



Purchase Order

TERMS & CONDITIONS

Terms of Agreement: The terms and conditions detailed herein are applicable to the Purchase Order issued by Ross Video, Inc. ("Buyer") and by accepting the Purchase Order you agree that you have read, understand, and agree to be bound by these terms and conditions. The Purchase Order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively the "Purchase Order"), constitutes the entire and exclusive agreement between Buyer and the supplier ("Supplier") identified in the Purchase Order. Buyer's submission of the Purchase Order is conditioned on Supplier's agreement that any terms different from or in addition to the terms of the Purchase Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of the Purchase Order, even if Supplier purports to condition its acceptance of the Purchase Order on Buyer's agreement to such different or additional terms unless communicated change is agreed to in writing by the parties and a subsequent revision to the purchase order is submitted by the Buyer and acknowledged by the Supplier. Supplier's electronic acceptance, acknowledgement of this Purchase Order, or commencement of performance constitutes Supplier's acceptance of these terms and conditions. The Purchase Order does not constitute a firm offer within the mean of Section 2205 of the California Commercial Code, and may be revoked at any time prior to acceptance. Notwithstanding the foregoing, if a Master Agreement covering procurement of the Work described in the Purchase Order exists between Buyer and Supplier, the terms of such master agreement shall prevail over any inconsistent terms herein.

Notices: All communications from Supplier to Buyer relating to the Purchase Order and these terms and conditions shall be addressed to the Buyer's

representative identified on the Purchase Order.

Supplier Responsibilities: Time is of the essence in Supplier's performance of its obligations under this agreement. Supplier will immediately notify Buyer if Supplier's timely performance under the Purchase Order is delayed or is likely to be delayed. Buyer's acceptance of Supplier's notice will not constitute Buyer's waiver of any of Supplier's obligations.

If Supplier delivers goods or deliverables after the Delivery Date, Buyer may reject such goods or deliverables without notice and prior acceptance in writing by the Buyer.

Supplier will preserve, pack, package, and handle the Deliverables and Products so as to protect the Deliverables and Products from loss or damage and in accordance with best commercial practices in the absence of any specifications Buyer may provide.

Without limiting the foregoing, Supplier shall observe the requirements of any local laws and regulations relating to hazardous work, including without limitation, with respect to its accompanying information, packing, labeling, reporting, carriage and disposal.

Supplier will include with each delivery of Products a packing list identifying the Purchase Order number, Buyer part number for each of the Products (if applicable), a description and the quantity of each of the Products, and the date of shipment.

Supplier is to permit duly authorized representatives of Buyer to review and observe, from time to time upon reasonable notice, the delivery of the goods and services. Supplier is to provide Buyer with such reports as are appropriate to the nature of the goods and services ordered and as may be reasonably requested by Buyer from time to time.

Price: All purchase orders shall be acknowledged and honored at the price listed on the purchase order.

Supplier shall not invoice parts or services at a price higher than listed on purchase order without prior acceptance and written consent by Buyer.



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Acknowledgement: The shipment of any goods or the furnishing of any services (or delivery of any deliverable arising therefrom), shall constitute acceptance by Supplier of the Purchase Order and each and all of the terms and conditions stated herein. If Supplier objects to any of the terms and conditions hereof, it shall notify Buyer in writing within ten days after issuance of the Purchase Order and withhold acceptance of the Purchase Order until such objection is settled by written agreement.

Inspection: All goods and deliverables are subject to final review, inspection and acceptance by Buyer notwithstanding any payment or initial inspection. Final inspection will be made by Buyer within a reasonable time after receipt of goods or deliverables.

Rejections / Returns: Buyer reserves the right to refuse any goods or deliverables and to cancel all or any part of a Purchase Order for goods or deliverables not conforming to applicable specifications, drawings, samples or descriptions of required and expected performance. Acceptance of any part of the Purchase Order shall not bind Buyer to accept future shipments of non-conforming goods or deliverables already accepted. Goods and deliverables, if rejected, will be held by Buyer at Supplier's risk and expense, inclusive of storage charges, while awaiting Supplier's Return Goods Authorization and return shipping instructions. Supplier shall be responsible for the expense of transportation both ways, and no replacement or substitution shall be made unless so authorized by Buyer. Buyer may, in its sole discretion, destroy or sell at a public or private sale any rejected goods and deliverables for which Buyer does not receive Supplier's Return Goods Authorization and return shipping instructions within a reasonable time, and apply the proceeds, if any, first toward any storage charges.

