

## **Terms & Conditions of Sale**

All purchases of goods and/or services from TEQlease are governed by the terms and conditions shown below.

### **TERMS AND CONDITIONS**

PLEASE READ THESE TERMS AND CONDITIONS VERY CAREFULLY.

THE TERMS AND CONDITIONS ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS IN ANY FORMS DELIVERED BY YOU ("CUSTOMER") ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

BY ACCEPTING DELIVERY OF THE PRODUCTS OR BY ENGAGING TEQLEASE TO PROCURE THE SERVICES DESCRIBED IN TEQLEASE'S INVOICE OR OTHER TEQLEASE DOCUMENTATION, CUSTOMER AGREES TO BE BOUND BY AND ACCEPTS THESE TERMS AND CONDITIONS UNLESS CUSTOMER AND TEQLEASE HAVE SIGNED A SEPARATE AGREEMENT, IN WHICH CASE THE SEPARATE AGREEMENT WILL GOVERN.

### **Important Information About These Terms and Conditions**

These Terms and Conditions constitute a binding contract between Customer and TEQLEASE and are referred to herein as either "Terms and Conditions" or the "Agreement". Customer accepts these Terms and Conditions by making a purchase or receiving Services. These Terms and Conditions are subject to change without prior notice, except that the Terms and Conditions posted on the Site at the time Customer places an order will govern the order in question, unless otherwise agreed in writing by TEQLEASE and Customer.

Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void. No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these Terms and Conditions or any purchase order or invoice related thereto.

### **Governing Law**

THESE TERMS AND CONDITIONS AND ANY SALE OF PRODUCTS OR DELIVERY OF SERVICES PROVIDED HEREUNDER WILL BE GOVERNED BY THE LAW OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICTS OF LAWS RULES. ANY ARBITRATION, ENFORCEMENT OF AN ARBITRATION AWARD OR LITIGATION WILL BE BROUGHT EXCLUSIVELY IN LOS ANGELES COUNTY, CALIFORNIA AND CUSTOMER CONSENTS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED THEREIN, SUBMITS TO THE JURISDICTION THEREOF AND WAIVES THE RIGHT TO CHANGE VENUE. CUSTOMER FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY SUCH COURT WITH RESPECT TO ANY SUCH PROCEEDING. Except in the case of nonpayment, neither party may institute any action in any form arising out of these Terms and Conditions more than one (1) year after the cause of action has arisen.

### **Sales**

#### **Title; Risk of Loss**

If Customer provides TEQLEASE with Customer's carrier account number or selects a carrier other than a carrier that regularly ships for TEQLEASE, title to products and risk of loss or damage during shipment passes from TEQLEASE to Customer upon shipment from TEQLEASE's facility (F.O.B. Origin, freight collect). For all other shipments, title to products and risk of loss or damage during shipment passes from TEQLEASE to Customer upon receipt by Customer (F.O.B. Destination, freight prepaid and added). Notwithstanding the foregoing, title to software will remain with the applicable licensor(s) and Customer's rights therein are contained in the license agreement between such licensor(s) and Customer. TEQLEASE retains a security interest in the products until payment in full is received.

### **Warranties**

Customer understands that TEQLEASE is not the manufacturer of the products purchased by Customer hereunder and the only warranties offered are those of the manufacturer, not TEQLEASE. In purchasing the products, Customer is relying on the manufacturer's specifications only and is not relying on any statements, specifications, photographs or other illustrations representing the products that may be provided by TEQLEASE. TEQLEASE HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES EITHER EXPRESS OR IMPLIED, RELATED TO PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY

WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF NONINFRINGEMENT. THIS DISCLAIMER DOES NOT AFFECT THE TERMS OF THE MANUFACTURER'S WARRANTY, IF ANY.

#### **Pricing Information; Availability Disclaimer**

All pricing is subject to change. TEQLEASE reserves the right to make adjustments to pricing and products for reasons including, but not limited to, changing market conditions, product discontinuation, product unavailability and manufacturer price changes. All orders are subject to product availability.

#### **Services**

Customers may order services (collectively, "Services") through TEQLEASE from time to time. Orders are not binding on TEQLEASE until accepted by TEQLEASE. Customer understands that Services will be performed by third parties, and are third party services ("Third Party Services") that are purchased from a third party by Customer or sold by TEQLEASE as a distributor or sales agent (e.g., extended warranties of services by manufacturers).

