

## **ARTISTRY IN MOTION, INC.**

### **Terms and Conditions of Purchase**

This purchase order or purchase orders to be issued constitute an offer by Artistry In Motion, Inc. (“Buyer”) to the supplier to whom this purchase order is issued (“Seller”) to purchase the articles, materials, services or equipment covered by this purchase order (the “Product”) exclusively upon the terms and conditions of purchase set forth below (or incorporated herein by reference) and shall become a binding contract upon such terms and conditions upon either issuance of an order acknowledgement hereof by Seller or substantial performance hereunder by Seller (the “Agreement”). No contrary or additional terms or conditions of sale proposed by Seller will be accepted by Buyer and any such proposed contrary or additional terms are to be construed as proposals for addition to this Agreement which are hereby rejected unless otherwise indicated in a written instrument executed by an authorized officer of Buyer Seller. Seller’s performance pursuant to this order shall be deemed unqualified acceptance of the terms and conditions of purchase set forth below.

**1. Price.** The price for the Product sold hereunder shall not be higher than that appearing on the face of this purchase order, or if no price appears thereon, then not higher than the last price quoted by Seller. Seller covenants that if it should at any time prior to the delivery of the Products covered hereby sell like articles, materials, services or equipment in similar quantities to any third party at lower prices, it will notify Buyer in writing of such lower prices and Buyer will receive the full benefit of such lower prices from the date of such sale to any third party.

**2. Warranty.** All Products sold and delivered to Buyer hereunder shall be in full conformity with Buyer’s specifications set forth or referred to on the face hereof or if none are set forth or referred to, shall be conformity with Seller’s published specifications and samples provided to Buyer. All Products sold and delivered to Buyer will be new, fit and sufficient for the use intended by Buyer and will be merchantable and of good quality and workmanship and free from defects. The foregoing warranty expressly furnished or represented to Buyer by Seller. Seller will defend, indemnify and hold harmless Buyer and its customers from and against any and all costs (including reasonable attorney’s fees incurred), expenses, damages, losses, liabilities, penalties, judgments attributable to any Product delivered hereunder that fails to conform to the warranty set forth herein or otherwise implied by applicable law.

**3. Inspection.** All products delivered hereunder shall be subject to final inspection and acceptance by Buyer at its facility notwithstanding prior payment or inspection at Seller’s facility. Acceptance of any products shall not alter or affect the warranties of Seller referenced above. Buyer may, at its option, either hold rejected Products for Seller’s instructions and at Seller’s risk, or return them to Seller at Seller’s expense and require their correction, and Seller shall promptly reimburse Buyer for any and all damages sustained by Buyer as a result of failure of Products to conform to the provisions and specifications set forth in this purchase order.

**4. Cancellation.** Buyer reserves the right to cancel this order or any part thereof, or terminate this Agreement, and Buyer’s sole responsibility to Seller shall be to pay the agreed price for such Products as have been delivered as of the time such cancellation is effective and to reimburse to Seller its actual costs of materials and direct labor expended by it in reasonable anticipation of its fulfillment of this Agreement which are not recoverable by Seller, provided that no allowance shall be made to Seller for any overhead or anticipated profit for undelivered Product, Buyer’s maximum liability on account

thereof shall be agreed price for the Products as set forth in paragraph 1 above, and Seller shall deliver to Buyer any inventory paid for by Buyer pursuant to the preceding.

**5. Time and Delivery.** Because Buyer's business and operations are in part dependent on receipt of the Products that are the subject of this Agreement, timely delivery of the Products is essential to the performance of Seller's obligations hereunder. Unless otherwise specified on the face of this purchase order, terms of delivery of the Products are F.O.B destination with freight prepaid. Deliveries shall be made at the times and of the quantities specified on the face of this purchase order, and Seller shall not, without the written consent of Buyer, make shipment in advance of such schedule. Buyer may order expedited routing in place of scheduled routing, if necessary, to meet schedule or recover time lost by and delay, in which even any excess transportation costs shall be paid by Seller. Buyer may postpone delivery of any Products covered hereby. Over shipments may be returned by Buyer at Seller's expense or retained by Buyer at no increase in price. Seller shall not make any commitment or production arrangements in excess of the amounts, or in advance of the time, necessary to meet Buyer's delivery schedule for Products.

**6. Excusable Failure or Delay.** Neither Buyer nor Seller shall be held responsible for the failure or delay in delivery or acceptance of Products where such failure or delay is attributable to any act of God or of the public enemy, war, compliance with laws, governmental acts or regulations, in any case, not in weather or other causes similar to the foregoing excuses must promptly notify the other party of the reasons for the failure or delay in delivery or acceptance and shall exert its best efforts to avoid further delay.

**7. Intellectual Property Warranty and Indemnity.** Seller warrants that the Products when delivered to Buyer will be free from any claims of alleged infringement of patent, copyright, trade mark, service mark, trade secret or any other intellectual property right of any other party. If any third party asserts any such claim or allegation against Buyer or its customers, Seller shall defend, indemnify and hold harmless Buyer and its customers from and against any and all costs (including reasonable attorneys' fees incurred), expenses, losses, damages, liabilities, penalties, or judgments relating to such claim or allegation; provided, that Buyer and its customers use the Products for their normal purposes.

