

**EQUINOX PAYMENTS
TERMS AND CONDITIONS OF SALE**

1. APPLICATION

These terms and conditions constitute an agreement between the seller, Equinox Payments ("Equinox") and the purchaser ("Customer") and apply to the sale and purchase of all Equinox products ("Products") to Customer. These terms and conditions do not apply if Equinox and Customer have executed a separate written agreement for the sale and purchase of Products. These terms and conditions are expressly incorporated into and supersede any inconsistent terms set forth in a purchase order or other similar document submitted by Customer for the purchase of any Products.

2. ORDERS

All orders placed by Customer are subject to Equinox acceptance. Customer requests for changes, including changes, rescheduling, or cancellation by Customer are to be made to Equinox in writing and subject to Equinox approval. All orders are to identify the products, unit quantities, part numbers, applicable prices and requested delivery dates.

3. PRODUCT SHIPMENT

All Products sold by Equinox to customer are Ex Works factory (Incoterms 2010) and shipping and insurance are Customer's sole responsibility. In the event Customer requests and Equinox agrees, in its sole and absolute discretion, to provide shipping for a Product, all applicable freight and applicable insurance charges will be added to the invoice. Title to and risk of loss to any Products passes from Equinox to Customer at the time of shipment from Equinox's dock.

4. PRICING

Price quotes may be modified by Equinox with Customer notice. Changes will be notified in writing.

5. RETURNS

Customer may request a product return through the Equinox Return Material Authorization ("RMA") process.

- Visual Inspection: this may include damage to packaging or Product(s), quantity variance, or other discrepancy seen upon visual inspection. Customer is to notify Equinox in writing within five (5) business days after receipt for consideration.
- Product Warranty: Customer is to notify Equinox in writing stating the specific Product concern. A RMA will be issued to return the Product(s) per RMA instructions. Equinox will assess returned Product(s) to determine warranty coverage. If not covered under warranty, i.e., damage or other discrepancy created by Customer, freight provider or any other third party, the Customer will be notified. Options include non-warranty repair for fee or return to Customer at Customer's expense.

6. TERMS OF PAYMENT

Equinox shall issue an invoice to Customer for all Products. All payments are due 30 days from the date of invoice ("Due Date"). In the event that any portion of the invoice is disputed, Customer shall notify Equinox of the dispute in writing prior to the Due Date. All undisputed portions of the invoice shall be paid without offset or deduction for any reason other than a bona fide dispute relating to the invoice in question by the Due Date. All invoice amounts and payments will be made in U.S. Dollars in immediately available funds. Any amounts not otherwise subject to a bona fide dispute and not paid by the relevant Due Date will incur a service charge equal to the lesser of: (a) one and one-half percent (1.5%) per month or part thereof; or (b) the maximum amount permitted by law. The service charge will accrue from the Due Date on a daily basis until payment of all outstanding amounts is made in full. Customer is liable for all collection costs incurred by Equinox resulting from Customer's late payment.

All taxes, including sales, use, value-added taxes, excise fees, royalty taxes, withholding taxes or the like are Customer's responsibility, and will be invoiced to Customer, unless Customer provides a tax exemption certificate satisfactory to Equinox. Should Equinox later discover inadvertent failure to collect and remit an applicable tax, Customer agrees to pay the tax upon notification by Equinox with supporting documentation.

7. SOFTWARE LICENSE

All embedded software (including firmware) contained in the Products (the "Software") is licensed and not sold to Customer. Except as expressly licensed to Customer herein, Equinox retains all rights, title, and interest in and to all Software. Equinox grants to Customer a non-exclusive license to use the Software in object code form only for the sole purpose of enabling the Products to function according to their specifications. Nothing contained in this Agreement grants Customer the right to receive any source code, and Customer shall not reverse assemble, decompile, reverse engineer or otherwise attempt to derive the source code (or the underlying ideas, structure, sequence, organization or algorithms) from the Software. A license granted to Customer for Software shall terminate upon the licensing to Customer by Equinox of any upgrade, revision or replacement for the Software.