In the case of Third Party Services, the third party shall be the party responsible for providing the services to the Customer and Customer will look solely to the third party for any loss, claims or damages arising from or related to the provision of such Third Party Services. Customer hereby releases TEQLEASE and its affiliates from any and all claims arising from or relating to the purchase or provision of any such Third Parties Services. Any amounts, including taxes, associated with Third Party Services which may be collected by TEQLEASE will be collected solely in the capacity as an independent sales agent.

SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND. TEQLEASE EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING SOFTWARE OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY RELATING TO THIRD PARTY SERVICES, ANY WARRANTY WITH RESPECT TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE USED IN CONDUCTING SERVICES, ANY WARRANTY CONCERNING THE RESULTS TO BE OBTAINED FROM THE SERVICES OR THE RESULTS OF ANY RECOMMENDATION MADE BY TEQLEASE, INCLUDING WITHOUT LIMITATION ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DURABILITY, TITLE, NON-INFRINGEMENT OR OTHERWISE.

#### **Limitation Of Liability**

UNDER NO CIRCUMSTANCES WILL TEQLEASE, SUPPLIERS, SUBCONTRACTORS OR AGENTS BE LIABLE FOR: (A) ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHICH INCLUDES BUT IS NOT LIMITED TO, LOSS OF PROFITS, REVENUES OR SAVINGS, EVEN IF TEQLEASE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY; (B) CLAIMS, DEMANDS OR ACTIONS AGAINST CUSTOMER BY ANY THIRD PARTY; (C) ANY LOSS OR CLAIM ARISING OUT OF OR IN CONNECTION WITH THE SERVICES OR CUSTOMER'S IMPLEMENTATION OF ANY CONCLUSIONS OR RECOMMENDATIONS BY TEQLEASE IN CONNECTION WITH THE PRODUCTS; OR (D) THE PRODUCT BEING UNAVAILABLE FOR USE OR FOR LOST OR CORRUPTED DATA OR SOFTWARE. NOTWITHSTANDING THE FOREGOING, IN THE EVENT OF ANY LIABILITY INCURRED BY TEQLEASE, TEQLEASE'S ENTIRE LIABILITY FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED THE LESSER OF: (A) THE DOLLAR AMOUNT PAID BY CUSTOMER FOR THE PRODUCT(S) OR SERVICES GIVING RISE TO THE CLAIM; OR (B) \$50,000.00.

TEQLEASE will not be responsible for any delays in delivery which result from any circumstances beyond its control. Any shipping dates provided by TEQLEASE are estimates only.

#### **Orders; Payment Terms; Interest; Taxes**

Orders are not binding upon TEQLEASE until accepted by TEQLEASE. Terms of payment are within TEQLEASE's sole discretion. Invoices are due and payable within the time period specified on the invoice, measured from the date of invoice, subject to continuing credit approval by TEQLEASE. TEQLEASE may invoice Customer separately for partial shipments. In connection with Services performed, Customer will pay for the Services in the amounts and in accordance with the payment schedule set forth in the applicable invoice or agreement. Customer agrees to pay interest on all past-due

sums at the lower of one and one-half percent (1 1/2%) per month or at the highest rate allowed by law. Customer is responsible for, and will indemnify and hold TEQLEASE harmless from, any applicable sales, use, transaction, excise or similar taxes (but not taxes imposed or measured by TEQLEASE's net income), and from any federal, state or local fees or charges (including, but not limited to, environmental or similar fees), imposed on, in respect of, or otherwise associated with the order. Customer must claim any exemption from such taxes, fees or charges at the time of purchase and provide TEQLEASE with the necessary supporting documentation. Any sales, use or other applicable tax or fees or assessments is based on the location to which the order is shipped. In the event of a payment default, Customer will be responsible for all of TEQLEASE's costs of collection, including court costs, filing fees and attorney's fees.

#### **Miscellaneous**

TEQLEASE may assign or subcontract all or any portion of its rights or obligations with respect to the performance of Services or assign the right to receive payments, without Customer's consent. Customer may not assign these Terms and Conditions, or any of its rights or obligations herein without the prior written consent of TEQLEASE. Subject to the restrictions in assignment contained herein, these Terms and Conditions will be binding on and inure to the benefit of the parties hereto and their successors and assigns. TEQLEASE will not be considered in default due to any failure in its performance of Services should such failure arise out of causes beyond its control.