



TOSHIBA INTERNATIONAL CORPORATION
INDUSTRIAL DIVISION
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STANDARD TERMS AND CONDITIONS OF SALE (dated April 27, 1999)

EXCEPT AS OTHERWISE AGREED TO IN WRITING BY TOSHIBA INTERNATIONAL CORPORATION, THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY TO THE OFFER OF SALE OF THE EQUIPMENT, PARTS, SOFTWARE, AND SERVICES DESCRIBED HEREIN. PURCHASER'S WRITTEN ORDER ACCEPTING THIS OFFER FOR SALE FOR ANY SUCH EQUIPMENT, PARTS, SOFTWARE OR SERVICES OR WRITTEN DIRECTION TO TOSHIBA INTERNATIONAL CORPORATION TO PROCEED WITH ENGINEERING, PROCUREMENT, FURNISHING, MANUFACTURING OR SHIPMENT OF SUCH EQUIPMENT, PARTS, SOFTWARE OR SERVICES, SHALL CONSTITUTE CONSENT TO ONLY THESE TERMS AND CONDITIONS AND A REPRESENTATION THAT PURCHASER IS SOLVENT. THIS OFFER OF SALE EXPRESSLY LIMITS ANY ACCEPTANCE TO THE TERMS OF THIS OFFER ONLY. ANY ADDITIONAL OR CONTRARY TERMS IN A PURCHASER'S WRITTEN PURCHASE ORDER, ACKNOWLEDGMENT AND OTHER WRITTEN DIRECTION WILL CONSTITUTE A MATERIAL ALTERATION WHICH TOSHIBA INTERNATIONAL CORPORATION OBJECTS TO AND REJECTS. TRADE CUSTOM AND/OR USAGE ARE SUPERSEDED BY THE TERMS OF THIS OFFER OF SALE AND SHALL NOT BE APPLICABLE TO BROADEN OR NARROW THE EXPRESS TERMS OF THIS OFFER OR USED OTHERWISE IN ITS INTERPRETATION. THE TERM "COMPANY" AS HEREAFTER USED MEANS TOSHIBA INTERNATIONAL CORPORATION, EXCEPT THAT FOR PURPOSES OF ARTICLES III ENTITLED "EQUIPMENT AND SOFTWARE MODIFICATION AND INSTALLATION," IV ENTITLED "FORCE MAJEURE," VIII ENTITLED "LIABILITY," IX ENTITLED "NUCLEAR USE," XI ENTITLED "PATENTS," AND XII ENTITLED "WARRANTY," IT SHALL MEAN TOSHIBA INTERNATIONAL CORPORATION AND TOSHIBA CORPORATION AND THEIR RESPECTIVE SUBSIDIARIES AND SUPPLIERS.

I. PRICES: Unless otherwise specified herein, the prices described herein are in United States of America currency and include the cost of the manufacturer's usual factory tests, inspection and packing in accordance with the standards of the manufacturer and delivery F.O.B. carrier at the Company's plant in Houston, Texas, or F.O.B. place of shipment of Company's supplier. Unless otherwise specified herein, such prices do not include any other costs applicable to the equipment, parts and software described herein following their delivery in accordance with Article II, below, including, without limitation, unloading, handling, storage, transportation, installation, and insurance charges. All such costs shall be paid by Purchaser in addition to the purchase price upon receipt of Company's invoices. Unless otherwise specified herein, the prices applicable to the equipment, parts, software and services described herein are those in effect at the time of shipment or at the time of performance of the services. Upon any published increase or reduction in the price of such items by the Company, the new price will become effective immediately on the unshipped or unperformed portion. In no event will a reduction in price be retroactive to items shipped or services performed prior to the date of the price change. Purchaser's payment of Company invoices containing pricing errors will not relieve Purchaser's obligation to make full payment of the prices in effect at the time of shipment applicable to the equipment, parts, software and services. All clerical errors are subject to correction.

