

TERMS & CONDITIONS FOR ACT OF SALE

1. The agreement is related to the purchase by Buyer and the sale by Aggreko, LLC (“**Seller**”) of certain equipment identified on the document accompanying this agreement or to which this agreement is related, and expressly limits Buyer’s acceptance hereof to the terms and conditions of this agreement. Any terms and conditions contained in any writing issued by Buyer will be for Buyer’s internal purposes only, and such terms and conditions will have no force or effect. Seller objects to any additional or different terms and conditions in any such writing, including any purchase order or request for proposals, and no such different or additional terms and conditions will be effective or binding upon Seller unless agreed to in writing and signed by an officer of Seller. In the event of any inconsistency between the agreement and any writing issued by Buyer, this agreement shall prevail. Buyer will be deemed to accept this agreement upon signing the applicable proposal or quote, providing other written expression of its intent to be bound, issuing a purchase order, or upon transfer of the equipment to the freight carrier for delivery.
2. Seller warrants that equipment sold by Seller is free from defects in materials and workmanship and conforms to Seller’s published specifications or other specifications furnished by Seller, subject to the standard manufacturing variations and practices of Seller, for a period of twelve (12) months from the date of delivery. This warranty does not apply where equipment has been the subject of improper installation, misuse, neglect, accident, modification or any other cause beyond Seller’s reasonable control. Seller’s sole obligation for defects or nonconformities in such equipment is, at Seller’s option, either repairing, replacing, or issuing credit for such equipment; provided, however, that Buyer gives to Seller written notice of the alleged defect or nonconformity within fourteen (14) days of the expiration of the warranty period and returns the equipment at Buyer’s cost to Seller within seven (7) days of Seller’s written authorization. **BUYER HAS NO RIGHT TO COVER BY PROCURING SUBSTITUTE EQUIPMENT. IF BUYER FAILS TO PAY IN FULL AS PROVIDED IN SECTION 9, THEN THIS WARRANTY WILL BE NULL AND VOID AND BUYER SHALL BE DEEMED TO HAVE PURCHASED THE EQUIPMENT “AS IS,” “WITH ALL FAULTS,” AND “WHERESOEVER LOCATED.”** If the equipment is used equipment, Buyer shall at its own cost and expense remove any and all logos, stickers, paintings, etchings and any other markings containing Seller’s name, trademarks or service marks on the equipment.
3. If new equipment or any components thereof are sourced from a third party, Seller’s sole obligation for defects or nonconformities in such equipment is, to the extent assignable, assigning to Buyer any and all manufacturer’s warranties that may be applicable to the equipment (and, to the extent such warranties are not assignable, for a period of twelve (12) months from the date of delivery, assisting Buyer, to the extent commercially reasonable, in pursuing the benefit of any manufacturer’s warranties on Buyer’s behalf if Buyer so requests). Buyer will keep and maintain accurate maintenance records in connection with the equipment.
4. **THE ABOVE WARRANTIES ARE EXCLUSIVE, AND NO OTHER STATUTORY, EQUITABLE OR IMPLIED WARRANTIES (INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR REDHIBITION) APPLY.**
5. **SELLER SHALL HAVE NO LIABILITY TO BUYER OR ANY PERSON OR ENTITY WHOMSOEVER FOR ANY CLAIM, LOSS, DAMAGE OR EXPENSE (INCLUDING ATTORNEY FEES AND COURT COSTS) OF ANY KIND OR NATURE, WHETHER SPECIAL, CONSEQUENTIAL, ECONOMIC OR OTHERWISE, CAUSED OR ALLEGED TO BE CAUSED DIRECTLY, INDIRECTLY, INCIDENTALLY, OR CONSEQUENTIALLY BY THE EQUIPMENT OR ANY PART THEREOF OR PRODUCTS THEREFROM, BY ANY INADEQUACY OF THE EQUIPMENT OR DEFECT OR DEFICIENCY THEREIN, BY ANY INCIDENT WHATSOEVER ARISING IN STRICT LIABILITY OR OTHERWISE FROM SELLER’S OR BUYER’S NEGLIGENCE OR OTHERWISE, OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATSOEVER AND HOWSOEVER CAUSED, OR ARISING OUT OF THIS AGREEMENT OR THE EQUIPMENT.**
6. **BUYER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER, ITS PARENT, AFFILIATE AND SUBSIDIARY COMPANIES AND ITS AND THEIR OWNERS, DIRECTORS,**

