

## Terms of Sale

**1. General.** These Terms of Sale (“Terms”) govern all sales of items (“Goods”) by CapRock Communications, Inc. or its affiliated company (“Seller”) to Buyer, and may not be amended, waived or terminated except by written agreement signed by Seller. These Terms shall control over any inconsistent or additional term in any document of Buyer, and Seller hereby objects to the inclusion of any different or additional terms of Buyer. By accepting delivery of Goods, Buyer agrees to be bound by these Terms.

**2. Creditworthiness; Cancellation of Sale.** The sale of Goods to Buyer is expressly conditioned upon Seller’s approval of Buyer’s creditworthiness. Seller may cancel the sale to Buyer at any time if Seller determines, in its sole discretion, that Buyer’s credit is unsatisfactory or if Buyer does not provide security for payment promptly upon Seller’s request. Seller reserves the right to suspend, delay or cancel all or part of Goods ordered by Buyer or to require advance payment for such Goods if (a) Buyer becomes insolvent, makes an assignment for the benefit of creditors, or ceases doing business as a going concern; (b) a receiver, trustee, conservator, or liquidator is appointed for Buyer; (c) a petition under any bankruptcy or insolvency law providing for the relief of debtors is filed by or against Buyer and such petition remains unstayed or is not discharged within sixty (60) days; (d) Buyer causes or suffers the liquidation, dissolution or suspension of its business; (e) Buyer is unable to pay its debts; or (f) Buyer is in breach of any of its obligations to Seller.

**3. Availability of Goods and Delivery.** Seller does not guarantee the availability of any Goods, and Goods may not be available for immediate shipment at the time an order is placed. Seller reserves the right to limit or restrict quantities, and may make partial shipments and back order remaining quantities for future shipment. Any delivery dates provided by Seller are estimates only. Seller shall not be liable for any and all losses, claims, demands, damages, injuries, causes of action, liabilities and expenses (including attorneys’ fees and costs) of any nature (collectively, “Losses”) for failure to deliver Goods in accordance with any specified shipping or delivery dates. Time shall not be of the essence.

**4. Buyer’s Acceptance.** Buyer’s acceptance of Goods shall be irrevocable unless Seller receives Buyer’s written notice of non-conformance within forty-eight (48) hours after installation and testing. Buyer may cancel, suspend or alter its purchase order for Goods only with Seller’s prior written consent.

**5. Force Majeure.** Buyer agrees that Seller shall not be liable for any loss, damage, delay or failure to fulfill its obligations, in whole or in part, resulting from any causes beyond Seller’s reasonable control, including, but not limited to: acts of God; acts or omissions of Buyer; acts or omissions of third parties; terrorism; war; explosion; accidents; fires; floods; severe weather conditions; strikes; insurrections; riots; embargoes; delays in transportation; or requirements, orders or regulations of the government or any other civil or military authority (“Force Majeure”). In the event of Force Majeure, Seller reserves the right to cancel Buyer’s order with reasonable notice. Force Majeure shall not excuse Buyer’s delay in payment of, or failure to pay, any amounts due for Goods provided by Seller.

**6. Limited Warranty.** Buyer acknowledges that Seller is not the manufacturer of any Goods. However, Seller will pass through the original manufacturer’s warranties to Buyer to the extent it is able to do so. THIS PARAGRAPH CONSTITUTES BUYER’S SOLE REMEDY IN CONNECTION WITH FAILURES OR DEFECTS OF GOODS. SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO GOODS, INCLUDING WITHOUT LIMITATION, WARRANTIES OF INFRINGEMENT, COMPLIANCE WITH LAW, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**7. Title to Goods.** Seller retains title to Goods until Buyer has paid for Goods in full. Buyer agrees to execute any documents necessary to perfect Seller's security interest in Goods. Until Buyer has paid for Goods in full, Buyer agrees to defend, indemnify and hold Seller harmless against any and all Losses resulting from Buyer's failure to promptly release or discharge, by payment, bonding or otherwise, any liens, charges, encumbrances or other claims which have attached to all or any part of Goods (except any placed thereon by Seller). Buyer may not resell Goods before Buyer has paid Seller in full, except with the express prior written consent of Seller and in compliance with paragraph 10.

**8. Risk of Loss.** Risk of loss shall pass to Buyer upon delivery of Goods to the common carrier. Seller shall not be liable for any damage occurring during shipping or delivery, and Buyer's sole remedy for such damage shall be limited to recovery against such carrier in accordance with the carrier's claim procedures. Seller shall not be liable for shortage unless Seller receives Buyer's written claim and supporting documentation reasonably requested by Seller within seven (7) days of receipt of Goods.

