



## Worldwide Terms and Conditions of Sale

These Worldwide Terms and Conditions of Sale (“Terms”) create a contract between you (“Customer”) and Telestream, LLC and its affiliates (“Telestream”). Please read these Terms carefully. Notwithstanding anything to the contrary contained herein, if a binding agreement is in place between Telestream (or its affiliates) and Customer, the terms of that agreement will take precedence with respect to the products and services covered by that agreement.

### 1. PRODUCTS AND PARTIES

As used in these Terms, “Product(s)” mean the hardware and software issued by Telestream to which these Terms are attached. Such Product(s) are sold or licensed (or in the case of quotation, offered for sale or license) by Telestream to Customer.

### 2. CUSTOMER’S ORDER FORMS

Except as set forth above, these Terms apply to the sale or license of the Product(s) by Telestream to Customer to the exclusion of any additional or different terms and conditions, including any terms or conditions which Customer may purport to apply under any Customer request for quotation, purchase order or similar document, or which Customer may purport to offer in response to these Terms. All such additional or different terms and conditions are expressly rejected by Telestream. Customer’s assent to these Terms, and only these Terms, is conclusively presumed from Customer’s acceptance of delivery of the Product(s).

### 3. PRICES; VALIDITY OF QUOTATIONS

The price(s) for the sale or license of the Product(s) and the currency of payment are as stated on the face of the quotation, acknowledgement, pro forma or invoice issued by Telestream to which these Terms are attached. Quotations supplied by Telestream are valid for 30 days unless a different validity period is stated on the quotation.

### 4. RESCHEDULING

Customer may submit a request to Telestream to reschedule an order. All such requests must be in writing and are subject to acceptance or rejection by Telestream. Any request to reschedule an order (or part of an order) which is received by Telestream fewer than 30 days before the then-scheduled shipping date is subject to acceptance in Telestream’s unilateral discretion. If such rescheduling request is accepted, Customer shall be subject to and shall pay a rescheduling fee in the amount of 5% of the net order value of the Product(s) affected.

### 5. SHIPMENT

Telestream will make commercially reasonable efforts to ship the Product(s) by the estimated ship date shown on the applicable acknowledgement. Delivery may be up to 10 to 12 weeks ARO (At Receipt of Order). Order may be subject to extended lead time beyond 12 weeks. Unless carrier is specified on Purchase Order, Telestream may choose the shipment method. Customs clearance shall be handled by Customer. Credit references may be required. Purchase order required for shipment. Shipping and handling charges will appear as a separate item on the invoice, unless explicitly stated.

Telestream may make partial shipments unless Customer specifically objects in writing within 5 days prior to any partial shipment. Shipment shall be in accordance with Incoterms 2020, per the specific Incoterm stated on the quotation, acknowledgement, proforma or invoice issued by Telestream to which these Terms are attached, except that (a) Telestream will not be liable for any delay or failure to unreasonable expense to avoid, and (b) risk of loss shall pass in accordance with Section 6 of these Terms.

### 6. TITLE AND RISK OF LOSS

Title to all Products other than software shall pass at the same time as the risk of loss. Title to software shall remain with Telestream and/or its licensors, subject to the terms of Section 9. For Products shipped to a Customer location in a country other than the country where Telestream is incorporated, risk of loss shall pass at the later of (i) the point provided in the applicable incoterm or (ii) when the shipment leaves the country where the shipment to Customer originates.

### 7. TAXES

Unless otherwise indicated on the quotation, acknowledgement, proforma or invoice issued by Telestream to which these Terms are attached, any and all sales, use, value added (VAT) and similar taxes imposed on Telestream or which Telestream has a duty to collect in connection with the sale, supply, delivery, or use of any Product will appear as separate items on the invoice, and Customer shall be liable to pay the same. If sales to Customer are exempt from such taxes, Customer shall furnish Telestream with a certificate of exemption prior to shipment.

