

## PURCHASE ORDER TERMS AND CONDITIONS (AGREEMENT FOR LEASE OF COMPUTER EQUIPMENT)

### 1. DEFINITIONS AND ACCEPTANCE OF ORDER.

- A. "Customer," "Buyer," "Licensee" or "Lessee" means the entity name listed on the Purchase Order/Subcontract. "Licensor," "Seller" or "Lessor" means the party with whom the Customer is contracting. The term "Purchase Order" means the name or title of the instrument of contracting, including all documents, exhibits and attachments referenced thereon.
- B. This Order constitutes Customer's offer. Acceptance is expressly limited to the terms of the Order and Customer hereby objects to any additional or different terms in the acceptance. This Order is accepted as written by executing the Acknowledgement or Acceptance copy of the Order, or by beginning performance.
- C. No modification of this Order (including any additional terms or different terms contained in the acceptance) shall be binding on Customer unless agreed to in writing and signed by Customer's duly authorized Purchase Representative.

### 2. ENTIRE AGREEMENT.

This Agreement, including the Purchase Order and all appendices and attachments referenced herein, constitutes the entire agreement between Lessor and Lessee and supersedes all proposals, oral and written, between the parties on this subject matter.

### 3. LEASE AND USE OF EQUIPMENT.

The Lessor hereby leases to the Lessee the computer equipment, parts, documentation and other property enumerated and described herein (hereinafter collectively called the "Equipment"). Lessee shall have the right to use the Equipment during the term of this Agreement at any location at which Lessee or any corporate affiliate maintains a place of business in the United States. Lessee shall be solely responsible for the costs of moving the Equipment to such other location and of returning the Equipment to Lessor at the expiration of the Lease term. Lessee shall use the Equipment in a careful and proper manner and shall comply with all laws and regulations applicable to the possession or use of the Equipment. If at any time during the term hereof Lessor supplies Lessee with label, plates or other markings stating that the Equipment is owned by Lessor, Lessee shall affix and keep the same in a prominent place on the Equipment.

### 4. CONFIDENTIALITY OF LICENSOR'S INFORMATION.

Notwithstanding any other provisions of this Agreement to the contrary, Lessee hereby agrees that it shall use reasonable efforts to avoid disclosure of Lessor's proprietary/confidential information to any third party other than Lessee's consultants, agents and representatives having access to Lessee pro-prietary data. Further, Lessor agrees that all such proprietary/confidential information shall be marked with a stamp or legend indicating its confidential/proprietary nature. For the purposes of the

Agreement, the term "reasonable efforts" shall mean that Lessee shall treat such proprietary/ confidential information in accordance with Lessee's procedures regarding vendor/customer proprietary information. Further, Lessee shall have the right to copy the software products for backup and archival purposes.

Customer shall not be liable for use or disclosure of any such proprietary information if the same is:

- A. In the public domain at the time it was disclosed;
- B. Known to the party receiving it at the time of disclosure;
- C. Used or disclosed inadvertently provided the appropriate degree of care is exercised;
- D. Used or disclosed with the prior written approval of the other party;
- E. Independently developed by the receiving party;
- F. Becomes known to the receiving party without similar restrictions from a source other than the disclosing party having the right to disclosure.

### 5. PERFORMANCE – DELAY.

Time is of the essence in the Lessor's performance of this Agreement. If at any time it appears to Lessor that it may not meet any of the performance schedules or the scheduled completion date of the services to be performed for any reason, including labor disputes, Lessor shall immediately by verbal means (to be confirmed in writing) notify Lessee of the reasons for and the estimated duration of such delay. If requested by Lessee, Lessor shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time. Any additional cost caused by these requirement of Lessee shall be borne by Lessor, unless the delay in performance arises out of causes beyond the control and without the fault or negligence of Lessor or its subcontractors within the meaning of the Cancellation-Default clause herein. The foregoing requirements are in addition to any of Lessee's other rights and remedies as may be provided by law or this Agreement.

### 6. TERM.

The term of this Agreement commences on the acceptance date or on the date specified. The term ends on the date specified in the Purchase Order unless the Agreement is renewed for an additional period or earlier terminated as provided herein.

### 7. DELIVERY, INSTALLATION, AND ACCEPTANCE.

- A. Delivery and Installation. The Lessee shall be responsible, at its own expense, for preparing the site in accordance with Lessor's installation specifications. Lessor shall be responsible, at its own expense, for shipping, unpacking and installing the Equipment including making all cable connections and all connections with electrical power and communication, and upon completion of installation shall certify to the Lessee that the Equipment is ready for use. In the event that Lessee is authorized by Lessor to install said Equipment, the Lessee may elect to have Lessor

certify the installation. Risk of loss shall remain with Lessor until such certification.

