



General Sales Terms & Conditions

Rev. 21.615 Americas
June 16, 2021, Media Excel, Inc.

All sales made by Media Excel Incorporated ("Seller") to the issuer of a purchase order ("Buyer") are made pursuant to the following terms and conditions ("Agreement"):

1. **Acceptance:** These terms of sale apply to all quotations made and sales orders entered by Seller. Seller's acceptance is conditional on Buyer's assent to these terms in lieu of those in Buyer's purchase order, and any terms and conditions of Buyer's purchase order that are inconsistent with or in addition to these terms will be deemed stricken. Any changes in these terms must be agreed in writing by an officer of Seller before becoming binding. All orders or contracts must be approved and accepted by Seller at its home office. These terms will be applicable whether or not they are enclosed with the products and services sold hereunder.
2. **Shipment:** In the absence of specific shipping instructions from Buyer, Seller will ship by the method it deems most appropriate and may make partial shipments. Transportation charges will be collected or, if prepaid, will be subsequently invoiced to the Buyer. Unless otherwise specified, the products shall be shipped in Seller's standard commercial packaging.
3. **Passage of Title and Risk of Loss:** All sales are made FOB point of origin (INCOTERMS 2000), at which point title and risk of loss passes to Buyer, and Seller's liability as to delivery ceases. Seller shall be responsible for loading the products on departure and bears the risk and all costs of such loading.
4. **Delivery:** Shipping dates are approximate. In no event will Seller be liable for any re-procurement costs, delay or non-delivery, or any other failure to perform an obligation due to causes beyond Seller's control. In the event of any such delay, the date of delivery or other performance will at the request of Seller be extended for a reasonable period. In the event Seller's production is curtailed for a reason beyond its reasonable control so that Seller cannot deliver the full amount released hereunder, Seller may allocate production deliveries among its various customers then under contract for similar products. The allocation will be made in a commercially fair and reasonable manner. In such a case, Seller will issue a pro rata refund to Buyer.
5. **Inspection and Return:** Upon receipt of a shipment of products from Seller, Buyer will inspect such shipment to determine that it conforms to Seller's acknowledgment. If Buyer does not notify Seller in writing within fifteen (15) days after receipt of such shipment, such shipment will be deemed accepted by Buyer. At the discretion of Seller, rejected products shall be kept by Buyer in secured storage for inspection by Seller, or returned to Seller. If Buyer so notifies Seller of a nonconformance, Buyer will afford Seller a reasonable opportunity to inspect such shipment. No products will be returned to Seller without Seller's consent. Buyer must obtain from Seller a Returned Material Authorization, which must accompany any returned shipment. Freight must be prepaid by Buyer. All products must be returned in the same packing conditions in which it left Seller's premises (anti-static rails and boxes, adequately protected, etc.). If products are returned to Seller, Seller will repair or replace the product within thirty (30) days of receipt of returned products.
6. **Payment:**
 - a. **Payment Terms:** Invoices are generated upon shipment and are payable according to the quoted payment terms or thirty (30) days from date of invoice (if no payment terms were explicitly quoted), and all payments should be made by wire as described in invoice. Amounts past due will incur interest at a rate equal to seven percent (7%) per month or the highest rate permitted by applicable law, whichever is lower.
 - b. **Taxes:** Any present or future sales, revenue, excise, withholding, or other tax, fees or charges of any nature imposed by any public authority, applicable to the transaction, will be added to the purchase price and will be paid by Buyer, or in lieu thereof, Buyer will provide Seller with an exemption certificate acceptable to the taxing authorities.

