

1.0 ORDER ACCEPTANCE. The Terms and Conditions of Sale contained herein as well as the terms and conditions of Teracue's Software License and Support programs (hereinafter referred to collectively as "Terms and Conditions") shall apply to all price quotations made and purchase orders entered into by Teracue. Teracue's Software License and Support Program terms are herewith provided to buyer ("Buyer"), or if not provided, are available upon request. Teracue's Terms and Conditions may conflict with terms and conditions affixed to the purchase order and/or specified by Buyer of Teracue hardware, software and support products ("Product"); therefore, acceptance of Buyer's order is made only on the express understanding and condition that, insofar as Teracue Terms and Conditions conflict with any terms and conditions of Buyer's order, Teracue Terms and Conditions shall govern, and all different terms and conditions of Buyer are specifically objected to. All orders or contracts must be approved and accepted by Teracue at Teracue's principal place of business in Odelzhausen, Germany.

2.0 PRICE AND TERMS OF PAYMENT. Prices quoted are provided for information purposes only and do not constitute an offer to sell Product. All invoices for Product shall occur upon shipment from Teracue's factory and will be at the price indicated in Teracue's order acknowledgment, which shall be provided to Buyer after receipt and acceptance of Buyer's order. Buyer shall pay all transportation and installation charges. There shall be added to the prices the amount of any sales, use or other taxes, however designated or levied, based on such prices or on the sale or use of Product. Any personal property taxes assessable on Product after delivery to the carrier shall be borne by Buyer.

Buyer agrees to pay the purchase price for Product net thirty (30) days from date of shipment, subject to approval by Teracue of amount of credit extended. Teracue reserves the right to (i) require payment in advance or otherwise modify credit terms at its sole discretion and (ii) levy a late payment charge of 1.5% per month upon any unpaid amounts beginning thirty (30) days after the date of invoice, without any requirement of notice, provided however that such charge shall not be levied in any month if to do so would result in an annual charge in excess of legally permissible limits. Payment of such service charge shall in no way limit Teracue's right to repossess Product as provided in Section 3 hereof.

3.0 TITLE AND DELIVERY. All Teracue sales are ex works Odelzhausen, Germany. Partial deliveries shall be permitted hereunder. Teracue's obligation to deliver shall be fulfilled by its delivery of Product to the carrier ex works. The carrier shall be Buyer's agent, and Title (except in respect to Teracue software products) and risk of loss or damage to Product shall pass to Buyer upon delivery. All claims for damages due to shipping and transportation must be filed with the carrier. In absence of specific written instructions, Teracue will select the carrier, and the means of shipment. Buyer grants to Teracue a continuing purchase money security interest in any Teracue Product purchased for the amount of its purchase price. Upon request by Teracue, Buyer shall sign financing statements and any related documents required to perfect such security interest. Payment in full of the purchase price of any Product purchased hereunder shall release the security interest on that Product.

4.0 LIMITED WARRANTY. Teracue warrants that the hardware Product will be free from defects in materials and workmanship and that both the hardware and software Product will conform substantially to published specifications in effect at time of shipment when installed and used in the manner specified in Teracue's Product manuals. The duration of this standard limited warranty is one (1) year from date of original shipment. Hardware Product shall be of new manufacture, but may include used parts, subassemblies and/or components that match or exceed the performance and reliability of new parts, subassemblies and/or components.

Provided that Buyer has notified Teracue of a hardware defect during the warranty period, as Buyer's exclusive remedy for breach of warranty, Teracue will, at its sole discretion, repair or replace any such product which is confirmed to be defective after return by Buyer, at Buyer's expense, to an Teracue authorized service center. Repair or replacement and return to Buyer shall be made at Teracue's expense, unless the Product has been (i) damaged by accident, act of God, shipment, improper installation, misuse or misapplication or (ii) has been modified or altered without Teracue's express written acceptance of such modifications, in which case this limited warranty shall be null and void.

THE FOREGOING WARRANTIES ARE IN LIEU OF, AND TERACUE AND ITS LICENSORS DISCLAIM, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5.0 LIMITATION OF LIABILITY. IN NO EVENT WILL TERACUE OR ITS LICENSORS BE LIABLE TO BUYER FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT OR DATA AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES), WHETHER OR NOT TERACUE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, HOWEVER CAUSED, WHETHER FOR BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE. THIS EXCLUSION ALSO INCLUDES ANY LIABILITY, WHICH MAY ARISE OUT OF THIRD PARTY CLAIMS AGAINST BUYER, AND SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

Teracue's liability for breach of, or arising out of these Terms and Conditions and/or sale, shall be limited to refund of the purchase price for Product purchased and the license fee for software licensed hereunder. The existence of more than one claim will not enlarge or extend the foregoing limits. The essential purpose of this provision is to limit the potential liability of Teracue and/or sale. Any action against Teracue and/or its vendors must be brought within twelve (12) months after the cause of action arises.

6.0 REMEDIES UPON DEFAULT. Upon default by Buyer, Teracue shall have all the rights and remedies of a secured party under the Uniform Commercial Code. Further, Teracue shall have the option to withhold its performance under this or any other contract or agreement between Teracue and Buyer. Default includes, but is not limited to: (i) failure to pay the purchase price in full, (ii) failure to perform any other obligation under these Terms and Conditions, (iii) Buyer becoming insolvent, filing bankruptcy, or making an assignment for the benefit of creditors, dissolution or liquidation of Buyer's business, or winding up of Buyer's business.

