

TEGAM, INC.

Terms and Conditions of Sales and Services

1. **AGREEMENT.** ALL SALES BY TEGAM, INC. OR, IF APPLICABLE, AN AFFILIATE OF TEGAM, INC. ("TEGAM") OF ANY PRODUCTS ("PRODUCTS") TO THE PURCHASER ("CUSTOMER"), AND/OR THE SALE OR PROVISION BY TEGAM TO THE CUSTOMER OF ANY MAINTENANCE OR SUPPORT SERVICES FOR PRODUCTS (COLLECTIVELY THE "SERVICES") SPECIFIED IN THE ASSOCIATED SALES ORDER, ORDER CONFIRMATION, WORK ORDER, INVOICE, OR QUOTATION FROM TEGAM ("WORK ORDER") SHALL BE EXCLUSIVELY GOVERNED BY THESE TERMS AND CONDITIONS ("TERMS"). EXCEPT FOR THE ITEM TYPE, QUANTITY, REQUESTED DELIVERY DATES AND LOCATION, THESE TERMS TAKE PRECEDENCE OVER CUSTOMER'S ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS WHETHER CONTAINED ON A PURCHASE ORDER OR OTHER DOCUMENTATION, WHICH TEGAM OBJECTS TO AND HEREBY REJECTS. CUSTOMER'S RIGHT TO THE PRODUCTS AND/OR SERVICES IS CONTINGENT UPON CUSTOMER'S ACCEPTANCE OF THESE TERMS, ANY CHANGES TO THE TERMS MUST SPECIFICALLY BE AGREED TO IN A WRITING EXECUTED BY TEGAM AND CUSTOMER BEFORE BECOMING BINDING ON EITHER PARTY. To the extent a conflict or inconsistency exists between these Terms and any document submitted to TEGAM by Customer, these Terms will control. CUSTOMER ACKNOWLEDGES THAT IN THE EVENT THE PRODUCTS ARE SPECIFIED AS USED OR RECONDITIONED, THE WARRANTIES OFFERED BY TEGAM MAY BE LESS PROTECTIVE THAN THE WARRANTIES OFFERED FOR NEW PRODUCTS OF THE SAME KIND.

2. **LICENSE FOR SOFTWARE.** If Customer has purchased Products that include software, then this Section 2 shall apply. Subject to these Terms, TEGAM grants to the Customer a non-exclusive, non-transferable license to use the software that is installed on the Products, including updates or upgrades thereto, solely in connection with Customer's use of the Products. Customer may not modify, reproduce, decompile, reverse engineer or transfer the software without TEGAM's prior written consent.

3. **WARRANTY FOR PRODUCTS.** If Customer has purchased Products, then this Section 3 shall apply. Unless otherwise provided on the attached Work Order or otherwise agreed to in writing by authorized TEGAM personnel, TEGAM warrants that: (a) new Products sold by TEGAM will be free from defects in material and workmanship for 1 year from the date TEGAM ships the Product, unless a different time period is specified on TEGAM's Work Order or Quotation, in which case that time period will prevail, (b) certified used or refurbished Products sold by TEGAM will be free from defects in material and workmanship for 180 days from the date TEGAM ships the Product, and (c) exchange units delivered to Customer to replace a defective Product returned to TEGAM by Customer will be free from defects in material and workmanship for the longer of (i) 90 days from the date TEGAM ships the exchange unit, or (ii) the remainder of the defective and returned Product's original warranty. Additionally, for any Product repaired or serviced under: (i) TEGAM's conversion and upgrade services, the Product will be free from defects in material and workmanship for 90 days from the date of conversion/upgrade, (ii) TEGAM's refurbishment service, the Product will be free from defects in material and workmanship for 180 days from the date of refurbishment, and (iii) TEGAM's standard repair service, any repaired component of the Product will be free from defects in material and workmanship for 90 days from the date of repair. TEGAM's warranty shall not apply to any Products that are not installed or started in operation and tested in conformity with TEGAM's published instructions, or to any Products which have been subject to misuse, negligence, or accident, or altered or repaired by anyone other than TEGAM or TEGAM's duly authorized agent. In all cases, TEGAM has sole responsibility and discretion for determining the cause and nature of a Product defect, and TEGAM's determination with regard thereto shall be final. Customer must notify TEGAM of any breach of warranty within the applicable warranty period. The exclusive remedy for any breach of warranty shall be, at TEGAM's option, the repair of the Product or replacement of such Product with a Product of the same type, or the refund of the Purchase Price (defined below) for such Product. When notifying TEGAM of, or returning to TEGAM, any Products that fail to meet an applicable warranty, Customer shall comply with TEGAM's then-current Return Material Authorization procedure (available upon request). TEGAM will pay domestic freight to a US location on Products returned to Customer which are covered by the warranty in Section 3; Customer will pay freight and all applicable taxes and duties on Products returned to Customer that are not covered by warranty. TEGAM owns, and Customer hereby assigns to TEGAM ownership of, any part, component, or item removed from a Product by TEGAM under these Terms for any reason.

