

## STANDARD TERMS AND CONDITIONS OF FIELD SERVICES - Page 1 of 3

Except as otherwise agreed to in writing by Toshiba International Corporation ("TIC"), with its headquarters and principal place of business at 13131 W. Little York Rd., Houston, TX 77041, the following terms and conditions ("Terms") shall apply to all field services provided by TIC. These terms shall apply to any (1) offer to provide field services accepted by the customer, person or entity purchasing the Work ("Purchaser"), (2) request for field services accepted by TIC or (3) contract for field services that references these Terms (each, an "Order"). TIC shall perform the field services, which may include the provision of materials and parts (collectively, the "Work") either at TIC's facilities ("TIC Facility") or other location ("Job Site").

**SCOPE:** Purchaser shall complete and return to TIC the applicable request form detailing the Work requested to be performed. The Work shall be subject to TIC's applicable schedule of rates (each, a "Rate Schedule") published at the time the Order was placed and these Terms. Any request for Work may be accepted or declined by TIC. TIC shall furnish all labor, supervision, tools and services necessary for performance of the Work as set forth in the Order. To the extent applicable, for work done at other than TIC Facilities, Purchaser shall provide TIC with access to the Job Site and the equipment as necessary for the performance of the Work, and shall furnish such safe storage areas at the Job Site as may be necessary for TIC's materials, tools and equipment. Purchaser shall be responsible for coordination of the Work with any on-going operations and any other work at the Job Site. Purchaser shall furnish such plans, specifications, data, information, and advisory personnel as may be necessary to familiarize TIC with the equipment and operations of the Job Site as they relate to the Work. Purchaser shall provide all utilities necessary for performance of the Work done at the Job Site.

**COMPENSATION:** For performance of the Work, Purchaser shall pay TIC compensation on a fixed price or time and materials basis ("Compensation") as set forth in the Order. Time shall be paid at the rates provided in the Rate Schedule. Unless otherwise agreed to by TIC and Purchaser, materials shall be reimbursed at TIC's list price. Purchaser shall also reimburse TIC for any applicable travel, living and other reimbursable expenses ("Reimbursable Expenses"), if any, at the rates provided on the Rate Schedule.

**TAXES:** For Work performed in, or materials or parts delivered to, all countries other than Canada, the Compensation is exclusive of and TIC shall not be responsible for any federal, state, municipal, or local property, license, privilege, business, occupation, stamp, documentary, sales, use, excise, gross receipts, duties, customs charges, value added or other similar taxes or charges, real and personal property taxes or any other taxes imposed by taxing authorities on Purchaser sites and the Job Site or any components of the Work (collectively, "Taxes"). If Purchaser holds a direct payment permit or claims an exemption from Taxes, Purchaser shall provide TIC with documentation acceptable to the taxing authorities involved. Otherwise, Purchaser agrees to pay or reimburse TIC any Taxes and any related penalties or interest that TIC or TIC's subcontractors or suppliers are required to pay. Under no circumstances shall TIC be responsible for any income and/or payroll taxes attributable to Purchaser and/or Purchaser's subcontractors. Purchaser hereby agrees to indemnify TIC for any liability arising out of income and/or payroll taxes attributable to Purchaser and/or its subcontractors. TIC shall be entitled to payment in full for Compensation as set forth in the Order, and Purchaser shall be responsible for any non-resident withholding, if applicable, in addition to payment of the Compensation.

