

TELLUREX- TERMS AND CONDITIONS OF SALE

These terms and conditions, the attendant quotation or acknowledgment, and all documents incorporated by reference therein, binds Tellurex Corporation, hereinafter Tellurex, and the buyer, hereinafter Buyer, and constitutes the entire agreement (Agreement) between Buyer and Tellurex for the provision of the sale of goods (Goods).

1. PRICES: Unless otherwise specified by Tellurex, Tellurex's price for the Goods shall remain in effect for thirty (30) days after the date of Tellurex's quotation or acceptance of the order for the Goods, whichever is delivered first, provided an unconditional, complete authorization for the immediate manufacture and shipment of the Goods pursuant to Tellurex's standard order processing procedures is received and accepted by Tellurex within such time period. If such authorization is not received by Tellurex within such thirty (30) day period, Tellurex shall have the right to change the price for the Goods to Tellurex's price in effect for the Goods at the time the order is released to final manufacture. Notwithstanding any of the foregoing to the contrary, the price for Goods sold by Tellurex, but manufactured by others, shall be Tellurex's price in effect at the time of shipment to Buyer.

2. DELIVERY, ORDER ACCEPTANCE AND DOCUMENTATION: All shipping dates are approximate and are based upon Tellurex's prompt receipt of all necessary information from Buyer to properly process the order. Notwithstanding any provisions to the contrary in this or other documents related to this transaction, and regardless of how price was quoted legal title to the Goods and risk of loss thereto shall transfer to Buyer as follows: for sales in which the end destination of the Goods is within the United States, upon delivery to the freight carrier at the shipping point; for sales in which the end destination of the Goods is outside of the United States, immediately after the Goods have passed beyond the territorial limits of the United States. Acceptance of all orders placed by Buyer pursuant to this Agreement shall take place exclusively in Traverse City, Michigan.

3. EXCUSE OF PERFORMANCE: Tellurex shall not be liable for delays in performance or for non-performance due to acts of God, war, riot, fire, terrorism, labor trouble, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, or other unforeseen circumstances or causes beyond Tellurex's reasonable control.

4. TERMINATION AND SUSPENSION BY BUYER: Buyer may terminate or suspend its order for any or all of the Goods covered by the Agreement, provided that Buyer gives Tellurex reasonable advance written notice of such termination or suspension and reimburses Tellurex for all losses, damages, costs and expenses arising from such termination or suspension.

5. LIMITED WARRANTY: Subject to the limitations contained in Section 6 herein, Tellurex warrants that the Goods manufactured by Tellurex will be free from defects in materials or workmanship under normal use and care until the expiration of the applicable warranty period. Goods are warranted for six (6) months from the date of shipment by Tellurex. Products purchased by Tellurex from a third party for resale to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer. Buyer agrees that Tellurex has no liability for Resale Products beyond making a reasonable commercial effort to arrange for procurement and shipping of the Resale Products. If Buyer discovers any warranty defects and notifies Tellurex thereof in writing during the applicable warranty period, Tellurex shall, at its option, correct any errors that are found by Tellurex or repair or replace F.O.B. point of manufacture that portion of the Goods found by Tellurex to be defective, or refund the purchase price of the defective portion of the Goods. All replacements or repairs necessitated by inadequate maintenance, normal wear and usage, unsuitable power sources or environmental conditions, accident, misuse, improper installation, modification, repair, storage or handling, or any other cause not the fault of Tellurex are not covered by this limited warranty, and shall be at Buyer's expense. Tellurex shall not be obligated to pay any costs or charges incurred by Buyer or any other party except as may be agreed upon in writing in advance by Tellurex. All costs of dismantling, reinstallation and freight and the time and expenses of Tellurex's personnel and representatives for site travel and diagnosis under this warranty clause shall be borne by Buyer unless accepted in writing by Tellurex. Goods repaired and parts replaced by Tellurex during the warranty period shall be in warranty for the remainder of the original warranty period or ninety (90) days, whichever is longer. This limited warranty is the only warranty made by Tellurex and can be amended only in a writing signed by Tellurex. THE WARRANTIES AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE. THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE GOODS OR SERVICES.

