

## TERMS AND CONDITIONS

### 1. DEFINITION AND AGREEMENT

These Terms and Conditions apply to each offer and sale of products (“Products”) by Sanyo Corporation of America (“Seller”). These Terms and Conditions of Sale are the exclusive contract between Seller and Buyer. There are no terms, understandings, agreements, other than those stated herein. These Terms and Conditions may not be altered amended, nor waived except in writing signed by an officer of the party to be bound thereby. Acceptance of Buyer’s purchase order is subject to acceptance of the express Terms and Conditions contained herein. If any provisions of Buyer’s purchase order or other writings are different from or are otherwise in conflict with these Terms and Conditions, these Terms and Conditions shall govern and the terms contained in Buyer’s purchase order or other writings are expressly rejected by Seller.

### 2. PRICE

Seller may adjust Product prices at any time upon notice to Buyer.

### 3. PAYMENT

Payment terms are net 30 days from date of invoice. Past due balances are subject to a late payment charge of one and one-half percent (1.5%) per month, or the maximum amount permitted by applicable law, whichever is less. Buyer shall pay all charges, costs and legal fees incurred in collecting amounts owed. In the event of non-payment or late payment of an invoice, Seller has the right to suspend all further deliveries without any notice. In addition, Seller has the right to immediately and unilaterally terminate the agreement.

### 4. TITLE AND RISK OF LOSS

Title and risk of loss for Products transfers to Buyer at Seller’s shipping point, unless Products are shipped in Seller’s vehicles in which case title and risk of loss transfers to Buyer when the vehicle first enters Buyer’s property.

### 5. DELIVERY

If Seller cannot comply with the suggested time of delivery, this does not give the Buyer the right to cancel or suspend the order and does not give the Buyer any rights on compensation / indemnity / damages. Seller reserves the right to, before delivering the goods, demand that the Buyer pays all debt-claims resulting directly or indirectly out of previously delivered orders or resulting out of the order. If Seller does not timely receive the demanded payments, Seller has the right to suspend the delivery, without any further notice to the Buyer. If Seller does not timely receive the demanded payments, Seller has the right to cancel the delivery of the remaining goods by simply notifying the Buyer of its decision.

### 6. WARRANTY

Buyer acknowledges that Seller acts as a distributor for Products not branded by Seller (Resale Products) and that matters relating to the quality of the Products are not within Seller’s control. Accordingly, SELLER MAKES NO WARRANTIES WHATSOEVER CONCERNING RESALE PRODUCTS. THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES EXPRESS OR IMPLIED. SELLER EXPRESSLY

EXCLUDES WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. BUYER ACKNOWLEDGES THAT NO REPRESENTATIVE OF SELLER IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY ON BEHALF OF SELLER THAT IS NOT IN THESE TERMS AND CONDITIONS EXPRESSLY AMENDING SELLER'S WARRANTY.

#### 7. REMEDIES

Seller's liability for nonconforming Products is exclusively limited, at Seller's option, to replacement of the defective Products or refund of the purchase price of such Products. Seller's liability for any nonconforming Products shall not exceed the amount paid for the Products.

#### 8. LIMITATION ON LIABILITY

IN NO EVENT WILL SELLER BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES FROM ANY CAUSE OR FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF WHETHER THE CLAIM ARISES FROM ACTUAL OR ALLEGED BREACH OF WARRANTY, INDEMNIFICATION, BREACH OF CONTRACT, PRODUCT LIABILITY, CONTRIBUTION OR ANY LEGAL THEORY AND IN NO EVENT WILL SELLER BE LIABLE FOR LOST PROFITS, COSTS OR LOSSES NOT ASSOCIATED WITH DIRECT PHYSICAL DAMAGE TO PROPERTY FOR ANY CLAIMS MADE UNDER OR RELATED TO THE SALE OF PRODUCTS OR SERVICES TO BUYER. IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES THAT ARE THE SUBJECT OF ANY CLAIMS MADE BY BUYER.

