

CapRock Communications Purchase Order Terms and Conditions

1. Acceptance:

These "Terms", which are part of the purchase order and any attachments (together, "P.O."), become the complete and binding agreement between CapRock Communications, Inc. ("Buyer," which includes its subsidiaries and affiliates) and Seller for the products and services ordered ("Goods") upon Seller's acknowledgment, shipment of any Goods, or commencement of Seller's performance, whichever occurs first. These Terms shall control over any inconsistent or additional term in any document of Seller. These Terms may not be amended, waived or terminated except by written agreement signed by Buyer. BUYER'S ACCEPTANCE OF GOODS SHALL NOT CONSTITUTE ACCEPTANCE OF SELLER'S TERMS. THIS P.O. IS LIMITED TO ITS TERMS. BUYER HEREBY OBJECTS TO THE INCLUSION OF ANY DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS BY SELLER IN ACCEPTANCE OF THIS P.O.

2. Purchase Price; Payment:

No substitution of material or claims, changes, charges of any kind, or changes in the price indicated on the P.O. will be allowed unless expressly indicated on the P.O. or agreed by Buyer in writing. Pricing by weight or volume covers net weight or volume, unless otherwise expressly indicated on the P.O. If the price is omitted from the P.O., the price shall be Seller's lowest prevailing price. Seller warrants that the price is not in excess of prices charged to other customers for similar quantities and terms and such prices conform to applicable federal, state, local or foreign laws, rules and regulations ("Applicable Laws"). If Seller's invoice is subject to cash discount, but is not mailed on the date of the invoice, discount period begins on the day received. If transportation charges are not itemized separately on Seller's invoice, any cash discount is computed on total amount of invoice. Payment terms are net thirty (30) days from receipt of invoice if not otherwise indicated on the P.O.

3. Shipments:

Each shipment of Goods must include a packing list showing Buyer's P.O. number. Separate packing lists are required for each P.O. and must accompany each shipment. Shipping charges for freight or express, if authorized by Buyer, must be accompanied by original expense bill. Seller shall not deviate from the shipping and routing instructions shown on the face of this P.O. and will be liable for all charges associated with such deviation. Seller shall not, without the written consent of Buyer, make shipments in advance of any prescribed schedule. Shipments which are received more than 5 working days in advance of the requested delivery date shall constitute a material breach of these Terms and render the P.O. subject to partial or total cancellation.

4. Delays:

Seller shall notify Buyer at least ten (10) days prior to the due date of any inability or anticipated inability to deliver on the specified due date. Seller's failure to meet the agreed upon delivery date shall constitute a material breach of these Terms and Buyer, at its option, may cancel all or part of the P.O. and affect cover. Late shipments must be shipped the fastest way possible and Seller is responsible for paying the difference between normal and expedited shipping methods. Time is of the essence and acceptance of late deliveries shall not constitute waiver of this provision. However, Buyer may postpone delivery of any Goods covered hereby.

5. Inspection:

The making of payment for, or the inspection at Seller's facility of any Goods shall in no way impair Buyer's right to final inspection at its facility, acceptance or rejection of nonconforming Goods, or any other remedies or warranties to which Buyer is entitled. Buyer may either hold nonconforming, rejected Goods at Seller's risk pending Seller's instructions or return them to Seller at Seller's expense and require their correction, and Seller shall promptly reimburse Buyer for any and all damages sustained by Buyer as a result of the failure of the Goods to conform to the P.O.

6. Warranty:

Seller warrants clear title to all Goods, that the Goods will be of merchantable quality, will conform to applicable specifications furnished by Buyer, will be free from defects in material and workmanship, and will be fit for Buyer's intended purposes. Title to the Goods and risk of loss or damage shall pass from Seller to Buyer on delivery of the Goods to Buyer at the FOB point specified on the face of this P.O.; however, passage of title and risk of loss and damage shall not constitute acceptance by Buyer. Acceptance of any Goods shall not alter or affect the warranties of Seller. Buyer's approval of designs furnished by Seller will not relieve Seller of its obligations. Seller's warranties and service guarantees shall run to Buyer and its customers.

7. Indemnity:

Seller shall indemnify, release, defend and save harmless Buyer and its employees, directors, officers and agents ("Buyer Group") from any loss, damage, claims, suits, judgments, expenses (including court costs and reasonable attorneys' fees) or liability, including for injuries or death to the persons or property of anyone, including Seller and Buyer, their agents, employees and customers (collectively, "Claims"), arising in connection with this P.O. or the Goods, including Claims attributable to any act or omission of Seller (negligent or otherwise), any breach of Seller's representations or warranties, Seller's breach of any provision of this P.O., or any strict liability or product liability of any member of the Buyer Group, EXCEPT THOSE CLAIMS CAUSED BY THE SOLE NEGLIGENCE OF BUYER.

8. Patent Indemnity:

Seller shall indemnify, defend, release and save harmless Buyer Group, its agents and customers, against all Claims alleging that the possession, use or sale of the Goods by Buyer, its agents or customers infringes any patent, copyright, trademark or other intellectual property rights in the Goods. If any Goods are held to constitute an infringement of a proprietary right and Buyer's or its customer's use of such Goods is enjoined, Seller shall, at its expense, either (i) procure for Buyer and its customers the right to continue using the affected Goods; or (ii) replace or modify the affected Goods so long as they are substantially similar, functionally equivalent, and non-infringing.

