

# TV In A Card, LLC – TERMS & CONDITIONS

## 1. APPLICATION OF TERMS

1.1 The Customer agrees to purchase the goods (Products) to be supplied by TV in a Card, LLC (TV in a Card) in accordance with these Terms and Conditions (Terms). These Terms shall apply to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document, which is not mutually agreed in writing).

1.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of these Terms simply as a result of such document being referred to in these Terms.

1.3 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of TV in a Card which is not set out in these Terms. Nothing in these Terms shall exclude or limit TV in a Card's liability for fraudulent misrepresentation.

1.4 Each order or acceptance of an estimate for Products by the Customer from TV in a Card shall be deemed to be an offer by the Customer to buy the Products subject to these Terms. All reference to "days" shall imply business days.

1.5 No order placed by the Customer shall be deemed to be accepted by TV in a Card until a written acknowledgement of order is issued by TV in a Card (Order Confirmation) or (if earlier) TV in a Card delivers the Products to the Customer.

1.6 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.

1.7 Any estimate is given on the basis that no agreement shall come into existence until TV in a Card delivers an Order Confirmation to the Customer. Any estimate is valid for a period of thirty (30) days only from its date, provided that TV in a Card has not previously withdrawn it.

## 2. DESCRIPTION

2.1 The quantity and description of the Products shall be as set out in TV in a Card's estimate or Order Confirmation.

2.2 All samples, drawings, descriptive matter, specifications and advertising issued by TV in a Card and any descriptions or illustrations contained in TV in a Card's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of these Terms and this is not a sale by sample.

## 3. ORDERS

3.1 TV in a Card shall use its commercially reasonable endeavors to supply Products in accordance with the Customer's Orders.

3.2 Each Order shall (a) be given in writing or, if given orally, shall be confirmed in writing as the Order Confirmation within 2 [two] days; (b) specify the type and quantity of Products ordered; and (c) unless the parties agree that the Customer may specify the date and location after placing the Order, specify the estimated date by which the Order is to be delivered (Delivery Date), and the delivery location (Delivery Location). If the Delivery Date and/or Delivery Location are to be specified after the placing of an Order, the Customer shall give TV in a Card reasonable advance notice of the relevant information.

3.3 TV in a Card shall assign an Order Number to each Order received from the Customer and notify such Order Numbers to the Customer. Each party shall use the relevant Order Number in all subsequent correspondence relating to the Order.

3.4 The Customer may within five (5) days of placing an Order change or cancel an Order by written notice to TV in a Card. If the Customer cancels an Order, its liability to TV in a Card shall be limited to payment to TV in a Card of an amount equal to 25% of the full Order amount (before shipping costs). If the Customer changes an Order for any reason other than an error or oversight by TV in a Card, TV in a Card shall inform the Customer whether it is willing or able to agree to the change and, if so, what the impact will be on the Price and Delivery Date. The Customer shall within three (3) days of such notification inform TV in a Card if these changes are accepted and, if so, the Price and Delivery Date shall be so adjusted by TV in a Card. Until TV in a Card receives such notification from the Customer, no changes will be effected. A request to reduce the quantity of Products ordered shall not result in a price reduction unless otherwise agreed in writing by TV in a Card.

## 4. DELIVERY

4.1 Delivery of the Products shall take place typically within three (3) days of the estimated Delivery Date at a Delivery Location, which shall be agreed between the parties. Delivery of an Order shall be complete on its arrival at the Delivery Location.

4.2 Where appropriate, the Customer shall take delivery of the Products within five (5) days of TV in a Card giving it notice that the Products are ready for delivery.

4.3 Each Order shall be accompanied by a delivery note (or packing slip) from TV in a Card showing the Order Number, the date of the Order, the type and quantity of Products included in the Order, including the code numbers of the Products, and, in the case of an Order being delivered by installments, the outstanding balance of Products remaining to be delivered.

4.4 Any dates specified by TV in a Card for delivery of the Products are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.5 Subject to the other provisions of these Terms, TV in a Card shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products, nor shall any delay entitle the Customer to terminate or rescind these Terms unless such delay exceeds [180] days.

4.6 If for any reason the Customer fails to accept delivery of any of the Products when they are ready for delivery, or TV in a Card is unable to deliver the Products on time because the Customer has not provided appropriate instructions, documents, licenses or authorizations (a) risk in the Products shall pass to the Customer; (b) the Products shall be deemed to have been delivered; and (c) TV in a Card may store the Products until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.7 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labor for loading the Products.

