

GENERAL TERMS AND CONDITIONS

SHEN ZHEN BROTHER OPTICAL (HK) LTD.

IMPORTANT: THESE GENERAL TERMS AND CONDITIONS ("TERMS") APPLY TO ALL OF YOUR DEALINGS WITH SHEN ZHEN BROTHER OPTICAL (HK) LTD. ("BROTHER"). PLEASE READ THE FOLLOWING TERMS CAREFULLY TO ENSURE YOU UNDERSTAND YOUR RIGHTS AND OBLIGATIONS.

A. INTRODUCTION

1. GENERAL AND INTERPRETATION

1.1 By signing a Customer Account Opening Form ("Form") in the format provided to you by BROTHER, you, as the "Customer", confirm that your dealings with BROTHER shall be governed by these Terms and that each agreement ("Contract") with BROTHER for the provision of Goods and/or Services (as defined below) on or after the date of signing the Form shall incorporate the Terms. These Terms shall apply irrespective of whether any Contract shall be written or oral and irrespective of whether a further copy of these Terms shall be supplied at the time of entering into such Contract.

1.2 The Terms shall not be amended unless a duly authorised signatory of BROTHER shall approve such amendment in writing. These Terms shall apply in addition to the terms of the Contract but to the exclusion of any other agreements, whether written or oral, between BROTHER and the Customer relating to the Goods and/or Services and, without prejudice to the generality of the foregoing, each of BROTHER and the Customer confirm that:-

1.2.1 The only representations and warranties deemed to be given by or on behalf of BROTHER in respect of the Goods and/or Services shall be as set out herein; and

1.2.2 Any terms that the Customer may attempt to impose by endorsement on or by otherwise enclosing with any documentation sent to BROTHER shall not in any way apply to amend these Terms.

1.3 In the event of any conflict between the Contract and these Terms, then these Terms shall take precedence, save where the Contract shall expressly provide that it is amending provisions hereof. Headings are added for convenience purposes only and shall not have any legal effect; but all other terms herein, including the introduction to these Terms, shall form part of the Contract. Words referred to in the singular shall include the plural and vice versa. Any word or words defined anywhere in these Terms shall apply for all purposes throughout the Terms.

1.4 Sections A and E of the Terms shall apply to all types of Contracts between the Customer and BROTHER. In addition to those Sections, Section B shall apply to all Contracts for the purchase of Goods, Section C shall apply to all Contracts

for the consignment of Goods and Section D shall apply to all Contracts for Services, in each case between BROTHER and the Customer.

2. ORDERS AND CONTRACTS

- 2.1 Each Contract between BROTHER and the Customer shall be separate and distinct from any other Contract between the parties and the failure of BROTHER to perform any of its obligations under any Contract shall not entitle the Customer to repudiate or withhold any monies due pursuant to any other Contract. In the event that BROTHER shall deliver part only of the Goods and/or Services pursuant to any Contract, the Customer shall be obliged to pay the portion of the Price or Service Price (as the case may be) relating to the Goods and/or Services so delivered. Any failure or delay by BROTHER to insist upon the strict performance of any provision of any Contract (including any of the Terms) shall not constitute a waiver of BROTHER's rights in respect of such Contract or any other Contract with the Customer.
- 2.2 In the event that there shall have been an agreement between BROTHER and the Customer for the Customer to purchase a certain quantity of Goods and/or Services ("Agreed Quantity") during any period of time, and the amount of Goods and/or Services actually purchased by such Customer pursuant to Contracts during such period shall be less than the Agreed Quantity, then BROTHER shall have the right upon demand to require that the Customer compensate it for an amount equivalent to BROTHER's loss arising from the non-sale of the balance of the Agreed Quantity not so purchased.
- 2.3 If the Customer is a corporation, it confirms to BROTHER that it is duly incorporated and validly existing under the laws of its state of incorporation; that it has passed all necessary resolutions to enable it to perform its duties pursuant to each Contract ; and that BROTHER shall be entitled to enter into Contracts both orally and in writing with persons purportedly acting on behalf of the Customer without BROTHER having to enquire further as to whether such persons have received the actual authority from the Customer.
- 2.4 Irrespective of whether the Contract is for the purchase of Goods, consignment of Goods or for Services the Customer is not and shall not represent itself as being an agent, partner, employee or representative of BROTHER and shall not hold itself out as such or as having any power or authority to incur any obligation of any nature express or implied on behalf of BROTHER and nothing in the Contract shall operate so as to constitute the Customer as agent, partner or employee or representative of BROTHER.

B. SALES OF GOODS

3. TERMS OF SHIPMENT AND DELIVERY

- 3.1 Any written or oral request for the delivery of items of goods, products and/or equipment including the supply or sale of replacement or spare parts (together "Goods") received and accepted by BROTHER from the Customer shall amount to a Contract for BROTHER to deliver the Goods to the Customer and for the



Customer to pay the Price (as is defined below) for the Goods in each case in accordance with this Clause 3.

