



GENERAL TERMS AND CONDITIONS OF SALE (USA) ("GTC")

1. SCOPE

1.1. These General Terms and Conditions of Sale (USA) ("GTC") govern all contracts and related relationships (such as submissions of offers and orders, contract negotiations etc.) between Swissphone LLC ("Swissphone") and the customer ("Customer") with regard to the sale of products ("Products") and the provision of related services ("Services") by Swissphone to Customer. The GTC form an integral part of any agreements concluded between Swissphone and Customer.

1.2. By placing an order for Products or Services of Swissphone, the Customer restates, accepts, agrees and acknowledges that the sale of such Products and the provision of such Services are subject to these GTC.

1.3. The GTC constitute the entire agreement between the Customer and Swissphone regarding the contractual terms applying to the delivery of Products and the provision of Services and supersede all previous communications and understandings of Swissphone and the Customer. Swissphone shall not be bound by any other statements relating to the Products or Services, unless such statements are made in writing, expressly declared as being of binding contractual nature, and signed by the duly authorized representatives of Swissphone. In the event of any conflict, the provisions of the GTC shall prevail.

1.4. General terms and conditions of purchase and other contractual documents of the Customer are expressly rejected hereby are otherwise waived and excluded. This waiver and exclusion shall apply even if general terms and conditions or other contractual documents of Customer were incorporated into an order of Customer, or otherwise referenced or notified to Swissphone.

2. OFFERS, ACCEPTANCE AND COMING INTO FORCE OF CONTRACTS

2.1. Swissphone's offers, pricelists, product descriptions, datasheets, handouts and technical documentations are not binding and may be modified or revoked at any time.

2.2. Any contract with Swissphone enters into force only upon acceptance in Colorado by Swissphone. Customer's orders are hereby deemed to be offers for the conclusion of a contract. Swissphone expresses its acceptance of an order either by issuance of an order confirmation or by execution of an order in Switzerland.

2.3. Swissphone's order confirmations include a detailed description of the Products sold and of the Services provided. If no order confirmation is issued, the description may derive from an offer of Swissphone or from the order of the Customer. Swissphone reserves the right to make improvements, substitutions or modifications to any part of the Products prior to delivery.

3. DELIVERY

3.1. The Products are delivered from the headquarters in Windsor, CO. The risk of loss and damage passes to Customer upon Swissphone's dispatch of the Products to a carrier for shipment to Customer. The Customer shall be responsible for filling any claims with the carrier. Unless Swissphone receives other instructions from the Customer in writing prior to shipment, Swissphone will select the method of shipment and will package the Products in accordance with Swissphone's standard practices. It is Customer's sole responsibility to pay for and obtain any governmental or other licenses, certificates or documentation as may be required.

3.2. Delivery and shipping dates are estimates only and approximate. Swissphone shall not be in default nor be liable to Customer or any other party for any damage, loss or expenses incurred as a result of delayed delivery or non-delivery of Products. A delay shall not entitle Customer to any cancellation, rescission or modification of a contract.

3.3. The Customer shall inspect all deliveries on completeness and conformity. A delivery shall be deemed to be accepted unless Customer notifies Swissphone in writing to the contrary within seven days upon receipt. If a delivery is proven to be incomplete or non-conforming, Swissphone will re-perform the delivery to such extent as required to achieve a proper delivery.

4. PRICES

4.1. Prices are quoted in CHF, EUR or USD.

4.2. Prices are ex works and net. Additional or incidental costs and charges, such as for freight and insurance, and export, transit and import levies, fees, duties, customs and any and all taxes, and licensing and certification fees, are excluded and shall be borne and paid solely by Customer.

4.3. Prices are exclusive of value added, sales, use, excise and other applicable taxes, charges, duties or fees, which will be invoiced separately to and shall be paid by Customer.

4.4. Swissphone may adjust agreed prices in case of substantial price increases of, or the need to procure substitutes for, components of other manufactures included in the Products or other extenuating circumstances.

5. PAYMENT AND PAYMENT TERMS

5.1. The Products are to be paid in advance or upon dispatch for delivery. In case of successive or repeated deliveries (more than one delivery under a contract), payment is to be made per delivery. Services are to be paid in advance or upon provision.

5.2. Invoices are payable within thirty days from the date of invoice, net and without any deductions or set-off. Payments are deemed to have been made when the invoice

amount is credited to Swissphone's bank account. Customer shall in no case be entitled to withhold any payments, including in cases of delayed, incomplete or non-conforming deliveries or of outstanding warranty claims.

5.3. Interest of 4% per annum above the then applicable 3-month LIBOR of the applicable currency (or, if less, the maximum rate permitted by law) shall accrue and become payable on all amounts not paid within the payment period, without any further reminder by Swissphone being required.

