

TELMAR NETWORK TECHNOLOGY, INC.
Purchase Order Terms

1. Exclusive Agreement. The terms and conditions of purchase (“TNT PO Terms”) set forth herein constitute the exclusive agreement, along with the non-conflicting terms of a specific purchase order (“Order”) or Request for Quotation, between you (“Seller”) and Telmar Network Technology, Inc. and its operating units or affiliates (“TNT” or “Purchaser”), with respect to any services, equipment or materials (“Deliverables”) specified in the Order or the Request for Quotation. Any of the following shall constitute Seller's unqualified acknowledgment and acceptance of an Order and these (“TNT PO Terms”): (i) acknowledgement of the Order, (ii) responding to a Request for Quotation, (iii) furnishing of any Deliverables under an Order, (iv) acceptance of any payment under an Order, or (v) commencing performance under an 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 Purchaser. No change in, modification of, or revision to, an Order or a Request for Quotation shall be valid unless in writing and signed by an authorized TNT representative.
2. Packing and Shipment. Unless otherwise specified, all packing and packaging shall comply with good commercial standards and applicable carrier's tariffs and Incoterms 2000, as applicable. Seller shall use ESD protective packaging per ANSI/ESD S.20.20. Seller shall not use Styrofoam peanuts or other non-biodegradable packing or packaging materials on any 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. Packing slips must accompany all shipments and must show our part number. Please include the PO Number on the Packing Slip with the shipment and on the Shipping Label of each box. The price specified in any Order includes all charges for packing and packaging and for transportation to the F.O.B. point.
3. Changes. Purchaser may at any time by written notice make changes within the general scope of an 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 Purchaser immediately and an equitable adjustment negotiated.
4. Quality and Anti-Counterfeiting Assurance and Inspection. Seller represents that (i) any Deliverable bearing a trademark is genuine and manufactured by the owner of the trademark (or someone authorized by the owner of the trademark to use the trademark); (ii) no Deliverable infringes any intellectual property right (including, without limitation, patent, trademark, or copyright) of any person; and (iii) Seller has taken reasonable measures to assure that every Deliverable is genuine and infringes no intellectual property right of any person. Seller shall provide and maintain a quality control system acceptable to Purchaser. During performance of an Order, such quality assurance and related inspection systems are subject to review, verification and analysis by Purchaser. TNT may reject and hold, at Seller's expense, Deliverables that are nonconforming in that they (i) do not conform to applicable specifications, drawings, samples or descriptions; (ii) are not genuine or infringe any person's intellectual property rights; or (iii) are defective in material, workmanship, or design. Without limiting any other rights Purchaser may have, Purchaser, at its option, may require Seller (i) to repair or replace at Seller's expense any nonconforming Deliverables; or (ii) refund the price of any such

item. Without limiting any other rights Purchaser may have, with respect to Deliverables that are nonconforming because they are not genuine or infringe any person's intellectual property rights, Seller shall have no right to the return of such Deliverables, and such Deliverables may be rejected without the return of such Deliverables.

5. **Delivery. Time is of the essence.** Delivery according to schedule is a major condition of each Order. If Seller's deliveries fail to meet the specified schedule, Purchaser 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 an Order shall not be made in whole or part prior to the date or dates specified in the Order, without Purchaser'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 promptly notify Purchaser in writing 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. Purchaser shall have the option to cancel the Order, without further obligation.

6. **Original OEM Configuration.** Seller guarantees that (i) all new, reused, refurbished or repaired materials or equipment furnished hereunder will be unaltered from the OEM's manufacturing methods, standards, configuration and specifications (the materials shall not be upgraded or otherwise modified without prior written approval by the OEM or TNT); (ii) when an Order or Request for Quotation specifically defines a part by a 7 or 10 digit alphanumeric Telcordia CLEI/HECI/ECI code, such code shall take precedence over any other part number contained or referenced in the Order or Request for Quotation; (iii) any plug-in assemblies or materials ordered by a genuine Telcordia-assigned manufacturer CLEI/HECI/ECI alphanumeric identification code will be provided meeting those requirements and shall not be modified, or altered from different codes into the specified codes ordered or any other; (iv) any Deliverable bearing a trademark is genuine and manufactured by the owner of the trademark (or someone authorized by the owner of the trademark to use the trademark); and (v) no Deliverable infringes any intellectual property right (including, without limitation, patent, trademark, or copyright) of any person and every Deliverable is free of the rightful claim of any person by way of infringement, unfair competition, or the like. Furthermore, when an Order or Request for Quotation references an OEM's part number or a Telcordia CLEI/HECI/ECI code, or Seller provides Deliverables bearing a trademark, and the Deliverable is found, upon inspection and or testing to be counterfeit (not manufactured, upgraded or altered by the owner (or authorized user) of the intellectual property rights associated with the manufacturing, modification, marketing and sales of the product in question) Telmar Network Technology, Inc. may destroy the counterfeit material and will not return the counterfeit material or pay or compensate the supplier of said counterfeit material in any fashion whatsoever.

7. **Warranty.** In addition to those warranties expressed in other provisions, Seller warrants all Deliverables 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 or any other express or implied warranty is breached, and without limiting Purchaser's remedies or the language of provisions 4 or 6, Purchaser may return such Deliverables, at Seller's expense, for correction, replacement or credit, as Purchaser may elect.

8. **Special Tools And Other Property.** If the price of the Deliverables purchased under the

Order include any referenced tools, dies, fixtures or other equipment required by the Seller for the specific purpose of fulfilling the Order, such tools, dies, jigs, fixtures or other equipment shall become the exclusive property of the Purchaser.

