



## VIPCOLOR TERMS AND CONDITIONS

(available at and reproduced from [www.vipcolor.com](http://www.vipcolor.com))

### 1) CONTROLLING PROVISIONS:

Except as modified by an unexpired written agreement signed by an authorized officer of VIPColor Technologies USA Inc. (hereinafter "Seller"), the following Terms and Conditions comprise the complete agreement between Buyer and Seller with respect to products supplies, accessories, related equipment and software offered by Seller (collectively referred to as "Products"). Acceptance of all orders by Seller is strictly limited to these Terms and Conditions.

All terms and conditions contained in any prior oral or written communication, including, without limitation, Buyer's purchase order, which are different from or in addition to these Terms and Conditions are hereby rejected and shall not be binding on Seller, whether or not they would materially alter this document, and Seller hereby objects thereto. All prior proposals, negotiations and representations, if any, are merged herein. Buyer will be deemed to have consented to all these Terms and Conditions if any part of the Products are shipped or an invoice is presented in connection with the Products.

### 2) Acceptance of Orders; Price; Delivery:

Seller reserves the right to review and decline any order and purchases will have to be placed in accordance with the Seller's order process.

The price for each Product shall be that set forth in the applicable price list in effect when an order is accepted by Seller or as otherwise specified in an unexpired written quotation or agreement. All prices are exclusive of all taxes. All shipments will be Ex-Works of an agreed location ("Agreed site"), unless otherwise agreed. Should the delivery date be postponed by Buyer, Seller shall have the right to adjust the price of the undelivered Products to Seller's price at the time of shipment.

### 3) Taxes:

Any sales, use, excise, or manufacturer's tax which may be imposed upon the sale or use of the Products or any property tax levied after readiness to ship or any excise tax license or similar fee required under this transaction shall be in addition to the quoted prices and paid by Buyer. If Buyer is exempt from any taxes, Buyer shall furnish to Seller an appropriate tax exemption certificate in a form acceptable to the taxing authority.

### 4) Terms of Payment Hardware and Software Products:

Seller will issue a separate invoice for each shipment. Payment terms are as follows:

- a. If credit terms are requested, prior to any such credit terms being authorized, all Products must be paid for in advance of shipment.
- b. If credit terms are authorized, all payments must be paid within 30 days from invoice date. Payments not received by this date are deemed late and subject to late payment charges.

Seller reserves the right to require payment in advance or to establish other credit terms for Buyer. Each shipment shall be deemed a separate and independent transaction. Unless otherwise agreed in writing, payment on all export orders shall be paid in advance of shipment in U.S. dollars against Seller's invoice and standard shipping documents. All goods shipped are deemed property of the Seller until all payments in full have been received from Reseller on corresponding purchase order.

### 5) Late Payment:

A service charge to the maximum rate allowed by law, shall apply to the portion of Buyer's outstanding balance which is not paid when due. If legal action is taken by Seller, Buyer shall be liable for Seller's reasonable attorney fees, plus other costs of such action. The Seller shall advise the Buyer of the late payment service charge in writing.

### 6) Delivery, Risk of Loss, Shipment, and Acceptance:

- a. Delivery and performance dates specified herein or otherwise communicated to Buyer are approximate only and are based on conditions at the time Seller accepts Buyer's purchase order.
- b. Delivery shall be complete upon placement of Products for pickup by common carrier at the Agreed Site, hereupon title and all risk of loss, damage or destruction to the goods shall pass to Buyer, unless otherwise agreed.
- c. In the absence of specific instructions by Buyer, the carrier will be selected by Seller. In no event shall Seller be liable for any delay in delivery by the carrier, nor shall the carrier be deemed an agent of Seller.
- d. Seller reserves the right to make partial shipments and to submit invoices for partial shipments.
- e. Seller also reserves the right to impose handling charges on orders or single shipments under the minimum order requirements.
- f. Products not expressly rejected in a writing delivered to Seller within fifteen (15) days of receipt shall be deemed to have been accepted.

