

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

## 1. DEFINITIONS

- a) “Applicable Trade Term” means the trade terms defined in INCOTERMS 2017, agreed by the parties, and documented in the Quotation.
- b) “Customer’s Personal Data” means Customer’s personal data or other personal data in Customer’s control including, but not limited to, names, telephone numbers and e-mail addresses.
- c) “Custom Products” means Products manufactured or configured to meet Customer requirements.
- d) “Custom Support” means Support adapted to meet Customer requirements.
- e) “Delivery” means the date when TEGAM places the Product(s) at Customer or Customer’s representative’s disposal at the address agreed to by TEGAM in accordance with the Applicable Trade Term.
- f) “Product” means any hardware sold or Software licensed under these Terms.
- g) “Quotation” means a formal offer to sell made by TEGAM to Customer and transmitted in writing.
- h) “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.
- i) “Specifications” means specific technical information about Products which is published by TEGAM in effect on the date TEGAM ships Customer’s order.
- j) “Support” means any standard service such as hardware maintenance, calibration and repair; Software updates and maintenance; or education and training.

## 2. PRICES

- a) Unless otherwise stated on the Quotation, all prices are EXW 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 otherwise stated on the Quotation, TEGAM will prepay shipping costs and add the shipping costs to the quoted price on the invoice, which will be the responsibility of the Customer. Prices are valid for the period indicated on the Quotation. Support prices, except for prepaid Custom Support, may be changed by TEGAM at any time upon sixty (60) days prior written notice to Customer.
- 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 prior written 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 from TEGAM upon request.

c) Product returns will also be subject to TEGAM's prior written approval and return/refurbishment charges, excluding Product covered by Tegam "30 Day Trial Offer" if returned under the terms of that agreement.

#### 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 to by the parties. 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 otherwise stated in the Quotation, title will pass to the Customer 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. Any and all payments not timely received by TEGAM will accrue interest at the rate of 1.5% per month until such time as the entire outstanding payment and any and all interest has been received by TEGAM.

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. LIMITED WARRANTY

a) Unless a longer warranty period is stated in the Product literature or Customer Quotation,

TEGAM warrants to Customer that TEGAM hardware Products will (i) be free from defect in material and workmanship for a period of 12 months, and (ii) conform to the Specifications (collectively, the “Hardware Warranty”).

b) TEGAM warrants to Customer that the TEGAM standard Software will (i) 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, and (ii) substantially conform to the Specifications (collectively, the “Software Warranty”). TEGAM does not warrant that Software will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer, and TEGAM does not warrant that the operation of Products will be uninterrupted or error free.

c) TEGAM warrants to Customer that TEGAM Support will be provided in a professional and workmanlike manner (the “Support Warranty”). The Hardware Warranty, Software Warranty and the Support Warranty are collectively referred to as the “Limited Warranty.”

d) The Limited Warranty does not apply to any of the following: (i) defects resulting from improper or inadequate maintenance, installation, repair or calibration of the Product performed by Customer or a third party not authorized by TEGAM; (ii) Customer or third party supplied hardware or software, interfacing or supplies; (iii) unauthorized modification to the Product; (iv) improper use or operation of the Product outside of the Specifications; (v) abuse, negligence, accident, loss or damage in transit; or (vi) improper site preparation. Customer acknowledges and agrees that some newly manufactured TEGAM Products may contain, and TEGAM Support may use, remanufactured parts which are equivalent to new in their performance.

e) THE LIMITED WARRANTY IS THE SOLE WARRANTY AND THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED. TEGAM SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

f) If TEGAM receives a valid Limited Warranty claim within the applicable Limited Warranty period, TEGAM will, at its option, repair or replace the affected Product(s) or re-perform the Support. Customer will pay all expenses and bear the risk of loss associated with the return of the Product(s) giving rise to the Limited Warranty claim to TEGAM, and TEGAM will pay all expenses associated with the shipment of the repaired or replacement Product(s) to Customer. 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) The Limited Warranty is transferable upon TEGAM’s prior written approval. Any request for a transfer of the Limited Warranty must be in writing and include the Product serial number, model number and the name, address and location of the transferee, and the transferee must agree in writing to be bound to these Terms.

h) TEGAM reserves the right to invalidate the Limited Warranty for Products with an on-site warranty, or Products that have been installed by TEGAM in the event Customer relocates such Products.

The Limited Warranty for such Products may be reinstated provided TEGAM verifies, at Customer’s expense, that such Products are in good operating condition,

## 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, Products must be at current specified revision levels and may require TEGAM's certification, at Customer's expense, that the Products that would be supported 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: (i) use of non-TEGAM media, supplies and other Products; (ii) site conditions that do not conform to TEGAM's site specifications; or (iii) 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 prior written notice. Upon sixty (60) days prior written notice, TEGAM may delete Products no longer included in TEGAM's Support offering or may cancel a Support agreement.

## 9. LICENSES

- a) Except as otherwise stated on the Quotation or provided herein, TEGAM grants Customer a worldwide, non-exclusive, perpetual license to use the Software for internal purposes only and in strict 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. Customer's license will automatically terminate upon transfer.

c) Customer acknowledges and agrees that 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 and said copyrights, and said third party suppliers are third party beneficiaries to these Terms.

d) Customer will not reverse engineer, disassemble, decompile or otherwise modify the Software without prior written authorization from TEGAM. Customer will not copy the Software onto any public or distributed network.

e) TEGAM may terminate Customer's Software license upon five days prior written notice for breach of these Software 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.

#### 10. INTELLECTUAL PROPERTY CLAIMS

a) Subject to the limitations of Sections 10(c) and 11, TEGAM will indemnify, defend and hold Customer harmless from any claim against Customer that Products (excluding Custom Products) delivered under these Terms infringe a valid U.S. patent or copyright, provided that Customer promptly notifies TEGAM in writing and cooperates with and provides control of the defense or settlement to TEGAM.

b) In the event of an infringement claim under Section 10(a), 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 may refund Customer's purchase price for the Product giving rise to said claim upon return of the Product.

c) Notwithstanding the forgoing, TEGAM has no obligation under this Section 10 for any claim of infringement arising from: (i) TEGAM's compliance with, or use of, Customer's designs, specifications, instructions or technical information; (ii) Product modifications made by Customer or a third party; (iii) Product use prohibited by the Specifications or related application notes; or (iv) 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. LIMITATIONS OF LIABILITY.

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. IN NO EVENT WILL TEGAM'S TOTAL LIABILITY TO CUSTOMER, UNDER ANY LEGAL THEORY OR COMBINATION OF LEGAL THEORIES, EXCEED THE LESSER OF (I) \$200,000 (USD) OR (II) THE PURCHASE PRICE OF THE PRODUCT GIVING RISE TO SAID LIABILITY.

## 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 be 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 prior 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, TEGAM may cancel any unfulfilled obligation and terminate the Software license.
- 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) Customers who export, re-export, transfer or import Products, technology or technical data purchased hereunder assume full responsibility for complying with applicable U.S. and other laws and regulations, and for obtaining required export and import authorizations. Customer must 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 cancel any unfulfilled obligation and terminate the Software license 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 or the sale of the Products.
- 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, defend and hold TEGAM harmless from any and all losses, damages, expenses, costs (including reasonable attorney's fees) and liabilities associated 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.

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