9. Insurance. All property owned by Purchaser, while held in Seller's custody or control, shall be completely insured by the Seller against loss or damage resulting from fire (including extended coverage), malicious mischief and vandalism, in an amount equal to the replacement cost thereof, with loss payable to the Purchaser. Upon Purchaser's request, Seller shall submit a certificate of insurance confirming such coverage.

10. Indemnity and Advancement of Costs and Fees. Seller agrees to indemnify Purchaser, and hold Purchaser harmless, against all claims, judgments, decrees, costs and expenses whatsoever (including, without limitation, attorney's fees) arising from or incident to any proceeding whatsoever (including, without limitation, any government investigation or seizure, and any lawsuit or claim of any kind) to which Purchaser, or its agent or employee, is subjected related to the subject of any representation or warranty by Seller, or copyright, trademark, or patent infringement, trade secret misappropriation, or unfair competition resulting from similarity in design, trademark or appearance of Deliverables. Seller further agrees that, upon Purchaser's request, and at Seller's own expense, Seller will defend, assist in the defense of, and/or pay for the defense (including, without limitation, by advancing costs and attorneys' fees to attorneys selected by Purchaser) of, any proceeding whatsoever (including, without limitation, any government investigation or seizure and any lawsuit or claim of any kind) to which Purchaser, or its agent or employee, is subjected related to the subject of any representation or warranty by Seller, or copyright, trademark, or patent infringement, trade secret misappropriation, or unfair competition resulting from similarity in design, trademark or appearance of Deliverables. Unless otherwise prohibited by law or there is a request to the contrary by a government official, Purchaser agrees to notify Seller within a reasonable time of Purchaser becoming aware that Purchaser, or its agent or employee, has been subjected to such a proceeding. Nothing herein shall be construed as any relinquishment by Purchaser, or its agents or employees, of the right to control the defense of any such proceeding. The obligations of Seller expressed in this provision are in addition to all other obligations of Seller to Purchaser.

11. Use of Purchaser's Proprietary Information. Seller shall not reproduce, use or disclose to anyone, other than Purchaser, any TNT proprietary data, samples, tooling, dies, designs, drawings, specifications, software, technical information, or other property furnished by Purchaser, nor shall Seller use the same to produce or manufacture any materials, other than those required and authorized in an Order, without prior written authorization from Purchaser. Where TNT proprietary data, designs or other information are furnished to Seller's suppliers for procurement of Deliverables for use in the performance of the Order, Seller shall insert the substance of this clause in its subcontracts. Seller acknowledges that any such data, designs and other information of Purchaser are unique, and that Purchaser may enforce its rights under this clause by specific performance. Seller will disclose such information within Seller's organization only insofar as such disclosure is required for the purpose of the Order and only to those persons who have been advised of Seller's obligations under the Order. Upon Purchaser's request, such data, designs, and other information, and any copies thereof, shall be promptly returned to Purchaser. Purchaser shall be considered the person for whom the Deliverables were prepared, for the purpose of authorship in any copyrightable work created by Seller under the Order, and Seller hereby assigns to Purchaser all rights, title and interest in such works. Seller

shall promptly notify Purchaser of any attempt or other action of a third party seeking the reproduction, use or disclosure of such data and information without the written authorization of Purchaser. Nothing herein, or in any Order, shall be construed as granting Seller any license for any purpose under any patent or industrial property right of Purchaser, except those specifically required and authorized to effectuate the supply of the Deliverables subject to the Order.

12. Termination For Convenience/Stop Work. By written notice, Purchaser may terminate all or any part of an Order at its convenience. In such event, Seller and Purchaser 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 anticipated 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.

13. Compliance With Applicable Laws. Seller shall comply with all applicable Federal, State and local laws, statutes, rules, regulations and orders, as well as the laws of any foreign government in the countries in which the Seller provides any Deliverables, in the performance of the Order. Without limiting the generality of the foregoing, Seller represents (i) it has fully complied with all laws protecting intellectual property rights and forbidding trafficking in counterfeit goods, including, without limitation, the Lanham Act (15 U.S.C. § 1051, *et seq.*) and 18 U.S.C. § 2320 (trafficking in counterfeit goods or services); and (ii) with respect to the production and supply of any materials and/or performance of any services under the Order, it has fully complied with all of the provisions of the Fair Labor Standards Act of 1938, as amended, and that any materials and/or services furnished pursuant to the Order will meet the safety requirements of the Occupational Safety and Health Act.

14. Delegation And Assignment. No delegation or assignment of any duties under the Order shall be binding upon Purchaser, unless its prior written consent has been obtained. Seller shall inform Purchaser prior to any assignment of rights to monies due or to become due under the Order.

15. Waiver and Remedies. The failure of Purchaser to insist on performance of any of the provisions of these TNT PO Terms, and any Order, shall in no way be construed to be a waiver of such provisions. The right and remedies of Purchaser provided in these TNT PO Terms, and in any Order, shall be cumulative and in addition to any other rights and remedies provided by law or equity.

16. Choice of Law. These TNT PO Terms, and any Order, shall be governed and construed in accordance with the laws of the State of California, without giving effect to its conflict of law provisions. All actions and proceedings arising in connection with these TNT PO Terms, or any Order, shall be brought exclusively in the state and federal courts located in the County of Orange, State of California. The 1980 United Nations Convention on Contracts for the International Sale of Goods shall not apply to any Deliverable provided pursuant to these TNT PO Terms, or any Order.

17. Severability. In the event that any provision of these TNT PO Terms, any Order, or portion thereof, is held to be invalid or unenforceable, the remainder of these TNT PO Terms and such Order shall remain in full force and effect.