- B. Acceptance of Equipment by Lessee. Lessee shall have a trial period of thirty (30) days following the date on which the Equipment has been certified for use during which to determine whether the Equipment meets the standards and specifications set forth in the Purchase Order hereto. The acceptability of the Equipment shall be based upon its ability to complete successfully such acceptance tests as are set forth in the Purchase Order. In the event that the Equipment does not perform in accordance with such standards and specifications, the Lessor shall at its own expense take all reasonable actions (including modification, adjustment, repair or replacement of the Equipment) necessary to make the Equipment perform in accordance with the specifications. After completion of any such adjustments the acceptance tests will be conducted again; if the Equipment still fails to pass the acceptance tests, Lessee shall have the right to cancel this Agreement immediately and return the Equipment at Lessor's expense. The date upon which Lessee certifies to Lessor in writing its acceptance of the Equipment shall be called the "Acceptance Date" for purposes of the Agreement.

#### **8. PAYMENT SCHEDULE; FEES AND CHARGES.**

- A. Following successful completion of the acceptance tests, Lessee shall pay Lessor the fees and charges specified in the Purchase Order hereto contingent upon Lessor's satisfactory performance of its obligations under this Agreement up to and including the day upon which such payment becomes due.
- B. Invoices. Once each month (or more frequently if approved by Lessee), Lessor shall submit to Lessee, in such form and with such evidence in support thereof as Lessee may reasonably require, an invoice for each payment provided for in the Agreement. Payment of invoices shall not constitute approval or acceptance of services rendered. At any time prior to final payment under this Agreement, Lessee may have the invoices audited as to validity. Payment of Lessor's invoices shall be subject to adjustment for any amounts subsequently found upon audit or otherwise to have been improperly invoiced.

#### **9. WARRANTIES OF LESSOR.**

- A. Equipment Design and Performance. Lessor warrants that the Equipment is in good working order and condition, free from defects in design, workmanship and material, and that it conforms to any samples and drawings and to the performance capabilities, characteristics, specifications, functions and other descriptions and standards set forth in the Purchase Order hereto. Lessor agrees promptly to repair or replace, at no additional charge to Lessee, any item of Equipment, or part thereof, that is or becomes defective during the term of this Agreement and any extensions or renewals hereof and otherwise to maintain the Equipment in conformity with the terms set forth in the Purchase Order hereto. If Lessor is not the original equipment manufacturer, Lessor shall obtain in writing the manufacturer's consent to pass through all Equipment warranties.

- B. Quiet Enjoyment. Lessor warrants and represents that the Equipment is the sole and exclusive property of Lessor and is not subject to any lien, claim or encumbrance inconsistent with any of Lessee's rights under this Agreement and that Lessee is entitled to, and shall be able to enjoy, quiet possession and use of the Equipment during the term of this Agreement, without interruption by Lessor or any person claiming under or through Lessor or by right of paramount title. Lessor shall not assign this Agreement without obtaining the written permission of the Lessee. Lessee has no right, title or interest in the Equipment except as expressly set forth herein.
- C. Rights of Third Persons. Lessor warrants that the Equipment, the manufacture and production thereof, and the lease to and use thereof by Lessee, do not violate or in any way infringe upon the rights of third parties, including (but not limited to) contractual, employment, trade secrets, proprietary information and non-disclosure rights, and any trademark, copyright or patent rights in the manufacture, production, sale, lease or use of the Equipment.
- D. No Conflicting Agreement. Lessor warrants that entry into and performance of this Agreement is not limited in any way by any loan, security, financing, contractual or other agreement to which Lessor is a party.
- E. Operational Availability. Lessor warrants that the percentage of time during which the Equipment is available for normal operations during any month of the term of this Agreement, excluding time necessary for normal scheduled maintenance, shall equal or exceed ninety-five percent (95%) of the total time available (the operational availability), or such other operational availability percentage as may be specifically set forth in the Purchase Order. In the event that the operating characteristics of the Equipment or any item of Equipment fall below such operational availability percentages by five percent (5%) or more during any 90 day period, or by ten percent (10%) or more during any 30 day period, Lessor agrees at Lessee's request to replace promptly such Equipment or item of Equipment with new equipment so as to attain ninety-five percent (95%) operational availability.