II. DELIVERY: Delivery dates are approximate and are dependent upon (1) prompt receipt by the Company from the Purchaser of all information necessary to permit the Company to proceed with the work immediately and without interruption, (2) Purchaser's compliance with all of the payment terms specified herein, and (3) Purchaser's compliance with any terms, obligations, covenant or condition of this Agreement, the continuing validity of any representation furnished to Company by Purchaser, Purchaser's continuing solvency and, the non-occurrence of any event which Company deems, in its exclusive discretion, to endanger Purchaser's full performance of its acceptance of an offer of sale. Unless otherwise specified herein, the Company shall deliver the equipment, parts and software described herein F.O.B. carrier at the Company's plant in Houston, Texas, or F.O.B. place of shipment of Company's supplier. Partial deliveries shall be permitted. Unless otherwise specified herein, upon such delivery, title and all risk of loss or damage to such equipment, parts and software shall pass to Purchaser. In the event the Purchaser requests an extension of the delivery date and the Company, in its sole discretion, agrees to extend such date, or if any of the equipment, parts or software cannot be delivered when ready due to any cause referred to in Article IV hereof, the Company may place such equipment, parts or

STANDARD TERMS AND CONDITIONS OF SALE (dated April 27, 1999 con't.)

software in storage either at Company's plant in Houston, Texas, or at a location other than Company's plant in Houston, Texas ("off-site location"). In such events, (1) if storage is at an off-site location, all costs incurred by the Company in connection with such storage, including, without limitation, costs of preparing such equipment, parts and software for storage, placement into storage, handling, storage/demurrage, inspection, preservation and insurance (or if storage shall be at Company's plant in Houston, Texas, then up to five percent (5%) of the total price of the equipment, parts and software being stored for each month of storage), shall be due and payable by Purchaser upon receipt by Purchaser of the Company's invoices therefore, and (2) the Company's delivery obligations shall be deemed fulfilled and title and all risk of loss or damage to such equipment, parts and software shall thereupon pass to Purchaser, if it has not already passed, and (3) when conditions permit and upon payment of all amounts due hereunder, the Company shall arrange, on behalf of Purchaser, and at the cost of Purchaser, for shipment to a destination mutually acceptable to the Company and Purchaser

III. EQUIPMENT AND SOFTWARE MODIFICATION AND INSTALLATION: The Company shall have the right to modify the design and/or method of manufacture of the equipment or software described herein without advance notice to Purchaser if, in the judgment of the Company, such modification does not materially and adversely affect the performance of the equipment or software. Purchaser agrees to cooperate in good faith with Company to resolve all technical questions and problems associated with any equipment or software described herein. If requested in writing by Purchaser, the Company agrees to supervise the installation of the equipment and software described herein. The Purchaser shall pay Company's per diem charges for all such supervisory services plus all travel and subsistence expenses incurred by Company personnel in connection therewith. All necessary labor and materials required for installation and the preparation of the site for such installation shall be supplied by Purchaser, at its expense, prior to installation and connection of the equipment and software. Purchaser shall, at its expense, arrange for or provide access by Company's personnel to the installation site during business hours and if requested by Company, space for safe storage of Company's tools, test equipment, and other materials used in connection with such installation. Purchaser shall, at its expense, obtain all permits, licenses, authorizations and approvals and prepare and file with the appropriate government agencies all reports and information which may be required under all applicable federal, state, and local laws, regulations, and ordinances now or hereafter in effect to permit the purchase, installation, operation and use of the equipment and software. Notwithstanding any installation dates stated herein, in the event the installation of any part of the equipment or software is delayed or interrupted due to any cause described in Article IV, below, Purchaser agrees, at its expense, to exercise its best effort to arrange for the timely completion of such installation and Purchaser shall reimburse Company for all expenses incurred by Company as a result of any such delay. Purchaser shall pay all other amounts when due to the Company hereunder, notwithstanding any such delay in installation.

