

**PHOENIX TELECOM NC LLC
dba PHOENIX TELECOM SOLUTIONS**

Purchase Order Terms and Conditions

- 1) **Exclusive Agreement.** The terms and conditions of purchase set forth herein constitute the exclusive agreement between you ("Seller") and Phoenix Telecom NC LLC dba Phoenix Telecom Solutions ("PTS" or "Buyer"). Any of the following shall constitute Seller's unqualified acceptance of a PTS purchase order: (i) acknowledgement of the purchase order, (ii) furnishing of any supplies or materials under a PTS order, (iii) acceptance of any payment under a PTS order, or (iv) commencing performance under a PTS order. Additional or different terms and conditions proposed by Seller, or included in Seller's acknowledgement hereof, shall be void and of no effect unless accepted in writing by Buyer. No change in, modification of, or revision to, this order shall be valid unless in writing and signed by an authorized PTS representative.
- 2) **Packing and Shipment.** Unless otherwise specified, all packing and packaging shall comply with good commercial standards and carrier's tariffs and Incoterms 2000, as applicable. Seller shall use ESD protective packaging per ANSI/ESD S.20.20. Seller shall not use clear bubble, Styrofoam peanuts or other non-biodegradable packing or packaging materials on Buyer's orders. The packaging, labeling and shipping of all hazardous substances and dangerous materials must comply with all applicable international, federal, and state laws and regulations. The price includes all charges for packing and packaging. Equipment will ship F.O.B. Seller's location on Buyer's UPS/Fed Ex or other Common Carrier account provided, and without insurance.
- 3) **Changes.** Buyer may at any time by written notice make changes within the general scope of this order in any one or more of the following: (i) drawings, designs or specifications, (ii) method of shipping or packing, (iii) place of inspection, acceptance, or points of delivery, and (iv) delivery schedule. Should any such change require an adjustment in the price or time for performance, Seller shall notify the Buyer immediately and an equitable adjustment negotiated.
- 4) **Quality Assurance and Inspection.** Seller shall provide and maintain a quality system acceptable to Buyer. During performance of this order, such quality assurance and related inspection systems are subject to review, verification and analysis by Buyer. PTS may reject and hold at Seller's expense, subject to Seller's reasonable disposal instructions, materials and supplies which do not conform to applicable specifications, drawings, samples or descriptions or which are defective in material, workmanship, or design. Without limiting any other rights PTS may, at its option, require Seller to repair, replace or credit at Seller's expense any nonconforming materials or supplies.
- 5) **Delivery.** Time is of the essence. Delivery according to schedule is a major condition of a PTS order. If Seller's deliveries fail to meet the specified schedule, Buyer shall be entitled to request delivery by the most expeditious method of transportation, and the expenses thereof shall be borne solely by the Seller. Deliveries against this order shall not be made in whole or part prior to the date or dates shown hereon without Buyer's prior written consent, nor shall they exceed the quantities specified. If at any time it appears to Seller that any delivery schedule cannot be met, Seller shall notify Buyer as soon as possible as to the cause or causes therefore, action being taken to remove such cause or causes, and when on-schedule status will be achieved.

- 6) Original OEM Configuration. Seller guarantees that (i) all new, new excess, reused, refurbished or repaired materials or equipment furnished hereunder will be unaltered from original equipment manufacturer's configuration and specification (and not upgraded or otherwise modified without prior written approval by PTS) (ii) when a Purchase Order specifically defines an OEM part number it shall take precedence over any other part number contained or referenced in the Purchase Order, and (iii) any units or assemblies ordered by a genuine Telcordia assigned manufacturer CLEI/HECI alphanumeric identification code will be provided meeting those requirements and will not have had the units modified, or altered from different codes into the specified codes ordered.
- 7) Warranty. Seller warrants good and marketable title to the equipment sold and all materials or equipment furnished hereunder shall be free from defects in material and workmanship, conform to applicable specifications, drawings, samples or descriptions and be free from design defects. In the event this warranty is breached, Buyer may return such materials or equipment, at Seller's expense, for repair, replacement or credit as Buyer may elect. Materials required to be replaced or credited shall be subject to the provisions of this clause and the provision herein entitled: "Quality Assurance and Inspection".
- 8) Termination For Convenience/Stop Work. By written notice, Buyer may terminate all or any part of this order at its convenience. In such event, Seller and Buyer will agree upon an equitable adjustment of the order price, provided that (i) such adjustment shall not exceed the total order price; (ii) no amount shall be allowed for anticipate profit for performance not rendered, and (iii) Seller's written intent to file a claim for adjustment is received within thirty (30) days from the effective date of termination.
- 9) Delegation And Assignment. No delegation or assignment of any duties under this order shall be binding upon Buyer unless its prior written consent has been obtained. Seller shall inform Buyer prior to any assignment of rights to monies due or to become due under this order.
- 10) Waiver and Remedies. The failure of Buyer to insist on performance of any of the provisions of this order shall in no way be construed to be a waiver of such provisions in the future. The right and remedies of Buyer provided herein shall be cumulative and in addition to any other rights and remedies provided by law or equity.
- 11) Choice of Law. This purchase agreement and any orders placed under this agreement shall be governed and construed in accordance with the laws of the State of California. All actions and proceedings arising in connection with a PTS order shall be brought exclusively in the state and federal courts located in the County of Orange, State of California.