



# **TERMS AND CONDITIONS - EQUIPMENT SALE**

(EFFECTIVE 1/1/2010)

"USA" in this document shall mean USAPhone.com and The PhoneOwners Group which are trade names used by U ½ 2 Inc, A USA PhoneCenter Company

**MANUFACTURER'S PARTS WARRANTY** - This is a "pass-through" of the parts warranty provided by the manufacturer. This covers the cost of repair or replacement of a part, which fails due to defective materials or workmanship or normal wear-and-tear during the manufacturer's warranty period, which is specified on the Proposal. Or Contract. A "failure" is, for the purposes hereof, defined as failure of a mechanical or electronic part of a covered component, or faulty workmanship on a covered component. Failed parts may be repaired or replaced at the option of the manufacturer or USA. No USA labor is included even to test, troubleshoot, remove, install or reprogram the defective or replacement component. The cost of this LIMITED Parts warranty coverage is included in the part-price and/or on the applicable Proposal or Contract. Upon expiration this coverage automatically converts to and thereafter renews annually as a USA Managed Services Agreement - Parts at additional cost unless cancelled by either party in writing between 60 and 90 days prior to the anniversary (or expiration) date.

## **MANAGED SERVICES AGREEMENTS (MSA)– Parts Only, Labor Only or both.**

***Managed Services Agreements are available only on Panasonic (TDA, TDE and NCP) systems and on Samsung (OfficeServ Txxx) systems. No other systems are qualified for MSA's except following system evaluation on an individual case basis.***

USA provides a Managed Services LIMITED warranty for the time period shown on the face of your Proposal or Contract on your PAID invoice or on other correspondence. This LIMITED warranty has two coverages, PARTS coverage and LABOR coverage. Either or both or neither of these coverages may be in effect at any given time depending upon what was included in your original purchase contract and depending upon which coverages were added, renewed, extended or expired.

These cover the cost of labor and/or replacement parts where there is a failure due to defective materials or workmanship or normal wear-and-tear after a Manufacturer's Parts Warranty has expired but during the specified period of time. A "failure" is, for the purposes hereof, defined as failure of a mechanical or electronic part of a covered component, or faulty workmanship on a covered component.

**MANAGED SERVICES AGREEMENT – Labor** LABOR ONLY to troubleshoot, test, order parts, remove and install parts, program or reprogram, etc. It includes administration of any manufacturer's parts warranty or extended parts coverage, which may be in effect. *Eligible for 1 free training annually, free software upgrades to the telephone system and voicemail system as well as free handling of carrier trouble tickets, no-charge incidental consulting, free annual technology review and free annual carrier services audit.* This is an additional cost item priced based on covered parts and must be detailed on a Proposal or Contract, or on other documentation including a PAID invoice and may be included with the purchase of a new system. This coverage automatically renews annually unless cancelled by the either party in writing between 60 and 90 days prior to anniversary date

**MANAGED SERVICES AGREEMENT– Parts** PARTS ONLY. Covered parts which fail may be repaired or replaced at the option of USA. No USA labor is included-even to test, troubleshoot, remove, install or reprogram the defective or replacement component. See "Managed Services-Labor" for any and all labor required including warranty administration. *Eligible for 1 free training annually, free handling of carrier trouble tickets, no-charge incidental consulting, free annual technology review and free annual carrier services audit as well as other parts related benefits such as providing loaner equipment to maintain at least minimal service if necessary.* This is an extra cost item which may be included an applicable Proposal or Contract or on other documentation including a PAID invoice and may be included with the purchase of a new system. This coverage automatically renews annually unless cancelled by the either party in writing between 60 and 90 days prior to anniversary date.

## **LIMITS OF COVERAGE, EXCLUSIONS and LIMITS OF LIABILITY**

Equipment may be repaired or replaced at the option of USA. Equipment of like kind and quality shall be used to replace any covered equipment or components at the time of any failure thereof. Repair or replacement of wear and tear items such as base cords or handset cords are not covered under any warranty or Managed Services Agreement. Coverage shall be limited to the replacement or repair of the covered equipment once during the term (or extended term) of an MSA.