- 3.2 BROTHER shall use its best endeavours to make delivery of the Goods to the relevant point of delivery by the date agreed between BROTHER and the Customer for each Contract ("Agreed Date"). However, BROTHER shall not be liable for any delay in the delivery of any Goods after the Agreed Date for any reason whatsoever provided that, if any Goods shall be delayed for more than ninety (90) days after the Agreed Date, then the Customer shall, at any time thereafter, but prior to the delivery of such Goods, be entitled to cancel the Contract for such Goods without any further liability or obligation accruing to either party save as set out at sub-clause 17.1.
- 3.3 In the remaining provisions of these Terms, the "Destination" shall mean such place as is specified in the Contract as the relevant point of delivery for the Goods to the Customer; and "Delivery Date" shall be the later of the Agreed Date and any date upon which the Goods are actually delivered to the Destination pursuant to any Contract.
- 3.4 For CIF Contracts (which expression shall include all Contracts stated to be "CIF", "C & F" or for which the Price shall include all freight charges relating to the Goods), BROTHER shall be responsible for procuring the shipment of the Goods to the Destination.
- 3.5 For FOB contracts (which expression shall include all Contracts stated to be "FOB" or for which the Price does not include any freight charges relating to the Goods) the Destination shall be deemed to be the relevant port from which shipment is made and BROTHER shall not be responsible for providing any services relating to, or for any delay or failure in the shipping of the Goods, each of which shall be the responsibility of the Customer.
- 3.6 Save where a Contract is cancelled by the Customer pursuant to sub-clause 3.2, the Customer shall take delivery of the Goods at the relevant Destination and, if it shall fail to do so, then BROTHER may, without prejudice to any other right or remedy available to it:-
 - 3.6.1 store the Goods until actual delivery and BROTHER may charge the Customer for the reasonable costs of storage for such Goods (including, if it shall so elect, any insurance costs); and/or
 - 3.6.2 sell the Goods for such price as it shall think fit ("Sale Price"), in which case, in establishing the extent of any responsibility of either party to the other for the difference between the Sale Price and the Price, BROTHER shall in any event be compensated for all reasonable storage and selling expenses that it shall have incurred in respect of such Goods.
- 3.7 Unless otherwise specified in the Contract, it shall be the responsibility of the Customer to obtain any certificate, license, clearance or permit required for the purchase of the Goods pursuant to the Contract and the delivery of the same to the Destination together with the removal of the same by the Customer to their



ultimate destination ("Final Port"). BROTHER shall not be responsible for the failure or refusal of any authority or shipping company, intermediary or agent, whether before or after the Delivery Date, to issue any export or import or other certificates, licenses, clearances or permits as may from time to time be required to deliver the Goods to the Destination and/or the Final Port. All taxes, duties and excise charges payable in respect of the shipment and delivery of the Goods to the Destination and/or the Final Port shall be for the account of the Customer.

- 3.8 Without prejudice to Clause 8 below, the Customer agrees that where importation of the Goods into the Territory occurs and in the event the Goods are re-sold by it to consumers outside the Territory it has full responsibility to comply with all relevant customs and other laws and regulations and for payment of any taxes and import and export dues. Failure to comply with this Clause shall constitute a breach entitling BROTHER by notice in writing to the Customer to terminate the Contract. Notwithstanding termination of the Contract by BROTHER pursuant to this Clause, the Customer shall remain liable for the Price and at the discretion of BROTHER to take delivery in the Territory of any of the Goods already manufactured or in the manufacturing process including Goods for which raw materials have been appropriated to the Contract.
- 3.9 If BROTHER becomes aware that the Customer has contravened any customs or other laws and regulations relevant to the shipment or re-shipment of the Goods, without prejudice to any other remedies under the Contract, BROTHER shall have the right to terminate the Contract and enter into a sale contract with the Customer's customer. The Customer undertakes to provide BROTHER with full details of the identity and contact particulars of each of its customers in respect of the balance of the Goods under the Contract for such purposes. Notwithstanding termination of the Contract pursuant to this Clause, the Customer shall remain liable for the Price and at the discretion of BROTHER to take delivery in the Territory of any of the Goods already manufactured or in the manufacturing process including Goods for which raw materials have been appropriated to the Contract.
- 3.10 Without prejudice to any other rights or remedies of BROTHER herein, the Customer shall indemnify and keep BROTHER indemnified from and against any loss or damage whatsoever suffered or incurred by BROTHER by reason of or resulting from the breach of any of the provisions of this Clause 3.
- 3.11 In the event that the Goods are off-loaded by the relevant carrier at a place other than the Destination or the Final Port pursuant to a power of the relevant carrier to do so or that the Goods are otherwise held by the carrier for any reason or as a result of any occurrence beyond the reasonable control of BROTHER thereby preventing the Goods from being discharged at the Destination and/or Final Port, all costs, charges and/or expenses including additional freight, storage and insurance costs arising directly or indirectly by reason of such off-loading or the retention or in transporting the Goods from the place of off-loading to the Destination or the Final Port shall be for the account of the Customer.