4. **WARRANTY FOR SERVICES.** If Customer has purchased Services, then this Section 4 shall apply. TEGAM warrants that the Services will be performed in a workmanlike manner. Customer's exclusive remedy for a breach of this warranty is for TEGAM to re-perform the Service at no extra charge. Customer

must notify TEGAM of any breach of this warranty within 30 days of the date of the provision of the non-compliant services.

5. **DISCLAIMER OF WARRANTY.** THE EXPRESS WARRANTIES IN SECTIONS 3 AND 4 ABOVE ARE MADE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. TEGAM DOES NOT MAKE, AND HEREBY DISCLAIMS, ALL WARRANTIES AND CONDITIONS INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. NO WARRANTIES ARE MADE BY ANY OF TEGAM'S LICENSORS OR SUPPLIERS. No agent, representative or employee of TEGAM has any authority to make any representations or warranties on behalf of TEGAM.

6. **LIMITATION OF LIABILITY.** TEGAM'S TOTAL LIABILITY ARISING FROM THE PRODUCTS AND/OR SERVICES, WHETHER FOR BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHERWISE, WILL BE LIMITED TO THE AMOUNT CUSTOMER PAID FOR THE PRODUCTS AND/OR SERVICES FOR WHICH LOSSES OR DAMAGES ARE CLAIMED. IN NO EVENT SHALL TEGAM BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THE PRODUCTS AND/OR SERVICES, REGARDLESS OF WHETHER TEGAM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER ARISING OUT OF DESIGN OR MANUFACTURING DEFECT, NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, DEFAULT, INDEMNITY OR ANY OTHER REASON OR LEGAL THEORY ARISING OUT OF THE USE OR HANDLING OF ITS PRODUCTS OR ITS PERFORMANCE UNDER THESE TERMS. NO ACTION RELATING TO THE PRODUCTS AND/OR SERVICES MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER DELIVERY OF THE PRODUCTS OR COMPLETION OF THE SERVICES. TEGAM DISCLAIMS ALL LIABILITY OF ANY KIND OF TEGAM'S SUPPLIERS AND LICENSORS.

7. **USE OF PRODUCTS.** Customer shall indemnify TEGAM against all claims, losses, damage, injury, or other liability arising out of or related to the use of the Products, whether sold separately or incorporated into any of the Customer's products or services. The Products are not authorized for use as critical components in life support devices or systems, and, Customer agrees to indemnify and hold TEGAM harmless from any claims, losses, costs, and liabilities arising out of or in connection with the such use.

8. **DELIVERY OF PRODUCTS; TITLE.** Delivery and completion dates are estimates; TEGAM will use commercially reasonable efforts to meet desired delivery and completion dates, but will not be liable to Customer in any way for any late shipment or completion. Delivery requests not conforming to TEGAM's lead times are subject to expedite fees. TEGAM shall not be responsible for any delays caused by strike, flood, fire, act of God, scarcity of the materials needed to produce the Products or complete the Services, governmental restrictions, or any other cause beyond the reasonable control of TEGAM. Customer will accept and pay for partial shipments of Products or performance of Services. Unless otherwise provided on the Work Order, the Products shall be delivered EXW (Incoterms 2010) TEGAM's designated manufacturing facility, service facility, or other named place of origin. Identification of the Products shall occur when they are placed in the hands of the carrier for shipment to Customer. The Products shall be placed in suitably protected containers, the nature of which shall be determined by TEGAM. Delivery obligations for returned Products is addressed in Section 3. Title to Products passes to Customer when Products are placed in the hands of the carrier for shipment to Customer. The Products are deemed accepted upon receipt by Customer.

