



## RENTAL TERMS AND CONDITIONS

The following are the terms and conditions that apply to the rental of test equipment (Equipment) by Avalon Equipment Corporation (Avalon). By placing an order for Equipment (Equipment as referred to herein shall include all related accessories, manuals and other items that have been delivered with this order), the Customer accepts and agrees to these terms and conditions. Any additional or different terms and conditions proposed by the Customer or set forth in the Customer's purchase order, if any, will not be binding upon Avalon unless attested to in writing by an authorized representative of Avalon.

### 1. Terms of Rental

Customer agrees to rent the Equipment from Avalon and to pay all rent when due. Unless otherwise agreed to in writing by Avalon, the minimum rental is indicated on the quotation. Rent will begin to accrue from the date of shipment by Avalon. After the agreed upon minimum rental cycle has been reached or exceeded, the rental shall be prorated on a daily basis and continue to accrue until the Equipment is received by Avalon. If the Equipment is shipped in installments, each installment shall be deemed a separate Rental and Customer shall pay rent for each such transaction in accordance with Avalon's Rental Terms & Conditions. Customer shall pay all taxes and other governmental charges assessed in connection with the rental, use or possession of the Equipment including, without limitation, any and all sales and/or use taxes and personal property taxes (other than taxes on Avalon's net income).

### 2. Nature of Transaction

This transaction is only a rental of the Equipment and title shall not pass to Customer. Customer agrees to promptly execute any documents requested by Avalon to protect its rights hereunder, including protective UCC filings. If Avalon supplies Customer with labels stating that the Equipment is owned by Avalon, Customer shall affix such labels to and keep them in a prominent place on the Equipment.

### 3. Receipt of Equipment

Customer acknowledges that the equipment rented from Avalon is pre-owned (used) unless stated by Avalon to be new equipment.

Defects or discrepancies in or like objections to Equipment must be reported to Avalon in writing within forty-eight hours after Customer receives the Equipment or it will be conclusively presumed that the Equipment was as ordered and was received in good condition and is accepted.

### 4. Use, Maintenance and Return

Customer may use the Equipment only for the purposes and in the manner intended by the manufacturer thereof. Avalon shall be responsible for all maintenance of the Equipment. Customer shall insure the Equipment in accordance with customary business practice. The Equipment shall be returned to Avalon at the end of the rental thereof, freight prepaid, insured, properly packaged and in the same condition as delivered, ordinary wear and tear excepted. If Customer fails to so return the Equipment or any part thereof, then Customer shall, upon demand, pay to Avalon the full replacement cost of such equipment or Avalon's advertised sales price, whichever is greater. Customer shall not alter the Equipment without Avalon's prior written consent.

### 5. Default

If Customer fails to perform the terms hereof then Avalon may declare this Agreement in default. Upon such declaration, Customer shall immediately return the Equipment to Avalon in accordance with section 4 above. Such return shall not relieve Customer of its obligation to pay rent or any other amounts, which accrued hereunder prior to such return. Customer shall pay to Avalon a late charge on any late payment from the due date to the date paid at the lesser of 1.5% per month (equal to 18% per annum) or the maximum rate permitted by law.

### 6. No Purchase Options

Unless otherwise specifically quoted by Avalon, Customer does not have the right to purchase or acquire title to the Equipment at the end of the rental thereof. Any such purchase option is automatically deemed void if Customer defaults in its obligations hereunder.

### 7. Deposit

In addition to any applicable prepayment detailed above, Customer agrees to pay Avalon a security

deposit in the amount listed on the contract. This amount will be refunded if Customer meets the terms and conditions of this agreement and any applicable outstanding charges Avalon may apply upon return of the Equipment to Avalon.

## **8. Limitation of Liability**

Avalon's liability on any claim of any kind (including death and bodily injury), whether based on contract, warranty, tort (including negligence), strict liability or otherwise, for any loss or damage arising out of or connected with or resulting from the supply of Equipment hereunder, shall in no case exceed the rental amount paid by Customer to Avalon for such Equipment.

In no event, whether in contract, warranty, tort (including negligence), strict liability or otherwise, shall Avalon be liable for special, incidental, exemplary or consequential damages, including but not limited to, loss of profits or revenue, loss of use of any property, business interruption, loss of stored data, downtime costs, costs of substitute service, or claims of the Customer for such damages.

The Equipment rented under the Agreement was originally purchased by Avalon from other sources and is being rented under circumstances which do not permit investigation of possible risks under patents or copyrights. Avalon, therefore, assumes no obligation of Customer with respect to such risks.

Each of the foregoing paragraphs will apply to the full extent permitted by law. The invalidity, in whole or part, of any foregoing paragraphs will not affect the remainder of such paragraph or any other paragraph of this article.

## **9. Shipment**

All quoted prices are F.O.B. the Avalon supplying location from which shipment is made. Delivery and shipment charges are payable by Customer. Equipment will not be sent and must not be returned by U.S. Mail. Avalon shall ship in accordance with Customer's shipping instructions. In the absence of specific instructions, or if Customer's instructions are deemed unsuitable, Avalon reserves the right to ship by the most appropriate method. Avalon shall not be liable for delays in delivery due to causes beyond its reasonable control including, but not limited to, acts of nature, acts of government, labor disputes, delays in transportation and delays in delivery or non-delivery by Avalon's suppliers. Risk of loss of Equipment passes to the Customer at the time of delivery to a common carrier at the F.O.B. point.

## **10. Location**

The Equipment shall not be removed from the "Equipment Location" identified in Customer's Rental Agreement without Avalon's prior consent.

## **11. Warranty**

Avalon warrants that the Equipment rented shall be in working order upon shipment of the Equipment. If the Equipment, under normal use, is found to be defective, Customer shall notify Avalon and immediately ship the defective Equipment, at its expense, to Avalon. Under no circumstances is the Customer authorized to break the warranty seals on the Equipment without prior approval of Avalon. Upon receipt of the defective Equipment, Avalon shall at its option repair the Equipment, supply a replacement, make a price adjustment or credit the Customer's account. If Equipment is damaged in shipping, it is Customer's responsibility to contact forwarder promptly and register a claim. Concealed damage should be reported at once and claim made to forwarder in writing. The foregoing is the sole and exclusive warranty and remedy regarding rented Equipment by Customer and is in lieu of all other warranties and remedies, whether written, oral, implied or statutory. Customer has selected the Equipment it desires to rent. AVALON MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Avalon will not be liable for any loss or damage whatsoever by reason of its failure to discover, report, repair or modify latent defects inherent in the design of the Equipment.

## **12. Defaults**

If Customer defaults in its obligations hereunder or with respect to the Equipment, Customer agrees to pay Avalon for all costs and expense incurred by Avalon in recovering the Equipment, recovering any money due, and enforcing its rights hereunder, including reasonable attorney's fees and costs. Avalon shall be entitled to recover its attorney's fees and expenses whether or not formal legal action is instituted.

## **13. Notices**

Any required notices shall be given in writing at the address of each party set forth or to such other address as either party may substitute by written notice to the other.

## **14. Assignability**

Customer shall not assign or transfer any rights, duties or obligations herein without prior written consent of Avalon. Any purported attempt to do so shall be null and void.

## **15. Government Procurement**

No U.S. government procurement regulation shall be included hereunder or be binding on either party unless specifically agreed to in writing and expressly incorporated herein.

## **16. Errors**

Stenographic, typographic and clerical errors are subject to correction.

**17. Applicable Law**

The laws of the State of California govern the validity, interpretation and enforcement of this agreement.