

## Limited Warranty and Terms:

Birkemeier Consulting warrants the parts, software, products, and equipment it sells against defects in workmanship and materials pursuant to the terms of this warranty. Birkemeier Consulting makes no other warranties, express or implied, and DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS AND ALSO DISCLAIMS ANY LIABILITY BASED UPON NEGLIGENCE OR STRICT LIABILITY IN TORT. IN NO EVENT SHALL BIRKEMEIER CONSULTING, BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES SUFFERED BY CUSTOMER OR THIRD PARTIES. This limitation of remedies applies to all claims based upon warranty, tort, contract and any other legal theory, including but not limited to, damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss, arising out of Birkemeier Consulting's ability or inability to provide parts and/or services. This warranty cannot be changed, modified or added to except in writing by Birkemeier Consulting and no agent, distributor, dealer, or seller has any right or authority to change, modify, or enlarge this warranty in any manner whatsoever. Birkemeier Consulting's liability for any claim shall be limited to an amount equal to the amount of monies actually received by Birkemeier Consulting for the particular goods and/or services which give rise to the claim. These limitations of liability apply to all claims, including without limitation, those based upon contract, warranty, tort (including negligence), and strict liability. **The Customer is requested to back-up all data before Birkemeier Consulting commences work. Customer agrees that Birkemeier Consulting is not responsible for lost or unrecoverable data or the consequences thereof.**

The warranty granted herein is EXPRESSLY LIMITED to replacement, without charge to Customer, of any part, product, and/or equipment that is determined by Birkemeier Consulting to be defective. To Exercise this warranty, the Customer must deliver any allegedly defective parts or computer systems to Birkemeier Consulting at it's headquarters in Portland, Oregon, or at such place as Birkemeier Consulting may agree, within the warranty period. This warranty applies only to such parts or defects which are made to appear defective to the satisfaction of Birkemeier Consulting. The customer must produce the original invoice in order to claim service under this warranty.

It is possible that the manufacturer of the part, product, or equipment sold to the Customer may also have a warranty that applies. In that case, the manufacturer's warranty shall supersede any warranty granted herein and Birkemeier Consulting reserves the right to require the Customer to proceed against the manufacturer pursuant to its warranty and to exhaust its remedies against said manufacturer prior to making a claim for warranty service under this warranty; provided however, in such event Birkemeier Consulting shall assign to Customer all rights and remedies under any express and implied warranties of the manufacturer. For one year from the date of purchase, Birkemeier Consulting will, at no charge, aid the Customer in applying for service under any such manufacturer's warranty.

This warranty does not apply to damage caused by Customer's failure to properly use, insure, properly maintain, and/or protect the product. For example, damage caused by a Customer's failure to properly and adequately protect its computer equipment through the use of a high quality (IEEE C62.41 S 140V) surge suppressor is NOT covered by this warranty.

This warranty covers warranty work performed during Birkemeier Consulting's normal operating hours (Monday through Friday, 8:30 AM -5:30 PM). This warranty does not imply same-day repair nor does it include equipment loans or compensation for loss of use of equipment and/or data. All warranty repairs will be made on a first-come/first-serve basis.

**For New Computer Purchases:** Birkemeier Consulting warrants all hardware in a complete system to be free from defects for a period of one year from the date of purchase. If a part fails within the warranty period for any reason not otherwise excluded herein, Birkemeier Consulting will replace the part free of charge. If the computer system is opened or otherwise modified by someone other than Birkemeier Consulting's service personnel, it will VOID THIS WARRANTY.

**For Parts Sold By and Installed By Birkemeier Consulting during Service:** Birkemeier Consulting warrants new parts sold and installed by it to be free from defects for a period of ninety days from the date of purchase. If a part fails within the warranty period for any reason not otherwise excluded herein, Birkemeier Consulting will replace the part free of charge. This warranty EXCLUDES all parts (whether or not purchased from Birkemeier Consulting) that were not installed by Birkemeier Consulting. All used parts are sold in good working condition (or as stated) and cannot be returned.

**Parts Provided By Customer:** All parts provided by Customer will be installed by Birkemeier Consulting according to supplied documentation, industry standards, and/or the manufacturer's technical support personnel. This warranty, however, DOES NOT APPLY to any such parts provided by the Customer. Any charges for time spent with manufacturer's technical support will be included in the service charge.