Cancellation for Late Delivery: The delivery of goods, services and deliverables shall strictly comply with the

delivery date or delivery schedule specified by Buyer. If at any time it appears Supplier will not meet such delivery date or schedule, Supplier shall promptly notify Buyer in writing of reasons for, and the estimated duration of the delay. If requested by Buyer, Supplier will ship delayed goods by means to avoid or minimize delay to the maximum extent possible, the added cost to be borne by Supplier. Buyer may exercise its other remedies, such as cancellation of the Purchase Order after 30 days for non-compliance, and charge the Supplier for any incidental and consequential damages.

Invoice and Payment: Unless otherwise specified by Buyer, a separate invoice shall be issued for each shipment and each purchase order and only after the goods are shipped or services and deliverables delivered. No payment will be made prior to receipt of goods, services or deliverables and current invoice unless otherwise stated expressly in writing via purchase order or mutual agreement between parties. Payment due dates will be computed following the later of (i) the delivery date; (ii) the date of Buyer's acceptance of all of the goods and deliverables; (iii) or Buyer's receipt of a properly prepared invoice. A properly prepared invoice must include the Purchase Order number and, if required in the Purchase Order, Supplier's certification of conformance of the goods and deliverables to the specifications. Unless stated otherwise in writing and agreed to by the parties, payment terms shall be NET 45 days.

Warranty: In accepting this Purchase Order, Supplier unconditionally represents and warrants, any other representation or agreement to the contrary notwithstanding, that the goods and deliverables supplied pursuant to this Purchase Order are of merchantable quality, conform to the specifications as stated on the Purchase Order and as otherwise provided by Buyer and are suitable for Buyer's intended uses and purposes in the ordinary course of its business. All warranties herein stated shall run to Buyer, its customers and the users of



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the goods or deliverables or products into which such goods or deliverables may be incorporated.

Indemnification: Supplier agrees to indemnify and hold harmless Buyer, its affiliates (and its and their respective directors, employees and agents) from any losses, liabilities, damages and expenses (including without limitation reasonable counsel fees) arising, directly or indirectly, from: (i) Supplier's breach of any provision hereof, including without limitation the confidentiality obligations and the warranties made herein; (ii) any negligent or wrongful act or omission of Supplier, its employees, consultants or subcontractors; (iii) Supplier's failure to comply with applicable laws and regulations in filing the Purchase Order; (iv) any claim charging that Buyer's purchase of goods, services or deliverables under the Purchase Order constitutes misappropriation of trade secrets, breach of a confidential relationship, or trademark, trade secret or copyright infringement; and/or (v) any claim charging that any goods or deliverables acquired under the Purchase Order, or the use of such goods or deliverables, infringe a third-party's patent anywhere in the world. If the goods or deliverables, or the use of such goods or deliverables, are held to constitute an infringement and their sale or use is enjoined, Supplier shall, at its expense and option, either procure for Buyer and its affiliates the right to continue to use such goods or deliverables, or replace same with an equivalent non-infringing product, or modify same so it becomes an equivalent non-infringing product. This Section will not be construed to limit or exclude any other claims or remedies that Buyer or its affiliates (and its and their respective directors, employee and agents) may assert.

Limitation of Liability: UNDER NO CIRCUMSTANCES WILL BUYER OR ITS AFFILIATES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF SUPPLIER OR ANY OTHER PARTY ARISING OUT OF

BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE, NOTWITHSTANDING THE FORM (e.g., CONTRACT, TORT OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT, IN NO EVENT WILL BUYER OR ITS AFFILIATES BE LIABLE FOR DAMAGES OR LOSSES THAT EXCEED, IN THE AGGREGATE, THE GREATER OF (i) THE AMOUNT OF FEES PAID BY BUYER FOR THE GOODS OR SERVICES THAT GAVE RISE TO SUCH DAMAGES OR LOSSES FOR EACH RESPECTIVE BREACH OR SERIES OF RELATED BREACHES OR (ii) \$1000. THIS SECTION WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY DESPITE THE FOREGOING DISCLAIMER, EXCLUSION AND LIMITATION.

Insurance: Supplier shall, at its own expense, maintain with a reputable insurer (and provide written certificate(s) of insurance to Buyer if and when requested) for a period of at least 2 years after the fulfillment of the Purchase Order reasonable and customary insurance coverage, including, but not limited to, (i) worker's compensation statutory coverage as required by the laws of the applicable jurisdiction, and (ii) commercial general liability insurance including coverage for product liability in the minimum amount of \$5 million in respect of claims for any losses, costs and expenses arising out of or relating to Supplier furnishing the goods, deliverables and/or services under the Purchase Order. The certificate(s) of insurance will, if requested by Buyer, designate Buyer as "additional insured" under the **commercial** general liability policy and will include the agreement for the insurer to give Buyer written notice at least 30 days prior to the effective date of any cancellation, lapse or material change in the policy, and will contain a waiver of subrogation in favor of Buyer.