Coverage is NOT PROVIDED for: (1) Repair or replacement without proper authorization from USA; (2) Any equipment which is identified as "refurbished" or "used" or is similarly described on the Proposal or Contract. In the absence of other explanation, such equipment is furnished "as is." (3) Failures due to failure to perform normal, routine service/maintenance; (4) repairs to equipment serviced or repaired by someone not authorized by USA; (5) any equipment not purchased from USA. The addition of any such equipment will entirely void any warranty or MSA.

These warranties and MSA do not apply to covered equipment or components which are damaged due to: (1) Deliberate or inadvertent abuse thereof by any person; (2) The negligence of customer or it's agents or employees; (3) Improper or negligent alteration of covered equipment or a component part thereof; (3) misuse, negligence, accident, theft or unexplained loss, abuse, connection to direct current, fire, flood, wind, lightning, power surge, Acts of God or public enemy, insurrection, terrorism, water or other liquid damage; (5) Insufficient heating ventilating or air conditioning (HVAC) or HVAC system failure. **The coverage term for cordless devices or for hotel / motel telephones shall not exceed one year regardless of the overall coverage terms found on the face of the Proposal or Contract or referenced elsewhere.**

The liability of USA for this limited warranty and/or Managed Services Agreement is only as herein set forth and USA shall in no instance be liable for any consequential damages whatsoever.

## **CONTRACTUAL OBLIGATIONS**

Prices offered on a Proposal or Contract are valid for 30 days (or less if so detailed on the face of a Proposal or Contract) and may only be extended at the option of USA. Proposals, when executed, constitute a legal and binding contract between USA and the customer to provide the listed equipment, services, etc. at the agreed upon price to be paid in cash as specified or by lease proceeds at the customer's option. USA has relied upon the customer's representation of good creditworthiness and the customer agrees to complete and submit an Application for Credit or Lease. USA reserves the right to approve the selection of a leasing company. Lease payments appearing on our proposals are only informed estimates. Lease terms, rates and commitments, if applicable, are contingent upon separate agreement between and approval by both the customer/lessee and the approved Leasing Company. This Proposal or Contract supercedes all prior discussions, verbal agreements and represents the final agreement as to the nature of the products to be provided and the services to be performed. **This Proposal or Contract can only be canceled or modified by mutual written consent. Cancellation, if mutually agreed upon, would always be subject to a 25% cancellation / restocking charge.**

Failure of customer to pay invoices issued by USA within terms will constitute a breach of this contract by the customer and may, at the discretion of USA void the remainder of any warranty or Managed Services Agreement. The use of unauthorized personnel to service covered equipment may, at the discretion of USA, void the warranty or managed Services Agreement. No service will be performed and no parts will be replaced once a warranty or managed Services Agreement is voided. Customers may apply for reinstatement of a voided warranty or Managed Services Agreement by payment of any outstanding account balance plus a reinstatement & inspection fee which fee shall be no less than two hours of labor at that customer's prevailing labor rate. Reinstatement shall be at the sole discretion of USA.

**OTHER AGREEMENTS:** All existing SAM (Service and Account Management) Agreements, GOLD (Silver or Platinum) Continuing Maintenance Agreement, or other system warranty will automatically convert at the end of its present term to a USA Parts Warranty and a Managed Services Agreement as described above, upon written notice to the customer. Such conversion will be at additional cost and will be invoiced prior to the renewal date. USA reserves the right to refuse the renewal of such Agreements by electing not to send an invoice for the renewal.

**NON-SOLICITATION OF EMPLOYEES of USA-** During and for two years after the term of any warranty or Managed Services Agreement, the customer shall not solicit the employment of, or employ any employee of USA (or of its affiliate companies) on a full time, part time, casual, contractual or any other basis without the prior written consent of The USA or without remitting to USA the sum of \$50,000.00

## **OTHER PROVISIONS**

All Proposals and Contracts assume that the following conditions exist or apply. There will be an additional charge, over and above the Proposal or Contract amount if these conditions DO NOT exist or apply unless specifically detailed on the face of a Proposal or Contract:

1. The "point of demarcation" for the telephone lines (demarc) must be located within the purchaser's premises and also within 6 feet of the telephone system location. All telephone lines are "loop start."
2. All voice (station) cable is minimum CAT3 (non-plenum) and all data (network) cable is minimum CAT5e (non-plenum.) All cable runs are estimated to be 100 feet maximum length (and 1 hour of labor) and any substantial additional cable or labor will be billable to customer at standard rates.
3. All ceilings are of the "hung or suspended" type; less than 12 feet high and it is not necessary to use a lift device for ceiling access nor are there any unusual or difficult obstacles or impediments. All cable runs are indoors and within the same structure. Walls are plasterboard with wood or metal studs. While every effort shall be taken to avoid incidental damage to walls and ceilings, some holes or other damage may be unavoidable. The customer/owner/occupant is responsible for the cost of any such repairs. Where outdoor cabling utilizing utility poles is specified, the customer/owner/occupant is responsible for obtaining permission for the use of such poles and for the cost of any required permits.
4. Neither Union Labor nor Union Labor rates nor "Prevailing Rate" wage levels are required. If such labor or rates are required, an additional charge will apply.
5. All telephone instruments are configured for placement on desks. Wall mounting requires additional parts and/or labor, which is included only if specifically detailed on the Proposal or Contract.
6. There are no required building or construction permits or special licenses. Customer agrees to pay, in addition to the Proposal or Contract amount, for any such permits "at cost."
7. Satisfactory operation of portable telephones or other equipment utilizing radio waves depends upon specific site conditions. These conditions were not measured, nor are problems anticipated because the equipment we provide operates in most environments and under most conditions. We will make a good faith effort to make adjustments (without additional cable runs) to achieve satisfactory operation.
8. Our pricing is based upon the work proceeding from start to finish without undue interruption. When the customer (or unavoidable job conditions outside of the control of USA) requires that the job be interrupted due to construction scheduling, permits or for any other reason, there will be an additional charge of \$175.00 for each such interruption. Furthermore, once an installation/cutover date is scheduled and agreed-upon with the customer, requiring us to have all labor and equipment available and prepared for that date, there will be an additional charge of 10% of the sale price when the customer postpones the installation date. These charges are for the cost of inventory, rescheduling, redeployment and loss of continuity.
9. Any required removal of abandoned cable is to be provided by others and is not included in our prices unless specifically detailed as included on the face of a Proposal or Contract.
10. Title to and ownership of equipment removed and replaced by the equipment detailed on a Proposal or Contract will pass to USA upon completion of the installation. All equipment removed and/or replaced shall become the property of USA. Pricing has already been adjusted accordingly to provide a credit for such trade-in of old equipment.
11. Music-on-Hold programs are produced by an independent studio and will be sent directly to the customer by the studio. Our Music-on-Hold equipment will be set up to play music temporarily until the program media is received. This contract shall be considered complete and full payment will not be withheld once the equipment is playing the temporary music program.
12. All prices are based upon our standard Monday - Friday 9:00 am to 5:00 PM schedule. Overtime worked will be charged at the customer's prevailing rate.

13. Audio and Video Recording Notice: PLEASE NOTE that under certain circumstances, audio/video recording may be restricted or PROHIBITED by law. Your equipment should be used only in accordance with all applicable federal, state and local statutes, regulations or ordinances. Any and all notifications required to comply with such requirements are the responsibility of the customer/ owner/ operator of the equipment and NOT the responsibility of USA.

## **INSTALLATION COMMITMENT AND TRAINING**

Installation commitments will be confirmed only after all deposits and signed contract documents and any applicable completed lease documents are received. This in no way affects the validity of this Proposal or Contract.

**BASIC TRAINING** on your new system is included in the price and will be scheduled at, or as close as possible to, system cutover. This basic training includes making, receiving and transferring calls, leaving and retrieving voice mail messages and setting up individual voice mail boxes, etc.

**ADVANCED TRAINING** is available at additional cost and is not included unless specifically detailed on the face of this Proposal or Contract. Advanced training includes topics such as system administration, telephone and mailbox programming.

**Please Allow Us 4-6 Weeks to Properly Plan Your Installation**