- 3.12 BROTHER shall only be responsible for any loss or damage to the Goods on or before delivery to the Destination. Such responsibility shall, however, only apply to the extent set out at Clause 16.

4. PRICE FOR GOODS

- 4.1 The "Price" shall be the price of the Goods stipulated in the Contract. No discount on any Price shall apply unless it is incorporated in writing in any Contract. In the event that the Goods are required to be manufactured or altered in accordance with the specifications of the Customer, then BROTHER shall have the right to adjust the Price accordingly. The Price shall be exclusive of any value added or sales tax, which tax shall also be for the account of the Customer.
- 4.2 BROTHER may, by giving written notice to the Customer prior to the Delivery Date, increase the Price to reflect the increased cost to BROTHER due to factors occurring after the making of the Contract which are beyond the reasonable control of BROTHER (including, without limitation, the cost of raw materials, foreign exchange fluctuations, and increases in taxes and duties and the cost of labour, materials and other manufacturing costs). If such increase in the Price shall represent an increase of more than 10%, then the Customer shall have seven days within which to notify BROTHER of its objection to such increase in writing and:-
- 4.2.1 if it shall fail to do so, the Customer shall be deemed to have agreed to pay the Price so increased; and
- 4.2.2 if it shall do so, then the Contract for such Goods shall be cancelled without any further liability or obligation accruing to either party save as is set out at sub-clause 17.1.
- 4.3 The Price shall be payable in full upon the "Due Date" which shall mean the final day of the credit period specified in the relevant Contract (or in the invoice to which such Contract relates) which credit period shall commence on :- (i) the date upon which the shipping documents and the invoice for such Goods are presented, or, (ii) if BROTHER is unable, as a result of a lack of or unclear instructions from the Customer, to ship the Goods when ready, then the date upon which the invoice for the Goods and notification from BROTHER that the Goods are ready for despatch are delivered to the Customer, or (iii) in the event of local deliveries not involving shipment, the date of the invoice for the Goods. The Due Date shall only be extended by the agreement of BROTHER in writing and, for the purposes of any Due Date, time shall be of the essence. Notwithstanding the aforesaid, if it has been agreed that the Price or any part thereof shall become due and payable after the installation of the Goods has been completed, then the Due Date shall be the earlier of the installation date and one month from the Delivery Date notwithstanding that the installation of the Goods may be completed thereafter. Notwithstanding the above provisions of this sub-clause 4.3, in any event the Price or any part thereof then outstanding shall be paid forthwith once the Customer commences use of the Goods after or

during installation. Payment shall be in the same currency as is stipulated for the Price under the Contract.

- 4.4 Any discount from the Price or commission, bonus, rebate, concession, incentive or other benefit whatsoever (“Benefits”) offered by BROTHER to the Customer must be confirmed in writing by BROTHER to be effective. In the event that the Customer fails to pay the Price or any part thereof on the Due Date, BROTHER reserves the right to forfeit or defer any Benefits or set them off against sums owing by the Customer to BROTHER.

5. INSTALLATION AND ACCEPTANCE

- 5.1 If the Customer shall require installation of the Goods by BROTHER then such installation shall be at the expense of the Customer. Unless otherwise agreed in writing by BROTHER, the Customer shall indemnify BROTHER, its representatives, workmen and agents from and against all losses, damages, expenses and injuries sustained to their respective person or property during the installation of the Goods pursuant to this sub-clause 5.1.
- 5.2 The Customer shall inspect the Goods and in the case of (a) Goods that are consumable, the Customer shall, within forty eight hours of the Delivery Date or (b) any other Goods within 14 days of the Delivery Date or (if later) the date of installation of the Goods, notify BROTHER in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or sample. If the Customer shall fail to deliver a notice in accordance with this sub-clause 5.2 within the requisite time period, then the Goods shall be conclusively presumed to be in accordance with the Contract and free from any defect or damage and the Customer shall be deemed to have accepted the Goods.