7.0 INABILITY TO PERFORM. Teracue's sole liability for its failure to perform its obligation to deliver Product under these Terms and Conditions shall be to refund to Buyer any monies paid to Teracue relating thereto. Teracue shall in no event be

liable for delays or non-fulfillment of its obligations under these Terms and Conditions for any losses arising on account of acts of God, fire, labor dispute of any nature, accident, supplier failure or delay, insurrection or other causes beyond the reasonable control of Teracue.

8.0 CANCELLATION; PRODUCT DESIGN CHANGES. Order cancellation occurring less than thirty (30) days from date of scheduled shipment will be subject to a 20% order cancellation charge and requires written notice from Buyer, which shall be deemed accepted no later than seven (7) days after Buyer's mailing, order cancellation occurring within sixty (60) days from date of scheduled shipment will be subject to a 10% order cancellation charge and requires written notice from Buyer, which shall be deemed accepted no later than seven (7) days after Buyer's mailing. Terms are subject to amendment in such cases when specific terms are set forth for individual and/or unique purchase contracts. Alterations to Product which Teracue deems necessary to comply with specifications, changed safety standards or governmental regulations may be made at any time prior to shipment.

9.0 PATENT AND COPYRIGHT INDEMNITY. Teracue shall defend, or at its sole discretion, settle any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that Product as furnished by Teracue to Buyer under these Terms and Conditions directly infringes any issued patent or copyright, and Teracue shall pay all settlements and costs finally awarded therein against Buyer, provided that (i) Teracue is promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement, (ii) Teracue is given authority, information and assistance necessary to settle, compromise or litigate said suit or proceeding, and (iii) no settlement of any such suit is made without the express written permission of Teracue. If Product is held in any such suit to infringe and the use of Product is enjoined, Teracue shall have the option, at its own expense, to procure for Buyer the right to continue using Product; or replace same with non-infringing Product; or modify same to make it non-infringing; or refund the depreciated value of said Product, and accept the return of same.

Teracue shall not be obligated to defend or be liable for cost and damages if infringement, or a claim thereof, arises out of compliance with Buyer's specification; incorporation of Buyer or third party product or products in or with Product; modification of Product after delivery by Teracue; Buyer's use of other than the latest release of Product, if such infringement could have been avoided by use of the latest release of Product and such release has been made available to Buyer; Buyer's use of Product after receiving notice that Product infringes a patent or copyright; or from other fault, action or inaction of Buyer. Teracue may decline to make further shipments to Buyer if infringement caused by any such action of Buyer has been alleged, or has occurred. The foregoing states the entire liability of Teracue for patent, copyright, or other intellectual property infringement by Product furnished hereunder.

10.0 PROPRIETARY AND CONFIDENTIAL INFORMATION. Buyer will hold in confidence the contents of this Agreement and all information relating to Product that is designated as confidential by Teracue, or is of a confidential or proprietary nature, and shall take all reasonable steps to prevent its employees from misusing such information, or disclosing such information to any person outside its organization. Information shall not be considered to be confidential information if it is already, or otherwise becomes, publicly known through no act of Buyer. The obligations of this Section shall survive any termination of this agreement.

11.0 GENERAL.

(a) **Licensed Product.** All Teracue software Product is licensed by Teracue to Buyer for Buyer's use pursuant to the terms and conditions of Teracue's Software License Agreement. When sued in reference to software, the word "purchased" or similar or derivative word is understood to mean "license" and "Buyer" or similar or derivative word is understood to mean "licensee." Title to software shall remain with Teracue and its LICENSORS, notwithstanding anything to the contrary herein.

(b) **Export.** Buyer hereby agrees that Buyer does not intend to, and will not knowingly export, either directly or indirectly, any Product or any portion of Product, to any country for which such approval is required.

(c) **Assignment.** Orders received by Teracue are not assignable without permission from Teracue; any attempt to assign any rights, duties or obligations which arise under these Terms and Conditions without such permission shall be null and void.

(d) **Resolution of Disputes.** The parties hereby agree that any dispute regarding the interpretation or validity of or otherwise arising out of, these Terms and Conditions, or relating to Product sold or licensed hereunder shall be subject to the exclusive jurisdiction of the courts of Germany).

(e) **Governing Law.** The laws of Germany, excluding its choice of laws rules, shall govern any dispute regarding the interpretation or validity of, or otherwise arising out of these Terms and Conditions, or relating to Product sold or licensed hereunder.

(f) **Unenforceable Provision.** In the event that any of these Terms and Conditions shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining terms and conditions shall remain in full force and effect, provided that in such event the parties agree to negotiate in good faith hereunder.

(g) **Notices.** All notices shall be in writing and served by certified or registered mail, return receipt requested, and deemed complete seven (7) days after mailing to the party's corporate address.

(h) **Independent Agents.** Teracue and its vendors are independent contractors, and there exists no relationship of joint venture, partnership or agency between them. Teracue does not have and does not hold itself out as having, any right or authority to act, or assume or create any obligation or responsibility (whether express or implied) on behalf of or in the name of its vendors.

(i) **Complete Agreement.** These Terms and Conditions constitute the entire agreement between the parties pertaining to the subject matter hereof, and any and all written or oral agreements heretofore existing between the parties are expressly canceled. Buyer acknowledges that it has not relied on any representation not expressly contained herein. Any modification of these Terms and Conditions must be in writing and signed by both parties. Any such modifications shall be binding upon Teracue only if and when signed by its duly authorized officer.