



ALL SALES OF SERVICES AND PRODUCTS BY LIGHTTEL SHALL BE SUBJECT TO, AND MADE ONLY UPON, THE FOLLOWING TERMS AND CONDITIONS.

ACCEPTANCE OF TERMS: The provision of any products ("Products") and services ("Services") purchased by a buyer ("Buyer") from Lighttel ("Seller") are subject to these terms and conditions regardless of whether Buyer's order or request for Products or services is memorialized or issued by Buyer in any fashion such as by a hard copy purchase order or via facsimile, email, electronically or otherwise. Acceptance of any order and performance by Seller is subject to the Buyer's agreement to, and acceptance of, the express terms contained herein. Any terms proposed by Buyer that add to, vary from, or conflict with the terms herein are hereby objected to and rejected. If the performance of the Seller is in response to an order, solicitation, request, offer or other similar item issued by Buyer, the terms of which are additional to or different from any of the provisions hereof, then Buyer agrees and acknowledges that such performance shall be performed in accordance with the terms hereof.

GENERAL INTERPRETATION AND COMPLETENESS: This agreement is deemed made in the state of Washington and shall in all respects be interpreted enforced and governed by and under the Uniform Commercial Code and other laws of Washington applicable to instruments, persons and transactions which have legal contacts and relationships solely within the State of Washington. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The parties consent that the courts in the State of Washington shall have the exclusive jurisdiction over the disputes arising from this agreement. No Action by Buyer may be brought at any time which is more than twelve (12) months after the facts occurred upon which the cause of action arose. The entire agreement and final understanding pertaining to the sale to Buyer of Products and services is set forth herein and supersedes and terminates any and all prior and/or contemporaneous negotiations, discussions, offers, understandings, agreements and/or representations, oral or written, express or implied relating in any way to the subject matter hereof. This agreement may not be altered, amended, modified or otherwise changed in any way except by a written instrument signed by both Buyer and Seller and which specifically identifies the intended alteration, amendment, modification or other change and clearly expresses the intention to so change this agreement. Seller hereby rejects any different or additional terms previously or hereafter proposed by Buyer, none of which shall be effective. Acceptance by Buyer is limited to the terms and conditions of this agreement. Neither Seller's performance nor delivery shall be deemed or constituted as acceptance of Buyer's additional or different terms and conditions, Buyer acknowledges that it has not entered into this agreement in reliance upon any warranty or representation by any person or entity except for the warranties and representations specifically set forth herein.

1. DELIVERY, TITLE, RISK OF LOSS, and INSURANCE: Delivery of all shipments of Products will be made F.O.B. Seller's facility. All Products shall be suitably packed for air shipment, unless otherwise requested by Buyer and agreed to in writing by Seller. Title to each shipment of Products sold hereunder and risk of loss thereon shall pass to Buyer when Seller or its agent delivers such shipment to a common carrier or licensed trucker consigned to Buyer, or his agent, such shipment shall remain subject to Seller's rights of stoppage in transit and or reclamation. If a Force Majeure as defined in Section 4 below, prevents Seller from making delivery to Buyer or his agent, or if shipping instructions for any shipment are not received before the delivery date, or if payment is to be made on or before delivery, then title and risk of loss shall pass to Buyer as soon as the shipment has been set aside by Seller and invoices to Buyer (subject to Seller's rights as an unpaid Seller) and payment shall be made in accordance with invoice as though the Products had been delivered to Buyer, and Seller shall be under no duty to carry insurance thereon.