**TAXES (CANADA):** For Work performed or materials or parts delivered in Canada, the Compensation and Reimbursable Expenses are exclusive of any amounts payable in respect of the federal Goods and Services Tax imposed pursuant to the Excise Tax Act (Canada), any provincial taxes and any fully harmonized federal/provincial sales tax (collectively, "GST"). If TIC is required by law to collect such GST, then Purchaser shall pay such GST to TIC in addition to the Compensation and Reimbursable Expenses, as applicable, concurrently with the payment of such Compensation and/or Reimbursable Expenses upon which such GST is calculated. TIC hereby represents that it is duly registered for the purposes of Canadian legislation relating to GST ("GST Legislation") and will remain so registered during the currency of its dealings with Purchaser. All invoices, statements of account or any similar documents rendered by TIC shall contain such information as is required by, or prescribed under, GST Legislation. Where TIC is a non-resident of Canada for the purposes of the Income Tax Act (Canada) ("ITA") and has not obtained and provided to Purchaser a non-resident withholding tax waiver at such time as Purchaser makes any payment to TIC for services rendered to it by TIC in Canada, Purchaser shall withhold such percentage of any payment made by it for the Work as Purchaser is from time to time mandated under the ITA and shall remit the withheld amount(s) to Canada Revenue Agency in the manner and at the time required by the ITA and shall provide TIC with appropriate supporting documentation of the withholding. Under no circumstances shall TIC be responsible for any income and/or payroll taxes attributable to Purchaser and/or Purchaser's subcontractors. Purchaser hereby agrees to indemnify TIC for any liability arising out of income and/or payroll taxes attributable to Purchaser and/or its subcontractors.

**PAYMENT:** TIC shall invoice Purchaser for the Work and any Reimbursable Expenses, at TIC's option, on a monthly basis for Work to date or upon completion of all of the Work. For Work done on a time and materials basis, all invoices shall be substantiated with applicable documentation, which may include expense receipts, material receipts and timesheets (excluding per-diem charges). All invoices shall be payable in U.S. Dollars, and payment is due within thirty (30) days after Purchaser's receipt of invoice. Payments due but unpaid shall bear interest at the rate of twelve percent (12%) per annum from and after the date due and owing under these Terms. Notwithstanding any other provision of an Order, TIC 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. If in the judgment of TIC the financial condition of Purchaser at any time prior to delivery does not justify the terms of payment specified in an accepted "Order", TIC may require payment in advance, progress payments, payment security satisfactory to TIC, or may terminate the Order and Purchaser shall be liable for cancellation charges in accordance with the termination provisions provided herein.

**DELIVERY:** Dates for performance of Work are approximate and dependent upon (1) prompt receipt by TIC from Purchaser of all information necessary to permit TIC to proceed with the Work immediately and without interruption, (2) availability of TIC field service personnel, (3) Purchaser's compliance with all terms obligations and of the Order, including payment terms and continued solvency, and (4) Purchaser's ability to provide TIC with adequate assurance of its ability to fully perform its obligations under the Order, including assurances of payment, should TIC reasonably request such assurances; and (5) to the extent applicable, Purchaser's ability to provide a non-hostile working environment and assure TIC's safety during performance of the Work and while in transit between the Job Site, room and board, and airport.

**CHANGES:** Purchaser may at any time by written notice to TIC request reasonable changes in the scope of Work, including increases and decreases therein. In such event, the Compensation payable to TIC, and, if necessary, the time for completion of the Work, shall be adjusted by mutual written agreement executed by the Parties and such changes shall not be performed in the absence of such an agreement. Where the increase or decrease in the Work involves items of Work to be performed hereunder on a time and materials or other cost basis, or on a unit price basis, TIC's compensation shall be adjusted on such basis, whether there is an increase or decrease in such items or units of Work. Notwithstanding the foregoing, if any decrease in the quantity of Work to be performed on a unit price basis is determined by TIC to be of such a magnitude as to affect TIC's ability to recover fixed costs allocated to the estimated quantity of units, the unit price for such Work shall be adjusted accordingly.

**FORCE MAJEURE:** In no event shall TIC be liable for failure or delay in the performance of any obligations under an Order arising directly or indirectly from causes of any kind beyond TIC's control, including, without limitation, Purchaser's failure to provide unrestricted access to the equipment or the Job Site, Purchaser's failure to furnish

## STANDARD TERMS AND CONDITIONS OF FIELD SERVICES - Page 2 of 3

materials, equipment, services or information to be furnished by Purchaser, changes in the Work, concealed or unknown conditions at the Job Site, 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, or delay or inability to obtain or procure labor, manufacturing facilities or materials. The foregoing provision shall apply even though such causes may occur after TIC's performance of its obligations has been delayed for other causes.