7. Warranties:

- a. **Technical Support:** No product is available for purchase without technical support coverage for at least the first year. Details of the offered technical support plans are provided in Terms of Technical Support and Warranty.
- b. **Hardware Warranty:** Seller warrants that the hardware (a tangible device or component thereof, including any embedded code or firmware required for such device to function on a stand-alone basis), purchased hereunder will be free from defects of material and workmanship under normal use and service as follows:
 - i. For a period of one (1) year following shipment by Seller, Seller will supply, at no charge and at Seller's option, either new or refurbished replacement parts for defective parts of the products or new or refurbished products to replace defective products; and
 - ii. For a period of one (1) year following shipment by Seller, Seller will pay the labor charges incurred by Seller to repair defective products.
- c. **Software Warranties:**
 - i. Seller warrants that the software licensed under this Agreement (other than third party software identified by Seller on the relevant Quote) will for a period of ninety (90) days from shipment perform substantially in accordance with the published product specifications in effect on the date of shipment. During the warranty period Seller shall, at Seller's option, use reasonable commercial efforts to correct material, service-limiting errors detected in licensed software, or provide a reasonable workaround, after receiving notification from Buyer of such errors. This warranty is void if failure is the result of accident, abuse, misuse, alteration, or the introduction or use with unauthorized software or hardware. Seller does not warrant that the operation of the software will be uninterrupted or error free.
 - ii. Seller represents that (1) the Software shall be free from material defects or any "viruses," "worms," "time bombs," or other harmful or deleterious code, contaminant, routines, or any open source software code, and (2) Seller is the exclusive owner of the products, and is in material compliance with any third-party licenses governing any third party software included in products that are required to use the products as contemplated herein. Seller shall ensure that any software licensed to Buyer uses industry-standard secure coding practices, and shall provide updates, patches, and vulnerability alerts to Buyer pertaining to software on a regular and timely basis. Workaround Solutions and Corrections, as defined and elaborated at **Exhibit C: Support Terms**, will be provided on a best effort basis and Seller will do its best to resolve the issue. Seller does not warrant that all issues can be mitigated or fixed.
- d. **Software Media:** Seller warrants that the Software media provided hereunder will be free from defects of material and workmanship under normal use for a period of one (1) year following shipment by Seller.
- e. **Third Party Equipment:** The warranty and other terms and conditions of sale applicable to other vendor or third-party equipment purchased through Seller when available shall be transferred to Buyer.
- f. **Procedures:** Warranty obligations apply only to products returned to Seller at Seller's factory of origin, transportation charges prepaid, during the applicable warranty period. Further, the warranty obligations set forth the sole and exclusive remedy to Buyer.
- g. **Exclusions:** This warranty extends only to the original Buyer and will not apply to any products which have been repaired or altered other than by Seller, Buyer's failure to meet environmental specifications or products which have been subjected to misuse, negligence, accident, unusual physical or electrical stress, or other causes other than the normal and intended use of the products. Buyer is responsible for any charges upon expiration of the applicable warranty period.
- h. **Disclaimers:** THE WARRANTY FOR THE PRODUCTS AS SET FORTH HEREIN IS IN LIEU OF, SUPERCEDES, AND SELLER HEREBY DISCLAIMS, ALL OTHER WARRANTIES EXPRESSED, STATUTORY OR IMPLIED, WHETHER ORAL OR WRITTEN, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. Limitation of Liability: EXCEPT FOR LIABILITY SUBJECT TO INDEMNIFICATION HEREUNDER, EITHER PARTY'S TOTAL

LIABILITY ARISING OUT OF THIS SALE OR THIS AGREEMENT WILL BE LIMITED TO THE PURCHASE PRICE PAID BY BUYER. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, ANY LOST PROFITS OR SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. The limitations specified in this Section will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

9. **Software License:** Buyer is hereby granted a limited, non-transferable, nonexclusive license to use and exploit the software and the documentation solely in conjunction with the products purchased under this Agreement and solely for use by Buyer for its internal business purposes, including use of the products in combination with third-party products to provide services to Buyer's third-party customers. Buyer receives no title or ownership rights to such software or documentation. This Agreement does not entitle Buyer to the receipt or use of, or access to, software source code or any right to reproduce the software or the documentation, and Buyer agrees that it shall not decompile, reverse engineer or otherwise attempt to gain access to the software source code. Software licensed hereunder is subject to the additional terms and conditions of the applicable End User License Agreement included with product shipment (if applicable), provided such terms shall not supersede these Sales Terms and Conditions. Seller covenants that it has all necessary rights, authorizations, and licenses to grant Buyer the licenses set out in these Sales Terms and Conditions and in particular, Seller covenants that it has paid the necessary license fees to MPEG LA applicable to manufacturers of encoders and decoders; however, notwithstanding the foregoing, the licenses granted in this Section 9 exclude any license for patents reasonably necessary to practice or otherwise related to SMPTE VC-1, ISO IEC 14496-3-2001, ISO IEC 14496-3 Amendment 1 (2003) to the extent such licenses relating to the provision of content to end users.
10. **Intellectual Property Rights:** If Seller is notified promptly in writing and given sole control of the defense and all related settlement negotiations, Seller will indemnify, defend and hold harmless Buyer and its affiliates, members, partners, and contractors against any and all claims, costs, direct expenses, liabilities and responsibilities based on an allegation by any third party that any Seller products supplied to Buyer hereunder infringe any patents, copyrights, trademarks, computer software, trade secrets, or any other intellectual property rights, including without limitation any patent relating to manufacturers of encoders or decoders, (excluding any patent reasonably necessary to practice or otherwise related to ISO IEC 14496-10 and any amendments thereto, SMPTE VC-1, ISO IEC 14496-3-2001, ISO IEC 14496-3 Amendment 1 (2003)). If any such products in the possession of Buyer, or the operation thereof, become, or in Seller's opinion are likely to become, the subject of such a claim, Buyer will permit Seller, at Seller's option and expense, either to procure the right for Buyer to continue marketing the relevant products, or to replace or modify them at Seller's expense so that they become non-infringing. If neither of the foregoing alternatives is available on terms that Seller in its sole discretion deems reasonable, Buyer will return such products on written request from Seller. Seller will refund to Buyer the price paid by Buyer for such returned products and related services. Seller will not be liable to Buyer for any claim to the extent arising from or based upon the combination, operation or use of any product of Seller, with equipment or data not supplied by Seller, unless Seller sold, made or specifically recommended the equipment or data as a combination or arising from any alteration or modification of products of Seller by anyone other than Seller or its agents authorized to do so. Buyer will hold Seller harmless against any expense or loss resulting from infringement of the above-mentioned rights or unfair competition arising from compliance with Buyer's designs, specifications, or instructions. Seller will have no obligation to Buyer with respect to infringement beyond that stated in this Section. THE FOREGOING ARE EACH PARTY'S SOLE AND EXCLUSIVE OBLIGATIONS, AND THE OTHER PARTY'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS.
11. **Product Changes:** Seller reserves the right to make substitutions, modifications, and improvements to the products, provided that such substitutions, modifications, or improvements shall not materially affect performance of the products.
12. **Breach of Agreement:** Seller reserves the right to declare all sums immediately due and payable and to cancel any order, service or shipment, without liability to Buyer, in the event that Buyer is in breach of a material obligation hereunder, including but not limited to failure to comply with credit terms, or termination hereof. If Buyer is in breach, Buyer shall remain liable for all unpaid sums and reimburse Seller for all damages suffered or incurred by Seller as a result of Buyer's breach. The remedies provided herein will be in addition to all other legal means and remedies available to Seller.
13. **General:**
 - a. **No Waiver:** Failure of Seller to enforce at any time any of the provisions hereof will not be construed to be a waiver of the right of Seller thereafter to enforce any such provisions.

