



Phoenix Telecom NC LLC  
dba Phoenix Telecom Solutions  
3200 El Camino Real, Suite 200  
Irvine, CA 92602  
714.564.9044 www.phoenix-ts.com

**PHOENIX TELECOM NC LLC**  
**dba PHOENIX TELECOM SOLUTIONS**  
**GENERAL TERMS AND CONDITIONS OF SALE**

The following terms and conditions govern the sale of material to the Customer by Phoenix Telecom NC LLC dba Phoenix Telecom Solutions. Please contact a Phoenix Telecom Solutions representative at 714.564.9044 if you have questions concerning any of the terms and conditions.

**ACCEPTANCE OF ORDERS**

All purchase orders issued by the Customer to Phoenix Telecom Solutions shall be effective only to specify material ordered. All purchase orders, including amendments thereto, are subject to acceptance or rejection, in whole or in part, by Phoenix Telecom Solutions. Phoenix Telecom Solutions' acceptance of Customer orders is based upon the terms and conditions contained herein. Neither an acknowledgement of a Customer order or shipment of material ordered shall constitute acceptance or confirmation of terms contained on a Customer's purchase order. All quotations, purchase orders, acknowledgements, and invoices shall be subject to the terms and conditions set forth herein. All terms and conditions in addition to, or in conflict with, terms and conditions set forth herein are deemed deleted unless otherwise agreed by Phoenix Telecom Solutions in writing which has been executed by its duly authorized officer.

**PRODUCT INSTALLATION**

Customer assumes total responsibility for the proper selection, configuration, installation, operation, and maintenance of material purchased.

**DELIVERY INFORMATION**

Phoenix Telecom Solutions plans to ship in a timely manner designed to meet Customer provided request delivery date. If Customer is not prepared to accept shipment on that date, Customer must notify Phoenix Telecom Solutions at least ten (10) days before the scheduled shipping date for stock and drop ship items to reschedule the shipment. Otherwise, special handling charges will be assessed. Unless a specific ship date is requested, all shipments will be processed after receipt of the order. All shipments are subject to and contingent upon timely receipt of order and established credit lines. Phoenix Telecom Solutions will not be liable for any failure or delay in performance of obligations caused by acts of nature, war, riot, labor difficulties, acts of government, unavailability of material from suppliers, delay or default of common carrier, or any other circumstance beyond the reasonable control of Phoenix Telecom Solutions.

**SHIPPING AND RISK OF LOSS**

Unless otherwise specified in writing, all shipments of material shall be made F.O.B. Origin, freight prepaid and added to the invoice. Title and risk of loss to the material passes to Customer when placed on the carrier at the F.O.B. point, notwithstanding the prepayment of transportation by Phoenix Telecom Solutions. All remedies for lost or damaged product during transit are exclusively against the transport carrier and is limited to recourse against said carrier. If additional coverage is necessary, consult a Phoenix Telecom Solutions Account Representative before shipment.

**WAREHOUSE SHIPMENTS**

Shipments from Phoenix Telecom Solutions National Logistics Centers to points within the continental United States will be shipped via surface carrier, F.O.B. Phoenix Telecom Solutions' warehouse, shipping/handling prepaid and charged back to the Customer.

## **DROP SHIPMENTS**

Drop Shipments from the manufacturer to Customer will be shipped from the manufacturer's point of origin, shipping/handling prepaid, charged back to Customer. Shipping and handling fees shall be applied according to the manufacturer's published freight policy.

## **EXPORT SHIPMENTS**

Unless otherwise specified in writing, all materials will be shipped on an Ex-Works point –of-origin basis. The export of materials to foreign countries may be subject to restrictions and approvals of the U.S. Government and/or Phoenix Telecom Solutions' suppliers. The import of materials into foreign countries may also be subject to foreign country restrictions and approvals. Customer will, in its own name, apply for any required U.S. export license and hereby assumes full responsibility for the exportation or importation of the materials and for compliance with all United States and foreign laws applicable to the exportation or importation of the materials. Phoenix Telecom Solutions assumes no liability whatsoever in connection with the exportation or importation of the materials.

## **CLAIMS**

Items damaged from shipment should not be returned to Phoenix Telecom Solutions. All damage and shortage claims should be made upon receipt of the material and filed directly with the carrier handling the shipment. The carrier's agent should always be requested to make annotation on the freight bill specifying the damage or shortage. Phoenix Telecom Solutions will use commercially reasonable efforts to assist Customer in presenting these claims to the carrier. However, collection of the claim is Customer's responsibility.

## **SELLER'S RIGHTS OF POSSESSION**

For credit reasons or Customer default, Phoenix Telecom Solutions retains the right to withhold shipments, recall goods in transit, or retake and repossess all goods which may be stored – all without the requirement of taking any other action. Customer relinquishes all materials so taken, which shall become the property of Phoenix Telecom Solutions, provided Customer is promptly notified of this action and given full credit for the materials when applicable.

## **CANCELLATION OF ORDERS**

Customer may cancel or reschedule a purchase order on written notice to Phoenix Telecom Solutions prior to shipment. If written notice of the cancellation or rescheduling is received by Phoenix Telecom Solutions more than thirty (30) days prior to the scheduled shipping date (SSD), there is no cancellation charge. If written notice is received by Phoenix Telecom Solutions within thirty (30) days of the SSD, Customer will be charged five percent (5%) of the order price for the cancellation or rescheduling. This charge is not imposed as a penalty but as a result of the difficulty computing actual damages, costs, or other charges caused by such cancellation or rescheduling. In no event may an order be rescheduled more than once nor more than sixty (60) days beyond the SSD unless mutually agreed upon by the parties in writing.