4.8 TV in a Card may deliver the Products by separate installments. Each separate installment shall be invoiced and paid for in accordance with the provisions of these Terms.

4.9 Each installment shall be a separate agreement and no cancellation or termination of any one agreement relating to an installment shall entitle the Customer to repudiate or cancel any other agreement or installment.

## **5. NON-DELIVERY**

5.1 The quantity of any consignment of Products as recorded by TV in a Card upon delivery from TV in a Card's place of business or such place of manufacture of the Products shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

5.2 TV in a Card shall not be liable for any non-delivery of Products unless the Customer gives written notice to TV in a Card of the non-delivery within five (5) days of the date when the Products would in the ordinary course of events have been received.

5.3 Any liability of TV in a Card for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata rate against any invoice raised for such Products.

## **6. RISK AND TITLE**

6.1 The Products are at the risk of the Customer from the time of delivery.

6.2 Product ownership shall not pass to Customer until TV in a Card has received in full (in cash or cleared funds) all sums due to it in respect of the Products, and all other sums which are or which become due to TV in a Card from Customer on any account.

6.3 Until ownership of the Products has passed to the Customer, the Customer shall (a) hold the Products on a fiduciary basis as TV in a Card's bailee; (b) store the Products (at no cost to TV in a Card) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as TV in a Card's property; (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and (d) maintain the Products in satisfactory condition and keep them insured on TV in a Card's behalf for their full price against all risks to the reasonable satisfaction of TV in a Card. On request the Customer shall produce the policy of insurance to TV in a Card.

6.4 The Customer may resell the Products before ownership has passed to it solely on the following conditions (a) any sale shall be effected in the ordinary course of the Customer's business at full market value; and (b) any such sale shall be a sale of TV in a Card's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

6.5 The Customer's right to possession of the Products shall terminate immediately if (a) the Customer enters into liquidation (whether voluntary or compulsory), or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof; or (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under these Terms or any other contract between TV in a Card and the Customer, or is unable to pay its debts or the Customer ceases to trade; or (c) the Customer encumbers or in any way charges any of the Products.

6.6 TV in a Card shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from TV in a Card.

6.7 The Customer grants TV in a Card, its agents and employees an

irrevocable license at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

6.8 Where TV in a Card is unable to determine whether any Products are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by TV in a Card to the Customer in the order in which they were invoiced to the Customer.

## **7. PRICE AND PAYMENT**

7.1 Unless otherwise agreed by TV in a Card in writing, the price for the Products shall be the price set out in TV in a Card's written Order Confirmation (Price).

7.2 The Price for the Products shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Products.

7.3 The Customer shall pay 50% of the invoiced amount immediately upon receipt of TV in a Card's Order Confirmation, and the remaining 50% upon approval of Proofing copies of the Product. Standard Proofing consists of digital (PDF) copies of the printing, if requested, and digital photographs of an assembled Product. An actual Replica Sample of the printed shell and/or assembled Product may be furnished upon request. However, additional production time and expenses will be incurred for orders of less than 500 units. If the Proofing copies and/or Replica Samples do not meet the Customer's approval, the terms established in clause 3.4 shall apply. Payment shall be made to the bank account nominated in writing by TV in a Card. Time for payment shall be of the essence as manufacture and fabrication of the Order will not commence until full payment is received.

7.4 No payment shall be deemed to have been received until TV in a Card has received cleared funds.

7.5 The Customer shall make all payments due under these Terms in a timely basis, in full and without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by TV in a Card to the Customer.

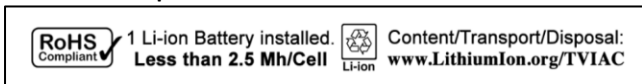
7.6 If the Customer fails to timely approve Proofing copies or Replica Samples, or fails to pay TV in a Card any sum due pursuant to these Terms, TV in a Card reserves the right, in its sole discretion, to either cancel the order and retain 25% of the Order amount, as full and agreed upon liquidated damages, or to seek specific performance from the Customer, subject to any price increases that may have occurred since the date of the Order. Further TV in a Card shall be entitled to suspend Delivery of any Orders that remain outstanding, and to cancel any other Orders, for as long as any sums due to TV in a Card remain outstanding.