2. ACCEPTANCE: Buyer or Buyer's agent may inspect the Products at the place of manufacture. Buyer shall accept any tender of the Products by Seller which substantially conform to the description of the Products set forth herein. Buyer shall be deemed to have accepted any Product and Buyer's right to cancel, reject or claim any damages for breach of Seller's obligation under this agreement shall cease within thirty (30) days of delivery thereof unless notice of defect is received as described below and the defective Products are returned to Seller within sixty (60) days of delivery. Buyer must give Seller notice of defect or non-conformity in writing within thirty (30) days after delivery date. If Buyer discovers during the said period a defect of non-conformity, Buyer shall immediately notify Seller whether or not Buyer will continue to accept similarly defective or non-conforming Products and acceptance of any defective or non-conforming Products shall constitute a waiver by Buyer of that specification requirement(s) for said Products. If Buyer timely notifies Seller of a claimed defect, Buyer shall concurrently in writing offer Seller opportunity to investigate the claim and to inspect the allegedly defective or non-conforming Products. Failure to offer Seller such opportunity shall constitute acceptance by Buyer and waiver of all claims for defects or non-conformity. If Seller determines that Buyer's claim is valid, Seller may, at its sole option, (a) repair the defective Products or replace the defective or non-conforming Products with new Products and deliver same at the F.O.B. point specified in this Agreement; or (b) cancel that portion of the order which relates to the defective or non-conforming Product (and repay the purchase price the Buyer has already paid for such Product). The remedies described in (a) and (b) above shall be Buyer's sole and exclusive remedies for cancellation, rejection or claim of breach for delivery of a non-conforming or defective Product. In any event, when the Product shall have been used or altered from its original state, Buyer shall be deemed to have accepted the Product. Buyer's acceptance of Products tendered under this Agreement shall be final and irrevocable. Seller shall not be liable for damages relating to any instrument, equipment, or apparatus with which the Product sold under this Agreement is used.

3. SHIPMENTS and FORCE MAJEURE: The carrier will be selected by Seller in the absence of specific instructions by Buyer or if Seller believes Buyer's instructions are unsuitable; however, Seller will not assume any liability in connection with the selection of the carrier. The carrier will not be deemed to be an agent of Seller. Seller shall not be liable, directly or indirectly, for any delay or failure in performance or delivery or inability to perform or deliver. Further, Seller will not be liable for any failure or delay in performance or delivery made under this agreement where such delay, failure or inability in whole or in part, directly or indirectly, arises or results from any cause beyond Seller's control or beyond the control of Seller's suppliers or contractors, including, but not limited to, strike, embargo, governmental action, unavailability of necessary utilities or raw materials, unavailability of components, or act of God ("Force Majeure"). In the event of any such delay of failure in performance due to a Force Majeure, Seller shall have such additional time within which to perform its obligations hereunder as may reasonably be necessary under the circumstances; and Seller shall also have the right, to the extent necessary in Seller's reasonable judgment, to allocate among its various customers in such manner as Seller may consider equitable, in Seller's sole discretion, the Products then available for delivery. If, as a result of any Force Majeure, Seller is unable to perform, such obligations shall be deemed terminated without liability to either party, but shall remain in effect as to the unaffected portion of the order, if any.

4. **PAYMENT:** Other than payment described in Section 1 above, Buyer shall make payment to Seller for any services or products purchased hereunder in accordance with the terms of this section. Those amounts which are due with respect to Products shall be invoiced as of the delivery date. In those instances where Seller is to be paid for services as they are provided, the amounts due shall be shall be invoiced in the month following the month in which they were performed. Any invoices containing charges for expenses shall be accompanied by the appropriate supporting documentation. Payment of all amounts invoiced hereunder shall be due within thirty (30) days of the respective invoice date. Any amounts payable to Seller which remain overdue for ten (10) days or longer shall be subject to interest, which shall accrue from the due date, at a rate equal to the lesser of one percent (1.0%) per month or the maximum amount permitted by law, calculated on a daily basis. All amounts due shall be invoiced, and are payable, in United States Dollars unless otherwise indicated and are exclusive of any Value Added Tax, sales tax, use tax, service tax, import or related duties, and other taxes arising from or in connection with the provision Products or services, with the Buyer being responsible for the payment of all such taxes.

5. **SELLER'S REMEDIES:** If Buyer fails to make payment of any amounts due under this agreement at the times specified above or to furnish Seller with specifications and/or instructions for, or refuses to accept deliveries of, any of the Products sold under this Agreement or if Buyer is otherwise in default under, or repudiates, this agreement or any other contract with Seller, then in addition to any and all remedies allowed by law, Seller may (i) promptly present for delivery, all then undelivered Products remaining to be delivered under this or any other contract between Seller and Buyer and invoice Buyer for same; and/or (ii) suspend further delivery of any Products and any other performance ordered (including acceptance of any future requests or orders for Products) under this or any other contract between Buyer and Seller until such default, repudiation is removed, cured or withdrawn and/or (iii) cancel any undelivered or unperformed portion of this agreement and/or any other contract in whole or in part (Buyer remaining liable for damages). **ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW**

