



These Terms and Conditions of Sale and Service (“Terms”) govern the sale of Products and Support and the license of Software by TEGAM, Inc. and its subsidiaries (“TEGAM”) to a Buyer, hereinafter referred to as “Customer”.

## 1. DEFINITIONS

- a) “Applicable Trade Term” means the term defined in INCOTERMS 2000, agreed by the parties, and documented in the quotation.
- b) “Customer’s Personal Data” means Customers personal data or other personal data in Customers control, including but not limited to names, telephone numbers and e-mail addresses.
- c) “Delivery” means the date when TEGAM places the Product(s) at Customers or Customer’s representative’s disposal at the address agreed to by TEGAM in accordance with the Applicable Trade Term.
- d) “Product” means any hardware sold or Software licensed under these Terms, “Custom Products” means Products manufactured or configured to meet Customer requirements.
- e) “Software” means one or more computer programs in object code format, whether stand-alone or bundled with other Products, and related documentation provided to Customer under these Terms.
- f) “Specifications” means specific technical information about Products which is published by TEGAM in effect on the date TEGAM ships Custom order.
- g) “Support” means any standard service such as hardware maintenance, calibration and repair; Software updates and maintenance; or education and training, “Custom Support” means Support adapted to meet Customer requirements.
- h) “Quotation” means a formal offer to sell made by TEGAM to Customer and transmitted in writing.

## 2. PRICES

- a) Unless otherwise indicated on the quotation, prices are FOB at the TEGAM facility in Geneva, Ohio, USA, and DO NOT include shipping and handling charges to the address agreed to by TEGAM in accordance with the Applicable Trade Term. Unless stated otherwise on the quotation, TEGAM will prepay shipping costs and add the shipping costs to the quoted price on the invoice (“prepay and add”). Prices are valid for the period indicated on the quotation. Support prices, except for prepaid Custom Support, may be changed by TEGAM upon sixty (60) days written notice.
- b) Prices exclude any sales, value added, import duties or taxes, customs fees, or similar tax which will be payable by Customer in addition to the purchase price if applicable. If exemption from taxes is claimed, Customer must provide a certificate of exemption.

## 3. ORDERS, CANCELLATIONS AND RETURNS

- a) All orders are subject to acceptance by TEGAM. Product orders must specify Delivery within six (6) months from order date, unless TEGAM has quoted a longer delivery schedule.
- b) Cancellation of orders or rescheduling shipment will be subject to TEGAM’s approval. Cancellation of an order for Product will be subject to applicable charges. Cancellation of a Support order will be



subject to applicable charges. Information regarding applicable cancellation charges is available upon request.

c) Product returns will also be subject to TEGAM's approval and return/refurbishment charges.

#### 4. SHIPMENT, TITLE AND RISK OF LOSS

a) TEGAM will make reasonable efforts to meet Customer's Delivery and shipment requirements. If TEGAM is unable to meet Customer's Delivery and shipment requirements, alternative arrangements may be agreed. In the absence of such agreement Customer's sole remedy is to cancel the order.

b) Title to hardware Products and risk of loss and damage will pass to Customer at the address agreed to by TEGAM in accordance with the Applicable Trade Term. If not specified otherwise in the Quotation, title will pass upon Delivery to the shipper at the TEGAM facility in Geneva, Ohio, USA.

#### 5. INSTALLATION AND ACCEPTANCE

a) For Products with installation included in the purchase price, acceptance by Customer occurs upon completion of installation by TEGAM. Installation is complete when the Product passes TEGAM's installation and test procedures. For Products without installation included in the purchase price, acceptance by Customer occurs upon Delivery.

b) For Products with installation included in the purchase price, if Customer schedules or delays installation by TEGAM more than thirty (30) days after Delivery, Customer acceptance of the Product(s) will occur on the thirty-first (31<sup>st</sup>) day after Delivery.