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Force Majeure: Supplier and Buyer, as the case may be, shall be excused for delays in performance or failure of performance to the extent arising from causes beyond such party's reasonable control, including without limitation strikes, wars, fires, floods, earthquakes, acts of terror or other acts of God. In the event of any such event or condition, the party whose performance is excused hereunder shall notify the other promptly thereof and shall make diligent efforts to perform at its earliest opportunity and the other party shall be permitted to suspend its performance under the Purchase Order. If Supplier's performance is excused hereunder, Buyer shall have the right, and Supplier agrees to provide to Buyer the assistance and information necessary for Buyer, to make, have made, or otherwise produce replacement goods and services.

Shipping Terms: Unless otherwise specified by Buyer, delivery of goods is to be F.O.B. Vendor's plant. If Buyer has not designated routing, Supplier is required to ship via the most economical method that will meet delivery date.

Transportation Liability: Supplier agrees that in any case where freight regulations covering goods transported by common carrier establish a maximum limit on the carrier's liability for loss or damage suffered in transit, Supplier will be liable to Buyer for any loss or damage in excess of such maximum limit up to the full price of the goods.

Buyer's Property: All tools, equipment and materials of every description furnished to Supplier by, or specifically paid for by, Buyer, and any replacement thereof, and any materials affixed or attached thereto, shall be and remain the personal property of Buyer, and shall be safely stored separate and apart from Supplier's property. Supplier shall not substitute any property for Buyer's property and shall not use such property except in filling Buyer's purchase orders. Such property while in Supplier's custody or control shall be held at Supplier's risk, shall

be kept insured by Supplier at Supplier's expense in an amount equal to the replacement cost with loss payable to Buyer and shall be subject to removal at Buyer's written request, in which event Supplier shall prepare such property for shipment and shall redeliver to Buyer in the same condition as originally received by Supplier, reasonable wear and tear excepted.

Safety Data Sheets: An appropriate material safety data sheet ("SDS") and labeling, is to precede or accompany each shipment of Supplier. Further, Supplier shall send to Buyer updated SDS's and labeling.

Compliance with Laws: Supplier agrees to comply with the applicable provisions of any federal, national, state or local law, and all orders, rules and regulations issued thereunder, whether now or hereafter in force, and any provisions, representations or agreements required thereby to be included in the contract resulting from acceptance of the Purchase Order are hereby incorporated by reference, including, but not limited to, those prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin, or physical or mental handicap and those providing for the employment of disabled veterans and veterans of the Vietnam era.

RoHS Directive: Product supplied must not contain the substances prohibited by the European Community Directive (2002/95/EC) on the Restriction of the use of certain Hazardous Substances (commonly known as the RoHS Directive) at levels in excess of the anticipated maximum allowable concentration values. Supplier is required to furnish Buyer proper RoHS compliance certification up to and including IPC-1752 compliant declarations when requested.

Governing Law: The Purchase Order will be construed in accordance with, and be governed by, the laws of the New York without regard to its conflict



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of laws rules. The parties specifically waive application of the UN convention on Contracts for the International Sale of goods. Supplier irrevocably consents to the personal jurisdiction of the state and federal courts in and for the State of New York and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum.

Complete Agreement: These terms and conditions and the other agreements (e.g., supply agreements, service agreements, statements of work) if any, pursuant to which this Purchase Order was issued contain the entire understanding of the parties with respect to the subject matter of the Purchase Order. In the event of any conflict between the terms and conditions contained herein and those in any other applicable written agreement relating to the subject matter of the Purchase order and governing the relationship between Buyer and Supplier, the conflicting terms and conditions in the other agreement will govern. No modification, amendment or waiver of any term or condition hereof shall be effective unless set forth in writing signed by Buyer and Supplier. Unless agreed to by Buyer in a writing, Buyer will not be bound to any additional or different terms or conditions hereafter transmitted by Supplier and Buyer will not be bound by its silence, course of dealing, usage of the trade or its acceptance of the goods or services.

Assignment: The Purchase Order and Supplier's rights and duties hereunder shall not be assignable by Supplier without the prior written consent of buyer, which consent may be withheld in its sole discretion. Buyer may assign its rights and obligations hereunder to any one or more of its affiliates. The Purchase Order and these terms and conditions shall inure to the benefit of and be binding upon Buyer and Supplier and their respective successors and permitted assigns; nothing contained herein shall give to any other person any benefit or any legal or equitable right, remedy or claim.

Severability: If any provision herein is held to be invalid or unenforceable, such provision shall be narrowly construed, if possible, or otherwise deemed ineffective and the remaining provisions shall not be affected.

Miscellaneous: Headings used herein are for convenience only and shall not be used for interpretive purpose. A party's failure to act with respect to another party's breach of any provision contained herein does not constitute a waiver. These terms and conditions will survive the fulfillment of the Purchase Order.