

## SUNRISE TELECOM TERMS AND CONDITIONS

1. **General Terms and Conditions.** These general terms and conditions (“General Terms”) apply to any quote, order, order acknowledgment and invoice, and any sale, license or delivery of all equipment, materials, spare parts, software, merchandise or services by Sunrise Telecom Incorporated, a Delaware corporation located at 302 Enzo Drive, San Jose, CA 95138 or any of its subsidiaries or affiliates (“Sunrise Telecom”). Sunrise Telecom does not accept, expressly or impliedly, and Sunrise Telecom hereby rejects and deems deleted, any additional or different terms or conditions that any potential or actual customer (“Customer”) presents, including, but not limited to, any terms or conditions contained or referenced in any order, acceptance, acknowledgment or other document, or established by trade usage or prior course of dealing, unless Sunrise Telecom expressly and unambiguously agrees to such terms and conditions in a duly signed writing. By ordering, accepting delivery, keeping or using equipment, materials, spare parts, or otherwise proceeding with any transaction after receipt of the Agreement (as defined below) or after otherwise being notified that such transactions are subject to the Agreement, Customer agrees to the terms of the Agreement. If tender of these General Terms is deemed an offer, acceptance is expressly limited to the terms of the Agreement. All orders and contracts must be approved and accepted by Sunrise Telecom at its San Jose, CA offices. The General Terms shall apply whether or not they are attached to or enclosed with the merchandise to be sold hereunder.
2. **Agreement.** “Agreement” means a contract between Sunrise Telecom and Customer that is formed by reference to these General Terms and, where applicable, additional equipment or service specific terms provided by Sunrise Telecom to the Customer.
3. **Prices.** Written quotations of prices will be firm for a period of thirty (30) days from the date of the quote unless otherwise provided therein.
4. **Taxes.** Stated prices and fees are exclusive of any sales taxes, service taxes, withholding taxes, customs duties and other taxes and charges, insurance and costs related to transportation, with any such charges, taxes and/or costs being paid by Customer.
5. **Delivery Dates.** Sunrise Telecom will notify Customer of the scheduled delivery date(s) by written acknowledgment of Customer’s order. Sunrise Telecom will use its reasonable commercial efforts to meet the scheduled delivery date(s), but Sunrise Telecom’s failure to perform or ship on such dates shall not be considered a breach by Sunrise Telecom.
6. **Delivery.** Sunrise Telecom may select the carrier, at Customer’s expense, unless Customer provides written instructions to the contrary. Customer is responsible for procuring its own insurance on shipments from Sunrise Telecom. Sunrise Telecom shall deliver all products EXW Sunrise Telecom’s facilities; title changes hands upon delivery to customer’s agent.
7. **Examination of Shipment.** Immediately upon receipt, Customer shall visually inspect the shipment and notify Sunrise Telecom in writing of any deficiencies. Customer shall be deemed to have waived its rights to claim incorrect or incomplete delivery or packaging, unless Sunrise Telecom receives Customer’s detailed written notice within ten (10) days following delivery of the products by Sunrise Telecom.
8. **Return Merchandise Authorization (“RMA”).** No returned products shall be accepted without obtaining an RMA number prior to shipping such merchandise back to the facility indicated by Sunrise Telecom. Customer must contact Sunrise Telecom’s technical support staff immediately by email: support@sunrisetelecom.com, online at www.sunrisetelecom.com or by calling (800) 701-5208 if Customer suspects that the merchandise may be defective. Once an RMA number has been obtained, no returned products will be accepted after 30 days. Products damaged beyond the noted RMA defect will not receive service and will be returned to the customer without refund.
9. **Payment.** Customer shall pay all invoices in full when due. Sunrise Telecom reserves the right to charge interest on all overdue and unpaid amounts at the rate of eighteen percent (18 %) per annum on the unpaid balance.
10. **Order Cancellations.** Any order for a standard product accepted by Sunrise Telecom and terminated by Customer prior to shipment, may be subject to a termination charge of twenty percent (20%) of the order value. No order for nonstandard products may be terminated by Customer except by mutual agreement in writing. Any order terminated after the shipment will be subject to a restocking fee of twenty five percent (25%) of the returned merchandise value. Products must be returned in their original condition to be eligible for credit. Customer must contact Sunrise Telecom’s Order Administration department at orderNA@sunrisetelecom.com to obtain an RMA number prior to shipping merchandise back to the facility indicated by Sunrise Telecom.
11. **Express Limited Warranty.**
  - (a) **General Warranty Terms.** Sunrise Telecom warrants its products for a period of one year from the date of shipment, unless otherwise specified in the product documentation. Any warranties extended by Sunrise Telecom are nontransferable and for Customer’s benefit only.
  - (b) **Coverage.** Sunrise Telecom warrants its products against defects in materials and workmanship for the warranty period. During the warranty period, Sunrise Telecom will, at its sole option, either (i) refund the Customer’s purchase price without interest; (ii) repair such products; or (iii) replace such products that prove to be defective. Sunrise Telecom will provide, without charge to Customer, all fixes, patches and releases for the purchased software that Sunrise Telecom issues during the warranty period. Where Sunrise Telecom has licensed a software product “AS IS,” Sunrise Telecom’s obligation will be limited to replacing an inaccurate copy of the original media.
  - (c) **Limitation on Warranty.** THE REMEDIES EXPRESSLY PROVIDED IN THIS SECTION 11 WILL BE CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST SUNRISE TELECOM WITH RESPECT TO ANY NON-CONFORMANCE OF GOODS AND/OR SERVICES. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 11, SUNRISE TELECOM MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY PRODUCT. SUNRISE TELECOM DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS, AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH IMPLIED WARRANTY MAY BE BASED, INCLUDING, WITHOUT LIMITATION, CONTRACT, COURSE OF DEALING, USAGE OR TRADE PRACTICE.
  - (d) **No Guaranty.** Sunrise Telecom does not warrant or represent that all software defects will be corrected or that software will run uninterrupted or error free. This warranty shall not apply to defects resulting from Customer’s: (i) improper or inadequate maintenance; (ii) Customer-supplied software or interfaces; (iii) unauthorized modification or misuse; (iv) operations outside of environmental specifications for the product; (v) improper site preparation or maintenance; or (vi) improper installation. If Customer loads any unlicensed software into the product(s), such action will void the product warranty.