6. TITLE TO GOODS

- 6.1 If the Price under any Contract is not paid in full on or before the Delivery Date, the Customer shall insure and keep insured the Goods for their full value under a comprehensive policy with a reputable insurance company in the name of BROTHER from the Delivery Date of such Goods until the Price has been paid in full and will forthwith lodge with BROTHER such policy of insurance.
- 6.2 Without prejudice to sub-clause 6.1, the Goods shall be at the Customer's risk as from the Delivery Date and thereafter the Customer shall obtain and maintain insurance for the Goods to such extent against such risks as may reasonably be anticipated in respect of the same (including, but not limited, to damage by fire or flooding and the theft of the Goods). In spite of delivery having been made, unless BROTHER elects otherwise however, title in the Goods shall not pass from BROTHER to the Customer until the Customer shall have paid both the Price in full and all other sums whatsoever then due from the Customer to BROTHER pursuant to any Contract.
- 6.3 Until the title to the Goods passes to the Customer in accordance with sub-clause 6.2, the Customer shall hold the Goods and each of them on a fiduciary basis as bailee for BROTHER. The Customer shall store the Goods (at no cost to

BROTHER) separately from all other Goods in its possession and mark them in such a way that they are clearly identified as BROTHER's property. For so long as this sub-clause 6.3 shall apply, the Customer shall not sell, mortgage or pledge the Goods or any of them and shall maintain the Goods in good repair and condition and allow BROTHER at all times to inspect the Goods to ensure that the terms of this sub-clause are complied with.

- 6.4 BROTHER shall be entitled to recover the Price under any Contract notwithstanding that property in any of the relevant Goods has not parted from BROTHER. Upon a "Customer's Default" (as is defined below) and without prejudice to its other remedies herein, BROTHER shall have the right to serve a notice upon the Customer specifying the Goods in respect of which the Price shall not have been paid and, upon the serving of such notice, the Customer shall hold all Goods specified in such notice as available for repossession by BROTHER or its agents; and BROTHER or its agents may, without further notice, retake possession thereof and may also, for that purpose, enter upon any land or buildings on or in which the Goods or any part thereof is or are believed by BROTHER or its agents to be situated and, if such Goods or any part thereof are affixed to land or buildings, BROTHER or its agents shall be entitled to sever the same therefrom and to remove the Goods so severed and the Customer shall be responsible for all damages caused to such land or buildings by such removal.

7. INTELLECTUAL PROPERTY

- 7.1 For the purposes of this Clause "Rights" means :-

7.1.1 any patent, copyright, registered design or unregistered design right and any application for any of the foregoing, any right in respect of confidential information and any other intellectual property right

7.1.2 any methods, techniques, discoveries, inventions (whether patentable or not), formula, formulation, technical and product specifications, equipment descriptions, plans, layouts, drawings, computer programs, assembly, quality control, installation and operating procedures, operating manuals, technical and marketing information

7.1.3 registered trade marks

- 7.2 The Customer shall have no Rights applicable to the Goods and without prejudice to the generality of the foregoing shall not use the Rights on or in relation to the Goods.

- 7.3 BROTHER does not warrant that the sale or use of any of the Goods will not infringe any Rights of any third party. BROTHER does not hold itself out to be the registered proprietor, registered user or otherwise authorised to use any such Rights. The Customer warrants that, once the Goods are in its possession or under its control, then it shall only use the same in the ordinary and lawful course of its business and if it shall otherwise use the same and any third party shall make a claim against BROTHER for any infringement of any Rights or

for passing off then the Customer shall indemnify BROTHER against all losses, damages, costs and legal expenses incurred by BROTHER in relation to any such claim.

8. RESELLING RESTRICTIONS

- 8.1 The Customer acknowledges that BROTHER sells the same product as the Goods in and outside the territory to which such Goods are to be supplied pursuant to the Contract ("Territory"); that BROTHER acquires such products from its supplier under certain restrictions including the price for which it may be sold in the Territory; that such prices are fixed in accordance with a strict pricing system which is established according to BROTHER's international marketing program and/or restrictions imposed on BROTHER by its suppliers; that the Price may be lower than the sale prices for the same Goods in areas outside of the Territory; and that it would be detrimental to the interests of BROTHER if the same were re-sold or re-exported or re-shipped or otherwise made available outside of the Territory.
- 8.2 In consideration of the terms of sub-clause 8.1, the Customer confirms, represents, warrants and undertakes that, without the written consent of BROTHER, the Customer shall only deal with the Goods by directly reselling to consumers in the Territory and not otherwise and shall not directly or indirectly by itself, its servants or agents or otherwise howsoever re-sell, re-export, re-ship or procure to re-sell, re-export, re-ship any of the Goods to any party in any place outside of the Territory or otherwise for use outside of the Territory (such activities being referred to as "Prohibited Activities").
- 8.3 The Customer shall take all necessary action at its own cost to ensure that any party purchasing or acquiring the Goods from the Customer ("Sub-Customer") shall not directly or indirectly by its servants or agents or otherwise howsoever carry out any of the Prohibited Activities and the Customer shall procure that each and every Sub-Customer shall give a valid and enforceable undertaking in writing to the Customer in such terms.
- 8.4 Without prejudice to any other rights or remedies of BROTHER herein, the Customer shall indemnify and keep indemnified BROTHER from and against any loss or damage whatsoever suffered or incurred by BROTHER by reason of or resulting from the breach of any of the representations or warranties given by the Customer under this Clause 8 and the Customer shall account to BROTHER for all profits which it may directly or indirectly make as a reason of or resulting from the breach of any of the representations or warranties made or given by it herein.

