

TW TELECOM L.P. TERMS AND CONDITIONS OF PURCHASE ORDER

1. **ACCEPTANCE** – In the absence of a written acceptance hereof, the delivery of any material, equipment, software or services ("Supplies"), by Vendor against a TW Telecom L.P. ("Purchaser") Purchase Order ("PO") will constitute a full acceptance by Vendor of the Terms and Conditions stated herein. Further, Vendor acknowledges and agrees that the Terms and Conditions stated herein prevail over any terms and conditions stated in Vendor's acknowledgement or invoice.

2. **INSPECTION AND DEFECTS** – Supplies ordered are subject to inspection and approval at the ultimate destination point. If rejected, Supplies will be returned for credit or replacement at Vendor's risk and all handling and transportation expense both ways will be assumed by Vendor. It will be essential that Vendor obtain new shipping instructions from Purchaser before making said replacement.

3. **PACKING REQUIREMENTS** – Supplies must be prepared for shipment in accordance with the packing requirements of consolidated freight classification. Vendor agrees to assume and pay all extra expenses attributable to improper packing.

4. **BILLING, MARKING AND ROUTING** – Vendor agrees to comply with the billing and routing instructions shown on the PO or as otherwise communicated in writing. When Supplies are improperly marked or routed and extra expense is incurred to deliver such Supplies to the proper destination, Vendor agrees to assume and pay such extra expense. All containers must be plainly marked with the "ship to" location as it appears on the front of the PO.

5. **RELEASE AUTHORIZATIONS** – In the absence of quantities, delivery dates, and destination being specified on the PO, Vendor will ship Supplies in accordance with the instructions to be furnished to Vendor.

6. **SUSPENSION OF WORK AND SHIPMENT** – The Vendor will, upon Purchaser's request, suspend shipment and delivery of Supplies and all work and operations hereunder for such reasonable period as may be requested.

7. **CHANGES TO PO BY PURCHASER** – Purchaser may request changes in the drawings, designs, or specifications applicable to the Supplies or services covered by the PO. If any such change affects the cost of manufacturing such Supplies or the cost of furnishing such services, Vendor may propose a change in the purchase price, but no such change will be effective until Purchaser has approved the change in writing.

8. **TERMINATION AT OPTION OF PURCHASER** – (a) Performance of work under the PO may be terminated by Purchaser at its option in whole or in part, at any time by delivery, or by faxing a PO Change Order as written notice of termination to Vendor specifying the extent of such termination. (b) Upon such termination, the following amounts will be paid without duplication: (i) the PO price for all Supplies or services already fabricated or completed in accordance with the PO and not previously paid for; and (ii) the actual costs incurred (exclusive of profit) by Vendor in accordance with the PO that are properly allocable or apportionable under generally accepted accounting practices to the terminated portion of the PO, including the cost of discharging liabilities which are so allocable or apportionable. Vendor will to the extent possible, mitigate Purchaser's expenses under this Section. Payments due under this subparagraph (b), will not exceed the aggregate price specified in the PO, less payments already made.

9. **EXCUSABLE DELAYS** – Vendor will not be liable for delays in furnishing Supplies or services hereunder, and Purchaser will not be liable for failure to accept Supplies or services hereunder, if such delays or defaults on the part of either party are due to: (a) acts of God or of a public enemy; (b) Acts of Government of the United States or any state or political subdivision thereof; (c) fires, floods, explosions or other catastrophes; (d) epidemics or quarantine restrictions; (e) freight embargoes; (f) unusually severe weather; (g) delays of a supplier due to such causes; (h) causes beyond the control and without the fault or negligence of Vendor in furnishing Supplies or services hereunder or resulting from Vendor's failure to timely place orders or have alternative sources or of Purchaser in accepting Supplies and services hereunder.

10. **DELIVERY** – Must be made within time promised, failing which Purchaser reserves the right to purchase elsewhere and charge Vendor with any loss incurred, unless Purchaser has expressly authorized deferred shipment.

11. **INTELLECTUAL PROPERTY INFRINGEMENT** – Vendor guarantees that the Supplies specified on the PO, and their sale or use, alone or in combination, according to the Vendor's specifications or recommendations, if any, will not infringe any copyright, maskwork right, patents or other intellectual property right; and agrees to defend, indemnify, and hold Purchaser harmless against all judgements, decrees, costs and expenses resulting from any such alleged infringements; and covenants that Vendor will, upon Purchaser's request and at Vendor's own expense, defend Purchaser against any claim, allegation or action which may be brought against Purchaser or its customers by reason of any such alleged infringements.

12. **LIABILITY FOR INJURY** – If Vendor is required by the terms of the PO to perform any work on Purchaser's premises or the premises of Purchaser's customer or another third party designated by Purchaser, then Vendor will be responsible for any damages or injuries to persons or property that may occur as a result of fault or negligence of Vendor, its agents, its contractors (and subcontractors), servants or employees in connection with the performance of such work, and Vendor will defend, indemnify and hold harmless Purchaser from and against any liability for such damages or injuries. Before commencing such work Vendor will furnish a certificate of insurance showing that Vendor carries bodily injury and property damage liability insurance (or evidence of self-insurance, which must be acceptable to Purchaser) in amounts and with coverages satisfactory to Purchaser.

