



# KONICA MINOLTA

KONICA MINOLTA BUSINESS SOLUTIONS U.S.A., INC.

## RESELLER AGREEMENT

This Reseller Agreement ("Agreement") is entered into as of the \_\_\_ day of \_\_\_\_\_, 2008 ("Effective Date") by and between Konica Minolta Business Solutions U.S.A., Inc. company ("KMBS"), a New York corporation having its principal place of business at 100 Williams Drive, Ramsey, New Jersey, 07446, and \_\_\_\_\_ ("Reseller"), a \_\_\_\_\_ Corporation (doing business as \_\_\_\_\_), with its principal place of business at \_\_\_\_\_.

Subject to the Reseller Standard Terms and Conditions ("Ts & Cs") attached as Schedule A, which are incorporated herein by reference, and in consideration of the mutual covenants and promises set forth hereunder and in the Ts & Cs, the parties agree as follows:

### 1. DEFINITIONS

- a. Authorized Location: The place(s) of business operated by Reseller for the sale of Product to End-Users.
- b. Confidential Information: Trade secrets and all information not publicly available and which gives the owner of the information a competitive advantage in the industry, including but not limited to, information encompassed in software, related source and object codes, technology, circuit diagrams, instruction manuals, technical specifications, electronic artwork, designs, plans, flow charts, proposals, marketing and sales information, financial information, costs, pricing information, end-user identification, and ideas that are reasonably related to the business of the parties that have not been previously publicly released, and all other information that has been marked "Confidential."
- c. End-User: A customer who is acquiring Products for its own use and not for sale, resale, lease or similar transfer.
- d. Products: The products and their related parts, accessories and supplies which Reseller is authorized to sell shall be as set forth on the KMBS Reseller Website, which may be amended from time to time on KMBS' sole discretion. Reseller shall have the obligation to check KMBS' Web site regularly.

2. **VALUE ADDED RESELLER PROGRAM**: Reseller shall comply with all of the requirements of the Value Added Reseller Program ("Reseller Program"), as currently set forth herein. Reseller acknowledges, however, that KMBS may change the terms of the Reseller Program from time to time in its sole discretion and that Reseller shall have the obligation to check KMBS' Web site regularly to ensure compliance with the Reseller Program requirements which may be posted there. Reseller's right to participate in the Reseller Program and the continuation of this Agreement is conditioned upon its remaining in compliance at all times with the then current terms and conditions of the Reseller Program.

3. **APPOINTMENT**. Subject to all the terms and conditions herein and the requirements under the Reseller Program, KMBS appoints Reseller and Reseller accepts appointment as KMBS' Reseller for the resale of Products listed on the KMBS Reseller Website only to End-Users. Reseller will market the Products in accordance with the provisions of this Agreement. Reseller's appointment hereunder is non-exclusive; KMBS may sell Products and appoint others for the resale of Products. KMBS authorized dealers and distributors are not eligible to participate in the Reseller Program.

### 4. Reseller OBLIGATIONS

- a. Reseller agrees to positively promote the goodwill and name of KMBS in connection with Reseller's marketing, sale, distribution and service of the Products to End-Users.
- b. Reseller agrees to purchase from KMBS or KMBS authorized distributors and sell only to End-Users. Reseller shall refrain from knowingly selling Products to anyone other than an End-User. Reseller shall immediately notify KMBS in the event Reseller learns that an entity to which it has sold Products has acquired such Products for resale.
- c. Reseller agrees to timely pay to KMBS the full invoice purchase price for the Products and all KMBS accounts upon the due date of the invoices and account statements.
- d. Reseller agrees to maintain the Authorized Locations at a suitable place of business from which to conduct its business. All costs and expenses incurred by Reseller in the performance of this Agreement (including but not limited to the costs associated with identifying and establishing its Authorized Location, all rentals, salaries, commissions, taxes, licenses, permits, telephone, telegraph, promotional and advertising expenses and traveling expenses) shall be paid by Reseller and Reseller shall not be entitled to reimbursement therefore from KMBS.
- e. To ensure End-User satisfaction with the Products, Reseller agrees to (a) ensure that the Product marketed to the End-User is appropriate to the End-User's requirements; (b) use its best efforts in the marketing of the Products; (c) report promptly to KMBS any suspected or actual problems with the Product; (d) maintain an End-User record of each Product sold; (e) assist KMBS in obtaining information regarding End-User satisfaction with the Product; (f) conduct business in a manner which reflects favorably on the Products and the goodwill and reputation of KMBS; (g) use any marketing funds and promotional offerings provided by