6. LIMITATION OF REMEDY AND LIABILITY: TELLUREX SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE. THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL TELLUREX'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE TO BUYER OF THE SPECIFIC GOODS MANUFACTURED OR SERVICES PROVIDED BY TELLUREX GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL TELLUREX'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE OR USE AND COSTS INCURRED INCLUDING WITHOUT LIMITATION FOR CAPITAL, FUEL AND POWER, AND CLAIMS OF BUYER'S CUSTOMERS.

7. PATENTS: Subject to the limitations contained in Section 6, Tellurex shall defend any suits brought against Buyer based on a claim that use of the Goods manufactured by Tellurex constitutes an infringement of a valid patent of the United States, and shall pay any damages awarded therein against Buyer, provided that Buyer: promptly notifies Tellurex in writing of the filing of such suit or the threat thereof; permits Tellurex to control completely the defense or compromise of such claim of infringement; and provides all reasonable assistance and cooperation requested by Tellurex for the defense of such suit. In the event that only the Goods manufactured by Tellurex are held to be infringing in such suit and their use is enjoined, Tellurex shall, at its sole option and expense, provide a commercially reasonable alternative, including, but not limited to, procuring for Buyer the right to continue using the Goods, replacing them with a non-infringing product or modifying them so they become non-infringing. Buyer agrees that Tellurex shall not be liable for infringement, and that Buyer shall fully indemnify Tellurex therefore, if infringement is based upon the use of Goods in connection with goods not manufactured by Tellurex or in a manner for which the Goods were not designed by the Tellurex or if the Goods were not designed by the Tellurex or

if the Goods were designed by the Buyer or were modified by or for the Buyer in a manner to cause them to become infringing.

8. TAXES: Any tax or governmental charge payable by the Tellurex because of the manufacture, sale or delivery of the Goods, or provision of Services, may at Tellurex's option be added to the price herein specified. The foregoing shall not apply to taxes based upon Tellurex's net income.

9. TERMS OF PAYMENT: Subject to the approval of Tellurex's Credit Department, terms are F.O.B. shipping point, net 30 days from date of Tellurex's invoice in U.S. currency, except for applicable milestone payments covered below or export shipments for which Tellurex may require other arrangements. International shipments must be assured through a U.S. bank in U.S. funds, irrevocable Letter of Credit, or other arrangements satisfactory to Tellurex. Freight charges may include shipping and handling charges, and Buyer shall pay all such charges. If any payment owed to Tellurex hereunder is not paid when due, it shall bear interest, at a rate to be determined by Tellurex which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is received. Tellurex shall have the right, among other remedies, either to terminate the Agreement or to suspend further deliveries under this and/or other agreements with Buyer in the event Buyer fails to make any payment hereunder when due. Buyer shall be liable for all expenses attendant to collection of past due amounts, including but not limited to attorneys' fees.

Unless otherwise provided in Tellurex's written quotation, periodic milestone payments shall be made by Buyer when the purchase price of this Agreement exceeds \$10,000. In such cases, invoices shall be issued by Tellurex and paid by Buyer based on the following milestones: Milestone 1: 30% of price upon acceptance of order by Tellurex. Milestone 2: 30% of price upon release by Tellurex of approved bills of material to manufacturing for assembly. Milestone 3: 40% of price upon shipment of the Goods by Tellurex. Tellurex reserves the right to designate additional Milestones where the Agreement provides for Services in excess of \$5,000.

10. BUYER SUPPLIED DATA: To the extent that Tellurex has relied upon any specifications, information, representation of operating conditions or other data or information supplied by Buyer to Tellurex in the selection or design of the Goods and/or provision of the Services and the preparation of Tellurex's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer and relied upon by Tellurex, any warranties or other provisions contained herein which are affected by such conditions shall be null and void, unless otherwise mutually agreed upon in writing.