**WARRANTY:** By acceptance of an Order, TIC warrants (1) that the Work shall be performed in a good, safe and workmanlike manner, and that the Work shall be performed in accordance with Purchaser's specifications, drawings and descriptions provided to TIC; (2) that all TIC-furnished materials and equipment, if any, incorporated into the Work shall be free from defects in design (except design provided by Purchaser), workmanship, and material. TIC does not warrant that the work requested includes all preventative maintenance, repair, upgrade or other work necessary to ensure continued, uninterrupted or optimal performance of the equipment or facility. This warranty shall expire, with respect to the Work, ninety (90) days after the last date such Work was performed and, with respect to equipment, materials and parts, if any, that are provided as part of the Work, six (6) months after such materials or parts are incorporated into the Work or delivered to Purchaser. TO THE EXTENT PERMITTED UNDER LAW, TIC MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, THAT EXTEND BEYOND THE WARRANTIES STATED ABOVE. TO THE EXTENT PERMITTED UNDER LAW, TIC MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. To the extent permitted under law, in the event that any Work or materials do not conform to the requirements stated above, TIC agrees to correct any nonconforming Work and/or properly repair and/or replace, at its expense, any nonconforming materials or parts, or if correction, repair or replacement is not, in TIC's discretion, commercially reasonable, to refund an applicable portion of the Compensation for such Work or material. THE PURCHASER ACKNOWLEDGES AND AGREES THAT THE FOREGOING SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF PURCHASER FOR BREACH OF WARRANTY. To the extent applicable, TIC shall be provided free and clear access to the nonconforming Work or materials for the purpose of correcting any nonconforming Work and/or repairing or replacing any nonconforming materials or parts. In no event shall TIC be responsible for any costs or expenses incurred by Purchaser and/or its customers in connection with providing free and clear access or any special tools or heavy equipment required to carry out any such repair or replacement. TIC shall not be liable to Purchaser for, and Purchaser hereby waives recovery from TIC of, any loss of profits or anticipated profits, loss of production, loss of power, loss of data, overhead, and any indirect, consequential, special, exemplary or incidental damages arising at any time from any cause whatsoever, whether arising under tort, implied or statutory warranties, strict liability or breach of contract (collectively, "Consequential Damages"), notwithstanding any right or remedy available to Purchaser at law or in equity to Consequential Damages even if TIC was advised of the possibility of such Consequential Damages. For any questions or complaints regarding the warranties set forth above, Purchaser may contact TIC at 13131 W. Little York Rd., Houston, TX 77041, (713) 466-0277 between 8:30 a.m. – 5 p.m. CST, Monday through Friday or via email at one of the following email addresses, as applicable: Motors and Drives Field Service (Repair Shop): [tic-asd-ra@toshiba.com](mailto:tic-asd-ra@toshiba.com); Motors and Drives Field Service (On-Site Field Services): [tic-asd-svc@toshiba.com](mailto:tic-asd-svc@toshiba.com); Uninterruptible Field Services (Repair Shop): [TIC-UPSservice@toshiba.com](mailto:TIC-UPSservice@toshiba.com); Uninterruptible Field Services (On-Site Field Services): [TIC-UPSservice@toshiba.com](mailto:TIC-UPSservice@toshiba.com).

