclusive jurisdiction of the state or federal courts located in Plymouth Township, Michigan for all disputes arising out of or related to these terms and conditions, the purchase, sale or use of Goods or otherwise relating to the relationship of the parties. Seller reserves the right to initiate and maintain legal action in Michigan or in any other forum where Goods or Seller may be located for purposes of replevying or repossessing Goods.
14. **Waiver of Jury Right and Punitive Damages.** BUYER AND SELLER HEREBY IRREVOCABLY AND KNOWINGLY WAIVE ANY RIGHTS TO TRIAL BY JURY OR FOR PUNITIVE DAMAGES WHICH EITHER MIGHT HAVE FOR ANY CLAIM RELATING TO OR ARISING OUT OF THESE TERMS AND CONDITIONS OR THE PURCHASE, SALE OR USE OF THE GOODS OR OTHERWISE RELATING TO THE RELATIONSHIP OF THE PARTIES.
15. **Force Majeure.** Seller will not be liable for delays in production or delivery due to causes beyond its control, including, but not limited to, acts of God, acts of Buyer, acts of civil or military authorities, fires, strikes, floods, epidemics, quarantine restrictions, war, delays in transportation, and inability to obtain necessary labor, materials or manufacturing facilities. In no event will Seller be liable to Buyer for any damages whatsoever, including loss of income, use or profits, or any collateral, incidental, special or consequential damages resulting from delays or Seller's inability or failure to deliver Goods.
16. **Miscellaneous.**

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- a. These terms and conditions of sale constitute the entire agreement between Seller and Buyer and supersede any and all other prior or contemporaneous agreements, correspondence, quotations or understandings between the parties. Except as otherwise attached to these terms and conditions and signed by Seller and Buyer, there are no other agreements between Seller and Buyer with respect to the Goods.
- b. If any part of these terms and conditions of sale is held invalid, the remaining terms and conditions hereof shall not be affected thereby.
- c. These terms and conditions of sale may be modified, canceled or rescinded only by a written agreement signed by both parties.
- d. All rights available to Seller under the Uniform Commercial Code (even though not specifically enumerated), are expressly reserved to Seller as remedies available to it in case of Buyer's breach.
- e. Any failure by either party to enforce at any time any term or condition hereof shall not be considered a waiver of such party's right thereafter to enforce the same or any other term or condition.
- f. These terms and conditions of sale shall be binding upon the successors and legal representatives of Buyer and Seller.
- g. Seller shall be entitled to all attorneys' fees, court costs and other expenses incurred in enforcing this Agreement.