**8. Assignment of Work Product to Seller.** All work product developed by Seller in connection with its performance under this Agreement, including (but not limited to) computer files, concepts, designs, discoveries, drawings, inventions, models, plans, programming, schedules, specifications, technical documentation, software, or source code ("Work Product") is Buyer's property and all right, title and interest, including (without limitation) copyright interest, shall belong exclusively to Buyer. Seller is not permitted to retain copies of such Work Product and shall deliver all Work Product to Buyer with the Products ordered hereunder. Seller shall not photograph or otherwise visually document any Work Product except for archival purposes. This Agreement transfers all right, title or interest, including (without limitation) copyright and patent, that Seller may otherwise have in such Work Product to Buyer. Seller will at Buyer's request execute and deliver such documents as in Buyer's ownership of such Work Product to Buyer. Seller warrants and represents that any tangible Work Product developed by it pursuant to this purchase order will be either original to Seller, in the public domain, or Seller obtained the written consent of the copyright owner to use such other works any and all cost (including reasonable attorneys' fees incurred), expenses, losses, damages, intellectual property right of any third party.

**9. Indemnify for Injury to Persons or Property.** Seller will defend, indemnify and hold harmless Buyer from and against any and all costs (including reasonable attorneys' fees incurred), expenses, damages, liabilities, penalties, judgments relating to damages suffered or incurred by any individual or to any real or personal property that is attributable to the Products or to Seller.

**10. Confidentiality.** All data and other information obtained by Seller from Buyer in connection with this purchase order, and any Work Product to be delivered to Buyer hereunder, shall be held in strict confidence by Seller and used solely for the purposes originally intended in connection with this purchase order. Seller shall treat such data, information and Work Product with the same degree of confidence that it uses to protect its own proprietary or confidentiality of such data, information or Work Product is known is bound to maintain the confidentiality of such data, information or Work Product by separate agreement with Seller or by operation of law.

**11. Compliance with Laws and Buyer's Zero Harassment Tolerance Policy.** In performing its obligations hereunder, Seller shall comply with the Occupational Safety and Health Act, the Fair Labor Standards Act, and all other federal, state, municipal, or local laws, rules, regulations, orders, decisions or permits relating to employment, safety, health, and environmental compliance. Buyer has a zero tolerance policy prohibiting harassment of any kind in or about its premises. Copies of this policy will be furnished to Seller upon request. Any violation by Seller, its agents, employees, representative or subcontractors of any of the foregoing shall be deemed a breach of Seller's obligations hereunder and Buyer may cancel this purchase order or Agreement (without penalty and without any payment otherwise payable to Seller pursuant to paragraph 4) at any time thereafter. Seller will defend, indemnify and hold harmless Buyer from and against any and all costs (including reasonable attorneys' fees incurred), expenses, damages, liabilities, penalties, or judgments relating to any breach by Seller, its agents, employees, representatives, or subcontractors of its obligations hereunder.

**12. Insurance.** If Seller performs any services for Buyer on buyer's premises, during the term of this Agreement and for a period of at least one year after completion of Seller's obligations pursuant hereunder, Seller will maintain the following levels of insurance coverage with a reputable and financially sound insurance carrier: (a) worker's compensation insurance as required by applicable law; (b) employer's liability insurance with limits not less than US \$1 million; (c) Commercial General Liability, including Products and Completed Operations and Contractual Liability, with a minimum combined single limit of \$2,000,000 per occurrence; and (d) Excess Liability insurance with limits not less than US \$5 million. Seller will provide Buyer with an insurance certificate from its insurance carriers for each of the required foregoing insurance coverage's, and naming Buyer as an additional insured for Commercial General Liability and Excess Liability insurance.

**13. Software Warranty.** If licensing or providing software or a computerized system to Buyer hereunder, whether or not embedded within a system or otherwise, Seller warrants that such software of computerized system will operate without interruption notwithstanding any changes in dates, passing of calendar years, leap years, or otherwise. If such software or computerized should fail on account of the foregoing, Seller shall immediately repair or patch the software or computerized software and defend, indemnify and hold harmless Buyer from and against any and all costs (including reasonable attorneys' fees incurred), expenses, losses, damages, liabilities, penalties, or judgments, attributable to the failure of such software or computerized system.

**14. No Assignment.** Neither this purchase order, the Agreement, nor any right or obligation of Seller hereunder may be assigned or delegated by Seller, by contract, merger, operation of law, or otherwise, to

any other party without the prior consent of Buyer which may be granted at Buyer's sole discretion. Seller is not permitted to engage subcontractors in connection with the performance of its obligations to Buyer hereunder without the prior consent of Buyer.

**15. Independent Contractor.** Nothing in this purchase order or Agreement is intended to, or does create any joint venture, partnership, agency or similar relationship between Buyer and Seller, other than a buyer and seller relationship. Seller shall not be, and is not authorized to represent itself as, an agent or representative of Buyer for any purposes.

**16. Waiver.** Buyer's failure to insist in any one or more instances upon the full performance by Seller of any term, covenant or condition imposed on it by this Agreement shall not be construed as a waiver of any right available to Buyer hereunder with respect to such nonperformance or as Buyer's condoning further nonperformance.

**17. No Change Order.** No change, modification or extension of this purchase order or Agreement shall be effective against Buyer or Seller unless it is made in a writing making specific reference to this purchase order and is signed by an authorized representative of Buyer and Seller.

**18. Governing Law.** This Agreement shall be governed exclusively by the laws of the State of California without regard to its conflicts of laws principles. The United Nations Convention on the International Sale of Goods shall not apply to this Agreement. Any dispute, claim, or controversy between the Buyer and Seller related to this Agreement that cannot be resolved through good faith negotiations shall be adjudicated in a court located in the County of Los Angeles, California.