



PURCHASE ORDER TERMS AND CONDITIONS

Vendor and EchoStar Holding Purchasing Corporation ("Purchaser") agree to be bound by all terms and conditions contained herein, all of which are a part of each purchase order issued to Vendor by Purchaser (each, an "Order") and should be carefully read.

OFFER: The Order is Purchaser's offer to buy, and may be modified or cancelled by Purchaser at any time prior to acceptance by Vendor without any liability or cost to Purchaser. All previous offers by Vendor are hereby rejected. The offer to purchase shall expire unless accepted by Vendor within thirty (30) days of issue. The Order is not binding upon Purchaser unless and until Purchaser receives Vendor's written acceptance. Unless otherwise stated on the face of the purchase order, Vendor must accept the Order in writing, which may be by fax, email, first class mail, or recognized air courier service. **NO SUCH ACCEPTANCE SHALL BE VALID OR BINDING UPON PURCHASER UNLESS VENDOR INCLUDES THEREIN THE CORRECT PURCHASE ORDER NUMBER PROVIDED ON THE FRONT SIDE OF THE ORDER.**

ACCEPTANCE: By accepting the Order, Vendor agrees to all of the terms and conditions on the face of the purchase order and in these Purchase Order Terms and Conditions. Any provisions in Vendor's quotation forms, sales forms, acknowledgements, invoices, communications or the like which are inconsistent with the provisions of the Order, or additional or different terms inserted in the Order by Vendor, or deletions therefrom, shall be of no force or effect. Acceptance of materials, work or services, payment or any inaction by Purchaser shall not constitute Purchaser's consent to or acceptance of any such terms. Estimates or forecasts furnished by Purchaser shall not constitute commitments. Upon acceptance, the terms contained in the Order shall constitute the entire agreement between Vendor and Purchaser with respect to the subject matter of the Order, superseding all contemporaneous oral agreements and prior oral and written quotations, communications, agreements and/or understandings of the parties, and may not be modified or rescinded except by a writing signed by Vendor and Purchaser. To the extent that terms contained on the face of the purchase order are inconsistent with the terms and conditions contained herein, the terms contained on the face of the purchase order shall control.

TERMINATION FOR CAUSE: Purchaser reserves the right to cancel the Order or any part thereof for cause in the event Vendor (1) defaults at any time prior to completion of its performance under the Order, (2) breaches or fails to perform any of its obligations in any material respect, (3) becomes insolvent or proceedings are instituted by or against Vendor under any provision of any federal or state bankruptcy or insolvency law or (4) ceases to operate in the normal course of business. Vendor agrees not to charge or assess any form of cancellation charges or restocking fees upon Purchaser due to the cancellation of the Order. Vendor agrees not to require Purchaser to purchase any canceled items not completed and/or items ready to be delivered at the time written notice of cancellation is mailed to Vendor. No claims shall be made for anticipatory profits or other damages resulting from cancellation of the Order. Where such cancellation is through the fault of Vendor, Purchaser, at its option, and without waiving any of its rights to recover damages or losses sustained, may accept the completed portion of the Order and pay for the same at the contract price, or may place all or any part of the Order elsewhere and charge Vendor the difference in the cost thereof to Purchaser. Vendor further agrees not to demand or access any cancellation charges of any form and to reimburse Purchaser for any shipping or freight expenses billed or paid by Purchaser if goods are not acceptable and must be returned to Vendor. If it should be determined that Purchaser has improperly terminated the contract for default such termination shall be deemed a termination for convenience.

TERMINATION FOR CONVENIENCE OF PURCHASER: Purchaser reserves the right to terminate the Order or any part hereof for its sole convenience. In the event of such termination, Vendor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. If Purchaser terminates after shipment, commencement of services or other performance, Vendor shall be paid a reasonable termination charge consisting of a percentage of the Order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Vendor shall not be paid for any work done after receipt of the notice of termination, or for any costs incurred by Vendor's suppliers or subcontractors which Vendor could reasonably have avoided. Vendor shall not unreasonably anticipate the requirements of the Order.

ADVERTISING: Vendor shall consider all information furnished by Purchaser to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing the contract, without first obtaining the written consent of Purchaser. Vendor shall not in any manner advertise or publish the fact that Vendor has furnished or contracted to furnish to Purchaser the goods or services herein mentioned, nor shall any information relating to the Order be disclosed without Purchaser's written permission. Vendor shall make no use of any identification of Purchaser, or its or their affiliated companies, in its advertising or promotional efforts in reference to activities undertaken by Vendor under the Order without Purchaser's prior written consent, which may be withheld in Purchaser's sole discretion. The term "identification" includes any trade name, trademark, service mark, insignia, symbol, or any simulation thereof, and any code, drawing, specification, or evidence of Purchaser's inspection. Vendor agrees to remove any such identification prior to any sale, use or disposition of material or equipment rejected or not purchased by

Purchaser, and shall indemnify Purchaser and their affiliated companies against any claim arising out of Vendor's failure to do so.

USE OF INFORMATION: Any specifications, drawings, sketches, models, samples, tools, computer or other apparatus programs, technical or business information or data, written, oral or otherwise, owned or controlled by Purchaser ("Information") furnished to or acquired by Vendor related to the Order, or in contemplation of the Order, shall remain Purchaser's property. All copies of such Information in written, graphic or other tangible form shall be returned to Purchaser at Purchaser's request within a reasonable time and at Vendor's sole cost and expense. Unless such Information was previously known to Vendor free of any obligation to keep it confidential, or is subsequently made public by Purchaser or a third party, it shall be kept confidential by Vendor, shall be used only in performing under the Order, and may not be used for other purposes except upon such terms as may be agreed upon between Vendor and Purchaser in writing.

