

TERMS AND CONDITIONS

CUSTOMER IS BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AND ANY APPLICABLE SOFTWARE LICENSE AGREEMENT.

The distinctions among a lease transaction and a rental transaction result in different terms and conditions which are stated below:

- 1. LEASE TERMS AND CONDITIONS:** If customer acquires Equipment from TDS pursuant to a TDS lease, the terms and conditions for the specific lease shall control such transaction and supersede the terms and conditions of this Agreement, unless otherwise agreed in writing signed by both parties. For lease transactions, this document shall constitute a delivery notice only.
- 2. RENTAL TERMS AND CONDITIONS:** Customer hereby rents or purchases from TDS the equipment listed on the contract hereof (Equipment) pursuant to the applicable terms and conditions on the contract and the following terms and conditions.
- 3. RENTAL TERM:**
 - (a). Initial Rental Term:** Notwithstanding any terms set forth on Customer's purchase order, the equipment described on the contract (Equipment) is initially rented on a 7 or 28 day rental cycle with a one-term minimum rental. The Initial Rental Term shall commence on the day after TDS ships the Equipment to Customer.
 - (b). Automatic Renewal:** This Agreement shall automatically renew and extend for subsequent periods, on the same 7 or 28 day basis as that of the Initial Rental Term, under all the terms and conditions hereof until the date the Equipment is returned to the possession and control of TDS.
 - (c). Subsequent Rental Term and Pro-rata Credit:** At any time after the Initial Rental Term of 7 or 28 days, should the Customer elect to return the equipment to TDS prior to the full Subsequent Rental Term of 7 or 28 days, TDS will pro-rate the rental fee on a daily basis for the Subsequent Rental Term only.
 - (d). Customer Acceptance of Terms:** Customer authorizes TDS to insert on the contract hereof the applicable information pertaining to this transaction.
- 4. RENT:**
 - (a). Payment:** All Equipment invoices are billed at the time the Equipment ships. Subsequent rental cycles are billed at the beginning of each cycle. Customer shall pay TDS each billing cycle during the Rental Term, the Rental Fee shown on the contract for each item of Equipment together with all sales and use taxes imposed thereon. Each Rental Fee shall be due on the date shown on the invoice. For equipment calibration and sales, payment terms as provided in the TDS quote shall apply.
 - (b). Payment methods:**
 - (i). Credit Card:** Unless specifically approved for invoicing terms and authorized by TDS in advance of acceptance of any Purchase Order, Customer will submit a valid credit card for payment and further agrees to ensure the card will have sufficient available balances to sustain payments through the term of this Agreement. Customer hereby grants TDS authorization to verify the usability of the Credit Card and account in advance and at any time during the term of this Agreement.
 - (ii). Check or Electronic Funds Transfer:** Customers with prior approval and written authorization from TDS may make payments via check or electronic funds transfer.
 - (c). Late Fees:** Customer shall pay a service charge each month late equal to one and one-half of one percent (1.5%) of the fee or other amount (with a minimum of \$5.00 and a maximum of \$100.00) for each invoice total or other amount not paid within thirty (30) days after its due date.
 - (d). Security Deposits:** If specified on the contract, a Security Deposit will be held as security against payment of rent, return of Equipment and performance of all other obligations of Customer hereunder and will be refunded to Customer, without interest, upon performance of all obligations hereunder.
- 5. OPTION TO PURCHASE DURING RENTAL TERM:** The Customer may, with TDS' approval, and having no past-due balances, purchase equipment that is currently rented under the terms of this Agreement. When requested by Customer, such Buy-Out Agreement will be prepared by TDS and presented to Customer for acceptance. Rental term shall continue until Buy-Out payment is accepted by TDS. All pricing, warranty and ownership-transfer terms and conditions will be spelled out in said Buy-Out Agreement, including the effective date of termination of this Rental and Lease Agreement.
- 6. DEFAULT AND REMEDIES:** Upon any default by Customer of any of its payment obligations or other obligations or reduction in the monthly rental fee contained in this Agreement, or if Customer files or has filed against it any petition or proceeding under any bankruptcy, reorganization, insolvency or similar law, or if Customer repudiates its obligations hereunder or becomes insolvent, dissolves, ceases business or is generally not paying its debts as the same become due, or if any Equipment is levied against, seized or attached, or if Customer is in default under any other agreement with TDS, TDS shall have the right to exercise any one or more of the following remedies which are cumulative and not alternative:
 - (a).** Terminate this Agreement and recover possession of the Equipment;
 - (b).** Recover all Monthly Rental Fees then due and unpaid and all future Monthly Rental Fees until the Equipment is returned to TDS, as such Monthly Rental Fees become due;
 - (c).** Demand that Customer return, and Customer shall return, all Equipment, provided that if Customer fails to return all Equipment within five (5) days of TDS' demand, Customer shall be obligated to pay to TDS, immediately, a sum of cash equal to the replacement value of any Equipment not returned to TDS; and
 - (d).** Such other rights and remedies as are available to TDS under applicable law. TDS shall be entitled to all costs and expenses (including legal fees and costs) incurred by TDS in enforcing any of the terms or provisions of this Agreement.