6. **CONSEQUENTIAL DAMAGES/LIMITATION OF LIABILITY:** in no event, including but not limited to delay in performance, breach of warranty or other breach of Seller's obligation under this agreement, will Seller be liable for any indirect, incidental, special, punitive or consequential damages, including but not limited to loss of anticipated profits or benefits, even if Seller has been informed of the possibility thereof in advance. In no case will Seller's aggregate liability to Buyer be greater than the purchase price paid by Buyer to Seller for the Products which are the subject of Buyer's claim. In the event Buyer's claim is not related to a Product or service provided by Seller, then Seller's total, aggregate liability to Buyer based on any actions or inaction related to or arising from such conduct shall be limited to the thirty percent of the (30%) of the gross sales value of the Products and services purchased by Buyer pursuant to the terms hereof during the three (3) month period immediately preceding the first action or inaction of Seller giving rise to a claim.

7. **WARRANTY:** All Products are warranted to be free from defects in workmanship and material for a period of one (1) year from date of delivery. This warranty does not apply to Products which Seller determines, upon inspection, have failed, become defective or unworkable due to, misuse, alteration, negligence, improper installation, use which is not in accordance with the information and precautions described in the applicable operating manual, or other causes beyond Seller's control. Buyer shall notify Seller of any alleged defect which occurs during the warranty period, obtain a return authorization for the nonconforming Products, and return the relative Products, to Seller's designated facility along with a written statement describing the defect. Seller's sole and exclusive obligation under this warranty is to use reasonable commercial efforts, at Seller's option, either repair, replace or refund the purchase price for any Products which are returned to Seller as set forth above and which are, after examination by Seller, determined in Seller's reasonable discretion to be defective. Any repaired or replacement Products are warranted only for the remaining unexpired portion of the original warranty period applicable to the repaired or replaced Products or components; however the warranty period does not include the time period between when Seller receives the defective Products and when Seller returns the repaired or replacement Products to Buyer. Buyer agrees that the foregoing provisions constitute the sole and exclusive remedies available to Buyer for breach of warranty by Seller with respect to the Products. If Buyer furnishes specifications to Seller, Buyer agrees to hold Seller harmless against any claim, which arises out of compliance with the specifications. Any description, specifications or performance capabilities of the Products other than those set forth in the operating manual accompanying the Product does not constitute a warranty that the Products shall conform thereto. Any sample or model used in connection with the sale or marketing of the Product is for illustrative purposes only, is not part of the bargain, and is not to be construed as a warranty that the products will conform to the sample or model. Seller warrants that services provided hereunder by it shall be performed with that degree of skill and judgment normally exercised by firms performing services of a similar nature. In the event Seller's performance of such services fails to meet such standard and provided that, Buyer provides Seller, within sixty (60) days of completion of those services claimed to be deficient, written notice of such claimed defect setting forth the nature of the alleged deficiency, Seller shall reperform, at no additional cost to Buyer, the defective services. If Seller is unable through reperformance to produce services as warranted, Buyer's exclusive remedy shall be refund of the fees paid to Seller for that portion of the services as are deficient

EXCEPT FOR THE WARRANTIES SPECIFICALLY STATED IN THIS SECTION 7, SELLER MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, IN RELATION TO THIS AGREEMENT OR ANY SOFTWARE, PRODUCTS, DOCUMENTATION OR ANY SERVICES DELIVERED OR PERFORMED HEREUNDER. WITHOUT LIMITING THE FOREGOING, SELLER EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.

8. **ASSIGNMENT:** These terms and Buyer's rights and obligations hereunder may not be assigned by Buyer except with the prior written approval of Seller. These terms will bind and insure to the benefit of Buyer and Buyer's respective successors and permitted assigns.

9. **WAIVER:** No term or provision hereof will be considered waived by Seller, and no breach of such term or provision excused by Seller, unless such waiver or consent is in writing signed on behalf of seller. No consent by Seller, or waiver of, a breach by Buyer of any term of provision, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by Buyer of any term or provision and such term or provision, as well as all other terms and provisions hereof, shall remain in full force and effect.

10. **EXPORT:** Buyer acknowledges that the laws and regulations of the United States may restrict the export and re-export of certain commodities and technical data of United States origin, including Seller's Products. Buyer agrees to comply with the applicable export laws or regulations of the United States or foreign governments.

11. **LICENSE:** A. For the purposes of this Section 11, the following definitions shall apply: a) "Licensed Materials" means Software and Documentation; b) "Software" means the Seller's executable computer programs, firmware, and other digital instructions and control data associated with a Product; Software does not include source code or proprietary design information; and c) "Documentation" means the user instructions related to a Product.