8. LIMITED PRODUCT WARRANTY

Equinox warrants the Products and Software when delivered, properly installed and used in accordance with its written specifications and this Agreement, will perform substantially as described in Equinox's official published specifications for the periods set forth below, from delivery of the relevant item ("Warranty Period"). The Products may include used or re-manufactured components, which are warranted as new. In the event any Product or Software does not conform to the above described warranty, Equinox will, in its sole and absolute

discretion, repair or replace the non-conforming item at no cost to Customer provided the warranty claim is submitted to Equinox in writing and during the Warranty Period. This warranty runs solely to Customer; in no event shall Equinox have liability to any of Customer's own merchants, customers, licensees, or any third party, nor may Customer extend this warranty to any other party. Equinox warranties do not cover any Product or Software that has been damaged by accident, neglect, misuse, abuse, or natural disaster, or subjected to an unsuitable physical operating environment, not properly maintained in accordance with the procedures recommended by its supplier, modified without Equinox's prior written consent, or where the physical integrity of the Product has been altered or compromised. Equinox makes no representations or warranties with regards to any third-party software incorporated into or licensed with the Software. THE REMEDY STATED ABOVE IS EQUINOX'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR NON-CONFORMING OR DEFECTIVE PRODUCTS OR PRODUCT SOFTWARE.

Warranty Term	Products Covered
1 Year	Apollo Family, Luxe 6000 Series
3 Years	Luxe 8000 Series / L5000 Series
90-Day	Software (if modified during the 90-day period)

*Plus a three-month logistical courtesy to accommodate shipping/staging time

The Warranty Term described above shall commence on the date the Product is shipped from Equinox to Customer. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH RESPECT TO THE PRODUCT AND SOFTWARE, INCLUDING WITHOUT LIMITATION ANY WARRANTY WITH RESPECT TO THE ACCURACY OR APPLICABILITY OF DATA OR ALGORITHMS CONTAINED IN THE PRODUCT SOFTWARE, WARRANTY OF NON-INFRINGEMENT, TITLE, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, EQUINOX DOES NOT WARRANT OR REPRESENT THE PRODUCT OR PRODUCT SOFTWARE WILL PERFORM UNINTERRUPTED OR ERROR-FREE, WITH IMPENETRABLE SECURITY, OR FLAWLESS VERIFICATION OF THE CARD HOLDER OR THEIR RELATED SIGNATURE.

9. TRADEMARKS

Brand names, trademarks, trade names of, and any other commercial symbol designating, the Products and Equinox (collectively, the "Trademarks") may only be used with advanced written permission from Equinox. Customer's use of the Trademarks shall at all times comply with applicable federal and state laws and reasonable written guidelines provided by Equinox. Customer acknowledges and agrees that it has no right, title or interest in or to any of the Trademarks, and that all use of the Trademarks inures to the benefit of Equinox. Customer shall make no contrary representations and will not in any way contest Equinox's rights to the Trademarks. Customer will notify Equinox of any infringement of which Customer has knowledge. Customer shall discontinue use of Equinox's Trademarks immediately as directed by Equinox. Customer shall at no time register any trade names or trademarks or any mark or name confusingly similar to the Trademarks.

10. INTELLECTUAL PROPERTY RIGHTS

Except as otherwise provided herein, title to all intellectual property rights in the Product and Software including patent, trademark, copyright, and trade secret rights, including title to all copies thereof, is and shall remain in Equinox or its licensors. No grant of rights nor a license to use any Equinox intellectual property may be assumed or implied by this Agreement. All rights not expressly granted herein are reserved to Equinox.

11. INDEMNIFICATION

11.1 Equinox shall defend, indemnify and hold Customer harmless against all claims, liabilities, and costs, including reasonable attorneys' fees, to the extent any third party claim arises from actual or alleged infringement by the Product or Software of any U.S. patent or copyright, provided Customer: (a) promptly gives Equinox notice of the allegation or claim; (b) permits Equinox to fully control the defense and any settlement thereof; and (c) fully cooperates in such defense at Equinox's reasonable request and expense.

11.2 In the event of any actual or anticipated infringement claim related to the Product or Product Software, Equinox may, in its sole and absolute discretion: (a) modify the allegedly infringing item; (b) settle the matter by substituting a substantially equivalent alternative; (c) obtain for Customer the right to continue using the allegedly infringing item; or (d) terminate this Agreement and Customer's right to use the allegedly infringing item, and refund the purchase price paid by Customer, depreciated on a 5 year straight line basis, with Customer returning all Products, Software and related materials to Equinox. THE FOREGOING RIGHTS CONSTITUTE EQUINOX'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY RIGHTS CLAIMS ARISING OUT OF OR RELATED TO THE PRODUCTS OR SOFTWARE.

11.3 Equinox's indemnity obligations do not extend to any intellectual property claim relating to, arising out of, or based on: (a) Products or Software developed in conformance with Customer-provided specifications, designs, or instructions; (b) any process patent or loyalty system, except processes inherent in the Products over which Customer has no control; (c) any modifications made to the Products or Software other than by or at the request of Equinox, or (d) any violation by Customer of any use restrictions or confidentiality or proprietary rights provisions contained in this Agreement.

