

TERMS & CONDITIONS

General: This Offer is made by Midwest Telecom specifically subject to the terms and conditions below ("Terms and Conditions"), and Purchaser accepts said Terms and Conditions by signing this Offer or by issuing a purchase order for, or otherwise acquiring, the services and/or equipment set forth in this Offer. Midwest Telecom expressly limits Purchaser's acceptance to the terms of this Offer, including these Terms and Conditions.

The services and/or equipment (and the configuration of same) covered by this Offer are proposed by Midwest Telecom based upon information supplied by Purchaser. The ultimate performance of the services and/or equipment will depend upon the full cooperation of Purchaser with Midwest Telecom. In contracting for said services and/or equipment, Purchaser acknowledges and stipulates to the above-referenced statements and further acknowledges that Purchaser has inspected, examined and studied all plans, proposals, specifications and material lists furnished by Midwest Telecom and Purchaser has approved the same.

If the Premier Warranty and/or the Preferred Maintenance Plan are included in this Offer, the terms and conditions provided to Purchaser labeled "Premier Warranty Terms and Conditions" and "Preferred Maintenance Terms and Conditions" shall also apply.

This Offer, including these Terms and Conditions, is intended by Purchaser and Midwest Telecom to be (a) a final expression of their agreement, and (b) a complete and exclusive statement of the terms of the agreement. No course of prior dealings between the said parties, and no usage of trade shall be relevant to amend, supplement, explain or vary any of the terms set out herein. No representations, understandings or agreements have been made or relied upon other than those specifically set forth herein. **IN THE CASE OF CONFLICT BETWEEN THIS OFFER AND ANY OTHER DOCUMENTATION SUPPLIED BY PURCHASER, INCLUDING, BUT NOT LIMITED TO, A PURCHASE ORDER, PROPOSAL OR CONTRACT, THE CONTENTS, TERMS AND CONDITIONS OF THIS OFFER SHALL PREVAIL.** The Terms and Conditions of this Offer may be modified only when the modification is agreed to, in writing, by both parties hereto. This Offer shall inure to the benefit of and be binding upon both Purchaser and Midwest Telecom, their legal representatives, successors and assigns, except as limited hereinbelow. This Offer shall be governed by the laws of the State of Indiana.

Payment: Purchaser agrees to pay the net amount as set forth on this Offer. Purchaser shall assume, in addition to the purchase price, all taxes, however designated, levied or based on such price of the equipment covered hereby (the "Equipment") or on this Offer, including, but not limited to, state and local sales, use, privilege or excise taxes based on gross revenue, and any taxes or amounts in lieu thereof paid or payable by Midwest Telecom in respect of the foregoing, exclusive, however, of taxes on net income.

Security Interest: Purchaser hereby creates a purchase money security interest in the Equipment to secure payment of the purchase price, and any and all other sums due and owing from the Purchaser to Midwest Telecom. Purchaser authorizes Midwest Telecom to file financing statements in necessary jurisdictions and represents that no third party has a prior security interest in the Equipment. Purchaser shall not sell, transfer, pledge, mortgage, lease or otherwise encumber the Equipment sold hereunder until Midwest Telecom is fully paid, including all service and costs of installation agreed upon.

Changes / Restocking Charges: Should Midwest Telecom agree to any equipment changes at the request of the Purchaser, the Purchaser shall pay a 20% restocking charge provided, however, in the event the equipment change is associated with an upgrade, this restocking charge shall not apply.

Risk of Loss: Upon delivery, Purchaser assumes the risk of loss or damage to the Equipment.

Trade-In Credit: In the event Purchaser desires to replace the Equipment, Midwest Telecom shall accept return of the Equipment and will issue a credit to be applied toward the purchase of new products distributed by Midwest Telecom. This credit shall be in the amount of the original purchase price of the returned Equipment less: (i) 30% of the original purchase price of the returned Equipment if the trade-in occurs within 1 year of this Offer, and (ii) an additional 20% of the original purchase price of the returned Equipment for each additional year or part thereof from the date of this Offer to the date of trade-in, and (iii) applicable restocking charges. This credit applies only to major end-item apparatus & central switching in good operating condition and specifically excludes all cable, labor, connection blocks and miscellaneous hardware.

Limited Warranties, Limitations and Disclaimer of All Other Warranties: The following warranties, limitations and disclaimers are applicable to the services and/or the Equipment included in this Offer:

(a) **Standard Warranty: Remedy:** This Standard Warranty will apply unless the Special Warranty applies. Midwest Telecom warrants that the Equipment is free from defects in material and workmanship for a period of (1) year commencing upon the earlier of the first installation of the Equipment or three months after its delivery. Purchaser's exclusive remedy in connection with this express warranty shall be that Midwest Telecom will repair or replace defective parts and make necessary Equipment adjustments during the warranty period.