#### 6. PAYMENT

a) Payment terms are subject to TEGAM's credit approval. Unless stated otherwise in the Quotation, Payment for orders shipped within the United States is due thirty (30) days from TEGAM's invoice date, and Payment for orders shipped outside the United States is due sixty (60) days from date of invoice. Invoices for contractual Support will be issued in advance of the Support period. TEGAM may change credit or payment terms at any time should Customer's financial condition or previous payment record so warrant.

b) TEGAM may discontinue performance if Customer fails to pay any sum due, or fails to perform under this or any other TEGAM agreement if, after ten (10) days written notice, the failure has not been cured.

#### 7. WARRANTY

a) Each Product will receive a global warranty. A global warranty includes the standard warranty for the country of purchase. If a Product is moved to another country, the destination country's standard warranty will apply except for on-site warranty where TEGAM does not have an applicable Product specific support presence or authorized representative in that country.

b) Product warranty information is available with Products or upon request. The warranty period begins on acceptance. Customer may receive a different warranty when the Product is purchased as part of a system.



- c) TEGAM warrants TEGAM hardware Products against defects in materials and workmanship, and further warrants that such Product conforms to Specifications.
- d) TEGAM warrants that Software will not fail to execute its programming instructions due to defects in material and workmanship when properly installed and used on the hardware designated by TEGAM. TEGAM further warrants that TEGAM owned standard Software will substantially conform to Specifications. TEGAM does not warrant that Software will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer.
- e) TEGAM does not warrant that the operation of Products will be uninterrupted or error free.
- f) If TEGAM receives notice of defects or non-conformance as defined in Sections 7(c) and 7(d) during the warranty period, TEGAM will, at its option, repair or replace the affected Product(s). Customer will pay expenses for return of such Product(s). TEGAM will pay expenses for shipment of repaired or replacement Product(s). If TEGAM is unable, within a reasonable time, to repair or replace the affected Product(s), Customer will be entitled to a refund of the purchase price upon prompt return of the Product(s) to TEGAM.
- g) TEGAM warrants that TEGAM Support will be provided in a professional and workmanlike manner. For ninety (90) days from the date of repair, TEGAM will replace, at no charge, defective parts used in TEGAM's repair of Products.
- h) Some newly manufactured TEGAM Products may contain and TEGAM Support may use remanufactured parts which are equivalent to new in performance.
- i) Customer's Product warranty is transferable upon TEGAM's receipt of written notification. Such notification must include the serial number, model number and the name, address and location of transferee and the transferee must agree in writing to TEGAM's warranty Terms,
- j) TEGAM reserves the right to invalidate Customers warranty for Products with an on-site warranty, or Products that have been installed by TEGAM in the event Customer relocates such Products. Customer's warranty for such Products may be reinstated provided TEGAM verifies, at Customer's expense, that such Products are in good operating condition,
- k) The above warranties do not cover defects resulting from improper or inadequate maintenance, installation, repair or calibration performed by Customer or a third party not authorized by TEGAM; Customer or third party supplied hardware or software, interfacing or supplies; unauthorized modification; improper use or operation outside or the Specifications for the Product; abuse, negligence, accident, loss or damage in transit; or improper site preparation.
- l) THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. TEGAM SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 8. SUPPORT

- a) Customer may order Support from TEGAM's current Support offering as available. Orders for Support are also subject to the Product specific Support terms and the terms indicated on the quotation.