(a) All items to be returned will require a return authorization from Phoenix Telecom Solutions and must be accompanied by an approved Phoenix Telecom Solutions Return Material Authorization (RMA) form. Unauthorized returns will not be accepted.

(b) CUSTOMER shall have thirty (30) days following receipt of Product within which to inspect and provide Phoenix Telecom Solutions written notice of rejection for nonconformity with the purchase order. Product returned for credit must be in warranty, and in the original shipping carton. Product returned due to nonconformity with the purchase order will have credit issued against the original invoice for the Product, freight, and taxes after the Product has been received and inspected at Phoenix Telecom Solutions National Logistics Center.

(c) Products can be returned for reasons other than non-conformance with the purchase order within fifteen (15) days of Customer's receipt of the Product, provided the Product is unused, in warranty and in the original shipping carton. Requests to return drop-shipped Product(s) must be directed to the Phoenix Telecom Solutions Account Representative within fifteen (15) days of receipt of shipment. Phoenix Telecom Solutions standard Product(s) must be returned in accordance with the instructions and documents enclosed with the shipment. Any Product returned at Customer's request is subject to a restocking charge. Credit for the return will be issued after the Product has been received and inspected by the designated National Logistics Center.

(d) All shipments to Phoenix Telecom Solutions' National Logistics Center must be prepaid.

CUSTOMER shall be responsible for providing proof of delivery on returned Product if requested by Phoenix Telecom Solutions. Return authorizations are valid for fifteen (15) days.

### **PAYMENT TERMS**

Payment shall be due thirty (30) days from date of invoice. Overdue accounts will be assessed a late charge at a rate of 1.5% per month, or the maximum permitted by law, whichever is lower, upon any unpaid amounts past due. Phoenix Telecom Solutions reserves the right to withhold shipment to Customers with past due balances.

### **PRICES, DISCOUNTS, AND QUOTATIONS**

Items will be invoiced at prices in effect at the time of order acceptance, provided the requested ship date for ordered items is within sixty (60) days of such acceptance.

Prices for material with a requested ship date beyond sixty (60) days shall be negotiated at the time of order acceptance. Prices do not include shipping charges or taxes unless specifically stated to Customer.

Prices published by Phoenix Telecom Solutions are subject to change without notice and do not constitute quotations or offers to sell. Quotations expire thirty (30) days after the date of the quote unless otherwise specified in writing by Phoenix Telecom Solutions.

### **TAXES**

Customer shall be responsible for all taxes, including tariffs or duties, imposed on or with respect to the material, except taxes levied on Phoenix Telecom Solutions' net income. Customer shall not be responsible for taxes for which it possesses a valid exemption certificate acceptable to the applicable taxing authority and on file with Phoenix Telecom Solutions prior to order acceptance.

### **WARRANTY AND DISCLAIMER OF WARRANTY**

Reuse products offered by Phoenix Telecom Solutions to our Customers includes a warranty, unless sold in "as-is" condition. Phoenix will assist Customer in resolving all warranty claims with any proven defective product covered under the warranty period. New products sold under distribution carry the OEM warranty. Phoenix Telecom Solutions makes no implied warranty of merchantability or fitness for a particular purpose for either Reuse or OEM New products.

### **LIMITATION OF LIABILITY**

Under no circumstance shall Phoenix Telecom solutions be responsible or liable for incidental, indirect, special, or consequential damages, including any damages arising from delay, loss of data, lost profits, or loss of goodwill, notwithstanding their foresee ability to Phoenix Telecom Solutions or disclosure by Customer. In addition, Phoenix telecom Solutions' maximum liability to Customer arising out of or relating to Phoenix Telecom Solutions' performance or nonperformance of its obligations, regardless of the form of action, shall be limited to the recovery of direct and actual damages and shall not exceed the amount invoiced for the material that it's the subject matter of, or directly related to, the cause of action.



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## **INTELLECTUAL PROPERTY RIGHTS**

Customer's intellectual property rights, if any, in any of the material, including any hardware, software, or firmware, are derived from and shall be subject to the intellectual property rights of Phoenix Telecom Solutions, its suppliers, or other third parties, including the terms of any licenses restricting use, duplication, or resale.

## **CHOICE OF LAW**

All transactions shall be governed by the domestic laws of the State of California. The U.N. Convention on Contracts for the International Sale of Goods shall not apply.

## **MISCELLANEOUS**

Any dispute arising out of any transaction shall be resolved by and submitted to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. If Customer requests arbitration, the hearing shall be held in Orange County, California. If Phoenix Telecom Solutions requests arbitration, the hearing shall be held in the county or city of Customer's principal place of business. Each party shall bear its own arbitration costs except that a party seeking discovery shall reimburse the other for costs of document production. The parties shall equally split arbitrator fees. No action or demand for arbitration may be brought more than two years after accrual. Material purchased hereunder is not subject to resale or redistribution unless specifically authorized by Phoenix Telecom Solutions in writing.