IV. FORCE MAJEURE: In no event shall the Company be liable for non-delivery or delays in delivery of the equipment, parts and software described herein or for failure or delay in the performance of any other obligations contained herein arising directly or indirectly from acts of God, unforeseeable circumstances, acts (including delays or failure to act) of any governmental authority (de jure or de facto), war (declared or undeclared), riot, revolution, priorities, fires, floods, weather, strikes, labor disputes, sabotage, epidemics, factory shutdowns or alterations, embargoes, delays or shortages in transportation, delay or inability to obtain or procure labor, manufacturing facilities, or materials, inability due to causes beyond the Company's reasonable control to obtain timely instructions or information from the Purchaser or causes of any other kind beyond the Company's control. The foregoing provision shall apply even though such causes may occur after the Company's performance of its obligations has been delayed for other causes.

V. TERMS OF PAYMENT: Unless otherwise specified herein, the purchase price for the equipment, parts and software described herein shall be paid in full, in United States of America currency, within thirty (30) days after the date of the Company's invoice for such price and all such invoices shall be mailed to the Purchaser at its address shown herein, upon delivery of the equipment, parts and software described herein in accordance with Article II, above. In the event Purchaser fails to make payment by the date provided in these terms of sale, the Company may deduct such amounts due it from all amounts, whether matured or un-matured, it may owe Purchaser arising from this or any other transaction. If such equipment, parts or software are ready for shipment from the manufacturing plant or for delivery to the Purchaser and the Company cannot make delivery thereof as

STANDARD TERMS AND CONDITIONS OF SALE (dated April 27, 1999 con't.)

scheduled herein due to any cause described in Article IV, above, any amounts otherwise due and payable to the Company following delivery shall be due and payable within thirty (30) days after the Company mails an invoice for such amount, together with a certification by the Company as to such cause, to the Purchaser at its address shown on this offer of sale. Upon the mailing of such invoice and certification, the equipment, parts and software shall be deemed to be in storage in accordance with Article II, above. Purchaser agrees that the purchase price and/or any unpaid portion thereof shall bear interest at the rate of 12% per annum from and after the date due and owing, if not paid in strict accordance with the terms of this Agreement. Notwithstanding any other provision of an accepted offer of sale, the Company does not intend to and shall not charge, collect or contract for interest which exceeds the maximum rate permitted by law. Any such excess interest shall be applied first to reduce any unpaid portion of the purchase price and all other outstanding charges owed, until such time as each is paid in full, at which time any remaining excess shall be refunded to Purchaser.

VI. SALES AND OTHER TAXES: Unless otherwise stated herein, the prices specified herein do not include any federal, state, municipal, or local property, license, privilege, business, occupation, stamp, documentary, sales, use, excise, gross receipts, duties, or custom charges, value added or other similar taxes which may now or hereafter be applicable to, measured by, or imposed by any governmental authority or with respect to (1) the transaction described herein or any contract of sale resulting there from, or (2) the equipment, parts or software described herein or their sale, value, or use, or (3) the performance of any services described herein. If the transaction is exempt from tax, Purchaser shall provide the Company with a tax exemption certificate or other documentation acceptable to the taxing authorities involved. Otherwise, Purchaser agrees to pay or reimburse to the Company within thirty (30) days of Company's written notice to Purchaser any such taxes and all penalties and interest in connection therewith which the Company or the Company's subcontractors or suppliers are required to pay. Under no circumstances shall Company be responsible for any income and/or payroll taxes attributable to Purchaser and/or Purchaser's subcontractors. Purchaser hereby agrees to indemnify Company for any liability arising out of income and/or payroll taxes attributable to Purchaser and/or its subcontractors.

VII. TERMINATION: The Purchaser may terminate its acceptance of this offer of sale only upon written notice to the Company and upon payment to the Company of the reasonable and proper termination charges which may be assessed by Company in its sole discretion.