- b) To be eligible for a Support agreement, Products must be at current specified revision levels and may require TEGAM's certification, at Customer's expense, that Products are in good operating condition.
- c) Product relocation may result in additional Support charges and modified service response times. Support of Products moved to another location is subject to availability.
- d) Customer is responsible for removing any Products not eligible for Support to enable TEGAM to perform Support services. Additional charges, computed at TEGAM's standard rates, may be incurred for any extra work caused by such Products.
- e) Support does not cover any damage, defects or failures caused by:
- 1) use of non-TEGAM media, supplies and other Products;
  - 2) site conditions that do not conform to TEGAM's site specifications; or
  - 3) neglect, improper use, fire or water damage, electrical disturbances, transportation, work, or modification by non-TEGAM employees or subcontractors, or other causes beyond TEGAM's control.
- f) Customer is responsible for maintaining a procedure external to the Products to reconstruct lost or altered Customer files, data or programs. Customer will have a representative present when TEGAM provides Support services at Customer's site. Customer will notify TEGAM if Products are being used in an environment which poses potential health hazard to TEGAM employees or subcontractors. TEGAM may require Customer to maintain such Products under TEGAM supervision.
- g) Additional return to TEGAM Support coverage may be purchased at the time of Product purchase and such coverage will be honored by any TEGAM authorized repair center. Additional on-site Support coverage may be purchased and such coverage will be limited to the country in which the additional coverage was purchased.
- h) Subject to Section 3(b) above, Customer may delete Products under a Support agreement or may cancel a Support agreement upon sixty (60) days written notice. Upon sixty (60) days written notice, TEGAM may delete Products no longer included in TEGAM's Support offering or may cancel a Support agreement.

## 9. LICENSES

- a) TEGAM grants Customer a worldwide, non-exclusive license to use the Software for internal purposes in accordance with the documentation provided with the Software. Such documentation may include license terms provided by TEGAM and TEGAM's third party suppliers, which will apply to the use of the Software and take precedence over these license terms. In the absence of documentation specifying the applicable license, Customer is granted the right to use one copy of the Software on one machine or instrument, or as otherwise indicated on the quotation.
- b) Customer's Software license is transferable upon TEGAM's receipt of the name, address and location of transferee and payment of any applicable fees to the extent permissible under local laws. Customer will immediately upon transfer deliver all copies of the Software to the transferee. The transferee must agree in writing to TEGAM's Software license terms. In addition, Customer's license terms will be binding on involuntary transferees, notice of which it hereby given. Customer's license will automatically terminate upon transfer.



- c) The Software is owned and Copyrighted by TEGAM or its third party suppliers. TEGAM and its third party suppliers retain all right, title and interest in the Software. Third party suppliers may protect their rights in the Software in the event of any violation of these license terms.
- d) Customer will not disassemble or otherwise modify the Software without written authorization from TEGAM, except as permitted by law. Customer may not copy the Software onto any public or distributed network.
- e) TEGAM may terminate Customer's license upon notice for breach of these license terms. Customer must destroy all copies of the Software immediately upon notice of termination.
- f) Software and technical data rights granted to the federal government include only those rights customarily provided to end user Customers. TEGAM provides this customary commercial license in Software and technical data pursuant to FAR 12.211 (Technical Data) and 12.212 (Computer Software) and, for the Department of Defense, DFARS 252,227-7015 (Technical Data — Commercial items) and DFARS 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation).

#### 10. INTELLECTUAL PROPERTY CLAIMS

- a) TEGAM will defend or settle any claim against Customer that Products (excluding Custom Products) delivered under these Terms infringe an intellectual property right in the country where the Products are used or sold, provided Customer promptly notifies TEGAM in writing, and cooperates with and provides control of the defense or settlement to TEGAM, to the extent legally permissible.
- b) In the event of an infringement claim under Section 10(a), TEGAM will pay infringement claim defense costs, settlement amounts and court-awarded damages. If such a claim appears likely, TEGAM may, at its option, modify the Product, procure any necessary license, or replace it. If TEGAM determines that none of these alternatives is reasonably available, TEGAM will refund Customers purchase price upon return of the Product.
- c) TEGAM has no obligation for any claim of infringement arising from:
  - 1) TEGAM's compliance with, or use of, Customers designs, specifications, instructions or technical information;
  - 2) Product modifications by Customer or a third party;
  - 3) Product use prohibited by Specifications or related application notes; or
  - 4) Use of the Product with Products not supplied by TEGAM.
- d) These terms state TEGAM's entire liability for claims of intellectual property infringement.