 - (e).** Customer hereby waives prior notice, pre-seizure hearing or any other judicial process as a condition precedent to TDS' repossession of the equipment. Customer also waives any and all damages occasioned by such repossession.
 - (f).** Notwithstanding any repossession of the equipment by TDS, or any other action TDS may take, Customer shall be and remain liable for the full performance of all obligations of this Agreement.
- 7. DELIVERY, INSPECTION & RETURN:**
 - (a). Shipping and Delivery:** All equipment is provided F.O.B., pre-pay-and-add, TDS' applicable distribution center. Shipment will be made to the Equipment Location, at Customer's risk and expense, and with exception to shipments made via UPS Ground Customer shall reimburse TDS for any shipping and handling charges incurred by TDS.
 - (b). Inspection and Acceptance:** Unless Customer notifies TDS to the contrary in writing within forty-eight (48) hours after receipt of an item of Equipment, it shall be conclusively presumed that the item of Equipment was delivered to Customer in good operating condition, that the Equipment conforms in all respects to Customer's order and that Customer has accepted the Equipment for all purposes under this Agreement.
 - (c). Return:** Customer shall return the Equipment in good operating condition to TDS at the end of the Rental Term by prepaid insured shipment to the distribution center in the USA designated by TDS. All equipment shall be returned in the condition and configuration as delivered, including appropriate accessories, manuals, software and any non-disposable transit or packing cases in which the equipment was shipped from TDS. Customer agrees that any expenses incurred by TDS to restore the returned Equipment to good operating condition shall be the responsibility of the Customer. All returned Equipment shall meet the power requirements for use in a 60Hz power configuration and Customer shall bear all costs for the power conversion, freight and duties incurred in connection with the return of the Equipment that must be so modified.
- 8. LIMITED WARRANTY; EXCLUSIVE REMEDY; EXCLUSION OF WARRANTIES:** The sole and exclusive warranty made by TDS is the LIMITED WARRANTY that each item of Equipment, when shipped to Customer, will be in good operating condition. Customer has selected all equipment for customer's intended uses without TDS assistance or representations, and recognizes that TDS is not a manufacturer of any equipment. TDS has not made and does not make any representation or warranty, express or implied, with respect to any matter whatsoever including, without limitation, the design compliance with specification, operation, or condition of any equipment (or any part thereof), the merchantability or fitness of any equipment for a particular purpose, or issues regarding patent infringement, title and the like. Equipment shipped directly from a supplier may require supplier installation to assure good operating condition. In such case, TDS' warranty takes effect only upon such installation by supplier. Customer's sole and exclusive remedy for failure of any equipment to conform to such limited warranty shall be that TDS, at its election, may:
 - (a).** Repair or replace any item of equipment that is not in good operating condition when shipped to customer; or
 - (b).** terminate this agreement without any liability to customer.The foregoing limited warranty and remedy are the exclusive warranty and remedy and are in lieu of any oral representation and all other warranties and remedies, whether implied or statutory, other than the foregoing limited warranty. It is further agreed that TDS shall have no liability to customer, or the customers of customer, or any third parties for any direct, indirect, special or consequential damages based on strict and absolute tort liability, or TDS negligence or otherwise, customer agrees that TDS shall not be liable for any delay in delivery or installation of, or any failure to deliver or install, any equipment.
- 9. OWNERSHIP; PERSONAL PROPERTY; USE:** The Equipment shall remain the property of TDS and TDS retains the title thereto. Customer shall keep the Equipment free from all claims, liens, security interests and encumbrances. The Equipment shall at all times remain personal property, whether or not any Equipment shall become affixed to or a part of any real property or real property improvements. Customer shall use the Equipment only at the Equipment Location and Customer shall not remove, transfer, alter or modify any item of Equipment without TDS' prior written consent. Without limiting the foregoing, Customer shall not remove the Equipment outside of the USA without prior written notice to and the written consent of TDS. TDS may inspect the Equipment at any time.