**PATENTS:** TIC shall defend any suit or proceeding brought against Purchaser to the extent it is based upon a claim that any Work furnished pursuant to the Order constitutes an infringement of any patent of the country in which the Work is performed, and if notified promptly in writing and given authority, information and assistance at TIC's expense for the defense of such suit or proceeding, and TIC shall pay all damages and costs awarded therein against Purchaser. The foregoing obligation shall not apply to the extent such infringement, claims, suits, proceedings, liabilities, costs, royalties, damages or expenses are based on sole source designs of Purchaser, unauthorized modifications, alterations, additions or changes made to Works, Works that are supplied in accordance with detailed design developed by Purchaser and furnished by Purchaser to TIC (as part of the Order or otherwise) or Purchaser's combinations of Works with other Purchaser-furnished components not furnished by TIC.

**TERMINATION:** Prior written notice of default is a condition precedent to termination of an Order for default. If either TIC or Purchaser considers the other party in default, that party shall give the other party written notice thereof, describing in detail the alleged condition(s) of default. If actions to cure the alleged conditions of default is/are not commenced and diligently pursued within fourteen (14) days of the date of receipt of the notice, the other party may terminate the applicable Order or part thereof by written notice without incurring any cancellation or other charges, except to make payment for Work already completed and related expenses. In the event of partial termination of Work to be done at a Job Site, Purchaser may require that TIC proceed with any portion of the Work but may award any other portion of the Work to another service provider or service providers, or perform any part of the remaining Work itself, or may do both or either. Notwithstanding the foregoing provision, an Order may be terminated by either TIC or Purchaser, at any time at such party's sole discretion, upon giving the other party at least fourteen (14) days' prior written notice, subject to payment of any direct costs and expenses incurred by the other party, if any, prior to such termination.

**INDEMNITY:** To the extent caused by TIC's negligence or willful misconduct, TIC agrees to indemnify, hold harmless, and defend Purchaser from and against all claims, liabilities, damages, and expenses, including, without limitation, attorneys' fees, for death and bodily injury to third parties or damage to third-party tangible property resulting from TIC's performance of the Order; provided, however, that TIC and Purchaser each shall bear that portion of liability attributable to itself according to the principles of comparative fault and/or contribution. Notwithstanding the foregoing, TIC's total overall liability under an Order, whether in contract, tort (including negligence and strict liability) or otherwise is capped in the aggregate at 100% of the Compensation allocable to the Work which gives rise to the claims, liabilities, damages or expenses.

**SAFETY EQUIPMENT AND PERSONNEL:** TIC agrees, while performing the Work, to comply with all laws, whether federal, state, provincial or otherwise, applicable to the Work. With respect to Work to be performed at a Job Site, Purchaser shall provide a safe and non-hostile work environment, and TIC agrees to observe such safety rules as Purchaser shall prescribe for the protection of Purchaser's personnel and property to the extent Purchaser notifies TIC of such rules in advance. For Work done at a Job Site, TIC's equipment is to be in safe operating condition and shall be subject at all times to Purchaser's inspection and approval. Purchaser reserves the right to remove from or refuse entry to the Job Site any or all of TIC's personnel at any time and TIC may remove its personnel at Purchaser's expense if it determines in its sole discretion that an unsafe or hostile work environment exists.

**INSURANCE:** For Work to be done at a Job Site, TIC shall carry, at its own expense, the following insurance: (1) Commercial General Liability: Commercial general liability coverage on an occurrence form with limits of \$1,000,000 each occurrence, excluding products liability/completed operations. Commercial general liability coverage shall include the following coverage: premises, personal injury, advertising injury, explosion, collapse and underground coverage, broad form property damage, and contractual liability; (2) Products Liability/Completed Operations: Products liability/completed operations coverage under a separate claims-made policy with limits of \$5,000,000. Products liability/completed operations coverage will not include additional insureds, a cross-liability or severability of interest clause or endorsement, per project aggregate requirements, a contractual liability coverage clause, or a waiver of subrogation rights or primary coverage as to Purchaser; (3) Automobile Liability: Automobile liability coverage with bodily injury and property damage combined single limits of \$1,000,000 each accident; (4) Workers' Compensation and Employers' Liability Insurance: Workers' compensation insurance providing statutory limits of liability, and employers' liability limits of \$1,000,000 per disease, accident or employee; and, (5) Excess Coverage: excess coverage insurance with limits of \$5,000,000 in the aggregate.

