

Coda Octopus Products Inc.

TERMS AND CONDITIONS  
FOR EQUIPMENT RENTAL THROUGH TAP™ (Technology Access Program)

1. DEFINITIONS:

In these Terms and Conditions for Equipment Rental (the "Terms"), the following definitions shall apply:

- A) "Contract" means binding contract between Customer and Coda Octopus Products Inc. for the of Equipment, consisting of these Terms and the Order;
- B) "Customer" means the person or entity renting the Equipment pursuant to the Contract;
- C) "Equipment" means the equipment rented pursuant to the Contract, as described in the Order;
- D) "Order" means the written purchase order placed by Customer for the purchase of Equipment, and accepted by Coda Octopus Products Inc.;
- E) "Quotation" means a written quotation of prices, rates and other commercial terms relating to the purchase or rental of Equipment provided to Customer by Coda Octopus Products Inc.; and
- F) "COPI" means Coda Octopus Products Inc., with its principal address at 4020 Kidron Rd, Suite #9, Lakeland, Florida, 33811, USA.

2. CONTRACT:

- A) Upon issuance of an Order by Customer to COPI and acceptance of such Order by COPI, a Contract shall be deemed to have been entered into by and between the parties. The Order may incorporate terms from the Quotation, if any. No Order will be binding upon COPI unless accepted in writing.
- B) The Contract shall constitute the entire agreement between Customer and COPI with respect to rental of Equipment. The parties shall not be bound by any statement, representation, promise, inducement, or understanding of any kind not set forth in the Contract, except to the extent otherwise specifically set forth herein. No other terms, whether or not contained in any bid, estimate, acknowledgement, confirmation or invoice given by Customer, shall in any way modify or supersede any of the terms of the Contract and are hereby rejected. Any change, amendment or modification of any of the terms and conditions of the Contract or waiver of any of the terms and conditions thereof must be made in writing and executed by the parties.

3. ORDER OF PRECEDENCE:

In the event of a conflict or ambiguity between the provisions of these Terms and the Order, the provisions of these Terms shall supersede the Order.

4. RENTAL OF EQUIPMENT:

- A) If the Order contemplates the rental of Equipment from COPI by Customer, the terms of such rental shall be as set forth in this Section 4, except that the term of the rental, the amount and frequency of payment of the rental fee, the geographic region where the Equipment will be used, and a description of the Equipment to be rented during such term, shall be as set forth in the Order.
- B) Customer agrees that the Equipment rented hereunder will be used during the rental term (i) only by Customer, (ii) only in compliance with normal, safe operating procedures and in conformance with applicable operating manuals, (iii) for lawful purposes in the ordinary course of Customer's business; and (iv) only in those geographic areas specified in the Order.
- C) The Equipment rented hereunder shall be delivered to Customer, at Customer's expense, on the date of commencement of the rental period, or such other date as has been mutually agreed upon between the parties in writing. Customer shall notify COPI in writing within two days after delivery of the Equipment if the Equipment is defective or otherwise unsuitable for Customer's purpose, which notice shall describe in reasonable detail the defective or unsuitable nature of the Equipment. If such notice is not received by COPI within two days after delivery of the Equipment, it shall be conclusively presumed that the Equipment has been received in good working condition and is in every way satisfactory for Customer's purposes.
- D) Customer agrees to pay the rental fee as specified in the Order. Customer's obligation to pay the rental fee is absolute and unconditional and not subject to abatement, set off or counterclaim.
- E) Customer shall pay all costs, expenses and obligations of every kind and nature relating to the Equipment rented hereunder during the rental term. Customer agrees, at its expense, to procure and maintain in effect all licenses, certificates, permits and other approvals and consents required by law in connection with the possession, use and operation of the Equipment. Customer shall pay promptly when due all registration, title, license, permit and certificate fees, assessments, taxes or other charges of whatever nature (except federal taxes levied on COPI net income), now or hereafter imposed by any state, federal, local or foreign government upon use, ownership, rental, shipment, transportation, delivery or operation of the Equipment. In the event any of such impositions and any penalties or interest thereon, shall be paid by COPI or if COPI is required to collect and pay the foregoing, Customer shall promptly reimburse COPI upon demand for such sums and for any expenses incurred therein.
- F) Any use of the Equipment rented by Customer beyond the expiration of the rental term shall be on a month to month basis, and all obligations of Customer with respect thereto shall continue until the Equipment is returned to COPI as described herein. Unless otherwise agreed in writing, the rental fee for any period beyond the rental term shall be 150% of the rental fee during the rental period. Nothing herein shall be construed to waive or limit COPI rights and remedies hereunder or pursuant to applicable law relating to Customer's failure to return the Equipment at the end of the rental term.
- G) CUSTOMER AGREES AND ACKNOWLEDGES THAT EXCEPT AS SET FORTH IN SECTION 4(C), EQUIPMENT RENTAL IS ON AN "AS IS" AND "WHERE IS" BASIS AND IS WITHOUT WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO (A) CONDITION, DESIGN, OPERATION, FITNESS FOR USE OR MERCHANTABILITY OF ANY EQUIPMENT, (B) FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE OF CUSTOMER, (C) CUSTOMER'S RIGHT TO THE QUIET ENJOYMENT THEREOF, EXCEPT THAT COPI WARRANTS THAT IT WILL NOT DISTURB CUSTOMER'S QUIET ENJOYMENT OF THE EQUIPMENT HEREUNDER, PROVIDED CUSTOMER IS NOT IN DEFAULT, OR (D) ANY OTHER MATTER WHATSOEVER; IT BEING AGREED THAT ALL RISKS ARE TO BE BORNE BY CUSTOMER.
- H) Customer acknowledges and agrees that (1) ownership of and title to the Equipment and all accessions thereto remain with COPI; (b) Customer will make no claim or assert any right to any such Equipment inconsistent with COPI ownership, and will make appropriate entries upon the books and records disclosing COPI title to the Equipment; (c) if COPI so requests, Customer will specifically identify the Equipment rented to Customer hereunder as being owned and rented by COPI, in a manner reasonably acceptable to COPI; (d) during the rental term, Customer, at its expense, will protect and defend COPI title to the Equipment from and against all claims,

