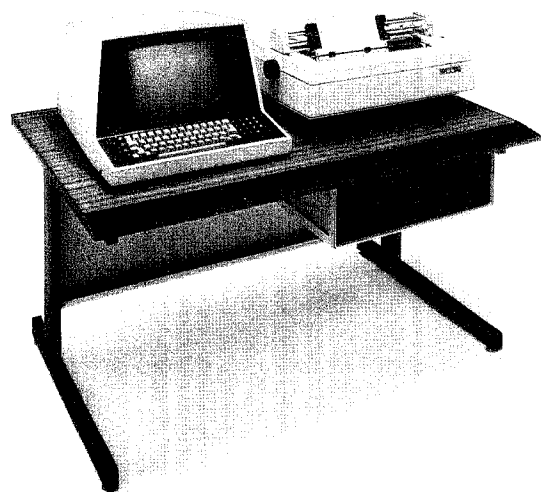


**APPENDIX "B"**

**STANDARD TERMS AND  
CONDITIONS OF SALE**



## APPENDIX "B" STANDARD TERMS AND CONDITIONS OF SALE

**1. General.** The following are the terms and conditions of sale under which Vector Graphic sells its products. Any terms and conditions contained on Buyer's purchase orders which are not in strict accordance with the provisions set forth herein shall not be binding on Vector Graphic.

**2. Payment.** All invoices are net and due upon receipt of invoice. A carrying charge of the maximum amount allowed by applicable state law shall be added to past due accounts.

**3. Taxes.** Prices are exclusive of all sales, use and like taxes. Any tax Vector may be required to collect or pay upon the sale or delivery of the product shall be paid by the Buyer, or in lieu thereof, the Buyer shall provide a tax exemption certificate acceptable to the taxing authorities. On sales outside of the United States, all required import duties, licenses and fees shall be payable by the Buyer in addition to the stated prices.

**4. Delivery.** Delivery shall be made F.O.B. Vector's plant with shipping and insurance charges to be paid by Buyer. Risk of loss shall pass to Buyer upon delivery by Vector to the carrier. Title to products delivered to Buyer shall pass to Buyer upon payment to Vector for the Product delivered. Insurance for an amount equal to the purchase price shall be obtained by Vector on behalf of Buyer for Buyer's equipment unless instructions to the contrary are thoroughly stated on the face of Buyer's Purchase Order. In the absence of specific instructions from Buyer, Vector shall select the carrier but shall not thereby assume any liability in connection with shipment. In the event of damage or loss in transit, Buyer must give immediate written notice to the carrier's agent at destination and to Vector within fifteen (15) calendar days.

**5. All Sales Final.** All sales are final, and any return of goods shall be subject to the prior written approval of Vector. Shipments refused or returned without Vector's prior approval shall be subject to re-stocking charge of 10% of selling price and applicable cancellation charges. All freight charges for returned or refused shipments are to be paid by Buyer.

**6. Non-exclusive Agreement.** This Agreement does not prohibit Buyer from selling Products to Vector's customers or the products of others to any customers, nor does it prohibit Vector from selling Products to Buyer's customers.

**7. Warranty.** Vector hereby warrants its Products, consisting of Hardware, Software, and Accessories, as follows:

**7.1 Hardware and Accessories.** Vector warrants hardware and accessory Products to conform to published product definitions applicable at the time of Buyer's order and to be free from defects in material or workmanship under normal and reasonable use and service for a period of ninety (90) days following delivery to the original end user, provided that delivery to the original end user does not occur later than six (6) months following shipment by Vector to Buyer. Buyer must notify Vector in writing within fifteen (15) days following discovery of the defect. In the event Vector has been so notified, Vector agrees at its option to repair or replace, at the place of manufacture, without charge, all parts of Products which are returned at Buyer's expense to Vector's factory within the said ninety (90) day warranty period, provided such inspection discloses in Vector's sole opinion that the defects are as above specified, and provided further that the equipment has not been: altered or repaired other than with Vector's authorization and by its approved procedure; subjected to misuse, improper maintenance, negligence, or accident; or damaged or had its serial number or any part thereof altered, defaced or removed.

