

Apex Display Group, LLC Terms and Conditions of Sale

1. **Applicability.** These terms and conditions apply to all sales made by Apex Display Group, LLC ("Apex") to all Apex customers (each, a "Customer"). All sales by Apex are conditioned upon acceptance of these terms and conditions, regardless of whether Customer provides additional or conflicting terms to Apex in any other written or oral form. Unless otherwise agreed upon by a signed writing of both parties, any additional or conflicting terms in any prior or later communication or other writing from Customer to Apex shall have no effect on any sales by Apex and are expressly rejected by Apex.
2. **Contract Documents; Order of Precedence.** The contract between Apex and Customer consists of (a) Apex's Master Services Agreement, if any, (b) these Terms and Conditions of Sale, (c) Apex's Quotation, (d) Apex's Warehousing Price List, and (e) Apex's Order Confirmation, if any (collectively, the "Contract Documents"). If there is any conflict among the Contract Documents, the following order of precedence will apply: (i) Apex's Master Services Agreement (if any); (ii) these Terms and Conditions of Sale; and (iii) the other Contract Documents.
3. **Pricing.** Unless otherwise stated in writing by Apex, quoted prices exclude all applicable taxes, duties, and shipping or freight charges. If Customer claims a sales tax exemption, Customer must provide Apex with a valid exemption certificate or other reasonably satisfactory documentation before Apex issues an invoice.
4. **Payment Terms.** For Customers approved for credit by Apex, payment is due thirty days after the invoice date. Apex may require prepayment or other assurance of payment and may suspend or delay shipments if any amount is past due. Past-due amounts will accrue interest at 1.5% per month (or, if lower, the maximum rate permitted by applicable law) from the due date until paid. Customer will reimburse Apex for all reasonable costs of collection, including attorneys' fees and court costs.
5. **Shipping.** All shipments are EXW Lansdale, Pennsylvania (Incoterms® 2020). Customer is responsible for arranging and paying for shipping, insurance, and all related costs, unless otherwise agreed by Apex in writing. Title and risk of loss transfer to Customer when the goods are made available for pickup at Apex's facility.
6. **Confidentiality.** Each party (the "Receiving Party") may receive Confidential Information of the other party (the "Disclosing Party") in connection with the Contract Documents. "Confidential Information" means any non-public information disclosed by or on behalf of the Disclosing Party, whether oral, written, electronic, or otherwise, including business, financial, pricing, customer, supplier, product, technical, and operational information, and the existence and terms of the Contract Documents, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. The Receiving Party shall: (a) use the Disclosing Party's Confidential Information solely to perform its obligations or exercise its rights under the Contract Documents; (b) protect the Confidential Information using at least the same degree of care it uses to protect its own confidential information of like importance, but not less than reasonable care; and (c) not disclose the Confidential Information to any third party except to its employees, contractors, professional advisors, carriers, and agents who have a need to know for purposes of the Contract Documents and who are bound by confidentiality obligations at least as protective as those set forth herein. Confidential Information does not include information that the Receiving Party can demonstrate: (i) is or becomes publicly available through no breach by the Receiving Party; (ii) was lawfully known to the Receiving Party without restriction before receipt from the Disclosing Party; (iii) is lawfully received from a third party without breach of any obligation of confidentiality; or (iv) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. The Receiving Party may disclose Confidential Information to the extent required by applicable law, regulation, or court order, provided that (to the extent legally permitted) the Receiving Party gives the Disclosing Party prompt written notice and reasonably cooperates (at the Disclosing Party's expense) in seeking confidential treatment or a protective order. Upon the Disclosing Party's written request, the Receiving Party shall promptly return or destroy the Disclosing Party's Confidential Information in its possession or control, except that the Receiving Party may retain copies as required by law or in accordance with its bona fide record retention policies, and any retained Confidential Information remains subject to this Section. The Receiving Party acknowledges that unauthorized use or disclosure of Confidential Information may cause irreparable harm for which monetary damages may be an inadequate remedy, and the Disclosing Party may seek equitable relief in addition to any other remedies available at law or in equity.
7. **Limited Warranty.** Apex shall not be liable for any loss or damage to any of Customer's goods unless such loss or damage resulted from Apex's willful misconduct or gross negligence, regardless of whether such claim arises in contract (including warranty), tort (including active, passive, or imputed negligence) or otherwise. Any presumption of conversion under applicable law shall not apply to a loss with respect to any of Customer's goods, and a claim for conversion must be established through evidence that Apex converted the goods to its own use. Customer shall permit, or use reasonable best efforts to allow end users to permit, Apex to inspect any goods for which a claim is submitted under this Section 7.
8. **DISCLAIMER OF OTHER WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS STATED IN SECTION 7, APEX DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ANY WARRANTY ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.**