5.4. In case of Customer's payments being delayed or at risk, Swissphone may withhold and suspend any (further) deliveries under the affected or any other contract with Customer, or rescind all or parts of the affected or any other contract with Customer, and claim damages.

5.5. Customer agrees to reimburse Swissphone for any costs and expenses (including reasonable attorney's fees) in connection with the collection of any amounts owed to Swissphone under any contract.

6. SECURITY INTEREST

6.1. Customer hereby grants to Swissphone a security interest in the Products sold in connection herewith together with the proceeds therefrom to secure payment of the purchase price of such Products and agrees, and appoints Swissphone its agent, to take all such action and to execute all such documents and instruments as may be necessary or reasonably requested by Swissphone to perfect and continue its security interest hereunder.

7. LIMITED PRODUCT WARRANTY

7.1 This warranty sets forth the full extent of Swissphone responsibilities regarding the pagers. Repair, replacement, or refund of the purchase price, at Swissphone's option, is the exclusive remedy. THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER EXPRESS WARRANTIES. IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE LIMITED TO THE DURATION OF THIS LIMITED WARRANTY. IN NO EVENT SHALL SWISSPHONE BE LIABLE FOR DAMAGES IN EXCESS OF THE PURCHASE PRICE OF THE SWISSPHONE PAGER, FOR ANY LOSS OF USE, LOSS OF TIME, INCONVENIENCE, COMMERCIAL LOSS, LOST PROFITS OR SAVINGS OR OTHER INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE SUCH PRODUCT, TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW.

7.2. The warranty does not extend to and any warranty is excluded for software, if any, embedded in the Products.

7.3. The warranty does not extend to and any warranty is excluded for non-confor-

mities and defects of the Products deriving or resulting from (i) components of other manufacturers included in the Products, (ii) improper handling, installation or use, (iii) unauthorized repair or alterations, (iv) non-observance of operating instructions, (v) negligence or accident, or (vi) normal wear and tear.

7.4. Each warranty claim shall be in writing and specify the type of Product and the nature of the defect. Upon receipt of a claims notice, Swissphone shall have the option of testing or inspecting the affected Product at its location or of having the Product returned to the Swissphone. Swissphone will analyze the claim and notify Customer whether a claim falls within the warranty or not. Claiming an alleged defect does not relieve Customer of any of its payment obligations to Swissphone.

7.5. Swissphone warrants the pager against defects in material and workmanship under normal use and service for the period of time specified below. This warranty is issued by Swissphone LLC, 1194 W Ash Street, Suite C, Windsor, CO 80550 to the original end user purchaser only and may not be assigned or transferred to any other party.

7.6. Warranty claims shall be notified to Swissphone within two years for analog pagers (one year for digital pagers) from the date of dispatch for delivery (warranty period) at the latest. Costs and charges for freight, insurance, customs and similar of a return and redelivery shall be borne by Customer. Swissphone pagers are shipped from the factory with a standard two year limited warranty for REX29 and a standard one year warranty for the DE920 parts and labor from date of purchase based on proof of purchase. In the event of a defect, malfunction, or failure to conform to specifications during the warranty period, at its option, will either repair, replace or refund the purchase price of the pager. Repair, at Swissphone option, may include the replacement of parts or boards with functionally equivalent reconditioned or new parts or boards. Replaced parts and boards are warranted for the balance of the original warranty period. All parts and boards removed in the replacement process shall become the property of Swissphone. This warranty does not cover defects, malfunctions, performance failures or damages to the unit resulting from use in other than its normal and customary manner; misuse, accident or neglect, the use of non-conforming parts, or improper alterations or repairs. This warranty does not cover water damage, batteries, battery chargers, housings or holsters, wear and tear on covers and coverage or range over which the pager will receive signals. Unauthorized disassembly of the paging product or repairs of any kind by anyone other than a Swissphone authorized pager service center will void this warranty.

7.7. For information on how to receive service on your Swissphone pager, Please call 1-800-596-1914, prior to any return for service.

7.8. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR LIMITATION ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS OR EXCLUSIONS

MAY NOT APPLY. This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

8. SERVICES

8.1. Swissphone performs the Services in a professional and workmanlike manner and with qualified personnel. Swissphone does not assume any obligation to deliver particular results or deliverables when providing Services and expressly disclaims all warranties, if any, for the provision of Services.

9. EXCLUSION OF LIABILITY

9.1. Except as otherwise agreed in writing, Swissphone's liability with respect to Products shall be limited to the warranty provided in Article 7 hereof, and shall be limited to the purchase price.