### 8. INVOICES AND PAYMENT

Upon each shipment, Telestream will issue an invoice to Customer. Payment terms and currency of payment are as stated on the face of the quotation, acknowledgement, pro forma or invoice issued by Telestream to which these Terms are attached. Customer shall not be entitled to make any deduction with respect to any set-off or counter claim. For Products other than software shipped to a location in the United States, Telestream shall hold a security interest in such Products until receipt of full payment. For Products other than software shipped to a location outside of the United States, if Customer is past due on payment for any such Product, Telestream shall have the right to take possession of that Product and sell it, applying the proceeds of any sale to the balance due on the Product. Without prejudice to its other rights hereunder, Telestream may charge interest at the lesser of 1.5% per month or the maximum amount allowed by applicable law on any balance outstanding after the payment due date, such interest accruing on a daily basis. Telestream may change its credit terms and/or suspend its performance when, in the opinion of Telestream, Customer’s financial condition or record of payment so warrants. Customer shall pay any third-party collection expenses, including attorney’s fees, incurred by Telestream to collect any past-due amounts.

For professional services provided by Telestream to Customer, invoicing is as follows: (a) for projects valued at or less than \$25,000 USD, the invoice will issue upon receipt of the applicable purchase order; (b) for projects valued at greater than \$25,000 USD, the invoice will issue as set forth in the applicable quote or statement of work.

Products that are licensed on a subscription basis through our Business-to-Consumer ecommerce platform shall automatically renew for successive like terms, unless and until auto-renewal is turned off by the user through the user portal or by contacting Telestream Support.

### 9. SOFTWARE AND SUPPORT

Software, including software Products and software incorporated within Products, (e.g., in ROM or on internal media), is provided under license and is subject to the software warranty, if any, and other terms set out in a separate end user license agreement, a copy of which may be obtained from Telestream at <https://www.telestream.net/pdfs/support/Telestream-EULA-English.pdf> (which Telestream may revise from time to time). In general, Telestream’s licenses prohibit reproduction of software, limit use of software to the intended operation of the Product with which the software is originally acquired from Telestream, and prohibit disassembly, decompilation and reverse engineering of the software to the maximum extent permitted by applicable law. Customer may use and reproduce the software only as permitted by the applicable end user license agreement.

Telestream may, in its sole discretion, offer to Customer the non-standard option of purchasing support for an extended period of time beyond the applicable end-of-support date for a given Product, and may do so by making such information available at <https://www.telestream.net/telestream-support/overview.htm> (“Extended Support”). Any Extended Support offered by Telestream is subject to the terms and conditions set forth in the applicable support document at this hyperlink and is subject to these additional terms and conditions: (a) with respect to hardware Products, Telestream shall use commercially reasonable efforts to provide Customer with replacement services for hardware Products, subject to availability of replacement parts. If despite its use of commercially reasonable efforts Telestream is not able to provide such replacement

services, Customer may need to upgrade or remove the affected hardware Product(s) to correct the problem; and (b) with respect to software Products, extended support is limited to configuration assistance and troubleshooting for bugs previously identified and resolved prior to the commencement of the Extended Support period. During the Extended Support period, Telestream shall not provide new maintenance releases, bug fixes, security patches, or engineering development support for newly identified issues, nor for software issues or bugs that were not resolved prior to the applicable end-of-support date.

#### **10. USE OF RECONDITIONED MATERIAL**

Products may include materials that are reconditioned to like-new performance and functionality. Customer shall not be entitled to reject Products or seek any diminution in the price of Products on the basis of the inclusion of reconditioned materials.

#### **11. CANCELLATION AND RETURN POLICY**

All requested cancellations and returns are subject to Telestream's unilateral discretion, and Customer may not cancel any accepted orders or return any Products without Telestream's prior written consent. All returns must be unopened and in the original packaging. Accepted cancellations or returns are subject to a cancellation or restocking charge which may change from time to time. Contact Telestream to determine the exact amount. Telestream may deduct the amount of the cancellation or restocking fee from any payments it makes to Customer.