(b) **Special Warranty: Remedy:** This Special Warranty will apply if (i) safety hazards exist at the location of the Equipment or are present as a result of the attachment of the Equipment to another machine or system or (ii) Midwest Telecom service representatives are required to disconnect equipment from a product not distributed by Midwest Telecom to properly service the Equipment and its disconnection and subsequent reconnection (excluding actual repair time) cannot be accomplished by Midwest Telecom, without additional training and within a half hour. If the Special Warranty applies, Midwest Telecom's only warranty is that the Equipment is free from defects in material upon delivery. Purchaser's exclusive remedy under this Special Warranty shall be that Midwest Telecom will furnish, on an exchange basis, replacements for defective parts returned to Midwest Telecom within one year of delivery.

(c) **Warranty Limitations:** Both the Standard Warranty and the Special Warranty shall be for the sole benefit of Purchaser. Neither Warranty covers (1) any product on which the serial number has been defaced, modified or removed; (2) removal, installation and setup service charges, or (3) damage, deterioration or malfunction caused by fire, lightning, flooding, exposure to excessive moisture, acts of nature, electrical power fluctuations or failure, normal wear and tear, accident, misuse, abuse, negligence, neglect, unauthorized product modifications, failure to follow instructions supplied with the Equipment, shipment, or any other cause not due to inherent defects or faulty workmanship. Midwest Telecom shall not be held liable for special, indirect, incidental or consequential damages of any nature (including, without limitation, loss or damage resulting from interruption or failure in operation of the Equipment) with respect to the Equipment or any services rendered hereunder. Additionally, neither warranty applies (i) when attachments not distributed by Midwest Telecom, which impair normal operating function, have been added to the Equipment and/or (ii) when Equipment is repaired by anyone other than Midwest Telecom.

(c) **Disclaimers: NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY TO THE EQUIPMENT.**

Default by Purchaser: In the event Purchaser fails to uphold its obligations hereunder or if a petition in bankruptcy is filed by or against Purchaser, Midwest Telecom, in addition to other remedies, may repossess the Equipment without notice, and Purchaser agrees to pay Midwest Telecom's costs and expenses of collection and or repossession, including attorney's fees.

Dispute Resolution: Any and all disputes, controversies and questions directly or indirectly arising under, out of, or in connection with, or in relation to this instrument, or its subject matter, including, without limitation, all disputes, controversies and questions relating to the validity, negotiation, interpretation, construction, performance, termination and enforcement of this Offer (collectively "Dispute(s)"), shall be resolved in accordance with this paragraph, which shall be the sole and exclusive procedure for the resolution of any Dispute(s). Any and all Dispute(s) arising relating to this Offer, these Terms and Conditions, the Equipment and/or services and all other disagreements between the parties hereto shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and any judgment or award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding said Rules, any arbitration hearing to take place hereunder shall be conducted in Evansville, Indiana before one (1) arbitrator who shall be a licensed attorney with extensive experience in business law. The party who is unsuccessful in such arbitration shall pay to the successful party reasonable attorney fees, court costs and expenses incurred by such successful party in connection with resolving the Dispute(s) and prosecuting the arbitration. Each party hereby consents to a single, consolidated arbitration proceeding of multiple claims, or claims involving more than two parties. Either party may apply to any court of competent jurisdiction for injunctive relief or other interim measures in aid of the arbitration proceedings, but not otherwise. Any such application shall not be deemed incompatible or a waiver of this section. The arbitrator shall be required to make written findings of fact and conclusions of law to support their award. Notwithstanding anything to the contrary in the Commercial Arbitration Rules and supplementary procedures, the arbitrators shall not be empowered to award punitive, indirect, incidental or consequential damages, and/or aggregate damages against Midwest Telecom in excess of the total sum received by Midwest Telecom pursuant to this Offer, and the parties expressly waive any claim to such damages. Notwithstanding anything herein to the contrary, Midwest Telecom shall be entitled to apply to a court in of competent jurisdiction in Evansville, Indiana to collect amounts due from Purchaser pursuant to this Offer, including past due service fees, costs of collection and attorney fees.

Waiver and Severability: These Terms and Conditions shall be deemed to be separable. If any part thereof is held to be invalid for any reason, the other Terms and Conditions hereunder shall remain in full force and effect. Midwest Telecom's waiver of any breach, or failure to enforce any of these Terms and Conditions, shall not be deemed to affect, limit or waive Midwest Telecom's right thereafter to require compliance with these Terms and Conditions.