- encumbrances, liens and legal processes; (e) during the rental term, Customer will, whenever requested by COPI, execute and deliver to COPI all agreements, instruments and documents necessary to fully consummate all of the transactions contemplated herein and necessary for the protection of COPI title to the Equipment; (f) Customer will allow COPI to inspect the Equipment rented hereunder at reasonable times; and (g) Customer agrees to provide to COPI reports in such form and at such times as COPI may reasonably require, including but not limited to reports identifying the use, operation, location and condition of the Equipment.
- I) Customer will keep the Equipment rented hereunder in good and safe working order and appearance at all times during the rental term as when received, excepting only reasonable wear and tear, and will at its sole cost and expense pay for any necessary or advisable repairs to and maintenance of such Equipment. Customer will not make any alterations, modifications or improvements to such Equipment without the prior written consent of COPI.
- J) Customer will, at its expense, at all times during the rental term, and until the Equipment is returned to COPI, procure and maintain insurance covering the Equipment rented hereunder, and such insurance shall be of the type, in the amount and with insurers acceptable to COPI. All such insurance policies shall name COPI and COPI assignee (if any), as additional insured and loss payee, as their interests may appear, and shall provide that the policies may be altered or cancelled by Customer or insurer only after 30 days' prior written notice to COPI. Customer shall furnish COPI with a copy of each such insurance policy written with respect to Equipment and with evidence that the required insurance remains current and in full force and effect, and any operation of the Equipment by Customer while required insurance is not in full force and effect will constitute a default hereunder.
- K) Customer assumes and shall bear the entire risk of loss, destruction, theft, or taking of, or damage to the Equipment rented hereunder from any cause whatsoever. Customer will promptly report to COPI in writing any loss, destruction, theft, taking of, damage to, such Equipment, and shall promptly provide COPI with copies of all reports or documents made by it relating thereto. In the event that such Equipment shall have been lost, destroyed, stolen, or damaged to such an extent that repair thereof is impractical, or in the event of a total taking, Customer shall pay to COPI or to its assignee within 30 days after such loss, destruction, theft, damage or taking, the actual value of such Equipment as of the date thereof, plus an amount equal to the accrued but unpaid rental payments, for such Equipment and all other sums payable hereunder. To the extent that any such loss, destruction, theft, damage or taking is covered by insurance, all proceeds of such insurance shall be first applied by Customer toward satisfaction of the payment required to be made to COPI or its assignee pursuant to this section. Upon receipt of the payment in full, the rental term of the Equipment so lost, destroyed, damaged, taken or stolen shall terminate (if Customer is not then in default). If the Equipment rented hereunder or any part, component or material thereof shall suffer any loss, destruction, damage or taking, other than as set forth above, Customer shall, at its own expense promptly restore such Equipment to good and safe condition, repair and working order, including without limitation, replacing all equipment, parts components or materials of such Equipment as shall have been lost, destroyed, damaged or taken with manufacturer approved Equipment, parts, components, or materials of equal or greater value. No loss, theft, destruction or damage to, or taking of, the Equipment rented hereunder, however occurring and whether or not the same is covered by insurance, shall relieve Customer of any of its obligations hereunder.
- L) Customer assumes liability for, and hereby agrees to indemnify, protect, save and keep harmless COPI, its agents, employees, officers, directors, successors and assigns from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses, including legal fees and expenses, of whatsoever kind and nature imposed on, incurred by or asserted against COPI, its agents, employees, officers, directors, successors and assigns, in any way relating to or arising out of the rental of the Equipment to Customer, including, without limitation, the ownership, possession, use, selection, delivery, leasing, operation, maintenance, return or condition of such Equipment or any failure on the part of Customer to perform or comply with any of the terms of the Contract. This indemnity shall survive expiration or termination of the rental term.