- 10. UCC ARTICLE 2A:** To the extent permitted by applicable law, customer waives all rights and remedies conferred upon a lessee by Article 2A of the Uniform Commercial Code. To the extent permitted by applicable law, customer also waives all rights now or hereafter conferred by the Statute or otherwise which may limit or modify TDS rights under or with respect to this agreement.
- 11. ASSIGNMENT AND WAIVERS:** This agreement and all rights of TDS hereunder and to the equipment shall be assignable by TDS without customer consent. In the event of any such assignment of this Agreement, TDS' assignee shall have all of the rights, privileges, entitlements, powers and remedies of TDS hereunder, but none of TDS' obligations. Following such assignment, payments hereunder shall be made to such assignee and, solely for the purpose of determining assignee's rights hereunder, the term TDS as used herein shall be deemed to include or refer to any assignee of TDS. Customer waives and agrees not to assert against TDS' assignee any defense, claim, counterclaim, setoff or recoupment that Customer may have against TDS, whether arising under this Agreement or otherwise. Customer acknowledges and agrees that any assignment by TDS will neither materially change Customer's duties or obligations under this Agreement nor materially increase the burdens or risks imposed on Customer. Customer agrees to provide any such assignee with an estoppel letter or certificate and such other documentation as TDS or any such assignee may reasonably request confirming Customer's absolute and unconditional obligations hereunder. Without TDS prior written consent, customer shall not assign or grant a security interest in the equipment, this agreement or its interests hereunder or enter into any sub-lease with respect to the equipment. No permitted assignment, security interest or sublease shall relieve Customer of any obligations hereunder.

- 12. SERVICE:** If so specified on the contract, for Rental Equipment, TDS shall, at its expense, provide full service of the Equipment, consisting of routine maintenance of all Equipment and the repair or replacement of any item of Equipment found to be defective during the Rental Term, all of which will be provided only at TDS' facilities unless otherwise specified by TDS. In the event an item of Rental Equipment for which TDS is providing service does not operate properly, Customer shall notify TDS and request instructions before taking any remedial action or returning it to TDS. TDS shall provide Customer with a shipping label for shipping such Equipment and TDS shall bear the cost of the return shipment of such Equipment to Customer. In the event that any item of Equipment requires repair or recalibration as a result of Customer's tampering or unauthorized repair or negligence, misuse, or abuse of such items, Customer shall bear the entire cost thereof, including any shipping costs.
- 13. RISK OF LOSS; CARE OF EQUIPMENT; INSURANCE:** Customer is responsible for the safekeeping of all Equipment, and shall bear the risk of any loss of the Equipment for any reason, and shall insure each item of Equipment against loss or damage for not less than the replacement value of each item and if requested by TDS shall provide evidence of such insurance. At TDS' option, Customer shall either replace or pay the replacement cost of any item of Equipment which is lost, stolen, destroyed or damaged beyond repair. Until an item has been repaired, replaced or the replacement cost thereof has been paid by Customer, the Rental Term shall continue and Customer shall continue to pay the Rental Fee with respect thereto. Any item of non-expendable Equipment, accessories, manuals and the like which is lost, destroyed or damaged or which is not returned to TDS will be charged to Customer at full replacement cost (minimum \$25.00). Current prices are available upon request. All Equipment will be delivered to Customer with ownership labels, calibration seals and anti-tamper notice affixed, as shall be determined by TDS. Provided that TDS is to perform service hereunder (see Section Service), Customer shall not permit such seals or notices to be removed or defaced and if such seals or notices are removed or defaced, Customer shall pay a reasonable calibration or refurbishing fee. Customer shall also carry public liability and third party property damage insurance, in amounts sufficient to cover its obligations under this Agreement, including but not limited to protecting TDS from all damage, expense or penalties arising from or related to the use of the equipment during the rental term.
- 14. CUSTOMER'S UNCONDITIONAL OBLIGATIONS:** Customer's obligations are non-cancelable and customer agrees that its obligations to pay and to perform all other obligations hereunder shall be absolute, irrevocable, unconditional and independent and shall be paid and performed without abatement, deduction or offset of any kind or nature whatsoever.
- 15. BANKRUPTCY OR CESSATION OF BUSINESS:** In the event a petition, under the Federal Bankruptcy Act, is filed by or against the Customer, or the Customer makes an assignment for the benefit of creditors, or a Receiver for the Customer is appointed or applied for, or the Customer ceases to function as a going concern, TDS may declare the Customer to be in default and exercise all remedies or rights that TDS may have at law or in equity to recover any Equipment and all unpaid amounts owed to TDS.