**7.2. Software.** Vector's Software is warranted to conform to Vector's software Product description applicable at the time of Buyer's order. Vector's sole obligation hereunder shall be to remedy any non-conformity of the Software to Vector's applicable Software Product description for a one (1) year period following delivery thereof.

**7.3. Exclusive Remedy-Disclaimer.** Failure to notify Vector of non-conforming goods under the terms of Vector's warranty as stated herein, within the time specified above, shall bar Buyer from recovery under said warranty.

VECTOR MAKES NO OTHER WARRANTIES CONCERNING THE PRODUCTS SOLD HEREUNDER, AND THE SOLE REMEDY OF THE BUYER AND THE SOLE LIABILITY OF VECTOR FOR PRODUCT DEFECT SHALL BE AS SET FORTH ABOVE. NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, WHETHER OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR USE SHALL APPLY. VECTOR SHALL NOT BE RESPONSIBLE FOR CONSEQUENTIAL DAMAGES. ANY RECOMMENDATION OR SUGGESTION RELATING TO THE USE OF PRODUCTS MADE BY VECTOR EITHER IN TECHNICAL LITERATURE OR IN RESPONSE TO SPECIFIC INQUIRY IS GIVEN IN GOOD FAITH, BUT IT IS FOR BUYER TO SATISFY ITSELF OF THE SUITABILITY OF THE PRODUCTS FOR ITS OWN PARTICULAR PURPOSE AND IT WILL BE DEEMED TO HAVE DONE SO.

7.4. *Waiver.* Buyer hereby waives the benefit of any rule that disclaimers of warranty or limitation of liability shall be construed against Vector and agrees that the disclaimers and limitations applicable to the transaction covered by these *Standard Terms and Conditions of Sale* shall be construed liberally in favor of Vector.

8. **Assistance by Vector.** No statement or recommendation made or assistance given by Vector or its representatives to the Buyer or its representatives in connection with the use of any products by the Buyer shall constitute a waiver by Vector of any of the provisions herein or affect Buyer's or Vector's liability as herein defined.

9. **Design Changes.** Vector reserves the right to make design changes to its Products at any time without incurring obligation for Products previously or subsequently sold, and without prior approval from or notice to Buyer. All goods made to Buyer's special specifications are deemed to be inspected and accepted by the Buyer before shipment is made. Orders for special configurations may not be revised or cancelled.

10. **Insure Performance of Products.** The reputation and goodwill of Vector and the Products require that the Products be handled, delivered, and installed in accordance with the technical and engineering characteristics of the Products. Buyer hereby agrees to handle, package, ship, and install the Products in accordance with such methods and practices as Vector may reasonably recommend to insure the performance of the Products.

11. **Software License.** Software provided under this Agreement, including any subsequent improvements or updates, is furnished to Buyer under a license for use with a single Vector disc storage sub-system. No title to or ownership of the Software or of any of its parts is hereby transferred to Buyer nor to any third party. Buyer hereby agrees to comply with software sublicensing procedures as may be required in software documentation supplied by Vector.

12. **Advertising.** Buyer shall not use the name "Vector Graphic Inc." or any brand, service, or proprietary name, mark, or logo of Vector for any advertising or promotional purpose or in any written material without first submitting the advertising, promotional or written material to Vector and obtaining Vector's written approval of the material and the proposed use thereof.

13. **Proprietary Information.** All brand, trade, service or other proprietary names, marks, or logos of Vector, all patent or copyright interest of Vector used in connection with the Products, and all secret, proprietary, or confidential information of Vector, is hereinafter called "Proprietary Information". All of the Proprietary Information is the property of Vector, shall remain the property of Vector, and the Buyer shall acquire no interest therein by reason of purchasing the Products for resale. During and after the term of this Agreement, Buyer agrees to keep confidential, protect from public disclosure or from disclosure to any third party, and refrain from using any non-public Proprietary Information of Vector.

