

## **AVATAR MACHINE Customer Terms and Conditions**

### **General**

All acknowledgments, sales and acceptances by AVATAR MACHINE are expressly limited to and made conditional upon the terms and conditions contained herein and no others, and any of Purchaser's terms and conditions which are in addition to or different from those contained herein (except additional provisions specifying quantity, description of the products or services ordered, and in shipping instructions) are hereby objected to in advance and not included in this Agreement.

### **Limitation of Liability & Damages**

AVATAR MACHINE's liability under this agreement shall be limited to replacement of defective products only, and AVATAR MACHINE shall not be liable for the cost of procurement of a substitute product. In no event shall the company be liable for any indirect, special, incidental, consequential or exemplary damages incurred by the other party, or any successors in interest or any beneficiary of this agreement, and in any way arising out of or in connection with this agreement or any breach thereof, whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict liability or otherwise.

### **Customer Furnished Products**

AVATAR MACHINE will not be held responsible for value or replacement of Customer provided material / hardware, in the event of attrition and or loss due to other than negligence on the part of AVATAR MACHINE.

### **Claims**

All products damaged during shipment and all claims relating thereto must be made with the freight carrier in accordance with such carrier's policies and procedures. Claims for products damaged during shipment are not covered under the warranty provision stated herein.

### **Warranties**

AVATAR MACHINE's sole warranty is against defects in materials and workmanship for (1) year after date of sale of product. The foregoing warranty is exclusive, and in lieu of all other warranties (whether written, oral or implied). A no charge repair / replacement will be made on any product manufactured by AVATAR MACHINE which upon examination by AVATAR MACHINE appears to be defective, provided it is returned to AVATAR MACHINE with prior AVATAR MACHINE approval, transportation prepaid, within one (1) year of date of sale. AVATAR MACHINE will pay no Purchaser handling fees, processing fees or penalties associated with returned or alleged defective products.

### **Company's Right To Cure**

If products or services are tendered which do not fully comply with the provisions of this Agreement, and those products or services are rejected by Purchaser, AVATAR MACHINE will have the right to cure within a reasonable time after notice thereof by substituting a conforming tender whether or not the time for performance has passed. Any rejection of products or services by Purchaser must be within sixty (60) days from date of shipment.

### **Title and Risk of Loss**

All product sales with destinations to Canada, Mexico, or the U.S. shall be made F.O.B. AVATAR MACHINE's facility and shall be invoiced to and shall become the property of Purchaser upon tender of delivery thereof to the carrier. Purchaser shall have the right to specify the method of transportation for the products and the common carrier to be used. Absent such specification, AVATAR MACHINE shall ship the products by a reliable common carrier of its own selection in order to meet the delivery schedule and invoice Purchaser for all applicable charges associated with such shipment. Title and risk of loss or damage to products will pass to Purchaser upon tender of delivery of such to carrier at AVATAR MACHINE.

### **Taxes**

The price of products or services does not include any present or future foreign, federal, state, or local property, license, privilege, sales, use, excise, value added, gross receipts or other like taxes or assessments. Such amounts will be itemized separately to Purchaser, who will make prompt payment to AVATAR MACHINE. AVATAR MACHINE will accept valid exemption documentation for such from Purchaser, if applicable.

### **Deliveries and Delays**

Delivery dates are approximate. AVATAR MACHINE will use reasonable efforts to deliver the products or services on or before the estimated delivery date and will notify Purchaser if the estimated delivery dates cannot be honored and will deliver the products or services as soon as practicable thereafter. In no event will AVATAR MACHINE be liable for any damages or expenses caused by delays in delivery times and will pay no penalties for late deliveries.

### **Force Majeure**

AVATAR MACHINE will not be liable for delays in delivery or failure to manufacture or deliver (a) due to causes beyond its reasonable control; (b) due to acts of God, acts of Purchaser, acts of civil or military authority, priorities, fires, strikes, floods, epidemics, quarantine restrictions, war, riot, delays in transportation or car shortages; (c) due to uncontrolled inability to obtain necessary labor, materials, components or manufacturing facilities; or (d) due to any other commercial impracticability. Any such delays will affect a corresponding extension of AVATAR MACHINE's performance dates.

### **Delay or Cancellation**

An order placed with and accepted by AVATAR MACHINE cannot be delayed, canceled, suspended, or extended except with AVATAR MACHINE's written consent and upon written terms accepted by AVATAR MACHINE that will reimburse AVATAR MACHINE for and indemnify AVATAR MACHINE against loss and provide AVATAR MACHINE with an acceptable profit for its materials, time, labor, services, use of facilities and otherwise. Purchaser will be obligated to accept any goods shipped, tendered for delivery or delivered by AVATAR MACHINE pursuant to the order prior to any agreed delay, cancellation, suspension or

extension of the order. Any attempt by Purchaser to unilaterally revoke, delay or suspend acceptance for any reason whatever after it has agreed to delivery of or accepted any shipment shall constitute a breach of this Agreement. For purposes of this paragraph, acceptance shall be any waiver of inspection, use or possession of goods, payment of the invoice, or any indication of exclusive control exercised by Purchaser.

**Termination for Convenience**

AVATAR MACHINE may terminate performance of work under this Contract / Purchase Order in whole or, from time to time in part if AVATAR MACHINE determines a termination is in the best interest of AVATAR MACHINE.

**Disputes**

The parties agree that before, and as a condition precedent to, the litigation of any legal action or proceeding, all claims, controversies, and disputes (Disputes) arising out of or in relation to the performance, interpretation, application, or enforcement of this order, including without limitation any breach hereof, the following process must be completed. In the event of a Dispute, the parties agree that their project representatives familiar with the issue will schedule a meeting (by telephone or in person) to discuss the Dispute and to attempt in good faith to resolve it. If after ten (10 days), the matter is not resolved, then as promptly as practicable an executive officer of Buyer and an executive officer of Seller shall meet (by telephone or in person) to discuss and attempt in good faith to resolve the Dispute. If after such discussions the Dispute is not resolved the parties can pursue any available legal remedy, action, or proceeding. Each off the parties agrees that all actions, suits or proceedings arising out of or based upon this order or the subject matter hereof shall be brought and maintained exclusively in the state or federal courts located in the State of California. In the event AVATAR MACHINE shall initiate litigation against Purchaser for any reason in connection with this Agreement, AVATAR MACHINE shall be entitled to recover from Purchaser and Purchaser agrees to pay all costs related to such litigation as well as all attorneys' fees incurred by AVATAR MACHINE in connection therewith in addition to all other rights and remedies it might have.

**Entire Agreement**

This Agreement contains the entire and only agreement between the parties hereto relating to the subject matter hereof, and any document, representation, affirmation of fact and course of prior dealings, promise or condition in connection therewith or usage of the trade not specifically incorporated herein will not be binding on either party.