## **8. CONTENT STANDARDS**

8.1 These content standards apply to any and all content material which the Customer provides to TV in a Card for inclusion in the Product.

8.2 All content must be accurate (where they state facts), be genuinely held (where they state opinions), comply with applicable law in the US and in any country from which they are posted. The Customer warrants and represents that it has the necessary rights and authority to use, publish and share all of the images, music, data and material contained in the content, and shall defend and hold TV in a Card harmless against any and all claims made against TV in a Card related to said warranties and representations. A text

file (.TXT) may be placed by TV in a Card or its manufacturers, within each product's memory, which shall provide warranty and proper recycling procedures. Customer further agrees that all content material supplied adheres to the specification and cutter guides (if provided) and that, unless otherwise agreed, **the artwork shall include the following logos, text and lithium-ion battery Declaration, related to the rechargeable lithium-ion batteries installed in our products:**



Customers who elect NOT to adequately mark Products with the lithium-ion battery Declaration, above, agree to sign a Declaration Release and Indemnification, and pay a \$25 per order "Declaration Release and Indemnification Fee," releasing TV in a Card, LLC of all liability, and agreeing to reimburse TV in a Card for all related costs incurred, stemming from the use, handling, shipment, damage, or misuse of our Products and installed power sources.

Should the Customer choose to employ iBrochure™ Technology with the order, the Customer agrees that the artwork shall include the following text, logos and images (or approved facsimile, with a unique QR Code being provided prior to printing) instead:



8.3 TV in a Card reserves the right to refuse any material which is defamatory of any person; contain any material which is obscene, offensive, hateful or inflammatory; promote sexually explicit material; promote violence; promote discrimination based on race, sex, religion, nationality, disability, or age; infringe any copyright, database right or trade mark of any other person; be likely to deceive any person; be made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence; promote any illegal activity; be threatening, abuse or invade another's Privacy;; be used to impersonate any person, or to misrepresent the Customer's identity or affiliation with any person; give the impression that they emanate from TV in a Card, if this is not the case; or advocate, promote or assist any unlawful act such as (by way of example only) copyright infringement or computer misuse.

8.4 Unless notified by Customer in writing, TV in a Card is authorized and fully released to utilize the artwork and video content of the Customer's Product, as well as the identity and logo of the Customer, within its general marketing of TV in a Card's products. Said authorized utilization shall include TV in a Card's web sites and printed and Targeted Video brochures. TV in a Card will remove references to the Customer from its web site upon request by Customer.

## 9. QUALITY AND RETURNS

9.1 Where TV in a Card is not the manufacturer of the Products, TV in a Card shall endeavor to transfer to the Customer the benefit of any warranty or guarantee given to TV in a Card.

9.2 TV in a Card warrants that (subject to the other provisions of these conditions) upon delivery, and for a period of 90 calendar days from the date of delivery, the Products shall be free from defect, with a failure tolerance of 2%. TV in a Card shall include a 2% surplus overrun of units to the Order, as a set off against said 2% failure tolerance. During TV in a Card's internal Quality Assurance testing, TV in a Card reserves the right to remove any defective units found from the Order, prior to delivery to Client, and shall notify Client of same. Only defective units in excessive of 2% of the units ordered shall be subject to warranty replacement as outlined herein.

9.3 TV in a Card shall not be liable for a breach of any of the warranties in clause 9.2 unless (a) the Customer gives written notice of the defect to TV in a Card, and, if the defect is as a result of damage in transit to the carrier, within five (5) days of the time when the Customer discovers or ought to have discovered the defect; and (b) TV in a Card is given a reasonable opportunity after receiving the notice of examining such Products and the Customer (if asked to do so by TV in a Card) returns such Products to TV in a Card's place of business at the Company's cost for the examination to take place there.

9.4 TV in a Card shall not be liable for a breach of any of the warranties in clause 9.2 if (a) the Customer makes any further use of such Products after giving such notice; or (b) the defect arises because the Customer failed to follow TV in a Card's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice; or (c) the Customer alters or repairs such Products without the written consent of TV in a Card.

9.5 Subject to clause 9.3 and clause 9.4, if any of the Products do not conform with any of the warranties in clause 9.2 TV in a Card shall at its option repair or replace such Products (or the defective part) or refund the price of such Products at the pro rata rate provided that, if TV in a Card so requests, the Customer shall, at the Company's expense, return the Products or the part of such Products which is defective to TV in a Card.