### 7) Security Interest:

These Terms and Conditions shall constitute a security agreement in which Buyer hereby grants Seller a purchase money security interest in each Product shipped to Buyer until all payments in full are made by Buyer to Seller. Buyer agrees, without further consideration, at any time to execute appropriate financing statements, amendments thereto, and other documents necessary to perfect the security interest granted hereby, and consents to the filing of such financing statements, amendments and related documents with the appropriate authorities. Buyer hereby appoints Seller as its attorney-in-fact, which appointment is coupled with an interest, for the purpose of executing and filing with the appropriate authorities a financing statement and all other documents necessary to perfect the security interest granted hereby.

### 8) Warranty:

8.1 Each Product sold to Buyer under these Terms and Conditions is sold subject only to the implied warranty of title described in Section 2312 (1) of the California Commercial Code and the implied warranty of merchantability described in Section 2314 of the California Commercial Code. Seller makes no express warranties concerning the Products sold under these Terms and Conditions, and any affirmations or representations made by Seller or Seller's agents concerning the Products, including without limitation Product brochures and other marketing materials, were made for illustrative purposes only and do not constitute warranties of the Products. Notwithstanding the foregoing:

- a. Seller warrants that on the date of shipment, each Product manufactured by Seller shall be free from defects in material and workmanship under normal use and service. Printers are warranted for one (1) year from date of shipment or one (1) million inches, which ever comes first (hereinafter "Printer Limited Warranty Period"). Spare Parts are warranted for ninety (90) days from date of shipment (hereinafter "Spare Parts Limited Warranty Period"). Any repair work carried out by Seller on any Product under the express request and authorization of Buyer is warranted for ninety (90) days from the date of return shipment from Seller to Buyer.



- b. No warranty extended by Seller shall apply to:
- any Product which has been modified or altered by persons other than Seller;
  - any Product subjected to any misuse, neglect, improper storage or handling, improper installation or accidental damage;
  - any Product used in an unintended manner, or if non-qualified parts, toners, inks, consumables or media, are used ; or
  - any Product manufactured by a third party.
  - Products consisting of normal wear and tear items deemed preventative maintenance parts, media, supplies or consumables that have an operational duration that may be less than the term of the applicable limited warranty, depending on usage.

Seller's exclusive obligation under this warranty is, at Seller's option, (i) to repair the defective Product, (ii) to supply a replacement Product free of charge, (iii) to refund to Buyer the purchase price paid for the defective Product, or (iv) to grant credit for the value of any Product found to be defective under this warranty in installment sales. Seller shall not reimburse or make any allowance to Buyer for any labor charges incurred by Buyer for replacement or repair of any Product unless such charges are authorized in advance by Seller.

- c. This warranty is made on the conditions that (i) the claim is otherwise made in a timely manner (that is, within the applicable Warranty Period) by Buyer, (ii) the Product has been registered on Seller's website at the time of receipt of the Product, and (iii) Buyer returns the Product to Seller and Seller's inspection reveals that Buyer's claim is valid under the terms of this warranty. No returns will be accepted by Seller unless accompanied by Seller's Return Material Authorization.
- d. With respect to third party goods, Seller's only warranty to Buyer is that such goods are free of any rightful claims of their manufacturer. To the extent any warranties extended to Seller by their manufacturer are transferable, Seller shall transfer such warranties to Buyer.
- e. Software storage media shall be governed by the Spare Parts Limited Warranty set forth in this section. Otherwise, software supplied by Seller is "as is" and without warranty, either express or implied, of any kind or nature whatsoever.

