



TME500 Rental Terms and Conditions

These Viavi TME500 Rental terms and conditions ("Terms and Conditions") apply to any quote, order, order acknowledgment, and invoice, and any provision of Viavi TME500 product rentals provided to **Customer** by Viavi Solutions Inc. or any of its subsidiaries ("**Viavi**"), in addition to Viavi's General Terms ("General Terms"), System Software Maintenance and Support Services - TME500 ("Software Support Terms and Conditions") and/or Software License Terms, which are incorporated by reference herein and are either attached hereto, available at www.viavisolutions.com/terms or available upon request.

1. Products and Services to be Provided

- 1.1 Where a contract between Viavi and the Customer is formed as defined in the General Terms ("Agreement") Viavi hereby agrees to:
 - 1.1.1 deliver the Product (as such term is defined in the General Terms) and install it at the location agreed between the parties ("Location") on the date agreed between the parties;
 - 1.1.2 provide the Product for use by the Company for the rental period covered by the Agreement ("Rental Period");
 - 1.1.3 carry out Maintenance Activities and perform Support Services during the Rental Period; upon the terms and conditions contained in this Agreement.
- 1.2 The Customer agrees to hire the Product for the Rental Period upon the terms and conditions contained in the Agreement.

2. Location Preparation

- 2.1 The Customer will at its own expense prepare the Location and provide such environmental and operational conditions as shall be specified by Viavi in reasonable time before delivery of the Product.
- 2.2 Where the Customer has not prepared the site or complied with the requirements for installation provided by Viavi within ten (10) Business Days of the notification by Viavi of the requirements and such failure causes a delay in delivery of the Product, Viavi may charge the Customer for the Fees due as if the delivery of the Product and installation had occurred on the date originally agreed between the parties.
- 2.3 Where the Customer cannot comply with the requirements for installation provided by Viavi it shall notify Viavi in writing in reasonable time no later than ten (10) Business Days prior to the proposed installation date and the Customer shall provide an alternative site to be agreed by the parties.

3. Software

- 3.1 The Customer will have a licence to use the Software installed on and integral to the Product in accordance with the Licence Terms and such licence will continue for the Rental Period and will automatically terminate at the end of the Rental Period.
- 3.2 In respect of any Third Party Products, including operating or Product software installed on and integral to the Product, the Customer acknowledges that the terms of use of such Third Party Products shall be on the licensor's standard licence terms as notified to the Customer by Viavi and the Customer undertakes to comply with such standard licence terms which shall be directly enforceable by the licensor if the licensor so elects.

4. Customer's Default

If Viavi is prevented or delayed from performing its obligations under the Agreement by reason of any act or omission of the Customer then the Customer will pay to Viavi all reasonable costs charges and losses sustained or incurred by Viavi as a result (including without limitation the cost of storage and insurance of the Product).

5. Specification

- 5.1 Viavi does not give any warranty that the Product is fit for any particular purpose.
- 5.2 Viavi does not warrant that the Product will achieve any particular performance criteria unless:
 - 5.2.1 Viavi has specifically guaranteed such criteria in writing; and
 - 5.2.2 the environment conditions specified by Viavi are maintained.

6. Rental Period

The Rental Period shall commence on the Delivery Date (as such term is defined in the General Terms) and shall terminate on the last day of the Rental Period, subject to earlier termination in accordance with the provisions of the Agreement.

7. Charges and Payment

- 7.1 The Customer shall pay to Viavi the rental charges specified in the Agreement ("Rental Charges") in accordance with the payment terms stated therein. Such Rental Charges will be invoiced consistent with the payment terms.
- 7.2 Subject to payment of the Rental Charges Viavi will provide the Maintenance Activities and Support Services at no further charge to the Customer.

8. Ownership and Risk

The Product shall at all times remain the sole and exclusive property of Viavi and the Customer shall have no right or interest in the Product except for quiet possession and the right to use the Product upon the terms and conditions contained in this Agreement. Notwithstanding the foregoing risk in the Product shall pass to the Customer on delivery of the Product to the delivery point specified in the Agreement ("Delivery Point").

9. Replacements

- 9.1 The provisions of the Agreement shall apply to all replacements and renewals of the Product or any part thereof made by Viavi during the continuance of the Rental Period.

9.2 Any replacement parts provided by Viavi hereunder and any parts removed from the Product shall remain the property of Viavi.

10. Insurance

10.1 The Customer will from (and including) the date on which the Product is delivered to the Delivery Point effect (if not previously effected) and maintain until the Product has been re-delivered to or collected by Viavi with insurers acceptable to Viavi:

- 10.1.1 insurance covering the Product against all usual risks relating to loss or damage from whatever cause arising (other than exclusions agreed in writing by Viavi). Such insurance shall:
- (a) Cover the Product for its full replacement value; and
 - (b) Specify Viavi as loss payee.