Accessories and other external parts sold by Birkemeier Consulting: Birkemeier Consulting DOES NOT WARRANT any accessories or other external parts sold by it. Birkemeier Consulting will aid the Customer in any claim it may have pursuant to a manufacturer's warranty. Accessories and other external parts include, but are not limited to, keyboard drawers, monitors, magnetic and optical media, software, etc. Birkemeier Consulting reserves the right to charge the Customer for Birkemeier Consulting's time and shipping costs to aid in the submission of Customer's warranty claim with the manufacturer.

For Software Purchases: Software purchased from Birkemeier Consulting is special-ordered and cannot be returned. Birkemeier Consulting does not guaranty either compatibility of software with a customer's system nor its performance on that system unless Birkemeier Consulting has been instructed to research it. Unless otherwise noted on Contract and/or Invoice as "Birkemeier Consulting Approved for Customer", the Customer is solely responsible for compatibility and performance.

For Labor Services: Birkemeier Consulting warrants the work to have been performed to the best of Birkemeier Consulting's ability based upon professional training, experience, and technical resources. Customer agrees to indemnify, protect, defend, and hold harmless Birkemeier Consulting from and against all claims and liabilities, including attorney's fees and costs, arising by virtue of or relating to the Customer's violation or alleged violation of any software license. Birkemeier Consulting is not responsible for any problems or damage caused by its compliance with directions or instructions of software or hardware vendor's technical support personnel.

In the event that payment is not made [postmarked] within the TERMS specified on the invoice for this work or parts, time being of the essence, Customer agrees to pay a **FINANCE CHARGE** at the rate of **ONE AND ONE-HALF PERCENT PER MONTH which is an ANNUAL RATE OF 18 PERCENT**. Further, if this Work/Parts Order and its Invoice are placed in the hands of an attorney for collection, Customer promises and agrees to pay reasonable attorney's fees and collection costs, even though no action is filed herein; and, if an action is filed, the amount of such reasonable attorney's fees shall be fixed by the court or courts in which such action, including any appeal, is tried, heard or decided. The parties agree to venue and jurisdiction in Washington County, Oregon for all litigation involving this matter. Birkemeier Consulting reserves the right to suspend warranty work for parts sold on this invoice until invoice is fully paid, including interest charges, if any.

**Customer's obligation to backup data.** The customer agrees to have a backup of all data before Birkemeier Consulting commences work. Customer agrees that Birkemeier Consulting is not responsible for lost or unrecoverable data or the consequences thereof.

**Copying of Files.** Birkemeier Consulting is not permitted by law to copy pirated or copyrighted materials. Customer acknowledges that it owns the copyright or has a valid license to make copies to all of the files on the affected system(s) and that Customer does not have any files on the affected system(s) which would cause Birkemeier Consulting to be liable for copyright infringement if those files were copied and/or transferred by Birkemeier Consulting as part of any Services, including but not limited to, music files, motion picture files or photographic files that are subject to copyright restrictions. Customer accepts responsibility for,

and agrees to indemnify and hold Birkemeier Consulting harmless from, any and all liability, damages, claims or proceedings arising out of Customer's failure to remove any such files from a system prior to providing it to Birkemeier Consulting for Services, including data transfer or backup.

**Customer's software Licensing indemnification.** Customer agrees to indemnify, protect, defend and hold harmless Birkemeier Consulting from and against all claims and liabilities including attorney's fees and costs, arising by virtue of or related to the Customer's violation or alleged violation of any software license for software provided by Customer..

**LIMITATION OF LIABILITY. BIRKEMEIER CONSULTING WILL HAVE NO LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING BUT NOT LIMITED TO ANY LIABILITY FOR LOSS OR CORRUPTION OF DATA OR SOFTWARE, LOSS OF USE, LOST PROFITS OR LOSS OF BUSINESS. EXCEPT AS EXPRESSLY PROVIDED HEREIN, BIRKEMEIER CONSULTING WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. CUSTOMER AGREES THAT FOR ANY LIABILITY RELATED TO THE SERVICES, BIRKEMEIER CONSULTING IS NOT LIABLE OR RESPONSIBLE, FOR ANY AMOUNT OF DAMAGES ABOVE THE AMOUNT PAID FOR THE SERVICES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE REMEDIES SET FORTH IN THIS AGREEMENT SHALL APPLY EVEN IF SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE.**