C. CONSIGNMENT

- 9.1 If BROTHER has agreed to supply Goods that are not consumable as specified in the Contract (being referred to in this Clause 9 as "Consignment Goods") by way of consignment, then the terms of this Clause 9 shall apply. The Consignment Goods shall be placed with the Customer during the period

specified in the Contract (“Consignment Period”) for which purpose, the Customer agrees and understands as follows:-

- 9.1.1 that the terms of sub-clause 5.1 hereof shall apply to the installation and acceptance of the Consignment Goods;
 - 9.1.2 that the Consignment Goods shall be held by it as if it were a Customer who shall not have to pay a full value for the same pursuant to Clause 6 hereof;
 - 9.1.3 that no warranty shall be given by BROTHER in respect of the intellectual property to the Consignment Goods which shall be held by the Customer on the terms set out in Clause 7.3 hereof;
 - 9.1.4 that the Customer shall be subject to the re-selling restrictions set out in Clause 8 hereof; and
 - 9.1.5 that all of the above matters shall survive the expiry of the Consignment Period.
- 9.2 During the Consignment Period, the Customer shall only be entitled to receive Services for the Consignment Goods as BROTHER may agree to from time to time.
- 9.3 In the event that, at any time during the Consignment Period, BROTHER wishes to replace the Consignment Goods or supply additional Goods to the Customer on consignment, then the Customer shall agree to the same and such additional or replacement Goods shall be held on the terms set out this Clause 9. Save as where specified in the Contract, no rental or leasing charges will apply to the Consignment Goods supplied on consignment provided, however, that the Customer shall be responsible for all costs incurred in the installation of the Consignment Goods.
- 9.4 BROTHER shall provide such training as it deems appropriate to personnel of the Customer in the operation of the Consignment Goods subject to the Customer paying the agreed costs for the same. If such training involves overseas travel, then the Customer shall be responsible for their personnel’s own accommodation and travelling and other expenses in connection with the same.
- 9.5 The Customer shall return the Consignment Goods at the completion of the Consignment Period in its original condition except only for ordinary fair wear and tear resulting from the proper use thereof. In the event that there shall be any delay in returning the Consignment Goods then the same shall amount to a Customer Default to which, inter alia, sub-clause 6.4 hereof shall apply and the Customer shall fully and sufficiently indemnify BROTHER in respect of any losses resulting from the consignment of the Consignment Goods herein.

D. SERVICES

10. NATURE AND TERM OF SERVICES

- 10.1 The services to be provided by BROTHER pursuant to any Contract shall be in the format of the plan offered by BROTHER and selected by the Customer ("Plan") which shall be specified in the Contract. The terms of the Plan shall, together with these Terms, form part of the Contract.
- 10.2 For the purposes of these Terms, unless otherwise provided for in writing in the Contract, "Services" shall mean and only comprise those services and the spare parts and replacements to be specified in the Plan but shall not extend to any services or parts excluded pursuant to Clause 13 or otherwise arising howsoever.
- 10.3 The obligations of BROTHER to provide the Services shall apply for such a period as may be specified in the Plan (the relevant period being referred to herein as "Contract Period") unless earlier terminated by BROTHER pursuant to a Customer's Default as defined in sub-clause 17.1. The Customer understands that, in entering into the Contract, BROTHER is making the Services available to it for the Contract Period and the Customer will be liable to pay the Service Price notwithstanding the fact that no Services were required of BROTHER by the Customer during the continuance of the Contract Period. BROTHER shall only agree to any early termination of the Contract Period by way of a letter of release duly executed on behalf of BROTHER.

11. SERVICES

- 11.1 During the Contract Period, to the extent that maintenance and repairs are not otherwise provided for in the relevant Plan, BROTHER shall provide the Customer with the following services namely:-
- 11.1.1 routine maintenance at such intervals as BROTHER may reasonably determine to be necessary in order to keep the relevant equipment to which the Contract relates ("Equipment") in good working order to include inspection, adjustment and testing of the Equipment and inspection of all expendables, chemicals and consumable items that have signs of deterioration or are otherwise not in good condition; or
- 11.1.2 the repair of any defect or malfunction of the Equipment which is discovered by BROTHER's representatives during the course of routine maintenance checks or is reported by the Customer from time to time.
- 11.2 Save where otherwise specified in the Plan, routine maintenance of the Equipment shall be carried out by one of BROTHER's authorised representatives attending at the location where such Equipment is situated ("Site") at such time during the hours of 9:00 a.m. to 6:00 p.m. Monday to Friday (except on any public holidays) as may be agreed in advance between BROTHER and the Customer from time to time. BROTHER shall use its reasonable endeavours to deal with any request pursuant to sub-clause 11.1.2 but shall not be responsible for failing to respond within any time period specified in the Plan.