# **10. PATENT, TRADEMARK, AND COPYRIGHT INDEMNITY.**

Seller shall defend, indemnify, and hold Buyer, Buyer's officers, agents, employees, and customers harmless against all claims and liabilities, including costs, for infringement of any United States patent, trademark, or copyright by any Products delivered under this Order or, at Seller's option and expense, Seller shall obtain such licenses as are necessary to remove such infringement, provided that Seller is reasonably notified of such claims and liabilities. Seller's obligation shall not apply to Products manufactured by Seller pursuant to detailed designs developed by Buyer and furnished to Seller under an Order which does not require research, development, or design work by Seller. Seller's obligation shall also not apply to any infringement arising from the use or sale of Products in combination with items not delivered by Seller if such infringement would not have occurred from the use or sale of such Products solely for the purpose for which they were designed or sold to Buyer. Seller's obligation shall extend to the U.S. Government only if and to the extent Buyer has agreed to indemnify the U.S. Government.

# **11. TERMINATION/CANCELLATION.**

A. Termination-Convenience. The performance of services under this Lease may be terminated, in whole or in part, by Lessee for Lessee's convenience at any time and for any reason on Lessee giving written termination notice to Lessor and shall pay to Lessor termination charges computed in the following manner; (1) a sum computed and substantiated in accordance with standard accounting practices for those reasonable costs incurred by Lessor prior to the date of termination for completed work, work in process, materials directly related to the Agreement, for orderly phase out of performance as requested by Lessee in order to minimize the costs of the termination and for preparation and settlement of Lessor's termination claim and (2) a reasonable profit on such work performed; provided, however, that Lessee shall not be liable to Lessor for any costs which would not have been charged had the Lease not been terminated nor for any sum in excess of the total price stated in the Lease for the terminated products.

B. Cancellation-Default. Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of Lessor or of its suppliers or subcontractors, Lessee shall be entitled, by written cancellation notice to Lessor, to cancel the whole or any part of this Agreement for default, without granting an extension of time, and to have all other rights against Lessor by reason of Lessor's default as provided by law. If it be found that Lessor was not in default the rights and obligations of the parties shall be the same as if a Notice of Cancellation had been issued pursuant to Clause 11.A above, Termination-Convenience.

C. Other. By written notice to Lessor, Lessee may cancel the whole or part of this Agreement in the event of suspension of Lessor's business, insolvency of Lessor, institution of bankruptcy, reorganization, arrangement, liquidation proceedings by or against Lessor or proceedings for the benefit of creditors or for any

failure by Lessor to provide adequate assurances (as provided for in Uniform Commercial Code, section 2-609) of its ability or willingness to perform its obligations under this Agreement. Such cancellation shall be deemed "for default" in accordance with paragraph B. of this Termination/Cancellation clause and the rights and obligations of the parties shall be determined as therein provided.

D. Lessor shall also be deemed in default if the Equipment continues to exhibit defects causing serious disruption of use and/or repeated periods of downtime, notwithstanding Lessor's remedial or maintenance efforts, over a continuous period of three months or more.

E. Maintenance Termination. Lessee may immediately terminate this Agreement upon termination or breach of any maintenance agreement between Lessor and Lessee.

F. Rights and Obligations of the Parties on Termination. In the event that this Agreement is terminated, each party shall forthwith return to the other all papers, materials, and other properties of the other party then in its possession or certify to the destruction of same.

G. Refund of Payments After Acceptance. The Lessor shall, upon termination by Lessee due to default after acceptance of the Equipment, return payments it received for the Equipment and the services to the following schedule. The refund of monies paid hereunder shall not be deemed the exclusive remedy of Lessee in the event of a default or breach of this Agreement by Lessor.

Termination Date After Acceptance	Percentage of License Fee to be Refunded
less than 6 months	90%
within 6-12 months	75%
within 13-24 months	50%
within 25-36 months	25%
within 37-48 months	10%
more than 48 months	0%

# **12. SURRENDER OF EQUIPMENT.**

Unless Lessee has paid Lessor the "Stipulated Loss Value" of an item of Equipment, upon the expiration or termination of this Agreement Lessee shall return the Equipment to Lessor in good repair, condition and working order, ordinary wear and tear expected, as directed by Lessor. Lessee shall pay the cost of returning the Equipment to the office of Lessor as specified herein unless the Agreement has been terminated by Lessee as provided for herein, in which case Lessor shall pay for return of the Equipment.