## STANDARD TERMS AND CONDITIONS OF FIELD SERVICES - Page 3 of 3

Upon request for Work done at a Job Site, TIC shall provide to Purchaser a Certificate of Insurance certifying that all insurance policies required have been issued by TIC's insurer and shall be in effect until completion of the Work. If TIC fails to provide Purchaser with the above mentioned Certificate of Insurance, Purchaser may obtain and maintain the required insurance in TIC's name and the cost thereof shall be payable by TIC to Purchaser on demand, and Purchaser may elect to deduct such cost from any monies that are or may become payable to TIC.

**ASSIGNMENT:** Neither TIC nor Purchaser may assign any of its rights or obligations with respect to an Order or these Terms other than the right to receive payments with respect thereto without the prior written consent of the other party, except that both TIC and Purchaser may assign such rights or delegate such duties to a parent, subsidiary or an affiliate. Notwithstanding the foregoing, TIC may subcontract the Work, provided that TIC shall remain responsible for the performance of the Work.

**LIENS:** To the extent TIC has been paid for the Work, TIC agrees to take all necessary steps to ensure that no claims for liens for the Work will be filed against the Work or property of Purchaser or against the Job Site. If any such claim for a lien shall be filed, and so often as the same shall happen, TIC agrees that it shall, at its own expense, within fourteen (14) days after the filing thereof, cause the lien to be cancelled, removed or bonded around pursuant to applicable law. To the extent TIC has been paid for the Work, TIC further agrees to indemnify Purchaser against all claims for such payment for Work that was performed by TIC's subcontractors and vendors.

**CONFIDENTIAL & PROPRIETARY INFORMATION AND PROPERTY:** TIC hereby covenants and agrees with Purchaser that TIC will not, either during or after the completion of the Work, reveal to any third party (other than to a subcontractor to TIC as necessary for subcontractor's performance of the Work) or use for TIC's own purposes or for any purposes other than those of Purchaser, any confidential information of Purchaser, its subsidiaries and affiliates, which may be furnished to TIC or to which TIC may become privy in the course of Work performed for Purchaser, that is clearly identified in writing as confidential. All ideas, concepts, drawings and similar items created by TIC in connection with the performance of the Order shall be the property of TIC and may be used by Purchaser solely for the purpose of commissioning, startup, operation and maintenance of the Work. TIC agrees to grant Purchaser permission to include TIC's copyrighted, proprietary and other documents in manuals and instruction books for use by Purchaser, Purchaser's co-venturers and Purchaser's customers solely with respect to the commissioning, startup, operation and maintenance of the Work. These documents include, but are not limited to, drawings, sketches, specifications, operating instructions, installation instructions, maintenance and troubleshooting procedures, literature, and marketing brochures furnished to Purchaser by TIC. Neither the Order nor these Terms confer or grant, in any manner whatsoever, any license or right under any patent, trademark, trade secret, copyright or other intellectual property right held by either party, except as expressly provided hereunder.

**EXPORT CONTROL:** Purchaser acknowledges that the Order may concern products and/or technical data that may be controlled or restricted under the U.S. Export Administration Regulations or the Office of Foreign Assets Control, or other applicable laws and regulations relating to the export or import of products and/or technical data and may be subject to the approval of the U.S. Department of Commerce or Treasury, respectively, prior to export. Any export or re-export of products or technical data by Purchaser, directly or indirectly, in contravention of the export control laws, economic sanctions laws or other applicable laws or regulations is prohibited, and Purchaser shall comply with all such laws and regulations, as well as the U.S. Foreign Corrupt Practices Act and similar laws of applicable foreign jurisdictions. Purchaser shall not seek to influence sales or other business affairs by means of bribery, kickbacks, illegal payments or other ethically questionable inducements, including gifts or anything of value. Additionally, materials, equipment or parts, if any, that are provided as part of the Work shall not be used in or sold for use in, or to parties that are suspected to be involved in, the development, production, use or stockpiling of weapons of mass destruction; to entities or individuals on any applicable lists of parties denied export privileges (including, without limitation, <http://www.bis.doc.gov/complianceandenforcement/liststocheck.htm>), or to parties in any embargoed countries. This provision constitutes an independent covenant and continuing obligation of Purchaser and shall survive the completion or termination of any Order.