- 11.3 If BROTHER's representative discovers a defect in or malfunction of the Equipment in the course of routine maintenance, BROTHER's representative will use all reasonable endeavours to repair it at the Site but, if this is not reasonably practicable, then BROTHER's representative will seek to make suitable arrangements for either a further visit to the Site during normal working hours for the repair of the same or, if it is not reasonably practicable for the defect or malfunction to be repaired otherwise, the removal of the Equipment from the Site for the purposes of repair.
- 11.4 All reports of defects or malfunctions in the Equipment must be made by the Customer within one month of the same coming to the Customer's attention.

12. SPARE PARTS AND REPLACEMENTS

- 12.1 In addition to any spare parts and replacements as are covered by the Plan, BROTHER shall use all reasonable endeavours to supply minor spare parts and replacement components required to maintain the Equipment in good working order during the Contract Period and no extra charge will be made for these supplies. If, however, the Equipment is damaged otherwise than by fair wear and tear, or if the Equipment requires major spare parts or replacement components BROTHER reserves the right to charge the Customer for supplying the same. BROTHER's decision as to whether the Equipment requires (and what constitutes) minor or major spare parts or replacement components shall be final and binding on the Customer.
- 12.2 All spare parts and replacement components supplied by BROTHER herein shall become part of the Equipment and any part or component removed from it shall, if damaged, become BROTHER's property unless otherwise specified in the Plan or agreed in writing by BROTHER.

13. EXCLUDED SERVICES

- 13.1 The Services shall not extend to any design defect in the Equipment or any defect or malfunction which is due to faulty materials or workmanship in manufacture or which, in BROTHER's sole opinion, has arisen as a result of:-
- 13.1.1 electrical matters external to the Equipment;
 - 13.1.2 transportation or relocation of the Equipment not performed by or on behalf of BROTHER;
 - 13.1.3 any error or omission relating to the operation of the Equipment;
 - 13.1.4 any modification, adjustment or repair to the Equipment made by third parties without the written consent of BROTHER;
 - 13.1.5 the subjection of the Equipment by the Customer to unusual physical or electrical stress, the neglect or misuse of the Equipment or any failure

or fluctuation of electrical power, air conditioning, humidity or water control, air or water contamination or any other cause except fair wear and tear.

- 13.2 If BROTHER determines, as a result of its investigations, that any defect in or malfunction of the Equipment is the result of any of the matters referred to at sub-clause 13.1, the Customer shall be liable for all costs incurred by BROTHER in investigating the same and determining its cause.
- 13.3 If any part of the Equipment can no longer be maintained in good working order by the provision of replacement spare parts or the whole of the Equipment is damaged beyond economic repair otherwise than through BROTHER's fault (as to whether either of which events has occurred, BROTHER's decision shall be final and binding on the Customer), BROTHER reserves the right to terminate the Contract forthwith by giving written notice to the Customer in respect of the whole or any part of the Equipment which can no longer be maintained, in which case, BROTHER shall repay to the Customer a fair proportion of the Service Price which shall have been paid in advance by the Customer subject to BROTHER's rights pursuant to sub-clause 17.1.
- 13.4 Except as expressly provided for in the Plan, BROTHER shall have no obligation to provide any Services to the Customer outside of the working hours provided for at sub-clause 11.2.

14. CUSTOMER'S OBLIGATIONS

- 14.1 The Customer shall:-
- 14.1.1 at all times keep the Equipment in the environmental conditions recommended by the manufacturer of the Equipment;
- 14.1.2 use the Equipment only in accordance with such instructions and recommendations relating to the care and operation of the Equipment as may be issued by the manufacturer of the Equipment or as may from time to time be advised in writing by BROTHER; and
- 14.1.3 not allow person other than BROTHER's representatives to repair any part of the Equipment.
- 14.2 The Customer shall ensure that the BROTHER's representatives have full and free access to the Equipment and to any records of its use kept by the Customer to enable BROTHER to perform its duties herein.
- 14.3 The Customer shall provide BROTHER with such information concerning the Equipment, its application, use, location and environment as BROTHER may reasonably request to enable it to carry out its duties.
- 14.4 The Customer shall take such steps as may be necessary to ensure the safety of BROTHER's representatives, workmen and agents when visiting any premises of the Customer and shall indemnify BROTHER, its representatives, workmen

and agents from and against all losses, damages, expenses and injuries sustained to their respective persons or property during the carrying out of the Services.