B. Upon delivery of the Licensed Materials, Seller grants to Buyer a nonexclusive, non-transferable license to use the Licensed Materials delivered to Buyer by Seller: (a) with and on the single Product for which it was delivered; (b) only for Buyer's own internal purposes; (c) in accordance with the Documentation; and (d) subject to all use and other limitations set forth in this Section 11. The license shall be perpetual unless earlier terminated as specifically provided herein or by Buyer in writing.

C. Nothing herein shall be deemed to transfer from Seller to Buyer any intellectual property right, except as expressly provided, and all right, title and interest in and to all intellectual property of Seller and/or its licensor(s) shall remain solely with Seller and/or its licensor(s), and Buyer receives no express or implied license or any other right under any patent, copyright, trademark trade secret or other proprietary rights of Seller, except as specifically provided by the non-exclusive license(s) granted to Buyer herein. Buyer agrees that it will not, directly or indirectly, reverse engineer, translate, decode, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the Seller's Software or other technology. The Licensed Materials contain confidential and otherwise proprietary information of Seller or its licensors. Buyer shall receive and maintain the Licensed Materials in confidence. Buyer's use of and access to the Licensed Materials will be strictly limited to its employees with a need to know who shall have undertaken to comply with the confidentiality obligations set forth herein.

D. Buyer shall not itself, directly or indirectly: (a) modify, publicly display, disclose, sell, lease, loan, rent, transfer, assign, sublicense or otherwise provide to third parties the Licensed Materials; (b) perform or release benchmarks or other comparisons of the Licensed Materials; or (c) disclose, copy, modify or disable any license authorization control utilities that may be associated with the Software. Buyer has no right to transfer the license granted herein.

E. The license to the Licensed Materials will terminate immediately: (a) upon any breach of any of the Subsections of this Section 11 (as it relates to Licensed Materials); (b) upon Buyer ceasing to use the relevant Product; or (c) as otherwise expressly provided by this Agreement. Upon license termination or Buyer's receipt of modified or replacement Licensed Materials, Buyer shall immediately cease all use of and promptly return to Seller, or alternatively destroy with Seller's consent, all copies of the applicable Licensed Materials. Termination is not an exclusive remedy.

12. CONFIDENTIALITY: All information Buyer obtains from Seller and which is marked or designated as confidential or proprietary at time of disclosure or that by its nature the Buyer knows or should know is confidential shall be kept in the strictest confidence by Buyer. The Buyer shall at all times use all reasonable effort to prevent its disclosure to all third parties. This undertaking shall not apply to information which (i) is or becomes public knowledge otherwise than by unauthorized disclosure in breach of these terms, (ii) is obtained by Buyer from a third party who is not under any duty of confidentiality with respect thereto and did not obtain it by unauthorized disclosure, (iii) is independently developed by Buyer without reference to, or without reliance upon, Seller's confidential information; or (iv) was in the Buyer's possession in written or physical form prior to its disclosure by Seller. The confidentiality obligations stated herein shall survive until all confidential information obtained by Buyer from Seller has become public knowledge other than be an unauthorized disclosure by Buyer.

13. INDEMNIFICATION: Each party shall defend, indemnify and hold harmless the other from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), including without limitation, those based on contract or tort, arising out of or in connection with a claim, suit or proceeding brought by a third party and based upon bodily injury (including death) or damage to real or other tangible property (not including lost or damaged data) to the extent arising from the negligence or wilful misconduct of the indemnifying party.

14. TRADEMARKS: For the purposes of this Section 14, "Marks" shall mean Seller's **U.S.** or European Union insignia, logos, trademarks, tradename, trade dress, service marks or other business identifier. Except as provided herein, no press release, announcement, publication, or other use of the Seller's Marks shall be made by Buyer without the Seller's prior approval. All use by Buyer of Seller's Marks will inure to the benefit of Seller. Consistent with the terms of Section 12 Confidentiality, Seller may list Buyer as a client of Seller in the following Seller marketing materials: representative client lists, screen shots, case studies and printed and digital sales material, all of which will be prepared in a manner consistent with the highest standards of professionalism. Seller may include a link to Buyer's Web site on Seller's Web site. Seller also may identify Buyer as a client of Seller in government filings, such as Securities and Exchange Commission filings.