11.4 Except to the extent Equinox has a duty to indemnify Customer as stated above, Customer shall defend, indemnify and hold harmless Equinox, its suppliers and licensors from and against all claims, liabilities, loss and expenses, including reasonable attorneys' fees, of defending any third party claim, including but not limited to claims by Customer's own merchants, vendors and customers, arising out of or related to the use of any Product or Software, provided Equinox: (a) promptly gives Customer notice of the claim; (b) permits Customer to fully control the defense and any settlement; and (c) fully cooperates in such defense at Customer's reasonable request and expense.

12. LIMITATION OF LIABILITY

In no event shall Equinox be liable to Customer for any consequential (any loss of profits, business opportunities or goodwill), exemplary, incidental or indirect costs or damages (including legal fees and expenses) or loss of goodwill, business opportunity or profit, resulting from any performance or absence of such performance by Equinox. Should Customer be entitled to recover damages from Equinox based on one or more claims for breach of contract, negligence, misrepresentation, or other contract or tort claim, Equinox shall be liable only for: (a) its indemnity obligations hereunder; (b) damages for bodily injury (including death) and damage to real property or tangible personal property; and (c) the amount of any other actual direct damages or loss. In the case of clause (c), the maximum aggregate liability of Equinox shall not exceed the total amount paid to Equinox by Customer for the Products subject to the claim.

13. CONFIDENTIAL INFORMATION

Customer acknowledges the Product, Product Software, program concepts incorporated in the Product Software, official specifications, pricing, and any other information marked or otherwise identified as confidential or proprietary information are confidential property belonging to Equinox and/or its licensors ("Confidential Information"). Customer will maintain the Confidential Information as it does its own such information, and with no less than a reasonable degree of care, and shall not, without Equinox's prior written consent, disclose or make any Confidential Information available in any form to any person, except Customer's employees, consultants, or permitted operators, whose access is necessary to enable Customer to exercise its rights under this Agreement and who are contractually obligated to maintain the confidentiality in a like manner. Customer has no obligation to preserve the confidential or proprietary nature of Confidential Information which: (a) is already known to Customer, as evidenced by a writing dated prior to disclosure; (b) is or becomes generally known to the public at large through Equinox's own actions or no wrongful act of Customer; (c) is received from a third party without either an obligation of non-disclosure or breach of an obligation of confidentiality in such third party's receipt or transmission of the Confidential Information; (d) is independently developed by it or for it by third parties or affiliates, which third parties have not had any access whatsoever to the Confidential Information; or (e) is approved in advance for release by written authorization of an authorized officer of Equinox. Customer agrees to pay any and all damages (including attorney's fees) sustained by Equinox due to the unauthorized disclosure or use of any Confidential Information. This Section is not intended to replace or supersede any non-disclosure agreement between Equinox and Customer concerning treatment of confidential information, but rather, is intended to be an addition or supplement to any such agreement which may already exist between the parties.

14. MISCELLANEOUS

- 14.1 Assignment:** Neither Party shall delegate any duties, nor assign any rights or claims under this Agreement without the prior written consent of the other Party, and any such attempted delegation or assignment shall be void; provided, however, either Party may assign this Agreement (inclusive of its rights, obligations and duties hereunder) through a merger or consolidation or in connection with any sale of substantially all of its business. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
- 14.2 No Waiver:** A failure by either Party to exercise, or delay in exercising, any right or power conferred upon it by this Agreement shall not operate as a waiver of any such right or power.
- 14.3 Severability:** This Agreement is divisible, and any provisions herein held to be in violation of any applicable treaties, statutes, or regulations of any governmental agency having jurisdiction shall affect only that portion held to be invalid or inoperative, and the remaining portions of this Agreement shall remain in full force and effect.
- 14.4 Governing Law, Dispute Resolution:** This Agreement shall be governed by and construed in accordance with the laws of the state of Arizona without regards to its conflicts of law principles. All parties consent to jurisdiction of state and federal courts in Arizona for any matter arising out of this Agreement. The United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.
- 14.5 Headings:** The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect this Agreement.
- 14.6 Anti-bribery and Corruption:** We value our reputation and are committed to conducting business with honesty and integrity. In furtherance of this, we have a zero tolerance for bribery or any other actions that involve a financial incentive to influence a person or entity to perform a public or corporate function improperly. Neither the company nor anyone acting on our behalf may engage in this type of activity. This commitment comes from the highest levels of management and you must meet this standard.