- M) Each of the following shall be an event of default of the Contract: (i) Customer fails to pay when due any rental payment or any other sum payable hereunder, and such failure continues for a period of thirty days thereafter; (ii) Customer fails to perform or observe any covenant, condition or agreement to be performed or observed by it hereunder (other than a requirement to obtain or maintain insurance), and such failure continues for a period of thirty days; (iii) Customer ceases doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due or such fact is determined by judicial proceedings, files a voluntary petition in bankruptcy, is adjudicated bankrupt or insolvent, files a petition seeking for itself any reorganization, rearrangement, composition, readjustment, liquidation, dissolution, or similar arrangement or files an answer admitting the material allegations of a petition filed against it in any such proceedings, or consents to or acquiesces in the appointment of a trustee, receiver, or liquidator of all or any substantial part of its assets or properties; (iv) Customer attempts to sell, transfer, encumber, part with possession or sublet the Equipment; or (v) Customer fails to maintain the insurance required hereunder.
- N) Upon the occurrence of an event of default, COPI, at its option, may take one or more of the following actions: (i) proceed by appropriate court action or actions either at law or in equity to enforce performance by Customer of the applicable provisions of the Contract or to recover from Customer any and all damages or expenses including reasonable attorneys' fees, which COPI shall have sustained or incurred due to such default or COPI enforcement of its remedies hereunder; (ii) terminate Customer's rights under the Contract whereupon Customer, at its sole cost and expense, shall cause the Equipment to be delivered to COPI in accordance with Section 4(O) herein below; (iii) declare all rental payments and other sums payable under the Contract immediately due and payable; or (iv) take possession of all of the Equipment rented hereunder (damages to Customer occasioned by such taking of possession are hereby expressly waived by Customer), and thereupon Customer's right to the possession thereof shall terminate. In the event of any such repossession of the Equipment, COPI may either lease the Equipment or any portion thereof for the remainder of such rental period, and to such persons as COPI may elect, or sell the Equipment or any portion thereof at public or private sale and without demand or notice of intention to sell or of sale, or presence of the same at the place of sale. IN THE EVENT OF A DEFAULT BY CUSTOMER, CUSTOMER HEREBY WAIVES ANY AND ALL RIGHTS TO NOTICE AND TO A JUDICIAL HEARING BEFORE REPOSSESSION OF THE EQUIPMENT BY COPI EXCEPT AS REQUIRED BY LAW. In the event of any default, Customer will pay to COPI a reasonable sum for attorneys' fees and such costs and expenses as shall have been incurred by COPI in the enforcement of any right or privilege hereunder.
- O) At the end of the rental term, Customer shall return the Equipment to COPI (at Customer's sole cost and expense) in good and safe working order and appearance, reasonable wear and tear excepted. In the event Customer does not return the Equipment rented hereunder to COPI in good and safe working order and appearance, reasonable wear and tear excepted, COPI may, without limiting its remedies hereunder, make any repairs or replacements necessary to restore such Equipment to such condition, and Customer shall immediately reimburse COPI on demand for the expense of any such repairs or restoration. In such event, Customer shall continue to pay rental payments in the same manner as if there has been no expiration or termination of the Contract until all such work has been satisfactorily completed and COPI reimbursed for any expense in connection therewith.
- P) Customer may not, without prior written consent by COPI, sublease all or any part of the Equipment rented hereunder. COPI shall have absolute discretion as to whether to permit such sublease.
- Q) The Equipment rented hereunder shall remain personal property regardless of whether it becomes affixed or attached to real property or any improvement thereof. Customer will not permit any such Equipment to become so related to any particular real estate so as to become a fixture on such real estate or to be installed in or affixed to other goods so as to become an accession to such other goods.