Force Majeure: Midwest Telecom shall have no liability or obligation to Purchaser of any kind, including, but not limited to, any obligation to deliver Equipment and/or provide services, arising from any delay or failure to perform all or any part of this Offer as a result of causes, conduct or occurrences beyond Midwest Telecom's reasonable control, including, but not limited to, commercial impracticability, fire, flood, act of war, terrorism, civil disorder or disobedience, act of public enemies, problems associated with transportation (including car or truck shortages), acts or failure to act of any state, federal or foreign governmental or regulatory authorities, labor disputes, strikes, or failure of suppliers to make timely deliveries of materials, goods or services to Midwest Telecom.

INDEMNIFICATION: TO THE FULLEST EXTENT PERMITTED BY LAW, PURCHASER SHALL DEFEND, INDEMNIFY AND HOLD MIDWEST TELECOM HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, SUBROGATION CLAIMS BY PURCHASER'S INSURERS, CAUSES OF ACTION, FINES, CONTROVERSIES, LIABILITIES, REGULATORY ACTIONS, SEIZURES OF EQUIPMENT, LOSSES, COSTS, EXPENSES (INCLUDING, BUT NOT LIMITED TO ATTORNEYS' FEES AND EXPERT WITNESS AND LITIGATION EXPENSES) ("CLAIM"), ARISING FROM OR IN CONNECTION WITH ANY CLAIM ASSERTED AGAINST MIDWEST TELECOM FOR ANY DAMAGE, ENVIRONMENTAL LIABILITY, PATENT OR INTELLECTUAL PROPERTY INFRINGEMENT CAUSED BY PURCHASER'S UNINTENDED USE, MODIFICATION OR ALTERATION OF THE EQUIPMENT; INJURY, DEATH, LOSS, PROPERTY DAMAGE, DELAY OR FAILURE IN DELIVERY OF THE EQUIPMENT OR ANY OTHER CLAIM, WHETHER IN TORT, NEGLIGENCE, CONTRACT, OR OTHERWISE, RELATING TO THIS OFFER, THE BUSINESS RELATIONSHIP BETWEEN THE PARTIES, THE EQUIPMENT AND/OR SERVICES PROVIDED HEREUNDER; OR PURCHASER'S BREACH OF THIS OFFER. NOTWITHSTANDING THE FOREGOING, PURCHASER HAS NO INDEMNITY OBLIGATION TO MIDWEST TELECOM WITH RESPECT TO ANY CLAIMS THAT RESULT SOLELY FROM THE NEGLIGENCE OF MIDWEST TELECOM AND THIS INDEMNITY PROVISION DOES NOT PURPORT TO INDEMNIFY MIDWEST TELECOM SOLELY FOR ITS OWN NEGLIGENCE, BUT RATHER FOR THE NEGLIGENCE OR CONDUCT, WHETHER SOLE OR CONCURRENT, OF PURCHASER, PURCHASER, FOR ITSELF AND ITS INSURERS, EXPRESSLY WAIVES ANY AND ALL LIMITATIONS OR LIABILITY CAPS, IF ANY, ON PURCHASER'S CONTRIBUTION LIABILITY TO MIDWEST TELECOM, AND ANY AND ALL STATUTORY OR COMMON LAW LIEN RIGHTS OR CLAIMS AGAINST MIDWEST TELECOM ARISING FROM ANY APPLICABLE WORKERS COMPENSATION OR DISABILITY ACTS, WHICH PURCHASER MIGHT OR COULD ASSERT AGAINST MIDWEST TELECOM OR MIDWEST TELECOM'S INSURERS IN THE EVENT OF THE PERSONAL INJURY OR DEATH OF PURCHASER'S EMPLOYEES, REPRESENTATIVES OR SERVANTS. WITHOUT LIMITING THE FOREGOING, PURCHASER, FOR ITSELF AND ITS INSURERS, ALSO WAIVES ANY LIENS, CLAIMS OR OTHER RIGHTS IT MAY HAVE AS A RESULT OF BEING SUBROGATED TO ANY RIGHTS OF ITS EMPLOYEES, REPRESENTATIVES OR SERVANTS.

Relationship: The relationship between Midwest Telecom and Purchaser shall be that of independent contractor and Midwest Telecom, its agents and employees, shall under no circumstances be deemed the employees, distributors, franchisees, agents or representatives of Purchaser.

Assignment: The rights and obligations of Purchaser under this Offer shall not be assignable unless consent to the assignment is in writing and signed by Midwest Telecom.