- b. **Assignment:** Neither party shall assign this Agreement or any portion hereof without the prior written consent of the other party, and any such attempt at assignment will be void. If Seller merges, reorganizes, sells or otherwise transfers all or substantially all of its business and assets to which this transaction pertains to another entity, the rights and liabilities hereto will automatically bind and inure to the benefit of said successor entity.
- c. **Notice:** All notices and other communications hereunder shall be in writing and shall be deemed to have been given when: (i) delivered personally against a written receipt; or (ii) received by the addressee, if sent by Express Mail, Federal Express or other express delivery service (receipt requested) or by registered or certified mail, return receipt requested, in each case to the other party at the following addresses (or to such other address for a party as shall be specified by like notice; provided that notices of a change of address shall be effective only upon receipt thereof):
- Media Excel, Inc
8834 N. Capital of Texas HWY. Ste #230
Austin, TX 78759 USA
Phone: +1 512 502 0034, Fax: +1 512 502 0119
- d. **Governing Law and Disputes:** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, United States of America. The United Nations Convention on the International Sale of Products will not apply. Any suit hereunder will be brought solely in the federal or state courts in the Western District of Texas, and both parties hereby submit to the personal jurisdiction thereof.
- e. **Subcontractors:** Buyer acknowledges that all or part of the products purchased hereunder may be manufactured and/or assembled at any of Seller's or its subcontractors' facilities, domestic or foreign.
- f. **Tooling:** Unless otherwise agreed in writing, signed by both Buyer and Seller, Seller will retain title to and possession of all tooling of any kind used in the production of products furnished hereunder.
- g. **Export Restrictions:** Buyer, by accepting these products, certifies that it will not export or re-export the products furnished hereunder unless it complies fully with all laws and regulations of the United States relating to such export or re-export.
- h. **Modifications:** No modification to this Agreement, nor any waiver of any rights, shall be effective unless agreed to in writing by both parties.
- i. **Severability:** If any portion of this Agreement is held invalid, the parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement, and the parties shall seek in good faith to agree to substitute for the invalid provision a valid provision that most closely approximates its terms.
- j. Both parties shall comply with all applicable laws, rules, and regulations.
- k. **Force Majeure.** Seller shall not be under any liability to the Buyer in respect of delay or failure in performing its contractual obligations arising from industrial disputes, acts of God, fires, earthquakes, delays of subcontractors or suppliers, unusually severe weather, delays caused by governments, or any other causes outside its reasonable control.
- l. **Survival.** The obligations of both Buyer and Seller under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement shall survive termination, cancellation, or expiration of this Agreement.
- m. **Entire Agreement:** This Agreement supersedes all proposals, oral or written, all negotiations, conversations or discussions between the parties relating to this Agreement and past course of dealing or industry custom. Buyer represents and agrees that it has not relied on any representation or warranty other than those contained herein in entering into this Agreement. The terms and conditions of this Agreement contain the entire understanding and agreement of the parties with respect to the subject matter hereof.
14. **Termination:** Either party may terminate this Agreement if either files or has filed against it a petition in bankruptcy or otherwise for the protection of debtors, makes an assignment for the benefit of creditors, has a trustee or receiver appointed for all or substantially all of its assets, ceases to conduct business in the normal course or otherwise takes or has taken against it any action of similar import. Buyer may terminate this Agreement if Seller breaches any of its material obligations hereunder, and Buyer shall be entitled to a pro rata refund of all fees paid to Seller hereunder.