VIII. LIABILITY: The total liability of the Company (including its subcontractors) for any loss, damage, or claim, whether in contract, tort (including negligence and liability without fault), or otherwise, arising out of, connected with, or resulting from this offer of sale or the performance or breach of any contract based upon this offer of sale, or from the design, manufacture, sale, delivery, resale, installation, technical direction or supervision of installation, inspection, testing, repair, replacement, operation, maintenance, or use of any equipment, part, software or any service furnished pursuant to any contract based upon this offer of sale shall not in any event exceed the price allocable to the equipment, part, software or service which gives rise to the claim, loss or damage (except as further limited under Article XI and XII, below). In no event, whether as a result of breach of contract, warranty, alleged negligence, or liability without fault and regardless of whether the Company has been previously advised of the possibilities of such damages, shall the Company be liable for any indirect, incidental, special or consequential damages, including, without limitation, personal injury, death, property damage, loss of profits or revenue, loss of business, loss of information or data, loss of use of the equipment or software described herein or any associated equipment or software, cost of capital, cost of substitute equipment, parts, software, facilities or services, down time costs, labor costs, or claims of customers of the Purchaser for such damages, even if Company has been advised of the possibility of such damages. In further limitation, the Purchaser's sole remedy for any defect or breach of warranty in connection with any software product described herein shall be, at the Company's exclusive discretion, repair, replacement, software update or refund of the purchase price associated with the software.

IX. NUCLEAR USE: No equipment or any part thereof or any software described here in shall be use in conjunction with, or as a part of, any activity or process involving nuclear fission or fusion or any use or handling of any material defined in Chapter 2 of the U.S. Atomic Energy Act of 1954, as amended. If such use is contemplated by Purchaser or others, Purchaser shall prior to such use, at its expense, arrange for insurance and

STANDARD TERMS AND CONDITIONS OF SALE (dated April 27, 1999 con't.)

governmental indemnity satisfactory to the Company protecting the Company against liability of any kind, whether in contract, tort (including negligence) or otherwise.

X. GENERAL: This offer of sale may only be accepted in Harris County, Texas and any contract of sale resulting from it shall be performable, in whole or in part, in Harris County, Texas. This offer of sale and any contract of sale resulting from it shall in all respects be governed, construed, and enforced in accordance with the laws of the State of Texas, U.S.A. Unless otherwise agreed to by Company in a writing signed by a Company officer, venue for all proceedings arising out of this offer of sale or any contract of sale resulting from it shall be in Harris County, Texas (or in the Southern District of Texas if such proceeding is in a United States District Court). The United Nations Convention for the International Sale of Goods is disclaimed and excluded from any contract of sale arising from this offer of sale and any contracts the Company may have with its suppliers. The terms and conditions of sale contained herein shall be the only terms and conditions applicable to the sale of the equipment, parts, software and services described herein and shall supersede any prior agreements or writings. No term or condition of this offer of sale may be waived or modified unless done in writing and signed by an authorized representative of the Company. All proposals of the Company contained herein are subject to change by the Company at any time prior to actual receipt by the Company of written acceptance of this offer of sale by the Purchaser and shall expire thirty (30) days from the date hereof. For purposes of the terms and conditions of sale specified herein, the term "offer of sale" shall mean all written quotations to which such terms and conditions are attached and, unless waived or modified in a signed writing by the Company, all contracts of sale resulting therefrom. Any waiver by the Company of a breach of any term or condition of sale shall not constitute a waiver or prejudice the Company's right to otherwise subsequently demand strict compliance with that or any other term or condition of this offer of sale. The election of the Company to pursue any remedy provided in an accepted offer of sale as provided by law shall not exclude pursuit of any other remedy otherwise available to the Company or limit its right to declare Purchaser in default. The standard terms and conditions of sale herein are subject to change by Company at anytime, and all products and services sold by Company are subject to Company's latest published standard terms and conditions of sale.