#### **12. EXPORT RESTRICTIONS**

Customer shall not export, re-export, or transfer, directly or indirectly, any Product or technical data received from Telestream to any country or user to which such export, re-export or transfer is restricted by the United States or other country law or regulation without first obtaining any required governmental license, authorization, certification or approval. If Customer resells or otherwise disposes of any Product or technical data purchased or licensed hereunder, it will comply with any export restrictions applicable to such transfer. Telestream shall have no liability for delayed delivery or non-delivery resulting from denial, revocation, suspension or governmental delay in issuance of any necessary export license or authority will make commercially reasonable efforts to ship the Product(s) by the estimated ship date shown on the applicable acknowledgement. Telestream may make partial shipments unless Customer specifically objects in writing within 5 days prior to any partial shipment. Shipment shall be in accordance with Incoterms 2020, per the specific Incoterm stated on the quotation, acknowledgement, proforma or invoice issued by Telestream to which these Terms are attached, except that (a) Telestream will not be liable for any delay or failure to perform its obligations under the applicable Incoterm resulting from circumstances beyond Telestream's reasonable control or circumstances which would cause Telestream to incur unreasonable expense to avoid, and (b) risk of loss shall pass in accordance with Section 6 of these Terms.

#### **13. WARRANTY**

Telestream warrants to Customer that each hardware Product will be free from defects in materials and workmanship for the period set forth in the applicable warranty statement, a copy of which may be obtained from Telestream. If any such Product proves defective in materials or workmanship during the warranty period, Telestream will repair or replace the defective Product as specified in the applicable warranty statement. Information concerning the warranty period and whether warranty service will be provided at a location other than a Telestream service center is set forth in the applicable warranty statement.

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. TELESTREAM, ITS AFFILIATES AND VENDORS DISCLAIM ANY IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, AND THE EQUIVALENTS OF ANY OF THESE IMPLIED WARRANTIES IN ANY JURISDICTION.

#### **14. LIMITATION OF LIABILITY**

UNLESS APPLICABLE LAW PRESCRIBES OTHERWISE, IN NO EVENT SHALL TELESTREAM, ITS AFFILIATES OR VENDORS SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF CUSTOMER'S PURCHASE OR USE OF TELESTREAM PRODUCT(S) AND SERVICE(S), EVEN IF TELESTREAM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL TELESTREAM'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, APPLICABLE EULAS AND TOS, AND SALES OF THE TELESTREAM PRODUCTS AND SERVICES HEREUNDER EXCEED THE SUM PAID TO TELESTREAM FOR THE PRODUCT OR SERVICE IN QUESTION.

#### **15. WAIVER**

No waiver of any breach of any provision of these Terms will constitute a waiver of any other breach of any provision of these Terms

#### **16. ASSIGNMENT**

Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under these Terms, without the prior written consent of Telestream, and any purported assignment, delegation, or transfer in violation of this Section 16 is void. These Terms are binding upon and inure to the benefit of the parties' hereto and their respective successors and permitted assigns.

#### **17. ATTORNEYS FEES**

Telestream shall be entitled to recover its reasonable costs and attorneys' fees, both at trial and on appeal, in any litigation based on these Terms in which Telestream is the prevailing party.

#### **18. GOVERNING LAW**

These Terms and the relationship between Telestream and Customer shall be governed in all respects by the laws of the State of California, without giving effect to its principles of conflicts of law. Each party irrevocably consents to the exclusive and personal jurisdiction of the federal and state courts located in Sacramento County, California, for any claim or dispute arising out of or related to these Terms.

#### **19. SEVERABILITY**

If any term or provision of these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

#### **20. ENTIRE AGREEMENT**

These Terms and the quotation, acknowledgement, pro forma or invoice issued by Telestream to which they are attached comprise the entire agreement between Telestream and Customer and supersede any prior or contemporaneous negotiations or agreements with respect to their subject matter. No amendment shall be effective unless it is in writing and signed by an authorized representative of Telestream and Customer. For a copy of the most current terms and conditions of sale, please reference <https://www.telestream.net/company/terms-of-sale.htm>.