#### 11. LIMITATION OF LIABILITY AND REMEDIES

- a) IN NO EVENT WILL TEGAM, ITS SUBCONTRACTORS OR SUPPLIERS BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING DOWNTIME COSTS, LOSS OF DATA, RESTORATION COSTS, LOST PROFITS, OR COST OF COVER) REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON CONTRACT, TORT, WARRANTY OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. This exclusion is independent of any remedy set forth in these Terms.



b) To the extent that limitation of liability is permitted by law, TEGAM's liability to Customer is limited to \$200,000 US except that TEGAM's obligation to make warranty refunds under Section 7 is limited to the purchase price.

c) The limitations set forth in Sections 11(a) and 11 above will not apply to infringement claims under Section 10, or to damages for bodily injury or death.

d) The remedies in these Terms are Customer's sole and exclusive remedies.

## 12. GENERAL

a) TEGAM will not be liable for performance delays or for non-performance due to causes beyond its reasonable control.

b) Customer may not assign or transfer a Support agreement without TEGAM's prior written consent. Any attempted assignment or transfer without such consent will be void. As conditions to such consent; (i) the assignee or transferee must agree in writing to the applicable TEGAM Support terms; (ii) TEGAM may require that all Products included within a Support agreement are in good operating condition; and (iii) TEGAM may impose applicable charges in connection with the assignment or transfer. Customer may not assume a Support agreement in connection with any bankruptcy proceedings without TEGAM's written consent.

c) If the Customer becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party may cancel any unfulfilled obligation.

d) TEGAM will not sell, rent or lease Customer's Personal Data to others. Customer agrees that TEGAM may forward Customer's Personal Data to other TEGAM entities or business partners (including agents, resellers and subcontractors) solely to conduct business activities, including communication with third parties (such as the handling of orders, advertising campaigns or market research). Customer agrees that TEGAM and its entities may store and use Customer's Personal Data in all countries where TEGAM and its entities do business. Customer represents and TEGAM acknowledges Customer's representation that consent from individual data subjects has been obtained or is not needed.

e) Customer who exports, re-exports, transfers or imports Products, technology or technical data purchased hereunder, assumes responsibility for complying with applicable U.S. and other laws and regulations, and for obtaining required export and import authorizations. Customer will comply with U.S. and other laws and regulations prohibiting transfers, exports and re-exports to certain end-users and destinations or for certain end-uses, unless written authorization is obtained from the appropriate government. TEGAM may suspend performance if Customer is in violation of applicable laws or regulations,

f) The rights and obligations for the parties will be governed by the laws of the State of Ohio. Customer consents to the exclusive jurisdiction and venue of the courts located in Ashtabula County, Ohio, with respect to any action brought in connection with the Products or service that TEGAM has sold to Customer.



- g) Provisions herein which by their nature extend beyond the termination of any sale or license of Products or Support will remain in effect until fulfilled.
- h) Neither party's failure to exercise any of its rights under these Terms will be deemed the waiver or forfeiture of those rights.
- i) To the extent that any provision of these Terms is determined to be illegal or unenforceable, the remainder of those Terms will remain in full force and effect.
- j) The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.
- k) Products are not specifically designed, manufactured or intended for sale as parts, components or assemblies for the planning, construction, maintenance or direct operation of a nuclear facility. Customer is solely liable if Products or Support purchased by Customer are used for these applications. Customer will indemnify and hold TEGAM harmless from all loss, damage, expense or liability in connection with such use.
- l) These Terms constitute the entire agreement between TEGAM and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. Customer's additional or different terms and conditions will not apply. Customer's purchase or license of Products and Support will constitute Customer's acceptance of these Terms, which may not be changed except by an amendment signed by an authorized representative of each party.

3<sup>rd</sup> Revision of 29 November 2005