14. **Independent Contractors.** Vector and Buyer are each independent contractors operating separately established businesses. Neither party shall have any power to direct, control or supervise the other's activities, and neither party shall be responsible nor liable for the debts, expenses, obligations or liabilities of the other, nor shall either party represent, imply, or lead or permit others to believe that either party is authorized to enter into contracts or act on behalf of the other. Nothing contained in this Agreement shall create a partnership, joint venture, principal-agent relationship, or employer-employee relationship between Vector and Buyer.

**15. Force Majeure.** Vector shall not be liable for nonperformance resulting from any governmental law, ordinance, ruling, order, allocation, priority, restriction or regulation now or hereafter in effect or for delays or allocations made by Vector's suppliers. Vector is not responsible for nonperformance or delay caused by acts of God, fire, flood, wind, war, sabotage, civil unrest or disobedience, accidents, strikes or any other causes beyond Vector's control. In the event of any of the foregoing, Vector shall have the right to allocate and reschedule production and delivery of materials to Buyer as Vector shall deem fair and practical without liability for any failure of performance which may result, and without any liability for consequential or incidental damages which may result.

**16. Enforceability.** Failure of Vector to enforce any of these terms and conditions or to exercise any right accruing through the default of the Buyer shall not affect or impair Vector's rights in case such default continues or in case of any subsequent default of the Buyer and such failure shall not constitute a waiver of Vector's rights with regard to other or future defaults of the Buyer.

**17. Applicable Law.** The validity, interpretation and performance of this Agreement, as well as the rights and duties of the parties hereunder, shall be interpreted and construed pursuant to and in accordance with the laws of the State of California.

**18. Arbitration and Attorney's Fees.** Any controversy relating to this Agreement shall be submitted to and settled by arbitration in accordance with the rules of the American Arbitration Association which are in effect at the time the demand for arbitration is filed. Such arbitration shall be before a three-member panel of arbitrators, and the arbitration proceeding shall be held in Los Angeles County, California.

In the event that an arbitrator requests reasonable compensation for serving as such, the parties agree to share equally the costs of such compensation and to enter into a written agreement with such arbitrator to such effect, subject to the right of the arbitrators to transfer the burden of compensation to either party in any award rendered pursuant to arbitration.

This provision shall constitute a written agreement to submit to arbitration. Judgement upon any award rendered pursuant to such arbitration may be entered in any court of competent jurisdiction.

Should arbitration be commenced between the parties concerning this Agreement, the prevailing party in such arbitration shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorney's fees in such arbitration, which shall be determined by the arbitration panel in that arbitration or in a subsequent action brought in court for that purpose and such fees shall be assessed as costs unless prohibited by law, and if so prohibited, such fees shall be assessed as damages in such amount as is then determined to be reasonable.

**19. Notices.** Any notice or demand of payment given or made with respect to this Agreement shall be deemed given, made, and received when personally delivered or forty-eight (48) hours after the same is deposited in the United States mail, postage prepaid, registered or certified mail, addressed to the party at the respective address set forth in this Agreement, or at such other address as a party may from time to time designate by written notice to the other party.

**20. Assignment.** Neither this Agreement nor the rights of either Vector or the Buyer shall be assignable or transferable without the prior written consent of the other party, which consent shall not unreasonably be withheld, however, Vector may assign this Agreement without Buyer's consent to any Vector subsidiary or affiliate company.

**21. Complete Agreement.** There are no understandings or agreements between the Buyer and Vector relative hereto which are not fully expressed herein, and no change made herein (or in the product warranty provided to Buyer by Vector) shall be valid unless it is made in writing and signed by a duly authorized officer of Vector.



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