OFFICERS, EMPLOYEES AND AGENTS (THE “INDEMNITEES”) FROM AND AGAINST ANY AND ALL CLAIMS, COSTS, EXPENSES (INCLUDING LEGAL EXPENSES AND ATTORNEY FEES), DAMAGES, LOSSES, AND LIABILITIES ACTUALLY OR ALLEGEDLY INCURRED OR SUFFERED BY BUYER, ITS AGENTS OR EMPLOYEES OR ANY OTHER PERSON OR ENTITY, HOWEVER CAUSED, RESULTING DIRECTLY OR INDIRECTLY FROM OR PERTAINING TO THE MANUFACTURE, PURCHASE, DESIGN, DELIVERY, POSSESSION, USE, PERFORMANCE, AND/OR OPERATION OF THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO SUCH CLAIMS, COST, EXPENSE, DAMAGE, LOSS OR LIABILITY ARISING FROM THE DEATH OR INJURY OF ANY PERSON, DAMAGE TO ANY EQUIPMENT, AND ANY INCIDENTAL, CONSEQUENTIAL AND INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO STRICT LIABILITY IN TORT. BUYER SHALL GIVE SELLER PROMPT WRITTEN NOTICE OF ANY MATTER TO BE INDEMNIFIED AGAINST AND AGREES THAT, ON WRITTEN NOTICE BY SELLER OF THE ASSERTION OF SUCH LOSS, CLAIM, ACTION, DAMAGE, OR LIABILITY, BUYER SHALL ASSUME FULL RESPONSIBILITY FOR THE DEFENSE OF THE ACTION

7. Delivery will occur and risk of loss and title to the equipment will transfer to Buyer when Seller makes the equipment available for pickup at Seller’s facility, regardless of whether freight carriage is performed by Seller, Buyer or a third party freight carrier. Seller does not guarantee delivery dates, and all delivery dates are estimates.
8. A valid purchase order is required to guarantee availability of the equipment. Quotes shall expire thirty (30) days from the date of quotation unless Seller receives such purchase order before the end of such thirty (30) day period. Further, quoted prices are exclusive of taxes. Buyer shall be responsible for all taxes, liens, charges and encumbrances that now exist or hereafter are incurred, assessed or imposed on the equipment or as a result of the ownership or sale of the equipment. Buyer hereby agrees to hold harmless the Indemnitees from and against any and all taxes, liens, charges and encumbrances that are now existing or are hereafter incurred, assessed or imposed on the equipment or as a result of the ownership of the equipment.
9. Unless otherwise set forth on the applicable proposal or quote, payment is due immediately upon execution of this agreement. Amounts unpaid after the due date will accrue interest at the lesser of 18% per annum or the highest amount otherwise allowed by law. If Seller issues any credit to Buyer, such credit will be issued against specific invoices for approved returns or adjustments, will not apply to open account balances, and will be valid for only 120 days.
10. Unless otherwise set forth on the applicable proposal or quote, Buyer may cancel or revise its order prior to delivery upon written notice to Seller. If Buyer cancels or revises its order, Buyer will pay all cancellation charges set forth on the applicable proposal or quote or, if none, all amounts necessary to compensate Seller for any capital expenditures made by Seller in reliance on the order, any finished goods, any works in process, any raw materials ordered, a reasonable administrative fee for processing of the order, and any other costs or expenses incurred by Seller in connection with the order prior to receiving the notice of cancellation or revision, including without limitation any commitments made by Seller to third parties, regardless of whether such commitments are legally binding on Seller.
11. Nothing in this agreement shall be construed as an assignment, grant, option, license or other transfer of any of Seller’s or any third party’s intellectual property or other proprietary rights. Seller’s equipment is protected by copyright, trademark, patent or other proprietary rights of Seller. Buyer shall not modify or alter any of the intellectual property or proprietary rights made available by Seller in connection with the equipment. Further, Buyer shall not adapt, translate, modify, decompile, disassemble or reverse engineer the equipment or any software used in connection with the equipment.
12. Seller shall not be liable nor be deemed to be in default under this agreement for any failure to or delay in complying with this agreement if and to the extent such failure or delay is caused by acts or circumstances beyond Seller’s reasonable control, including without limitation acts of God, flood, fire, earthquake, war, invasion or hostilities, terrorist act, riot, national emergency, strike, or inability to secure materials or labor from usual sources of supply.

13. This agreement constitutes the entire agreement between Buyer and Seller, and supersedes any representations, warranties or agreements (written or oral) heretofore made or entered into between the parties relating to the equipment.
14. This agreement shall be governed by and construed in accordance with the laws of the State of Texas without giving effect to any choice or conflict of law provision or rule. Any legal suit, action or proceeding arising out of or related to this agreement or the matters contemplated hereunder may be instituted in the federal or state courts of the State of Texas in Harris County, and each party irrevocably submits to the jurisdiction of such courts in any such suit, action, or proceeding and waives any objection based on improper venue or *forum non conveniens*. Seller shall be entitled to all costs and expenses incurred in enforcing its rights under this agreement, including but not limited to attorney's fees and court costs.
15. If any provision of this agreement shall otherwise contravene or be invalid under the laws of any state or other jurisdiction where it is applicable, such contravention or invalidity shall not invalidate all of the provisions of this agreement, but rather this agreement shall be deemed to be amended to the extent necessary to render such provision valid and enforceable or, if necessary, to delete such provision, but only to the extent that it is invalid or unenforceable under the laws of that state or jurisdiction. All other provisions of the agreement shall remain in full force and effect.