10.2 The Customer will:

- 10.2.1 prior to delivery of the Product and thereafter on demand produce to Viavi copies of the policies relating to the above insurances and receipts for premiums;
- 10.2.2 forthwith notify Viavi in writing in the event of any loss of or damage to the Product;
- 10.2.3 punctually pay all premiums payable under the said insurance policies do everything necessary to maintain the said insurance policies in full force and effect and not do anything whereby they will or may be vitiated either in whole or in part.

10.3 The Customer will be responsible for and shall indemnify Viavi against any loss or damage to the Product insofar as such loss or damage is not covered by insurance (other than loss or damage caused by the negligence or wilful misconduct of Viavi its employees agents or sub-contractors).

11. Application of Insurance Moneys

11.1 If the Product shall be damaged and in the opinion of the insurers it is economic that such damage be made good (as opposed to the procuring of replacement Product) then all insurance moneys payable under the insurance policy mentioned in clause 12.1 shall be applied to making good such damage.

11.2 If the Product shall be lost stolen destroyed or damaged to such an extent as to be in the opinion of the insurers incapable of economic repair then the said insurance moneys shall at the option of Viavi:

11.2.1 be applied to replacing the Product with a Product having capabilities at least equivalent to that of the Product in which event the replacement Product shall at all times remain the sole and exclusive property of Viavi and shall be held by the Customer upon the terms of these Terms and Conditions and the Customer shall continue to be liable to pay the Rental Charges hereunder as if such loss had not taken place. The Customer shall be liable to pay to Viavi a sum equivalent to any amount deducted by the insurers by way of excess or in respect of damage caused to the Product prior to the date of total loss; or

11.2.2 be paid to Viavi to the extent necessary to discharge the Customer's liability to Viavi at the date of such payment and to compensate Viavi for the loss theft or destruction of or damage to the Product and any surplus will be paid to the Customer. If the insurance moneys paid to Viavi are insufficient to discharge such liability and to compensate Viavi as aforesaid the amount of the deficiency shall be paid by the Customer to Viavi forthwith. Upon all payments being made as aforesaid the

Rental Period in so far as it relates to the Product shall automatically terminate.

12. Corrective Maintenance Activities

12.1 During the Rental Period Viavi will provide corrective maintenance activities in respect of the hardware. Such activities will be carried out during normal working hours by prior appointment with the Customer.

12.2 During the Rental Period Viavi will provide corrective maintenance activities in respect of the software in accordance with the Software Support Terms and Conditions.

13. Exceptions to the Maintenance Activities

13.1 The maintenance activities defined in Section 12 ("Maintenance Activities") exclude any maintenance of the hardware which is necessitated as a result of any cause other than fair wear and tear, or necessitated as a result of Customer's neglect or fault including without limitation:

- 13.1.1 failure or fluctuation of electric power air conditioning humidity control or other environmental conditions; or
- 13.1.2 accident transportation neglect misuse or default of the Customer its employees or sub-contractors, or any third party; or
- 13.1.3 any fault in any attachments or associated hardware which do not form part of the hardware; or
- 13.1.4 act of God fire flood war act of violence or any other similar occurrence; or
- 13.1.5 any attempt by any person other than Viavi's personnel or authorised sub-contractors to adjust repair or maintain the hardware.

13.2 Viavi will (if it is reasonably able to do so) at the request and expense of the Customer repair or replace any part of the hardware which has failed due to a cause other than fair wear and tear or due to Viavi's neglect or fault subject to the Customer accepting Viavi's written quotation therefor prior to the commencement of work.

13.3 The Maintenance Activities also exclude:

- 13.3.1 the provision of services other than at the Location (or such other location as Viavi shall have approved in writing);
- 13.3.2 repair or renewal of disk packs print cartridges or other consumable supplies;
- 13.3.3 electrical or other environmental work external to the hardware; or
- 13.3.4 recovery or reconstruction of any data or programs lost or spoiled as a result of any breakdown of or fault in the hardware.

14. Service Visits Outside the Maintenance Activities

Viavi shall make an additional charge in accordance with its standard scale of charges from time to time in force for service visits made at the request of the Customer by reason of any fault in the Product due to causes not covered by the Maintenance Activities or which relate to matters not falling within the scope of the Maintenance Activities as set out in Section 12 ("Maintenance Activities") of these Terms.

15. Replacement Products

Viavi shall on giving to the Customer five (5) Business Days days' prior written notice be entitled if it considers it reasonably necessary or desirable to replace the Product with a Product having capabilities at least equivalent to that of the Product. Where Viavi avails itself of this right it shall be responsible for all the costs of replacing the Product, but the Customer shall provide Viavi with all facilities and assistance reasonably required by Viavi for the purpose of effecting such replacement.