12. Patent and Copyright Indemnification.

- (a) Indemnity. Sunrise Telecom, at its own expense, will defend any suit or proceeding against Customer in a court of the United States for the direct infringement of a presently existing United States patent or copyright by products purchased or licensed from Sunrise Telecom. Sunrise Telecom shall pay all damages and costs finally awarded by a court of competent jurisdiction against Customer because of such direct infringement; provided, however, Sunrise Telecom shall not be obligated to defend or pay for costs or damages awarded in any suit or proceeding for infringement of patents or copyrights for products not provided by Sunrise Telecom, or any completed equipment, assembly, combination, method or process, in which any products purchased or licensed from Sunrise Telecom may be used. Sunrise Telecom's maximum liability hereunder is set forth in Section 13 below.
- (b) Notice. Sunrise Telecom's duties are conditioned upon Customer: (i) giving Sunrise Telecom prompt written notice of the commencement of any suit or proceeding or any claim of infringement; (ii) furnishing to Sunrise Telecom a copy of each communication relating to the alleged infringement; and (iii) giving Sunrise Telecom all authority (including the right to exclusive control of the defense), information and assistance (at Sunrise Telecom's expense) necessary to defend or settle such suit or proceeding. Sunrise Telecom shall not be bound by any settlement made without Sunrise Telecom's prior written consent.
- (c) Injunction. In the event that the use of products purchased from Sunrise Telecom is enjoined or, in Sunrise Telecom's opinion, likely to be enjoined, Sunrise Telecom shall, at its option and expense, either (i) procure for the Customer the right to continue to use such products; (ii) modify the products (providing such modification does not materially affect their performance) so that the products become non-infringing; or (iii) remove such products and grant Customer a credit thereon as depreciated and accept their return.
- (d) Customer Specifications. Sunrise Telecom shall not be obligated to defend any suit or proceeding or be liable for any costs or damages, if the infringement arises out of compliance with Customer's drawings or specifications.
- (e) Entire Obligation of Sunrise Telecom. The foregoing states the entire liability of Sunrise Telecom for patent or copyright infringement with respect to products furnished hereunder.

13. LIMITATION OF LIABILITY.

- (a) LIMITATIONS. IN NO EVENT SHALL SUNRISE TELECOM HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, USE, BUSINESS, REVENUE, OR DATA, INSTALLATION OR REMOVAL COSTS, OR COST OF COVER. THE LIABILITY OF SUNRISE TELECOM FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH ANY GOODS OR SERVICES SHALL NOT EXCEED A TOTAL AMOUNT EQUAL TO THE PURCHASE PRICE PAID OR PAYABLE BY CUSTOMER FOR THE GOODS OR SERVICES PRINCIPALLY RESPONSIBLE FOR SUCH DAMAGES WITHIN THE LAST TWELVE (12) MONTHS PRECEDING THE CLAIM UNDER THIS AGREEMENT.
- (b) SCOPE. THE LIMITATIONS OF LIABILITY IN SECTION 13(A) SHALL APPLY TO ANY DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF SUNRISE TELECOM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE UNDER THESE GENERAL TERMS OR ANY AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

14. Governing Law, Jurisdiction and Venue. This Agreement and its validity, interpretation and performance, and any related dispute between the parties shall be governed by the laws of the State of California, excluding that body of laws known as conflicts of laws. The parties specifically disclaim the application of the U.N. Convention on Contracts for the International Sale of Goods. The parties agree that the exclusive jurisdiction and venue for all actions related to this Agreement shall be brought and maintained in San Jose, CA.

15. General Terms

- (a) Force Majeure. Any non-performance or late performance, except of payment obligations, of either party shall be excused to the extent that performance is rendered impossible or delayed by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party.
- (b) Assignment. Customer may not assign any of its rights or duties hereunder, and any purported assignment, either voluntarily or by operation of law, is invalid. Sunrise Telecom may assign its rights and delegate its obligations.
- (c) No Waiver. The failure or delay of either party to exercise or enforce any right or claim does not constitute a waiver of such right or claim and shall in no way affect that party's right to later enforce or exercise it, unless such party issues an express written waiver, signed by a duly authorized representative.
- (d) Re-export Assurances. Customer shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies and procedures of the applicable government and other competent authorities. Customer will indemnify and hold Sunrise Telecom harmless for any violation or alleged violation by Customer of such laws, rules, policies or procedures. Sunrise Telecom requires the purchaser to provide the name and address of the end-user and the purpose for which products will be used in order to comply with the Export Administration Act of 1979, as amended, and the rules and regulations promulgated thereunder (the "EAR").