**INDEPENDENT CONTRACTOR:** TIC is an independent contractor, and nothing contained in the Order, these Terms or otherwise, nor any past relationships or course of dealing between TIC and Purchaser shall be construed as establishing a relationship of principal and agent, master and servant, or employer and employee. None of TIC, any subcontractor of TIC or any employees of TIC or TIC's subcontractors shall be deemed to be employees or agents of Purchaser for any purpose whatsoever. TIC shall have control over the means, methods and techniques employed in the performance of the Work.

**GOVERNING LAW:** These Terms and all Orders shall be governed construed, and enforced according to the laws of the State of Texas, U.S.A. without regard to its conflicts of laws principles. For Work performed at a Job Site, if Purchaser's principal place of business is in the United States, or for Work performed at a TIC Facility, venue for all disputes arising out of these Terms or any related Order, or the breach of either, shall lie exclusively in Houston, Texas. For Work performed at a Job Site, if Purchaser's principal place of business is located outside of the United States, any controversy or claim arising out of or relating to these Terms or any related Order, or the breach of either, shall be settled by arbitration administered by the American Arbitration Association in Houston, Texas in accordance with the latest Commercial Rules of the American Arbitration Association or, if applicable, in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law. Judgment upon the award rendered by the arbitrator(s) may be entered in any court or forum having jurisdiction thereof. The arbitrator(s) shall provide TIC and Purchaser with a written explanation of the reasoning behind the decision and award. The arbitrators shall not have the authority to appoint a tribunal expert. TIC and Purchaser further agree to first mediate any controversy or claim in a good faith attempt to resolve it prior to the arbitration hearing in accordance with the Rules of the American Arbitration Association for mediation of disputes. The prevailing party in any arbitration proceeding shall be entitled to recover its reasonable attorneys' fees and costs of arbitration from the other party. Notwithstanding the foregoing, nothing in these Terms shall prevent either TIC or Purchaser from applying to a court that would otherwise have jurisdiction for provisional or interim measures, including, but not limited to any claim for preliminary injunctive relief.

**GENERAL:** TIC and Purchaser hereby acknowledge that any standard terms and conditions or boilerplate language contained in any Order that varies or adds to these Terms shall not be effective and shall not be construed to and shall not amend, modify or supplement these Terms. These Terms may not be waived or modified unless done in writing and signed by an authorized representative of TIC. Any waiver by a party of a breach of any of these Terms shall not constitute a waiver or prejudice its right to otherwise subsequently demand strict compliance with that or any other term or condition. The election of a party to pursue any remedy shall not exclude pursuit of any other remedy otherwise available to its or limit its right to declare the other party in default. Any quotation for Work is subject to change by TIC prior to actual receipt by TIC of an Order for the Work and shall expire thirty (30) days following such quotation. The Terms are subject to change by TIC at any time prior to an Order, and all Orders are subject to TIC's published standard terms and conditions of field services in effect at the time of the Order.

**LANGUAGE:** The parties have expressly required that this Order and the Terms and all documents and notices relating hereto be drafted in English Les parties ont expressément demandé que toute commande et les modalités et tous les documents et avis s'y rapportant soient rédigés en anglais.

**ENTIRE AGREEMENT:** These Terms shall be the only terms and conditions applicable to the performance of the Work described herein and shall supersede all prior oral or written communications regarding the subject matter of the Work.