#### 9. INDEMNITY

Buyer agrees to defend, indemnify and hold Seller, its officers, directors, agents, and employees harmless from all claims, demands, actions and causes of action relating to personal injury or property damage to third parties, including attorney's fees and actual costs incurred as a result thereof, to the extent of its negligence or arising after delivery of the Products to Buyer.

#### 10. CLAIMS

Any claim for shortage or non-conforming Products must be made in writing to Seller within 7 days after Buyer's receipt of the Product. Any claim for non-delivery of Product must be made within 7 days after the date upon which the Product was to be delivered. As to any claim not reasonably discoverable within such 7 day period (including claims discoverable only in processing, further manufacture, other use or resale), such claim must be in writing and received by Seller within 30 days after Buyer's receipt of the Products. Failure of Seller to receive written notice of any such claim within the applicable time period shall be deemed an absolute and unconditional waiver by Buyer of such claim. Products may not be returned without Seller's permission and transportation for return will not be paid by Seller unless authorized in advance. Amounts owing to or payable by either party hereunder these Terms and Conditions shall be deemed finally reconciled on the first anniversary of the final delivery under these Terms and Conditions and any outstanding rights of either party to receive overpayments or under payments including rights to unclaimed credits or refunds shall expire on such date.

## 11. FORCE MAJEURE

Seller is not liable for nonperformance or delay in performance caused by circumstances beyond Seller's control ("Force Majeure Event"). A Force Majeure Event includes, without limitation, (a) acts of God, war, riots, fire, explosions, floods, strikes, lockouts, injunctions, accidents, Product short supply, unforeseen shutdown of major sources of supply, breakage of machinery or apparatus, or national emergency, (b) Seller's inability to obtain at prices Seller deems in its discretion to be commercially reasonable, the Product, fuel, power, raw materials, labor, containers or transportation facilities, (c) the occurrence of any unforeseeable contingency making performance impracticable, or (d) compliance in good faith with any applicable governmental statute, regulation, or order. Any delivery so suspended shall be cancelled without liability, but these Terms and Conditions shall otherwise remain unaffected. This section does not apply to payment obligations.

## 12. QUANTITY

Seller is not obligated to deliver in any month more than a proportionate part of the maximum quantity specified, determined by dividing such maximum quantity by the total number of months included in the period of performance. When in the opinion of Seller there is a period of shortage of supply of said products for any reason, Seller may allocate its available supply among any or all of its various customers upon such basis as it shall deem fair and practicable, with no liability on its part for failure to deliver the quantity or any portion therein specified.

## 13. PRODUCT STEWARDSHIP

Buyer agrees that Products will be used, handled, stored, transported and disposed of in such a manner as is necessary for the safety and protection of persons, property and the environment, and in accordance with the manufacturer's recommendations and applicable laws and regulations. Buyer agrees to instruct its employees with respect to, and to make certain that they know and understand, procedures necessary to enable them to comply with the requirements set forth herein and make certain that they are adequately trained in the use, handling, storage, transportation and disposition of the Products. Buyer further agrees to deliver the most recent edition of Product literature, including Material Safety Data Sheets, to its employees and customers and to maintain a written record of such deliveries. Buyer shall only sell to those who can handle, use, store, transport and dispose of Products safely.

## 14. TERMINATION

Any order or delivery may be terminated or suspended, (a) by either party if any proceeding under bankruptcy is brought by or against the party, (b) by a party if the other party defaults in its material obligations and such default is not cured within a reasonable time if such default is curable, or (c) by Seller if it has reason to doubt the ability or willingness of Buyer to pay for the Products.

## 15. ARBITRATION

The parties will submit any dispute related to this Agreement to arbitration in New York, before one arbitrator under the American Arbitration Association's Commercial Arbitration Rules. A party may seek interim relief from any court having jurisdiction without waiving any remedy under this Agreement. The arbitrator may not award punitive damages or other damages not measured by actual damages, or limit, expand or otherwise modify the terms of this Agreement.

A party may enter a judgment on an award in any court having jurisdiction. The prevailing party is entitled to an award of reasonable attorney fees. This Agreement is governed by the laws of the state of New York.