8.2 THIS LIMITED WARRANTY MAY ONLY BE ASSERTED BY BUYER, AND BY NO OTHER PERSON, AND IS IN LIEU OF ALL OTHER OBLIGATIONS OR LIABILITIES ON SELLER'S PART EVEN IF SELLER HAS BEEN MADE AWARE OF A PARTICULAR PURPOSE. SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WRITTEN ORAL, EXPRESS, IMPLIED OR STATUTORY, TO THE FULLEST EXTENT PERMITTED BY CALIFORNIA LAW, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

The sole and exclusive remedy and damages available to the Buyer are limited to the remedies set forth in this Section. IN NO EVENT SHALL SELLER BE LIABLE FOR LABOR OR ANY OTHER INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES RELATED TO LOSS OF USE, BUSINESS, REVENUE, OR PROFITS, IN CONNECTION WITH OR ARISING OUT OF THESE TERMS AND CONDITIONS, OR ARISING OUT OF THE SALE OR USE OF ANY PRODUCT, SPARE PART OR SERVICES PROVIDED PURSUANT TO THESE TERMS AND CONDITIONS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**9) Miscellaneous:**

These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of California, excluding any conflicts of law provisions thereof. If any provision of these Terms and Conditions (or any portion of any provision) is held by any court of competent jurisdiction to be invalid or unenforceable, that provision or portion will be severed from this Agreement and any remaining provisions will continue in full force. The waiver by either party of any term or condition of these Terms and Conditions shall not be deemed to constitute a continuing waiver thereof nor of any further condition or additional right that such party may hold under these Terms and Conditions. Buyer shall not export, directly or indirectly, any product without first obtaining the appropriate Government export license. Seller shall be excused from any delays or failure in performance caused by any labor dispute, governmental requirement, act of God, inability to secure materials or transportation facilities, or any other cause beyond its reasonable control.



## Label Material Warranty

VIPColor's High Gloss and Matt label materials have been specifically designed for optimal functionality with water-based inkjet inks. While providing quick dry times and immediate smudge and scratch resistance after printing, this attribute also makes the label material receptive to moisture and certain airborne contaminants, which may result in discoloration. VIPColor highly recommends proper testing within the final environment of the application, especially when used on or near products with aromatic vapors or products containing volatile solvents. VIPColor highly recommends storage of this product in their original packaging and in a temperature and humidity controlled environment in order to provide for optimum longevity. As with all pressure sensitive materials, printed samples should be tested thoroughly under conditions equal to that of the final application in order to ensure that requirements are achieved.

All statements, technical information and recommendations regarding VIPColor label products are based upon tests believed to be reliable but do not constitute a guarantee or warranty. All VIPColor label products are sold with the understanding that the buyer has independently determined suitability and fitness of such products for its intended purposes. VIPColor label products are warranted to the original buyer to be free from defects in material or workmanship for a period of 6 months from date of shipment. Buyer's sole and exclusive remedy for breach shall be the replacement of the defective VIPColor label product or, at VIPColor's option, the issuance of a credit or refund in an amount up to the purchase price of the defective product (excluding shipping and handling). In no event shall VIPColor be responsible for claims beyond the purchase price of the defective product.

VIPColor shall not be held liable for the integrity and/or longevity of any text, photographic images, digitized images, graphics, bar codes, or combination thereof that are produced, generated, or otherwise transferred to substrates by the use of either VIPColor's hardware and software or if VIPColor's label material is used in conjunction with any other manufacturer's hardware or software.

THIS LIMITED WARRANTY SET FORTH HERE MAY ONLY BE ASSERTED BY BUYER, AND BY NO OTHER PERSON, AND IS IN LIEU OF ALL OTHER OBLIGATIONS OR LIABILITIES ON VIPCOLOR'S PART EVEN IF VIPCOLOR HAS BEEN MADE AWARE OF A PARTICULAR PURPOSE. VIPCOLOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, TO THE FULLEST EXTENT PERMITTED BY CALIFORNIA LAW, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

The sole and exclusive remedy and damages available to the Buyer are limited to the remedies set forth here in. IN NO EVENT SHALL VIPCOLOR BE LIABLE FOR LABOR OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES RELATED TO LOSS OF USE, BUSINESS, REVENUE, OR PROFITS, IN CONNECTION WITH OR ARISING OUT OF THESE TERMS AND CONDITIONS, OR ARISING OUT OF THE SALE OR USE OF ANY PRODUCT OR SERVICES PROVIDED PURSUANT TO THESE TERMS AND CONDITIONS, EVEN IF VIPCOLOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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