15. PRICE FOR SERVICES

- 15.1 Unless otherwise agreed in writing by BROTHER, the price for Services ("Service Price") shall be payable within thirty days from the date of invoice from BROTHER for such Services, in which regard time shall be of the essence. The date that falls on the thirtieth day from the date of the invoice is referred to herein (insofar as it relates to Services) as "Due Date".
- 15.2 If BROTHER's services are requested without such request being based on any reasonable justification or by reason of any defect in or malfunction of the Equipment due to causes not covered pursuant to the Services, the Customer shall be liable to pay BROTHER standard charges from time to time in force for such Services. Without prejudice to the generality of the foregoing, the Customer shall be responsible for the costs of all matters and expenses relating to the Equipment that are not specifically covered by the Plan.

E. GENERAL

16. LIABILITY OF BROTHER

- 16.1 If the Goods or Services delivered pursuant to any Contract are not in accordance with the terms of such Contract for any reason, then the Customer's sole remedy shall be limited to BROTHER making good any shortage by replacing such Goods or by undertaking such Services or, if BROTHER shall elect, by refunding all (or, a proportion, as the case may be) of the Price or Service Price as relates to such Goods or Services. BROTHER's liability to the Customer, whether for breach of Contract or otherwise, shall not, in any event, exceed the Price or Service Price pursuant to the relevant Contract and BROTHER shall be under no liability for any direct or indirect loss or expense suffered by the Customer or any liability to any third party incurred by the Customer and in any way resulting from such breach of Contract. Any breach by BROTHER under any Contract will not give the Customer any rights to terminate or withhold any monies due pursuant to any other Contract.
- 16.2 BROTHER also has the right, as a condition of any Contract, to require at any time that the Customer provide a guarantor to the satisfaction of BROTHER to secure the Customer's obligations therein. In the event that such guarantor shall at any time, in the sole opinion of BROTHER, cease to be suitable for such purposes then BROTHER can require that an alternative guarantor be provided to its satisfaction, and pending the securing of such guarantor, BROTHER shall have no requirement to perform its obligations under any Contract with such Customer.
- 16.3 In cases where BROTHER has supplied the Equipment (but not otherwise), BROTHER warrants that the Equipment is fit for the purpose for which it was manufactured and will work properly under normal conditions with competent

operators working under proper supervision. Such warranty shall apply for the Warranty Period and only to the extent set out in sub-clause 16.1. For the purposes of this sub-clause 16.3 "Warranty Period" shall mean such period as is specified as such in the Contract or, in the absence of such specification, such period as expires on the later of six months from the date of installation or seven months from the Delivery Date. Save as specified in sub-clauses 16.1 and 16.3, all warranties and conditions whether implied by statute or otherwise are excluded from each Contract provided that nothing in any Contract shall either restrict or exclude liability for death or personal injury caused by the negligence of BROTHER or its servants or agents or affect the statutory rights of any Customer who shall deal as a consumer.

17. CONDITIONS AND DEFAULT

- 17.1 BROTHER has the right, as a condition of any Contract, to require the payment by the Customer of some or all of the Price or Service Price, as the case may be (such payment being referred to herein as "Deposit") prior to the delivery of the Goods or performance of Services. In the event that the Customer shall fail to pay the Deposit, BROTHER shall not have any obligation pursuant to the Contract. In the event that there shall be a cancellation of the Contract in the circumstances specified in sub-clauses 3.2 or 16.1 or if any portion of the Deposit shall remain unused after payment of the Price or Service Price then, subject to the remaining provisions of this sub-clause 17.1, the Deposit (or portion thereof) shall either be returned to the Customer or credited to the Customer's account with BROTHER, as BROTHER may elect. Notwithstanding the aforesaid, in the event that there is a "Customer Default" (as is defined below) whether in relation to the Contract pursuant to which the Deposit was paid or any other Contract between the Customer and BROTHER, then BROTHER may apply all or such amount of the Deposit (as the case may be) as in BROTHER's reasonable opinion correctly reflects the loss accruing to BROTHER as a result of such Customer Default, but without prejudice to any other right that BROTHER may have in respect of such Customer Default.
- 17.2 If the Customer fails to make payment in full for the Goods or Services (as the case may be) on the Due Date, then in addition the Customer shall be liable to pay a default fee of [USD2,000] and interest shall accrue on any outstanding sums at a rate of 2% per month from the Due Date until the date of payment.
- 17.3 If the Customer fails to make any payment for the Goods or Services in accordance with any Contract (including any breach of any security or guarantee provided in connection with any Contracts or any breach of the Customer's undertakings herein) or commits any other breach of the Contract or if any distress or execution shall be levied upon any of the Customer's goods or if the Customer offers to make arrangements with its creditors or commits any act of bankruptcy or if any petition in bankruptcy is presented against the Customer or if the Customer is unable to pay its debts as they fall due or, if being a limited company, any resolution or petition to wind up the Customer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Customer's business or

assets or if the Customer shall suffer any similar proceedings under foreign law, then any such circumstances will be known as a "Customer's Default" and all sums outstanding in respect of all Contracts between the Customer and BROTHER shall become payable immediately.