9. **PURCHASE MONEY SECURITY INTEREST.** If Customer has purchased Products, then this Section 9 shall apply. TEGAM hereby reserves, and Customer hereby grants to TEGAM, a purchase money security interest ("PMSI") in the Products sold hereunder and all the proceeds thereof, including but not limited to, insurance proceeds, to secure performance of all of Customer's obligations hereunder. Customer's failure to pay any amount when due shall give TEGAM the right to repossess and remove the Products. Customer agrees, without further consideration, at any time to do or cause to be done, executed and delivered, all such further acts and instruments as TEGAM may reasonable request in order to perfect TEGAM's PMSI. Customer agrees that TEGAM shall have the authority to file any documents necessary, including but not limited to, any UCC-1 (or similar) financing statement or continuation statement, to perfect and maintain the perfection of TEGAM's PMSI granted here under.

10. **INSURANCE; TAXES.** In no case does the purchase price of the Products and/or Services ("Purchase Price"), even if inclusive of freight, cover the cost of any insurance; however, if the route selected involves movement of the Products by common carrier for which the freight rate does not include insurance, TEGAM may at its option, or upon Customer's instruction, procure insurance which amount Customer shall reimburse to TEGAM. Unless

otherwise provided on the Work Order, the Purchase Price is exclusive of, and Customer is responsible for, all sales, value added, use and like taxes and any applicable customs duties, import licenses, excise fees or tariffs. TEGAM will invoice Customer for all applicable taxes unless Customer supplies an appropriate and valid tax exemption certificate.

11. CANCELLATION/RESCHEDULE/CHANGES. Any order cancellation, change request, or reschedule request must be in writing. Any order for standard Products may be cancelled without penalty within 5 days of TEGAM's receipt of the order; orders for standard Products canceled more than 5 days after TEGAM's receipt of the order but more than 5 days before TEGAM's scheduled delivery date are subject to a 20% cancellation charge. Notwithstanding the previous sentence, orders for standard Products cancelled within 10 days of TEGAM's scheduled delivery date are subject to 100% cancellation fee. All special orders for custom goods are subject to a 100% cancellation fee, regardless of when the order is cancelled. Orders may be rescheduled to ship up to 45 days after the originally scheduled ship date, and are subject to a 15% reschedule charge. Only one reschedule per Order is allowed. Work Orders may not be canceled after commencement of Services by TEGAM. Changes to part numbers or Product configurations are subject to a 15% change fee from the original Product price; new part number pricing will also apply.

12. PAYMENT TERMS; INSURANCE ON PRODUCTS. Quoted prices for Products or Services are binding on TEGAM only if put in writing submitted by TEGAM. All Products are invoiced upon shipment and all Services are invoiced upon completion. Terms of payment are net 30 days from the date of invoice, unless otherwise expressly provided for and confirmed in writing by TEGAM. Notwithstanding any specified payment terms, TEGAM may require payment in advance of shipment of Product or commencement of repair services if Customer's credit, in TEGAM's sole judgment, becomes impaired. The Purchase Price shall become immediately due and payable and TEGAM may cancel any unfilled portion of a shipment or uncompleted Service upon Customer's failure to make any payment when due. Overdue payments shall be subject to finance charges computed at a periodic rate of the lesser of the maximum allowed by applicable law or 1 1/2% per month. Customer, at its expense, shall fully insure Products against all loss or damage until the Purchase Price has been paid in full.

13. PROPRIETARY INFORMATION. TEGAM may provide confidential or proprietary information to Customer in connection with the Products ("CI"). Customer agrees that CI shall include all information which Customer knows or reasonably may know is confidential. CI shall remain the exclusive property of TEGAM and Customer must not disclose CI to any third-party and will preserve and protect the confidentiality of CI by using at least reasonable care and Customer will take all other acts reasonably requested by TEGAM with respect to CI. Upon TEGAM's request, Customer will return to TEGAM all documents containing TEGAM's proprietary information and retain no copies thereof. No Reverse Engineering: It is an express condition of the acceptance of an order that Customer will not reverse engineer, decompile, or deconstruct any Products to extract any CI of TEGAM nor request or receive any disclosure of CI of TEGAM from a third party who reverse engineers, decompiles, deconstructs any Products. The obligations in this Section 13 will survive termination of the agreement.

14. ADVICE; ENGINEERING CHANGE ORDERS. TEGAM may provide Customer technical advice regarding the Products and Services, but TEGAM does not control or supervise the subsequent manufacture, fabrication, or installation of its products or their use after sale or Service, and does not warrant or guarantee such advice. TEGAM reserves the right to make additional engineering changes as necessary to comply with TEGAM's internal policies and procedures. TEGAM reserves the right to charge Customer for costs and expenses incurred by TEGAM associated with any servicing or repair of a Product or component for which there is no problem observed (NPO), regardless of whether the Product is returned to TEGAM for repair or TEGAM deploys resources to make the repair.