# **13. LOSS AND DAMAGE.**

Lessee hereby assumes and shall bear the entire risk of loss and damage (reasonable wear excepted) to the Equipment (following the Acceptance Date and until surrender of the Equipment) for any cause which is not the fault of Lessor.

# **14. CONSEQUENTIAL DAMAGES.**

In no event shall Lessee be liable to Lessor for payment of any consequential damages resulting from the default in the performance of their respective obligations under this Agreement.

# **15. TAXES.**

All prices herein, unless otherwise provided, include all applicable Federal, state and local taxes as may be assessed

against Lessor except those sales or use taxes required by law to be paid by Lessee.

**16. INSURANCE.**

The Lessor shall insure against injuries or damage arising which are the result of the fault or negligence of the Lessor, its agents and subcontractors.

**17. CLEARANCE OF MATERIALS INTENDED FOR PUBLIC RELEASE.**

No new release, including photographs and films, advertisement, public announcement, denial or confirmation of same, or any part of the subject matter of this Agreement or any phase of any program hereunder shall be made without prior written approval of both parties.

**18. MISCELLANEOUS.**

- A. Personal Property. The Equipment is personal property notwithstanding that it may now be, or hereafter come, in some manner affixed or attached to real property or any building.
- B. Delegation and Assignment. No delegation of any duties under this Agreement shall be binding upon Lessee until its written consent thereto has been obtained. Lessor is requested to inform Lessee prior to any assignments of rights to monies due or to become due under this Agreement.
- C. Choice of Law. This Order and any dispute arising hereunder shall be governed by the substantive and procedural laws of the State of California, except, however, that California's Choice of Law provisions shall not apply.
- D. Lessee's Instructions. During the term of this Agreement, the Lessor will be responsible for ensuring that its employees, servants, and agents will, whenever on the Lessee's premises, obey the instructions and directions issued by the Lessee.
- E. Notices. Any notice or other communication hereunder shall be in writing.
- F. Waiver. No term of provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other whether expressed or implied, shall not constitute a continuing waiver of, consent to, or excuse for any different or subsequent breach.
- G. Compliance with Laws.
  - (1) Federal, State and Local Laws. Lessor warrants that in the performance of this Agreement, it shall comply with all applicable Federal, state and local laws. On its invoice or in other form satisfactory to Lessee, Lessor shall submit certification that the products covered by this Agreement were produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act (29 U.S.C. 201-219) as amended and of regulations and orders of the U.S. Department of Labor issued under Section 14 thereof.
  - (2) Equal Opportunity. Lessee is an "Equal Opportunity" employer and Lessor shall, therefore, comply with the provisions of the President's Executive Lease 11246 as

supplemented and all related regulations of the Department of Labor.

**19. DISPUTES.**

Either party may litigate any dispute arising under or relating to this order. Such litigation shall be brought and jurisdiction and venue shall be proper only in a state or federal district court in Los Angeles County. Pending resolution of any such dispute by settlement or by final judgment, the parties shall proceed diligently with performance.

**20. WAIVER OF RIGHT TO JURY TRIAL.**

Buyer and Seller hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or hearing brought by either Seller against Buyer or Buyer against Seller on any matter whatsoever arising under, relating to, or in any way connected with this Order, the relationship of Seller and Buyer or any claim of injury or damage, or the enforcement of any remedy under any law, statute or regulation now or hereafter in effect.

**21. LESSOR'S DATA.**

Any knowledge, information, drawings, designs, data or computer programs (herein called "Data") which Lessor discloses to Lessee in connection with this Agreement, which Data Lessor has not marked with a proprietary legend, shall not be considered as proprietary to Lessor or in any way restrict Lessee's use of such Data.

**22. DISCLOSURE OR DISPOSAL.**

Lessor shall safeguard and keep secure all designs, processes, drawings, specifications, reports, Data and other technical or proprietary information and the features of all parts, equipment, tools, gauges, patterns, and other items furnished or disclosed to Lessor by Lessee. Unless otherwise provided herein, or authorized by Lessee in writing, Lessor shall use such information and items, and the features thereof, only in the performance of this Agreement. Thus Lessor shall not sell, or otherwise dispose of as scrap or otherwise, any completed or partially completed or defective products without defacing or rendering such products unsuitable for use. Upon completion or termination of this Agreement, Lessor shall, at Lessor's expense, make such disposition of all such information, items and products as herein required or as may be subsequently directed by Lessee.