- KMBS in accordance with the terms of such promotion; (h) provide KMBS with prompt written notice of any material change in Reseller's business structure, operating environment or change of location; (i) comply with all applicable law and regulations; and (j) comply with the reasonable policies and procedures issued by KMBS from time to time.
- f. With respect to any software or software solution which is sold with or comprises part of the Products sold hereunder Reseller agrees to complete and return and to use its best efforts to cause the End-Users to complete and return to the licensor of such software or software solutions any and all requisite documentation, including any license agreement, in the manner prescribed by the licensor of such software or software solutions.
- g. Reseller and KMBS agree that throughout the course of, and in terminating this Agreement, they will treat each other as well as all End-Users, in a fair, equitable, and legal manner.

#### **5. ORDERING, PRICING AND PAYMENTS**

- a. Pricing for the Products shall be as set forth at the KMBS Reseller Website. Except as otherwise provided by KMBS, all prices and discounts are subject to change with thirty (30) days advance notice of any price increases.
- b. Reseller may place orders for Products in accordance with KMBS' then current order terms and pricing. In no event shall provisions in Reseller's purchase orders or in any other business forms used by Reseller add to or supersede the terms and conditions of this Agreement, which shall exclusively govern the relationship between the parties. All qualified orders are subject to acceptance by KMBS. In addition to any other right or remedy, KMBS may, at its option, refuse any purchase order placed by Reseller, cancel any accepted orders or delay shipment thereof, if Reseller is delinquent in any payments, or if KMBS could reasonably believe that Reseller has failed to meet any of its other obligations.
- c. Reseller shall pay to KMBS the full amount of the purchase price of the Products upon due date of invoice. All accounts unpaid beyond due date of invoice will bear interest at an annual rate equal to one percent above the then-prevailing prime rate of interest. If, under applicable state law, such rate is usurious, then the rate of interest shall be the maximum legal rate of interest allowable in such state.
- d. In the event Reseller's account with KMBS is past due KMBS need not sell to Reseller nor supply Reseller with Products. If Reseller is in default under this Agreement, or if a petition in bankruptcy is filed by or against Reseller, KMBS, in addition to other remedies provided in this Agreement or under the law, may repossess any Product which was previously delivered and for which payment has not been received or refuse to make further shipment of Product or demand adequate assurances.
- e. All prices are F.O.B. point of shipment. Reseller shall bear all costs, including insurance, freight and other charges or expenses incurred after KMBS has placed the Products in the custody of a carrier.
- f. Taxes with respect to the sale of Product to Reseller, other than taxes measured by income, are the responsibility of Reseller; and if paid or required to be paid by KMBS, the amount thereof will be added to and become a part of the price payable by Reseller.
- g. Reseller grants to KMBS a security interest in all Products purchased on credit by Reseller from KMBS for the purpose of securing payment of the purchase price of the Product. Reseller shall execute any other document, including but not limited to, a financing statement that KMBS may require to protect and perfect the security interest granted by Reseller.

#### **6. DELIVERY, RISK OF LOSS AND INSPECTION**

- a. KMBS shall not be liable for failure to ship or for delay in shipment of Products. KMBS shall not be liable for shipping Products over routes or by means of transportation specified by Reseller. Risk of loss of the Products shall pass to Reseller upon KMBS placing such Products in the custody of a carrier for shipment.
- b. Within thirty (30) days following the date of receipt by Reseller, Reseller shall inspect the Products. KMBS shall not be responsible for any damage caused to the Products during shipment. It shall be the sole responsibility of Reseller to file any appropriate claims for reimbursement with the carrier.