9.6 If TV in a Card complies with clause 9.5 it shall have no further liability for a breach of any of the warranties in clause 9.2 in respect of such Products.

9.7 Any Products replaced shall belong to TV in a Card and any repaired or replacement Products shall be guaranteed on these terms for the unexpired portion of the three (3) month period.

## 10. LIMITATION OF LIABILITY

10.1 Subject to clause 4, clause 5 and clause 9, the following provisions set out the entire financial liability of TV in a Card (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of (a) any breach of these Terms; (b) any use made or resale by the Customer of any of the Products, or of any product incorporating any of the Products; and (c) any representation, statement or tortious act or omission including negligence arising under or in connection with these Terms.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by Florida law, excluded from these Terms.

10.3 Nothing in these clauses excludes or limits the liability of TV in a Card (a) for death or personal injury caused by TV in a Card's negligence; or (b) for any matter which it would be illegal for TV in a Card to exclude or attempt to exclude its liability; or (c) for fraud or fraudulent misrepresentation.

10.4 Subject to clause 10.2 and 10.3 (a) TV in a Card's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms shall be limited to an amount equal to the price paid for the Order; and (b) TV in a Card shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with these Terms.

## 11. INTELLECTUAL PROPERTY RIGHTS

All patents, rights to inventions, utility models, copyright and

related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world (Intellectual Property Rights) and all other rights in the Products shall be owned by TV in a Card or its licensors, and remain vested in TV in a Card or its licensors. TV in a Card licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Products. TV in a Card and its licensors give no representation, warranty, assurance, or guarantee with respect to the infringement of any Intellectual Property Rights, any right of privacy, or any other rights of third persons in relation to the Products.

## **12. CONFIDENTIALITY**

12.1 Each party undertakes that it shall not at any time during these Terms and for a period of five (5) years after termination disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party or of any member of its Group, including information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers (Confidential Information), except as permitted by clause 12.2.

12.2 Each party may disclose the other party's Confidential Information (a) to its employees, officers, agents, consultants or subcontractors (Representatives) who need to know such information for the purposes of carrying out the party's obligations under these Terms, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 12 as though they were a party to these Terms. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and (b) as may be required by law, court order or any governmental or regulatory authority.

12.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in these Terms are granted to the other party or to be implied from these Terms. In particular, no license is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

## **13. ASSIGNMENT**

TV in a Card may assign these Terms or any part of it to any person, firm or company. The Customer shall not be entitled to assign these Terms or any part of it without the prior written consent of TV in a Card.

## **14. FORCE MAJEURE**

TV in a Card reserves the right to defer the date of delivery or to cancel these Terms or reduce the volume of the Products ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of TV in a Card including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or

delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of ninety (90) calendar days, the Customer shall be entitled to give notice in writing to TV in a Card to terminate these Terms.

## **15. COMMUNICATIONS**

15.1 All communications between the parties about these Terms shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or sent by email to such address as shall be notified by the parties to each other.

15.2 Communications shall be deemed to have been received (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or (b) if delivered by hand, on the day of delivery; or (c) if sent by fax on a working day prior to 4:00 p.m. U.S. Eastern Standard / Daylight Time, at the time of transmission and otherwise on the next working day; or (d) if sent by email, on the day of delivery.

## **16. GENERAL**

16.1 Each right or remedy of parties under these Terms is without prejudice to any other right or remedy of the parties whether under these Terms or not.

16.2 If any provision of these Terms is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of these Terms and the remainder of such provision shall continue in full force and effect.

16.3 Failure or delay by the parties in enforcing or partially enforcing any provision of these Terms shall not be construed as a waiver of any of its rights under these Terms.

16.4 The parties to these Terms do not intend that any term of these Terms shall be enforceable by any person that is not a party to these Terms.

16.5 These Terms and the documents referred to in it constitute the whole agreement and understanding of the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of these Terms.

16.6 Each party acknowledges that, in entering into these Terms, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in these Terms or the documents referred to in it.

16.7 Each party agrees that all liability for and remedies in respect of any representations are excluded except as expressly provided in these Terms.

16.8 Any variation of these Terms shall be in writing and signed by or on behalf of the parties.

16.9 Unless otherwise agreed in writing, the formation, existence, construction, performance, validity and all aspects of these Terms shall be governed by the laws of the State of Florida, United States of America, and the parties submit to the exclusive jurisdiction of the Florida court system.