XI. PATENTS: The Company shall defend any suit or proceeding brought against the Purchaser to the extent it is based upon a claim that any equipment, software or any part thereof furnished pursuant to this offer of sale constitutes an infringement of any patent of the country in which the equipment, parts and software described herein are delivered to the Purchaser in accordance with Article II entitled "DELIVERY," above, if notified promptly in writing and given authority, information and assistance at the Company's expense for the defense of such suit or proceeding, and the Company shall pay all damages and costs awarded therein against the Purchaser. In the event such equipment, software or any part thereof is finally determined in such suit to infringe any such patents and the use of such equipment, software or any part thereof is permanently enjoined, the Company shall, at its expense, and at its option, either procure for the Purchaser the right to continue using said equipment, software or part; or replace the same with non-infringing equipment, parts or software; or modify it so that it becomes non-infringing or remove said equipment, software or part and refund the purchase price thereof, less a reasonable charge for depreciation. The foregoing states the entire liability of the Company for patent infringement by said equipment, software and any part thereof. The foregoing provisions shall not apply to any equipment, software or any part thereof manufactured to Purchaser's design. As to such equipment, software or part, the Company assumes no liability whatsoever for patent infringement and the Purchaser shall indemnify, defend, and hold the Company harmless from and against all claims, damages, obligations, liabilities and suits (and all associated costs and expenses, including, without limitation, attorneys' fees and costs of litigation) arising as a result of the alleged infringement of patent rights caused by the manufacture or sale by the Company of any equipment, parts or software manufactured to Purchaser's design. Notwithstanding the foregoing, the Company shall have no obligation to defend any suit or proceeding brought against the Purchaser to the extent it is based, in whole or in part, upon a claim that any application, method and process in which any equipment or any part thereof furnished by the Company is used constitutes an infringement of any patent. The Company shall have no liability or obligation to the Purchaser of any kind with respect to any such claim or with respect to any damages or costs awarded or any determination of infringement made on the basis of any such claim.

XII. WARRANTY: Unless a different warranty is stated herein or is affixed to the equipment, parts or software described herein by the manufacturer thereof or the Company or is specified in writing in any maintenance or

STANDARD TERMS AND CONDITIONS OF SALE (dated April 27, 1999 con't.)