5. TERMINATION PRIOR TO DELIVERY:

Customer may terminate the Contract prior to delivery of the Equipment only with the consent of COPI, which consent may be subject to applicable cancellation fees.

6. FORCE MAJEURE:

In the event that COPI is unable to deliver the Equipment or perform any other obligation hereunder due to a Force Majeure Event, COPI shall be excused from such performance for the duration of such Force Majeure Event. In the event that such Force Majeure Event persists for more than two consecutive days, Customer may terminate the Contract upon written notice to COPI. "Force Majeure Event" means the occurrence of conditions beyond the reasonable control of COPI, including but not limited to, acts of God, civil or military authorities, or a public enemy, fire, floods, wind, storm, labor disorders, strikes, work stoppages or other labor trouble, accidents, riots, civil commotion, terrorist acts or threats, closing of the public highways, and other contingencies, similar to the foregoing, beyond the reasonable control of COPI.

7. REMEDIES CUMULATIVE:

No right or remedy conferred upon or reserved to COPI by this Contract shall be exclusive of any other right or remedy herein or by law provided; all rights and remedies of COPI conferred upon COPI by this Contract or by law shall be cumulative and in addition to every other right and remedy available to COPI.

8. WAIVER:

The failure of COPI to enforce any provisions of the Contract shall in no way be construed as a waiver of such provisions nor in any way affect the right of COPI thereafter to enforce any such provisions. No waiver by COPI of any default of Customer under the Contract shall constitute a waiver of any subsequent default, whether or not the subsequent default is of a similar or different nature.

9. ATTORNEY FEES:

In the event that COPI should bring an action for enforcement of the terms and conditions of the Contract, Customer agrees that COPI shall be entitled to award of its reasonable attorney's and professional fees and court costs associated with such enforcement proceedings.

10. GOVERNING LAW:

The Contract shall be governed by and construed in accordance with the laws of the State of Texas, excluding its conflicts of laws provisions. In the event of any dispute arising out of or relating to this Contract, the parties agree that the federal and state civil courts located in Harris County, Texas and the Parish of Iberia, Louisiana, shall have exclusive jurisdiction and venue to determine such dispute(s), and each party hereby waives any objection to such jurisdiction and venue in any such court and any claim that such forum is an inconvenient forum.

11. ASSIGNMENT:

This Contract shall not be assigned or transferred by Customer to any third party without prior written approval by COPI. Any such approval shall not relieve Customer of any of its obligations under the Contract.

12. SEVERABILITY:

If any provision of this Contract is found by a court of competent jurisdiction to be unenforceable for any reason, the remainder of this Contract shall continue in full force and effect.

13. NO CONSEQUENTIAL DAMAGES:

NEITHER PARTY SHALL BE LIABLE TO THE OTHER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, FOR SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, COST OF CAPITAL, LOSS OF ANTICIPATED PROFITS OR REVENUES, BUSINESS INTERRUPTION DAMAGES, OR LOSS OF USE, EVEN IF NOTICE WAS GIVEN OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE.

14. LIMITATIONS OF LIABILITY:

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF COPI FOR ANY CLAIM ARISING IN CONNECTION WITH THE CONTRACT OR THE EQUIPMENT EXCEED THE AGGREGATE AMOUNT ACTUALLY RECEIVED BY COPI FROM CUSTOMER OVER THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO SUCH CLAIM.

15. NOTICES:

Any written notices issued by one party to another party pursuant to this Contract shall be sent by (a) special courier, or (b) certified or registered mail (return receipt requested), to the other party. In the case of COPI, such notice shall be delivered to its address set forth in Section 1. In the case of Customer, such notice shall be delivered to its address set forth in the Order. Notices shall be deemed to have been given when delivered to such party. Notwithstanding any provision to the contrary herein, any party may change its address for notice by written notice to the other party).

16. LATE PAYMENTS:

In the event that any amounts payable hereunder are not paid in full when due, interest shall accrue on such unpaid amounts at the lesser of (a) 18% per cent per annum, and (b) the maximum interest rate allowed by law, until such amounts are paid in full.