9.2. EXCEPT AS OTHERWISE LIMITED BY LAW, SWISSPHONE SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHER THEORIES OF LAW, WITH RESPECT TO PRODUCTS SOLD, BY SWISSPHONE, OR UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO. UNDER NO CIRCUMSTANCES WILL SWISSPHONE BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS, DAMAGE OR EXPENSE OF ANY KIND, INCLUDING LOSS OF PROFITS, ARISING IN CONNECTION WITH ANY CONTRACT OR WITH THE USE OR LIABILITY TO USE SWISSPHONE'S PRODUCTS FURNISHED UNDER ANY CONTRACT. SWISSPHONE'S SOLE LIABILITY AND CUSTOMER'S SOLE REMEDY IS AS DESCRIBED IN SECTION 7.6 HEREOF.

9.3. Without limiting the generality of the foregoing, Swissphone specifically disclaims any liability for property or personal injury damages, penalties, special or punitive damages, damages for lost profits or revenues, loss of use of Products, or any associated equipment, cost of capital, cost of repairs to Products subject to Swissphone's warranty performed by persons other than Swissphone without Swissphone's prior written consent, cost of substitute Products, facilities or services, down-time or slow-down costs or for any other types of economic loss, and for claims of Customer's customers or any third party for any such damages. Swissphone disclaims any liability for any claim, whether in contract or in tort, which arose more than one year prior to the initiation of arbitration or litigation by Customer against Swissphone.

9.4. Customer agrees to cause its customers and anybody in the chain of manufacturing supply and distribution including the end customer to be bound by limitations of liability substantially equal to those contained in these GTC.

10. INTELLECTUAL PROPERTY RIGHTS

10.1. Title to and ownership of any intellectual property rights in the Products and Services, including all patents, copyrights and other intellectual property rights relating thereto, shall at all times remain solely and

exclusively with Swissphone. Customer acknowledges that Swissphone has proprietary interests in the Products. Swissphone's sale of Products to Customer does not convey to Customer any license or any other right, express or implied, under any such intellectual property rights.

10.2. Swissphone confirms that to its best knowledge and belief, there are no rights of third parties that could be infringed by the Products. Swissphone, however, cannot and does not warrant that the Products do not infringe rights of third parties.

11. REGULATIONS

11.1. It is the sole responsibility of Customer to assure that the Products comply with the applicable regulations and standards relating to the importation, design and operation of the Products, if any, in the country of destination. Swissphone will provide Customer upon request the related pertinent information on the Products and copies of certificates obtained by Swissphone for the Products.

11.2. When Products are connected to a public network, certain telecommunication regulations may apply. It is the sole responsibility of Customer to ensure compliance with such regulations.

11.3. The export of the Products may be subject to export restrictions imposed by the Division for Import and Export of the Swiss Federal Department of Economic Affairs or by corresponding foreign authorities. The Customer shall not export or re-export Products or systems incorporating Products without first having obtained all such written consents or authorizations as may be required by any applicable government regulations.

12. CONFIDENTIALITY

12.1. Swissphone and the Customer agree that certain information supplied by each to the other may be proprietary or confidential. All such information shall be clearly marked "confidential", shall be held in confidence by the receiving party and shall be used only for the purpose of the contractual relationship.

13. APPLICABLE LAW AND PLACE OF JURISDICTION

13.1. These GTC and all contracts and related relationships (such as submissions of offers and orders, contract negotiations etc.) between Swissphone and Customer shall be governed by and construed in accordance with Colorado law.

13.2. Place of performance of all transactions relating to these GTCs shall be deemed to be in Colorado.

14. MISCELLANEOUS

14.1. In the event that Swissphone cannot perform or fulfill its obligations in whole or part for any reason beyond its reasonable control, Swissphone may at its discretion withdraw from all or parts of the affected contract(s) with Customer. Swissphone shall not be liable for any loss or damage arising from its failure to perform its obligations for any reason whatsoever beyond its reasonable control.

14.2. Customer shall not be entitled to assign rights and obligations under a contract with Swissphone to any third party without the prior written consent of Swissphone.

14.3. The invalidity of any part of these GTC shall not affect the validity of the remainder. Instead of any provisions that are invalid or null and void, provisions shall apply which correspond as close as possible to the intentions as expressed herein.

14.4. Textual declarations that are transferred or recorded via electronic means (telefax, e-mail, Internet and similar) shall be deemed as declarations in writing. The burden of proof that the recipient took notice of such declarations shall be with the sender. Such declarations shall be deemed to be received by the recipient upon the recipient having taken notice thereof.

15. RETURN POLICY

All products must be returned within 30 days of initial purchase in order to issue full credit or replacement. Prior to returning products, a RMA number must be obtained by contacting Swissphone Customer Service. Products must be in original unopened packaging and in same condition as when shipped.