operating instructions pertaining to such equipment, the Company warrants that all equipment, parts and software described herein and sold by the Company to the Purchaser will be free from defects in materials and workmanship. THIS WARRANTY SHALL EXPIRE EIGHTEEN (18) MONTHS AFTER THE DATE ON WHICH SUCH EQUIPMENT AND PARTS (EXCLUDING REPAIRED OR REPLACEMENT EQUIPMENT AND PARTS FURNISHED PURSUANT TO THIS WARRANTY) ARE SHIPPED BY THE COMPANY TO THE INITIAL PURCHASER OR TWELVE (12) MONTHS AFTER SUCH EQUIPMENT AND PARTS (EXCLUDING REPAIRED OR REPLACEMENT EQUIPMENT AND PARTS FURNISHED PURSUANT TO THIS WARRANTY) ARE FIRST PLACED IN OPERATION, WHICHEVER PERIOD SHALL FIRST EXPIRE. THE WARRANTY PERIOD APPLICABLE TO SOFTWARE SHALL EXPIRE NINETY (90) DAYS AFTER THE DATE THE EQUIPMENT IN WHICH IT IS INSTALLED IS FIRST PLACED INTO OPERATION OR UPON THE EXPIRATION OF THE ORIGINAL WARRANTY PERIOD APPLICABLE TO THE EQUIPMENT, WHICHEVER SHALL FIRST EXPIRE. **THERE ARE NO OTHER WARRANTIES WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WHICH EXTEND BEYOND THE ABOVE DESCRIPTION HEREOF, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, PURCHASER ACKNOWLEDGES THAT THE COMPANY'S GENERAL LITERATURE AND PRODUCT INFORMATION DOES NOT CONSTITUTE WARRANTIES OF PERFORMANCE OR QUALITY AND THAT BEFORE ENTERING INTO A CONTRACT OF SALE, PURCHASER HAS EXAMINED OR REFUSED TO EXAMINE THE EQUIPMENT, PARTS AND SOFTWARE DESCRIBED HEREIN OR SAMPLES OR MODELS OF EACH AS FULLY AS DESIRED AND THAT THERE IS NO IMPLIED WARRANTY WITH REGARD TO ANY CONDITION OR DEFECT WHICH AN EXAMINATION OUGHT TO REVEAL.** The Company shall, at its sole discretion, repair, replace or update, free of charge, or refund the purchase price paid for any such equipment, part or, software which is defective under the terms of the foregoing warranty provided the Purchaser (1) promptly notifies the Company in writing of such defect, and (2) furnishes the Company satisfactory proof thereof, and (3) establishes that the equipment, part or software has been properly stored, assembled, installed, serviced, maintained, operated, and used within the limits of rated capacity and normal usage, and in accordance with current operating and maintenance instructions furnished by the Company, and (4) has not been altered or modified in any manner without the written consent of the Company, and (5) if requested by the Company, returns the defective equipment, part or software to the Company and pays all expenses incurred in connection with such return. The repaired, replacement or updated equipment, part or software shall be delivered, free of charge, to the Purchaser, F.O.B. the Company's warehouse or at Company option, F.O.B. a Company authorized service shop, not loaded on truck or other carrier. The Purchaser shall pay all cost applicable to the equipment, part or software following such delivery, including, without limitation, all handling, transportation, assembly, installation, insurance, testing, and inspection charges. THE FOREGOING OBLIGATION TO REPAIR, REPLACE, UPDATE OR REFUND THE PURCHASE PRICE PAID FOR THE EQUIPMENT, PARTS AND SOFTWARE SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF THE PURCHASER, ITS CUSTOMERS AND USERS OF THE EQUIPMENT, PARTS OR SOFTWARE FOR THE BREACH OF THE FOREGOING WARRANTY. THE COMPANY SHALL HAVE NO OBLIGATION TO DISASSEMBLE ANY EQUIPMENT OR PART WHICH IS DEFECTIVE WITHIN THE TERMS OF THE ABOVE WARRANTY OR TO INSTALL ANY REPAIRED OR REPLACEMENT PART, EQUIPMENT OR SOFTWARE OR TO PAY ANY COSTS INCURRED IN CONNECTION WITH SUCH DISASSEMBLY OR INSTALLATION. THE COMPANY HEREBY EXPRESSLY DISCLAIMS ALL OTHER EXPRESS, STATUTORY AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ALL EXPRESS, STATUTORY AND IMPLIED WARRANTIES SUCH AS MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE APPLICABLE TO REPAIRED OR REPLACED EQUIPMENT, PARTS AND SOFTWARE FURNISHED PURSUANT TO THE FOREGOING WARRANTY.

XIII. WARNING: THE EXPORTATION FROM THE UNITED STATES OF PRODUCTS, COMMODITIES OR TECHNICAL DATA SOLD, FURNISHED OR DELIVERED TO PURCHASER BY COMPANY AND THE RE-EXPORTATION OF SUCH ITEMS FROM ANY OTHER COUNTRY MAY BE PROHIBITED OR RESTRICTED UNDER U.S. FEDERAL LAWS AND REGULATIONS. ACCORDINGLY, NO EXPORTATION OF SUCH PRODUCTS, COMMODITIES OR TECHNICAL DATA FROM THE UNITED STATES AND NO RE-EXPORTATION THEREOF FROM ANY OTHER COUNTRY SHALL BE PERMITTED, EXCEPT IN ACCORDANCE WITH U.S. LAW. This provision constitutes an independent covenant and continuing obligation of Purchaser which will survive the termination of this Agreement. Additionally, no contract of sale based on this offer of sale will constitute a waiver of any provision in Purchaser's distribution or reseller agreement, if any, with Company.