13. **REMEDIES** – The remedies reserved in the PO will be cumulative and additional to any other further remedies provided in law or equity. No waiver or breach of any provision of this PO will constitute a waiver of any other breach or of such provision.

14. **MODIFICATIONS OF PO AND NON-ASSIGNMENT** – The PO contains the complete and final agreement between Purchaser and Vendor and no agreements or other understanding in any way purporting to modify the terms and conditions hereof will be binding unless made in writing. A change to the PO proposed by Vendor will be effective only if Purchaser issues an executed Change Order to reflect the adjusted terms. Vendor will not assign the PO or any monies due or to become due hereunder without the prior written consent of Purchaser's authorized representative.

15. **WARRANTIES** – Vendor warrants all articles or services when delivered hereunder to be free from all defect of material or workmanship, to conform strictly to the specifications, drawings or samples specified or furnished by Vendor or Purchaser, and to be fit for the uses and purposes intended. All warranties will survive any intermediate or final inspections, delivery, acceptance, or payment and will continue in effect through a period of one-year beginning with the date of delivery of each article or service.

16. **FAIR LABOR STANDARDS ACT** – Vendor guarantees that it will comply with the requirements of the Fair Labor Standards Act of 1938, U.S.C. Title 29 Chapter 8, as mentioned in producing the Supplies or performing the services to be furnished hereunder. All invoices will contain substantially the following assurance: "Vendor hereby certifies that these goods were purchased in compliance with all applicable requirements of sections 206, 207 and 212 of the Fair Labor Standards Act, as amended, and regulations and orders of the United States Department of Labor."

17. **PRICE** – Any price increase over and above that which is stated on the PO is subject to written approval of Purchaser and if material is shipped without Purchaser's consent, material may be returned at Vendor's cost.

18. **INDEMNIFICATION** – Vendor will indemnify, defend, reimburse and hold harmless Purchaser, its parents, subsidiaries or affiliates, and all of their officers, directors, agents and representatives, from and against any and all claims and demands: (a) for damages of any nature whatsoever (including, without limiting the generality of the foregoing, damage to property of Purchaser, Purchaser's customer or any other third party site designated by Purchaser as the work site), including costs, litigation expenses, counsel fees and liabilities incurred in connection therewith; and (b) for direct damages of any nature whatsoever arising out of injury to, or death of any person whatsoever caused in whole or in part by the acts or omissions of Vendor, or any other person directly or indirectly employed by them or any of them, while engaged in the performance of work or any activity associated with the PO or arising out of failure to perform according to warranties.

19. **VALIDITY OF PO** - The PO is not valid unless signed by an authorized representative of Purchaser. Vendor agrees to deliver the material or services specified on the PO, subject to all terms and conditions therewith, and any attachments thereto provided by Purchaser. Vendor acknowledgement should be received within 7 days and should include confirmed price and delivery information. To facilitate invoice payment send statement directly to TW Telecom, L.P. at 10475 Park Meadow Drive, Littleton, CO 80124 Accounts Payable Department. Payments are due within 90 days of Purchaser's receipt of the invoice. If the services are performed on real property and could give rise to mechanic's or similar liens under applicable state law, Purchaser will not be required to make final payment of invoices unless Vendor provides mechanic's lien waivers signed by Vendor and all subcontractors. All shipments on the PO are to be insured at minimum valuation in accordance with the carrier's tariffs. No collect deliveries will be accepted. Purchaser will pay freight costs unless otherwise stated.

20. **TITLE** to the Supplies will pass to Purchaser when the Supplies are shipped from the manufacturer's warehouse (FOB Destination). Vendor will ship Purchases in accordance with Purchaser's instructions with transportation charges prepaid by Vendor. Risk of loss for the Supplies will pass to Purchaser when Vendor has delivered the Products to the destination agreed upon by the parties.

21. **EQUAL EMPLOYMENT OPPORTUNITY CLAUSE** (Incorporated by reference) The Equal Employment Opportunity Clause required under Executive Order 11246; the affirmative action commitment for disabled veterans and veterans of the Vietnam Era, set forth in 41 CFR §60-250.5; the affirmative action clause for disabled workers, set forth in 41 CFR §60-741.5; and the related regulations of the Department of Labor, 41 CFR Chapter 60, are incorporated by reference in the PO. By accepting the PO, Vendor certifies that it complies with the authorities cited above, and it does not maintain segregated facilities or permits its employees to perform services at locations where segregated facilities are maintained, as required by 41CFR Part 60.2. **Purchaser is an equal opportunity company and a wholly owned subsidiary of Time Warner Telecom Inc.**

22. **GRANT OF LICENSE** – Vendor hereby grants to Purchaser and its affiliates a nonexclusive, perpetual and fully-paid license to use (a) the software described on the PO; and (b) the user and operating manuals, in connection with their respective businesses, for processing data. TWTC will have the right to reproduce the software and manuals concurrent with delivery of the software, Vendor will supply to Purchaser a reasonable number of copies of the user manuals. Vendor hereby grants to Purchaser a license to copy the user manuals for Purchaser's internal use. Such copies will retain Vendor's copyright notices and markings indicating their proprietary nature. TWTC may modify, correct or enhance the user manuals in any manner, and any such modifications, enhancements, or corrections and any related materials and documentation (and all proprietary rights therein, including copyrights) will belong exclusively to Purchaser to the extent that the modifications do not embody any material proprietary to Vendor.