16. The Customer's Obligations

16.1 The Customer will:

- 16.1.1 not sell assign sub-let pledge or part with possession or control of or otherwise deal with the Product or any interest therein nor purport to do any of such things nor create or allow to be created any mortgage charge lien or other encumbrance on the Product;
- 16.1.2 not change, remove or obscure any labels plates insignia lettering or other markings which are on the Product at the time of installation thereof or which may thereafter be placed on the Product by Viavi or by any person authorised by Viavi;
- 16.1.3 do all things reasonably necessary to protect and defend Viavi's title to the Product against all persons claiming against or through the Customer and shall use all reasonable endeavours to keep the Product free from distress execution or any other legal process and shall forthwith give to Viavi notice of any claim or threatened claim to the Product by any third party;
- 16.1.4 provide prior written notice of any movement of the Product from the Location and not move the Product to a location objected to by Viavi;
- 16.1.5 permit Viavi and any person authorised by it at all reasonable times to have access to the Location (or such other place where the Product may be situated) for the purpose of inspecting and examining the condition of the Product;
- 16.1.6 pay to Viavi all costs and expenses (including legal costs on a full indemnity basis) incurred by or on behalf of Viavi in ascertaining the whereabouts of the Product or repossessing it by reason of a breach by the Customer of any of these Term and Conditions and of any legal proceedings taken by or on behalf of Viavi to enforce any provision of these Terms and Conditions;
- 16.1.7 not use the Product or permit the same to be used contrary to any law or any regulation or bye-law in force from time to time;
- 16.1.8 indemnify Viavi against all claims and demands made upon Viavi (so far as the same are not covered by insurance) by reason of any loss injury or damage suffered by any person arising directly or indirectly out of the presence control or use of the Product save where such damage loss or injury arises from the negligence or breach of contract of Viavi its employees or sub-contractors or by reason of any failure of the Product to operate in accordance with its acCustomering specifications other than by reason of one of the causes set out in clause 16.

16.2 The Customer will:

- 16.2.1 ensure that proper environmental conditions are maintained for the Product in accordance with the relevant specifications and shall maintain in good condition the accommodation of the Product, the cables and fittings associated therewith and the electricity supply thereto;
- 16.2.2 not make any modification to the Product;
- 16.2.3 keep and operate the Product in a proper and prudent manner in accordance with the manufacturer's operating instructions and ensure that only competent trained employees (or persons under their supervision) are allowed to operate the Product;
- 16.2.4 save as aforesaid, not itself attempt to adjust, repair or maintain the Product and shall not request, permit or authorise anyone other than Viavi to carry out any adjustments, repairs or maintenance of the Product;
- 16.2.5 not use in conjunction with the Product any accessory attachment or additional Product other than that which has been supplied by or approved in writing by Viavi.

16.3 The Customer will:

- 16.3.1 promptly notify Viavi if the Product needs maintenance or is not operating correctly;
- 16.3.2 provide such telecommunication facilities as are reasonably required by Viavi for testing and diagnostic purposes at the Customer's expense.

17. Time of the Essence

The time of delivery and installation of the Product shall not be of the essence of the Rental Term.

18. Electromagnetic Compatibility

- 18.1 In this clause the expression "Electromagnetic Equipment" means any part or parts of the Product which are electric or electronic and covered by the Electromagnetic Compatibility Regulations 2006.
- 18.2 Viavi warrants to the Customer that at the date hereof all the Electromagnetic Equipment complies with the Electromagnetic Compatibility Regulations 2006.
- 18.3 The Customer undertakes to Viavi that it will not make any modification to the Electromagnetic Equipment without the prior written consent of Viavi.

19. Termination and consequences of Termination

- 19.1 Notwithstanding anything else contained in this Agreement, this Agreement may be terminated at any time on or after the Acceptance Date by Viavi forthwith on giving notice in writing to the Customer if the Customer shall fail to pay any sum due under the terms of this Agreement (otherwise than as a consequence of any default on the part of Viavi) and such sum remains unpaid for five (5) Business Days after written notice from Viavi requiring such sum to be paid.
- 19.2 In the event of a termination by Viavi of the Agreement in respect of the rental of the Product:
 - 19.2.1 the Customer will relinquish any claim to possession of the Product and Viavi may without notice repossess the Product and may for that purpose without notice enter any of the Customer's premises in which the Product or any part thereof is or is reasonably believed by Viavi to be situated (and the Customer hereby irrevocably licenses Viavi its employees and agents to enter upon any such premises for such purpose);
 - 19.2.2 the Customer will not be entitled to the repayment of any sums previously paid by it to Viavi under the terms of this Agreement nor to any credit or allowance in respect of any such payments;
 - 19.2.3 the Customer will pay to Viavi a sum equal to the amount of Rental Charges which would otherwise have been payable for the remainder of the Rental Period.

20. Return of the Product

Upon termination of the Customer's right to hire the Product (for any reason) the Customer shall forthwith re-deliver possession of the Product in good order repair and condition to the Viavi point of origin or at such location as VIIVI may otherwise designate. For the purpose or return of the Product, if so required, Viavi shall have access to the Location or any other place where the Product may be situated (and the Customer hereby irrevocably licences Viavi, its employees and agents to enter upon any such premises for such purpose).