9. **LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, APEX SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR FOR ANY LOST PROFITS, LOST REVENUE, OR OPPORTUNITY COSTS, WHETHER OR NOT FORESEEABLE AND REGARDLESS OF THE THEORY OF LIABILITY. IN NO EVENT WILL APEX'S TOTAL, CUMULATIVE, AGGREGATE LIABILITY TO CUSTOMER (WHETHER BASED ON CONTRACT, TORT, WARRANTY, MISREPRESENTATION, EQUITY, OR OTHERWISE) EXCEED THE LESSER OF: (A) THE ACTUAL COST TO REPAIR, RESTORE, OR REPLACE ANY LOST OR DAMAGED GOODS; OR (B) THE AMOUNTS PAID BY CUSTOMER TO APEX IN THE SIX MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.**
10. **Customer Representations and Warranties.** Customer represents and warrants to Apex that: (a) Customer owns the goods or otherwise has the legal right to tender the goods to Apex; (b) all information and instructions provided by Customer regarding the goods (including contents, value, handling, storage, processing, labeling, and transportation requirements) are accurate, complete, and sufficient for Apex to perform its services and comply with applicable law; (c) the goods are not hazardous, dangerous, illegal, or otherwise restricted from storage, handling, processing, or transportation; and (d) Customer will comply with all applicable laws and will obtain and maintain all permits, licenses, and approvals required for the goods and Customer's use of Apex's products and services.
11. **Indemnification.** Customer shall defend, indemnify, and hold harmless Apex and its affiliates, and each of their respective officers, directors, employees, agents, and representatives, from and against any and all third-party claims, demands, suits, proceedings, damages, losses, liabilities, penalties, fines, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to: (a) the goods tendered to Apex by or on behalf of Customer (including their nature, condition, labeling, packaging, storage/handling requirements, or alleged hazardous or restricted status); (b) any information, instructions, specifications, artwork, labeling, or other materials provided by Customer; (c) Customer's breach of the Contract Documents or any applicable law; or (d) Customer's negligence or willful misconduct. Apex will provide Customer with prompt written notice of any claim for which indemnity is sought (provided that failure to give prompt notice will not relieve Customer of its obligations except to the extent Customer is materially prejudiced), and Customer shall assume control of the defense and settlement of the claim with counsel reasonably acceptable to Apex; however, Customer may not settle any claim in a manner that imposes any liability or obligation on, or admits fault by, Apex without Apex's prior written consent. Apex may participate in the defense with counsel of its choosing at its own expense and will reasonably cooperate with Customer at Customer's expense. Customer's indemnity obligations will not apply to the extent a claim is finally determined to have been caused by Apex's gross negligence or willful misconduct.
12. **Warehouse Lien.** Apex shall have a lien on all goods and other property of Customer in Apex's possession, custody, or control, and on the proceeds thereof, to secure payment of all amounts owed by Customer to Apex, including charges for storage, handling, transportation, preservation, labor, materials, and other services, and all related costs and expenses (including reasonable attorneys' fees and costs of collection), whether relating to such goods or to any other goods of Customer. Apex may retain the goods until all amounts due are paid in full. Apex may enforce its lien in accordance with applicable law, including by selling all or any part of the goods and applying the proceeds (net of Apex's costs and expenses) to the amounts owed, with any deficiency remaining Customer's responsibility.
13. **Termination.** In addition to any other remedies, Apex may terminate the Contract Documents and cease performing services upon written notice to Customer if: (a) Customer fails to pay any amount when due; (b) Customer materially breaches the Contract Documents; (c) Customer becomes insolvent, files or has filed against it a petition in bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors; or (d) the goods tendered by Customer pose a hazard to persons or property due to their quality or condition. Upon termination for any reason, all amounts owed to Apex become immediately due and payable, and Customer shall promptly arrange (at Customer's expense) for removal of all Customer goods from Apex's premises, subject to Customer's payment of all outstanding amounts. If Customer fails to remove the goods within a reasonable time after notice, Apex may, without liability, store the goods at Customer's expense and/or remove and dispose of the goods (including by public or private sale) without advertisement or further notice, and apply any proceeds to amounts owed to Apex, with any deficiency remaining Customer's responsibility.
14. **Force Majeure.** Apex will not be liable or responsible to Customer, nor be deemed to have breached the Contract Documents, for any failure or delay in fulfilling or performing any part of the Contract Documents when and to the extent the failure or delay is caused by or results from acts beyond Apex's reasonable control, including, without limitation, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, pandemic, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) action by any governmental authority or requirements of law; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns or other industrial disturbances; and (h) telecommunication breakdowns, power outages or shortages, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials. Apex shall give written notice within thirty days of the Force Majeure Event to Customer, stating the period the occurrence is expected to continue. Apex will use diligent efforts to end the failure or delay and ensure the effects of the Force Majeure Event are minimized. Apex will resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. If Apex's failure or delay remains uncured for a period of thirty days following written notice, Customer may thereafter terminate the Contract Documents on thirty days' written notice.

15. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Contract Documents shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
16. **Governing Law.** The Contract Documents, and the relationship between Apex and Customer, shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.
17. **Exclusive Forum.** Each party agrees that any action, suit, or proceeding arising out of or relating to the Contract Documents shall be brought exclusively in the U.S. District Court for the Eastern District of Pennsylvania or, if that court lacks subject matter jurisdiction, in the state courts of the Commonwealth of Pennsylvania sitting in Montgomery County. Each party irrevocably submits to the exclusive jurisdiction of such courts and waives any objection based on venue or forum non conveniens.
18. **Amendment.** The Contract Documents may not be amended except by a written agreement signed by the parties.
19. **Entire Agreement.** The Contract Documents integrate the entire understanding and agreement of the parties and fully take the place of all prior or contemporaneous agreements or understandings with respect to their subject matter.
20. **Waiver of Jury Trial.** Each party hereby knowingly, voluntarily, and intentionally waives any right to a trial by jury in any action, proceeding, or counterclaim arising out of or relating to any controversy arising under the Contract Documents.
21. **Assignment.** Customer may not assign any of its rights or delegate or subcontract any of its obligations under the Contract Documents without Apex's prior written consent. Apex may assign the Contract Documents and any of its rights or obligations thereunder, without Customer's consent, to any affiliate or successor in interest in connection with a merger, consolidation, reorganization, acquisition, change of control, or sale of all or substantially all of Apex's business or assets to which the Contract Documents relate.