#### **7. WARRANTIES**

- a. Except as otherwise advised in writing by KMBS, KMBS warrants that all new machines purchased by Reseller from KMBS, under normal use and service and when installed, repaired, maintained and used in conformance with KMBS' instructions and procedures, shall be free from defects in material and workmanship for one year from installation by Reseller. KMBS warrants that parts sold separately, accessories and supplies will, at the time of delivery, be free from defects in material and workmanship. KMBS' warranty for drums shall be as provided for in the procedures.
- b. KMBS' sole obligation and Reseller's exclusive remedy shall be an obligation by KMBS to repair, or at KMBS' option, replace any machine, part thereof, accessory or supply which is shown by proper evidence submitted by Reseller to KMBS, in normal and proper use, to be defective in material or workmanship within the warranty period.
- c. This warranty shall not apply if the item has been abused, neglected, modified, tampered with or repaired with the use of parts not recommended by KMBS.
- d. Reseller is expressly prohibited from extending any warranty or warranties on behalf of KMBS to any other person.
- e. **THE WARRANTIES PROVIDED PURSUANT TO PARAGRAPH (7)(a) ABOVE ARE EXCLUSIVE AND IN LIEU OF, AND KMBS EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- f. **KMBS SHALL NOT BE LIABLE TO Reseller OR PRODUCT END-USER OR ANY OTHER PARTY FOR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE PRODUCTS, AND Reseller SHALL DEFEND, INDEMNIFY AND HOLD KMBS, ITS PARENT COMPANY, SUBSIDIARIES, AFFILIATES, AGENTS, DIRECTORS, OFFICERS AND EMPLOYEES, HARMLESS FROM ALL LOSS, LIABILITY, CLAIMS OR EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) ARISING OUT OF OR IN CONNECTION WITH ACTS OR OMISSIONS OF Reseller ARISING OUT OF ITS PERFORMANCE UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ITS ACTIONS ASSOCIATED WITH THE SALE AND SERVICE OF PRODUCTS.**

- g. In the event any parts and/or structural components or accessories or supplies of a Product are altered or modified by Reseller or the End-User without the express written consent of KMBS any and all warranties and/or guarantees shall immediately cease and terminate.
- h. Reseller represents and warrants that it is not using confidential, proprietary or trade secret information of any third party. Reseller agrees to indemnify and hold KMBS harmless from any claims, demands or damages of any kind arising from Reseller's use or possession of such information.
- i. **Reseller SHALL OBTAIN THE WRITTEN AGREEMENT OF ITS END USER CUSTOMERS, BEFORE ANY PRODUCT INCORPORATING SOFTWARE LICENSED BY KMBS IS FURNISHED TO SUCH END USER CUSTOMER THAT THE SOFTWARE IN THE PRODUCT IS DERIVED FROM THIRD PARTY SOFTWARE AND THAT NO THIRD PARTY WARRANTS THE SOFTWARE OR ASSUMES ANY LIABILITY FOR ANY DAMAGES SUFFERED OR INCURRED BY THE END USER, INCLUDING BUT NOT LIMITED TO GENERAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES DUE TO LOSS OF DATA OR INFORMATION OF ANY KIND, LOSS OF OR DAMAGE TO REVENUE, PROFITS OR GOODWILL, DAMAGES DUE TO ANY INTERRUPTION OF BUSINESS, DAMAGE TO END USER'S COMPUTERS OR NETWORKS, EVEN IF Reseller'S END USER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**8. DURATION OF AGREEMENT**

This Agreement shall commence on the Effective Date and shall remain in full force and effect and automatically renew itself from year to year thereafter, unless terminated earlier in accordance with the terms of this Agreement, and/or Reseller is in default of any of its obligations hereunder. KMBS may, in its sole discretion, elect not to renew this Agreement if Reseller has failed to fulfill or perform any one or more of the material duties, obligations or responsibilities undertaken by Reseller.

**9. ENTIRE AGREEMENT**

This Agreement (including the Ts & Cs and other exhibits) is the entire agreement between the parties and supercedes all previous agreements, communications and course of dealings between the parties regarding the subject matter hereof. No provisions of this Agreement shall be deemed waived, amended, or modified by either party unless such waiver, amendment or modification shall be in writing and signed by a duly authorized officer of both parties.

IN WITNESS WHEREOF, KMBS has caused this Agreement to be executed by its duly authorized representative at Ramsey, New Jersey and Reseller has caused this Agreement to be executed by its duly authorized representative, each as of the date first above written.

[INSERT FULL NAME OF Reseller]

KONICA MINOLTA BUSINESS SOLUTIONS U.S.A., INC.

By \_\_\_\_\_

By \_\_\_\_\_  
Richard Miller, Vice President Printer Sales

Title: \_\_\_\_\_