- 17.4 Upon the occurrence of a Customer's Default, BROTHER may, in its absolute discretion and without prejudice to any other rights it may have, suspend all future deliveries of Goods or Services to the Customer and terminate any Contract without any liability upon BROTHER's part and BROTHER may further exercise any of its rights pursuant to sub-clause 6.4.
- 17.5 Without prejudice to any other of BROTHER's rights under the Contract, the Customer hereby agrees and undertakes fully and effectively to indemnify and keep indemnified BROTHER as well after as before the expiry or termination of the Contract for and against all damages, loss, claims, demands, fines, penalties, expenses (including legal and professional fees), costs and liabilities which BROTHER may at any time incur as a result of any and all breaches of the Contract. In the event that BROTHER shall take any action against the Customer pursuant to a Customer's Default, then the Customer shall be responsible on a full indemnity basis for all costs (including legal and other expenses) incurred by BROTHER in connection with the enforcement, exercise or attempt to enforce or exercise any of its rights, powers or remedies pursuant to these Terms.

18. MISCELLANEOUS

- 18.1 If and to the extent that BROTHER is prevented or delayed by Force Majeure (as is defined below) from performing any of its obligations under any Contract and promptly so notifies the Customer specifying the matters constituting Force Majeure, then BROTHER shall be relieved of any liability to the Customer for failure to perform or for delaying in performing such an obligation (as the case may be) but shall nevertheless use its best endeavours to resume full performance thereof. If the delivery of any of the Goods or provision of any of the Services shall be delayed owing to any Force Majeure then the Delivery Date or date for performance of Services (as the case may be) shall be extended for the period during which such Force Majeure continues without invalidating or terminating the relevant Contract provided that BROTHER shall, within a reasonable time of the commencement of the Force Majeure, give to the Customer written notice of the circumstances leading to the same and the expected duration of the delay. For the purposes of this sub-clause 18.1, "Force Majeure" means any circumstances not foreseeable at the date of the relevant Contract and not within the reasonable control of the party in question including, without prejudice to the generality of the foregoing, strikes, lockouts, shortages of labour or raw materials, civil commotion, riot, invasion, war, threat of or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural physical disaster.
- 18.2 Each paragraph, clause, sub-clause and provision of these Terms and the Contract shall be severable from each other and if, for any reason, any paragraph, clause, sub-clause or provision is held by any court or tribunal of competent

jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not prejudice or in any way affect the validity or enforceability of any other paragraph, clause, sub-clause or provision which shall be read and construed so as to give the full effect thereto subject only to any contrary provision of law to the extent that, where the Terms or the Contract (as the case may be) or any paragraph, clause, sub-clause or provision thereof would, but for the provision of this sub-clause 18.2, have been read and construed as being void or ineffective, it shall nevertheless be valid the full extent to which it is not contrary to any such provision of law.

- 18.3 All notices to be sent to the Customer shall be sent to the address shown on the Form unless the Customer shall have notified another address in writing to BROTHER.
- 18.4 The Contract and these Terms shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong SAR"). Each of the parties hereto irrevocably agrees that the courts of the Hong Kong SAR shall have non-exclusive jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute, which may arise out of or in connection with the Contract and these Terms shall :- (i) in the event that the Customer is carrying on business in Hong Kong SAR (whether exclusively or not), be conducted in the courts of Hong Kong SAR; and (ii) in the event that the Customer is not so carrying on business in Hong Kong SAR, be conducted by way of arbitration in accordance with UNCITRAL Arbitration rules in effect at the time of the arbitration except as may be modified by mutual agreement between the parties and for which purpose the seat of arbitration shall be the Hong Kong International Arbitration Centre ("HKIAC") and the appointing authority shall be HKIAC; and, for either such case , each party irrevocably submits to the jurisdiction of such courts or tribunal (as the case may be).
- 18.5 In the event that either (i) the Terms shall be provided in any language other than English or (ii) the Contract and/or the Plan shall be provided in English and another language, then, in each such case, the non-English version shall apply for information purposes only, and, in the event of any conflict between the terms of the English version and the version in any other language, then the English version shall prevail.