- 16. SOFTWARE:** Equipment includes any software provided therewith. Software shall remain the property of its licensor. The terms and conditions of any software license agreement covering the software are incorporated herein by reference and supersede anything to the contrary herein, and Customer agrees to be bound by such terms and conditions, particularly those limiting the use and transfer of the software. Except as otherwise permitted therein, Customer shall use the software only with the Equipment and shall not copy, remove, sublicense, rent, transfer, assign, sell, alter, modify or encumber the software without licensor's prior written consent. Software is warranted only to the extent provided for directly by the licensor. TDS makes no warranty as to the performance of any software. The RENTAL CUSTOMER hereby acknowledges that its use of any Microsoft software accompanying the computer equipment rented/leased is governed by the applicable Microsoft End User License Agreement. Customer shall be fully responsible for, and shall indemnify, hold harmless, and, if so requested by TDS, defend TDS from and against, all matters whatsoever arising out of or in connection with or relating to customer supplied software, including, without limitation, the ownership, licensing, licensing terms, licensed quantities, warranties, functionality, fitness for use, operation, installation, and de-installation thereof.
- 17. OBJECTIONS TO AGREEMENT:** If Customer objects to any terms and conditions of this Agreement or has any objection to the suitability of any Equipment or its acceptability for any purpose under this Agreement, Customer shall notify TDS in writing of Customer's specific objections within 48 hours after receipt of this Agreement. Any such objections shall not be binding upon TDS unless received by TDS within such period and TDS agrees in writing to such amendments to the Agreement. The parties understand and agree that TDS has the right to reject Customer's objections to this Agreement and/or the Equipment, and TDS, at its election may terminate this Agreement. If such termination occurs, Customer immediately shall return the Equipment in good operating condition by prepaid insured shipment to the specified TDS distribution center and shall pay any amounts due thereon to TDS.
- 18. INDEMNIFICATION OF TDS:** Customer shall indemnify, hold harmless, and, defend TDS against all claims (Claims) directly or indirectly arising out of or in connection with the Equipment or this Agreement. Claims refer to all losses, liabilities, damages, penalties, expenses (including legal fees and costs), claims, actions, and suits, whether in contract or in tort, whether caused by TDS' negligence or otherwise, and whether based on a theory of strict liability of TDS or otherwise, and includes, but is not limited to, matters regarding:
- The selection, manufacture, purchase, acceptance, rejection, ownership, delivery, lease, possession, maintenance, use, condition, return or operation of the Equipment;
 - Any latent defects or other defects in any Equipment, whether or not discoverable by TDS or by Customer;
 - Any patent, trademark, or copyright infringement by Customer; and (d) the condition of any Equipment arising or existing during Customer's use.
- 19. TAXES; NO OFFSETS:** Customer agrees to pay all charges, fees, impositions, tariffs and taxes, including but not limited to sales, use, personal property, withholding and value added taxes imposed by any taxing authority on the Equipment or its rental, use or purchase hereunder. All customer payments payable hereunder shall be paid without any deduction, offset or reduction. TDS RESERVES THE RIGHT TO ADJUST PRICES TO REFLECT THE IMPACT OF ANY LAW, REGULATION, TARIFF, DUTIES, MATERIAL PRICE INCREASE, THIRD-PARTY SUPPLIER PRICE INCREASES, SUPPLY CHAIN DISRUPTION, OR UNFORESEEABLE COST ESCALATION, OR SIMILAR GOVERNMENTAL CHARGES. ANY INCREASE IN TDS' COST OF IT'S PERFORMANCE UNDER THIS AGREEMENT DUE TO ANY OF THE CONDITIONS LISTED ABOVE SHALL BE ADDED TO THE PRICE UNDER THIS AGREEMENT. TDS WILL PROVIDE REASONABLE ADVANCE NOTICE OF ANY SUCH ADJUSTMENTS ALONG WITH DOCUMENTATION SUPPORTING THE CHANGES.
- 20. TDS PERFORMANCE OF CUSTOMER OBLIGATIONS:** If Customer fails to perform any of its obligations hereunder, TDS may, but shall not be obligated to, perform any act or make any payment that TDS deems reasonably necessary for the maintenance and preservation of the Equipment and TDS' interests therein; provided, however, that the performance of any act or payment by TDS shall not be deemed a waiver of, or release Customer from, the obligation at issue. All sums so paid by TDS, together with expenses (including legal fees and costs) incurred by TDS in connection therewith, and shall be paid to TDS by Customer immediately upon demand.
- 21. WAIVER OF JURY TRIAL:** Customer and TDS hereby waive the right to a trial by jury in any court and in any action or proceeding as to all matters and things arising out of or relating, directly or indirectly, to this agreement and the relations between the parties hereunder.