9. Compliance with Laws:

This P.O. incorporates by reference all Applicable Laws, including without limitation (i) certain provisions of Executive Orders No. 11246 and 11357, as amended, (ii) applicable clauses relating to equal opportunity employment, employment of the handicapped, employment of veterans, or utilization of minority owned businesses to the extent they are required by Applicable Laws to be incorporated, and (iii) any safety guidelines, rules and requirements issued by Buyer. Seller warrants the Goods have been produced or furnished in compliance with all Applicable Laws. The foregoing shall be a continuing warranty of compliance, upon which Buyer is entitled to rely, with respect to all future orders. Seller shall pass down, as applicable, all such compliance requirements to its agents, subcontractors and employees. Seller shall indemnify and hold Buyer Group harmless for all Claims arising from or based on the violation of this paragraph by Seller, its agents, subcontractors or employees.

10. Non-Disclosure; Publicity:

Seller shall hold all Buyer's confidential and proprietary information in the strictest of confidence in the absence of Buyer's prior written authorization, and shall return all copies of such data to Buyer upon request or termination of this P.O. Seller shall not, without first obtaining Buyer's written consent, use Buyer's name or advertise or otherwise disclose that Seller furnished or agreed to furnish Goods to Buyer.

11. Lien Waivers:

Final payment shall not be required unless the work is completed and accepted and Seller has furnished evidence satisfactory to Buyer that there are no claims, obligations, or liens in connection with the Goods. Final payment constitutes a waiver of any and all past, present, and future claims by Seller relating to this P.O.

12. Termination for Convenience:

Buyer may terminate all or any part of a P.O. at any time for its convenience upon written notice to Seller, in which event Buyer shall be relieved of all further obligations except the obligation to pay Seller for all completed and partially completed Goods delivered to and accepted by Buyer to the date of termination.

13. Termination for Default:

If delivery or performance of conforming Goods is not completed by the time(s) specified, if Seller becomes insolvent, enters voluntary or involuntary bankruptcy or receivership proceedings or makes an assignment for the benefit of creditors, or if Seller breaches any other term or condition of this P.O., Buyer may, without liability and in addition to its other rights and remedies, cancel this P.O. and reject in whole or in part those Goods not yet delivered or performed and purchase substitute Goods elsewhere and hold Seller liable for any loss, expense or damage incurred. Seller shall refund any monies pre-paid for such Goods. Unless otherwise instructed by Buyer, Seller shall also continue performance of this P.O. to the extent not terminated. If this P.O. is terminated in whole or in part pursuant to this Section, Buyer may require Seller to transfer the title and deliver to Buyer any completed or partially completed Goods as Seller has produced or acquired for the performance of the terminated part and Seller shall, upon direction of Buyer, protect and preserve such completed or partially completed Goods in the possession of Seller. Any provision for the delivery of Goods by installments shall not be construed as making Seller's obligations severable.

14. Remedies:

The rights and remedies of Buyer hereunder are cumulative of and in addition to any other rights or remedies that Buyer may have at law or in equity. No course of dealing and no failure of Buyer to enforce any of its rights hereunder shall constitute a waiver of such rights. IN NO EVENT SHALL SELLER BE ENTITLED TO ANTICIPATORY PROFITS, COMPENSATION FOR LOST OPPORTUNITY, SPECIAL (INCLUDING MULTIPLE OR PUNITIVE), INCIDENTAL OR CONSEQUENTIAL DAMAGES. BUYER'S LIABILITY TO SELLER IS LIMITED TO AND SHALL NOT EXCEED, FOR ANY REASON, THE VALUE OF THIS P.O.

15. Assignment:

Seller shall not, directly or indirectly, assign this P.O. (including by operation of law, merger or consolidation) without the prior written consent of Buyer.

16. Governing Law; Dispute Resolution:

The laws of the State of Texas shall govern without regard to its conflicts of law principles. The parties agree to attempt, in good faith, to resolve any disputes arising out of this P.O., the Goods or these Terms promptly by negotiation between an executive selected by each of the parties. If the executives fail to

resolve such dispute within thirty (30) days of first attempting to do so, then such dispute shall be submitted to and settled by final, binding and exclusive arbitration under the Commercial Arbitration Rules of the American Arbitration Association, before one arbitrator, chosen in accordance with such rules, in the State of Texas, County of Harris. The prevailing Party may enter any award or decision arising out of the arbitration as a judgment in any court of competent jurisdiction and any such award or decision shall be enforceable by such court. The non-prevailing Party shall bear the fees, costs and expenses of the arbitrator and the arbitration. Nothing contained in this P.O. shall be deemed to preclude Buyer from seeking injunctive relief, if necessary, in order to prevent Seller from willfully or intentionally breaching its material obligations or to compel Seller to perform its material obligations in the event of a willful or intentional failure to comply with this P.O.

17. Order of Precedence:

In the event of a conflict or inconsistency between or among the Terms of this P.O., the following order of precedence shall be used to resolve such conflicts or inconsistencies: (i) typed terms and conditions set forth in this P.O.; (ii) documents incorporated by reference on the face of this P.O.; (iii) standard terms provided with this P.O.; (iv) any "Statement of Work" provided as part of this P.O.; and (v) for drawings or specifications incorporated by reference, Buyer's drawing and specifications shall prevail over any of those of Seller or of any third party.

18. Miscellaneous:

Seller is an independent contractor and nothing in these Terms or the P.O. shall be construed to create a relationship of principal and agent, partnership or joint venture, or any other fiduciary relationship between Buyer and Seller. If any provision of these Terms is held to be illegal, invalid or unenforceable, such provision shall be fully severable and these Terms shall be construed and enforced as if such provision had never comprised a part hereof. The representations, warranties, indemnification and limitation on liability provisions of these Terms shall survive the expiration, assignment or other termination of these Terms.