**9. Terms of Payment.** The price of Goods does not include taxes, shipping, handling or any non-standard or special packing required by Buyer, which will be additional charges to Buyer. Buyer agrees to pay all invoices in US Dollars net, without offset, deduction or withholding, within thirty (30) days of date of invoice. Amounts due are considered paid when Seller receives collected funds. Invoices not paid by the due date shall accrue interest from the due date until paid at a rate equal to the lesser of 1-1/2% per month or the maximum rate allowed by applicable law.

**10. Software License.** Buyer acknowledges that any software that may be supplied by Seller with Goods is subject to the proprietary rights of Seller and/or Seller's vendor (the "Licensor"). Seller or its Licensor, as applicable, retain title to all software. Subject to performance by Buyer of these Terms, Seller hereby grants to Buyer and Buyer hereby accepts from Seller a limited, non-transferable, non-exclusive license (or sublicense, as applicable) to use the software solely in the operation of Goods, to commence on delivery of the software to Buyer and payment therefor by Buyer and to extend for the life of Goods. Except as permitted by this paragraph, Buyer will not (i) copy or duplicate, or permit others to copy or duplicate, any part of such software, or (ii) create or attempt to create, or permit others to create or attempt to create, by reverse engineering or otherwise, the source programs or any part thereof from the object programs or from other information made available under these Terms. Buyer will not, directly or indirectly, sell, transfer, offer, disclose, lease, or license such software to any third party except as set forth in paragraph 14.

**11. Compliance with Law.** Buyer acknowledges that Goods may be subject to export control laws and regulations and agrees not to export or re-export any Goods unless in compliance with all applicable federal, state, local and foreign laws, rules and regulations and with all applicable requirements of any regulatory agency or other competent authority. Buyer shall obtain and maintain all required licenses, titles, registrations, and permits necessary for its operations, transmission and receipt of signals, or as otherwise necessary for the use of Goods. Buyer shall indemnify, defend and hold Seller harmless from any Losses arising from its failure to comply with this paragraph.

**12. Remedies; Limitation of Liability.** Seller's rights and remedies are cumulative and in addition to any other rights or remedies Seller may have at law or in equity. SELLER SHALL NOT BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR INDIRECT DAMAGES RELATED TO GOODS OR THESE TERMS, INCLUDING LOSS OF REVENUES OR PROFITS, OR LOSS OF USE OR BUSINESS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S TOTAL LIABILITY TO BUYER OR ANY THIRD PARTY SHALL BE LIMITED TO THE AMOUNT PAID BY BUYER FOR GOODS WHICH ARE THE SUBJECT OF THE CLAIM.

**13. Governing Law; Dispute Resolution.** These Terms are governed by and shall be construed under the laws of the State of Texas, without regard to any conflict of laws principles. Buyer and Seller agree to attempt, in good faith, to resolve any disputes arising out of these Terms or Goods promptly by negotiation between an executive selected by each party. If the negotiations do not result in a mutually acceptable prompt resolution, then, either party may bring an action against the other party in the federal or state courts of Harris County, Texas, and each party hereby submits to the sole and exclusive personal jurisdiction of such courts, agrees that venue properly lies in such courts, and waives any claim that any such action should be dismissed on grounds of inconvenient forum or lack of personal jurisdiction or that any such action should be transferred to any court outside of such courts (service of process upon a party may be effected by delivery, verified by a receipt signed by a representative of the party served, to the last known address for such party) The non-prevailing Party shall bear the fees, costs and expenses of the court proceeding. The parties expressly agree that the terms of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms.

**14. Miscellaneous.** Buyer shall not, directly or indirectly, assign these Terms (by operation of law, merger or consolidation) without the prior written consent of Seller, and any unauthorized assignment shall be null and void. If Buyer sells or transfers title or otherwise transfers its interest in Goods to any third party, (i) the software license granted pursuant to Section 10 shall not transfer to such third party purchaser, and (ii) the warranty contained in Section 6, shall not be transferred to such third party purchaser, without Seller's prior written consent. Seller is an independent contractor, and nothing in these Terms is intended to create the relationship of principal and agent, partner or joint venturer or other fiduciary relationship. If any provision hereof is held by any competent authority to be illegal, invalid or unenforceable, such provision shall be fully severable and the remainder of these Terms shall stay in effect. No course of dealing or failure to enforce any of these Terms shall be deemed a waiver of a party's rights or remedies. The representations, indemnification, warranty and limitation on liability provisions shall survive the expiration, assignment or termination of these Terms.