- 22. OTHER PROVISIONS:**
- Jurisdiction and Venue: This agreement shall be governed by and construed in accordance with the internal laws (AS OPPOSED TO CONFLICTS OF LAW PROVISIONS) of the state of TEXAS. The parties hereto each agree that Tarrant County, Texas shall be the exclusive venue for litigation of any dispute or claim arising under or relating to this Agreement, and that such county is a convenient forum in which to decide any such dispute or claim.
 - Standing: Customer represents and warrants that, unless it is an individual, Customer is duly organized, validly existing and in good standing, and that Customer has the power and authority to enter into this Agreement.
 - Authorization to Obtain Information: Customer hereby authorizes TDS to obtain credit bureau reports and make such other credit inquiries as TDS deems necessary. Customer shall provide TDS with such corporate resolutions, opinions of counsel, financial statements, executed software sublicense agreements, and other documents (including UCC Financing Statements and other documents for filing and recording) as TDS shall request from time to time.
 - Joint and Several Liability: If more than one Customer is named in this Agreement, the liability of each shall be joint and several.
 - Commercial Purposes: Customer represents and warrants that Equipment is being purchased hereunder, as applicable, for business or commercial purposes and not for personal, family or household purposes.
- 23. FOREIGN LOCATIONS:**
- All rentals, tax, and other payments to TDS shall be in United States of America (USA) dollars and paid from Customer's address set forth herein above or one of its other USA offices. Customer represents and warrants that it is authorized to do business in the USA and is located at the address specified above. If the Equipment is shipped or removed outside of the USA, in accordance with this agreement, Customer shall obtain all appropriate export and import permits and licenses with respect to the export and import of the Equipment, including any permits that might be required for TDS and including with respect to the return of the Equipment. TDS may in its discretion determine to perform any of the foregoing on behalf of Customer at Customer's expense. Customer shall be fully responsible for and shall indemnify, hold harmless, and, if so requested by TDS, defend TDS from and against export, import, licensing, and all other matters whatsoever that arise out of or in connection with or relate to the Equipment (including, without limitation, all associated options, software, and technical data) being shipped or located outside of the USA or returned to the USA. Customer shall comply with all applicable laws, regulations, transactions and import/export controls, and economic sanctions imposed by the USA or any other government, including, without limitation, obtaining appropriate export and re-export authorizations as stipulated under the Export Administration Regulations of the USA Department of Commerce. In addition to all other obligations, Customer shall be responsible for and shall pay any sales, use, property, withholding tax, value added tax or any other fees, taxes, or impositions that may arise out of the Equipment being shipped or located outside the USA or returned to the USA or otherwise relating to the Equipment ("Relevant Tax"). Customer shall cooperate with TDS in obtaining any relevant documentation necessary to substantiate payment of Relevant Taxes and in providing originals or certified copies thereof. If any withholding, turnover or other Relevant Taxes are due, Customer agrees, to the extent permitted by applicable law and if requested by TDS, to self assess with respect to any Relevant Taxes and remit and file all Relevant Tax returns in regards to such Relevant Taxes under the Customer's tax registration number and filings.
 - Customer also agrees to pay all costs of customs, duties and other fees and otherwise comply with all laws and regulations with respect to the import and export of the Equipment. Customer shall reimburse TDS for all taxes to be paid by TDS in USA dollars based upon the USA dollars needed by TDS to pay foreign taxes (including Relevant Taxes) in the appropriate amount of foreign currency, and Customer agrees to take all currency exchange risks and to reimburse TDS for any losses incurred by it in the course of paying any taxes (including Relevant Taxes).
- 24. ENFORCEABILITY:** If any provision of this Agreement is held to be invalid or unenforceable in the jurisdiction in which this Agreement is being performed, then the meaning of such provision shall be construed so as to render it enforceable, to the extent feasible; and if no feasible interpretation would reform such provision, it shall be severed from this Agreement, and the remainder shall remain in full force and effect. However, if such provision is an essential element of this Agreement, TDS and Customer shall promptly negotiate a replacement thereof. If TDS and Customer are unable to agree upon a replacement term within thirty (30) days of a legal interpretation that such term is invalid or unenforceable, either TDS or Customer may terminate this Agreement upon ten (10) days prior written notice in which case Customer shall return the Equipment and pay all amounts as provided herein.
- 25. MODIFICATIONS TO AGREEMENT:** TDS reserves the right to pro-actively modify the terms and conditions of this Agreement at any time and for any purpose. Any subsequently-released or published revisions do not apply nor affect previous versions currently in force with Customers.
- 26. INCORPORATION:** All TDS quotes for services are hereby incorporated by reference and made a part of this Agreement as if fully set forth herein.