15. SPECIAL ORDERS. Customer acknowledges that if this purchase is a special order for custom goods, the provisions of this paragraph supersede any conflicting general terms of these Terms. Customer agrees to defend, protect, and hold harmless TEGAM against all suits at law or in equity and from any and all damages, claims, and demands for personal injury or actual or alleged infringement of any United States or foreign intellectual property right and to defend any suit or actions which may be brought against TEGAM for such injury and/or any alleged infringement because of the manufacture and/or sale of the custom good. Customer will describe any specially ordered customer goods in the purchase order at or before the time that their manufacture or assembly commences.

16. EXPORT; COMPLIANCE WITH LAW. Customer acknowledges that the laws and regulations of the United States restrict the export and re-export of certain commodities and technical data of United States origin. Customer will not export or re-export the Products or any related technical documentation in any form in violation of the export or import laws of the United States or any foreign jurisdiction. Customer shall not, without U.S. government authorization, export, re-export, or transfer any goods, software, or technology subject to these Terms, either directly or indirectly, to any country subject to a U.S. trade embargo (currently Cuba, Iran, North Korea, Sudan, and Syria) or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury. In addition, any software or any technology subject to these Terms may not be exported, re-exported, or transferred to an end-user engaged in activities related to weapons of mass destruction. Further, Customer and its personnel, agents and representatives are aware of, and agree to abide by, the obligations imposed by the laws of the countries in which Customer does business (including, without limitation, the Foreign Corrupt Practices Act) dealing with payments or gifts to governments or related persons for the purpose of obtaining or retaining business for or with, or directing business to, any person. Accordingly, Customer agrees that no portion of monies paid or payable to Customer in connection with this Agreement, nor any other item of value, will, directly or indirectly, be paid, received, transferred, loaned, offered, promised or furnished to or for the use of any officer or employee of any government department, agency, instrumentality or corporation thereof, or any political party or any official of such party or candidate for office, or any person acting for or on behalf of any of the foregoing, for the purpose of obtaining or retaining business for or with, or directing business to, any person. Customer will comply with the applicable provisions of 42 USC § 1320a-7b prohibiting illegal remuneration (including kickback, bribe or rebate). Customer will defend, indemnify, and hold harmless TEGAM from and against any violation of such laws or regulations by Customer or any of its agents, officers, directors, or employees.

17. LAW; VENUE. These Terms will be governed by the laws of the State of Colorado giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Customer shall only bring an action arising from or relating to these Terms in a federal court in Denver, Colorado or in state court in Fort Collins, Colorado, and Customer irrevocably submits to the personal jurisdiction and venue of such court in such action or in any action brought in such courts by TEGAM. Customer irrevocably consents to the service of process from any of the aforesaid courts by mailing copies thereof by registered or certified mail, postage prepaid, to Customer at its address designated pursuant to these Terms, with such service of process to become effective fifteen (15) days after such mailing. Customer agrees to pay TEGAM's reasonable attorney's fees and costs required to enforce TEGAM's rights hereunder. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.

18. ARBITRATION. Customer agrees that TEGAM shall have the right to have any dispute between the parties arising out of or in connection with these Terms be settled by arbitration utilizing the dispute resolution procedures of the American Arbitration Association (AAA) in Denver, Colorado, by one arbitrator appointed in accordance with said rules. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, nothing in these Terms shall limit either party's right to seek immediate injunctive or other equitable relief whenever the facts or circumstances would permit a party to seek such relief in a court of competent jurisdiction.

19. GENERAL. No waiver of rights under these Terms by either party shall constitute a subsequent waiver of this or any other right under these Terms, and all waivers must be in writing to be effective. Neither these Terms nor any rights under these Terms shall be assigned or otherwise transferred by Customer (by operation of law or otherwise) without the prior written consent of TEGAM and any unauthorized transfer or assignment shall be void. These Terms shall bind and inure to the benefit of the successors and permitted assigns of the parties hereto. In the event that any of the terms of these Terms are held to be illegal by any court of competent jurisdiction, all remaining terms of these Terms shall remain in full force and effect. These Terms together with TEGAM's associated Work Orders (if applicable) constitute the entire understanding and agreement between the parties regarding the subject matter hereof and supersede all prior or contemporaneous understandings, written or oral. In the event the terms of a Work Order contain additional or different terms than these Terms, the terms of the Work Order will govern and control. These terms may only be amended by an explicit and formal written document, hand signed by the authorized representatives of both parties.