Vendor's sole cost and expense. Unless such Information was previously known to Vendor free of any obligation to keep it confidential, or is subsequently made public by Purchaser or a third party, it shall be kept confidential by Vendor, shall be used only in performing under the Order, and may not be used for other purposes except upon such terms as may be agreed upon between Vendor and Purchaser in writing.

ASSIGNMENT AND SUBCONTRACTING: Vendor may not assign the Order, or any portion thereof, except that Vendor may, upon the prior written consent of Purchaser, assign claims for monies due or to become due hereunder provided in such event Vendor shall supply Purchaser promptly with two copies of any such assignment, and provided further, that payment to any assignee of any claim shall be subject to set off or recoupment for any present or future claim or claims where Purchaser may have against Vendor. Vendor agrees to obtain Purchaser's approval before subcontracting the Order or any portion thereof; provided however that this limitation shall not apply to the purchase of standard commercial supplies or raw material. Any attempted assignment or delegation in contravention of the above provisions shall be void and ineffective.

PURCHASER OWNED OR FURNISHED MATERIAL: Vendor assumes complete liability for any Purchaser-owned or Purchaser-furnished tooling, articles, and materials, unless furnished to Vendor on a charge basis, in connection with the Order, and Vendor agrees to pay for all such tooling, articles and materials spoiled by it or not otherwise satisfactorily accounted for. Title to the aforesaid Purchaser-owned or Purchaser-furnished tooling, articles or materials shall at all times remain in Purchaser. Vendor is and shall be an Express Trustee for the benefit of Purchaser of all such tooling, articles and materials.

BREACH OF CONTRACT: Vendor shall be in breach of the contract if (1) Vendor fails to make full delivery as called for in the Order, (2) Vendor fails to perform any of Vendor's covenants and obligations set forth herein, (3) any warranty of Vendor proves to be false, or (4) in the event of any of the insolvency of Vendor, Vendor's filing of a voluntary petition in bankruptcy, the filing of an involuntary petition to have Vendor declared bankrupt, the appointment of a receiver or trustee for Vendor's assets, or the execution by Vendor of an assignment for the benefit of creditors of Purchaser. The remedies provided in this section shall be in addition to any other remedies provided in law or equity.

ATTORNEY'S FEES: Vendor agrees that in the event that Purchaser be a part of any action arising out of, from or as the result of or predicated upon the Order, Vendor shall pay to Purchaser its reasonable attorney's fees and court costs incurred in connection therewith.

COLORADO CONTRACT AND JURISDICTION: The contract created by the Order shall be construed and enforced under the laws of the State of Colorado. It is agreed that Vendor hereby consents to the exclusive jurisdiction of the State of Colorado courts in Arapahoe County, Colorado or the United States District Court in Denver, Colorado.

COMPLIANCE WITH APPLICABLE LAWS: Vendor and all persons furnished by Vendor shall comply at their own expense with all applicable federal, state, local and foreign laws, ordinances, regulations and codes, including the identification and procurement of required permits, certificates, licenses, insurance, approvals and inspections in performance under the Order. Vendor agrees to indemnify Purchaser and its customers for any loss or damage that may be sustained by reason of any failure to do so. By accepting the Order Vendor certifies that the materials and articles ordered hereunder will be produced in compliance with all applicable requirements of the U.S. Export Administration Act as amended, the Fair Labor Standards Act of 1938 as amended, and lawful regulations and orders of the Administration of the Wage and Hour Division issued under Section 14 thereof and the Labor Management Relations Act.

DEDUCTIONS AND SETOFF: Any sums payable to Vendor shall be subject to all claims and defenses of Purchaser, whether arising from this or any other transaction or occurrence, and Purchaser may setoff and deduct against any such sums, all present and future indebtedness of Vendor to Purchaser. Purchaser shall provide a copy of the deduction taken by Purchaser against Vendor's account as a result of any returns or adjustments. Vendor shall be deemed to have accepted each such deduction unless Vendor, within ninety (90) days

following receipt of the deduction voucher, notifies Purchaser in writing as to why deductions should not be made and provides documentation for the reasons given.

FORCE MAJEURE: Neither party shall be liable to the other party for any delay or non-performance by reason of act of God, fire, explosion, flood, windstorm, earthquake, trade embargoes, governmental regulations, war, civil unrest, or any other cause beyond such party's reasonable control or satellite launch delays (a "Force Majeure Event"). The party whose performance is affected will use commercially reasonable efforts to develop a mutually acceptable work around plan in an attempt to minimize the impact of a Force Majeure Event. If any force majeure condition occurs, the party delayed or unable to perform shall give immediate notice to the other party, stating the nature of the force majeure condition and any action being taken to avoid or minimize its effect, and the party affected by the other's delay or inability to perform may elect to: (1) suspend the Order for the duration of the force majeure condition and (i) at its option buy, sell, obtain or furnish elsewhere material or services to be bought, sold, obtained or furnished under the Order (unless such sale or furnishing is prohibited under the Order) and deduct from any commitment the quantity bought, sold, obtained or furnished or for which commitments have been made elsewhere and (ii) once the force majeure condition ceases, resume performance under the Order with an option in the affected party to extend the period of the Order up to the length of time the force majeure condition endured and/or (2) when the delay or non-performance continues for a period of at least fifteen (15) days, terminate, at no charge, the Order or the part of it relating to material not already shipped, or services not already performed. Unless written notice is given within forty-five (45) days after the affected party is notified of the force majeure condition, (1) shall be deemed selected.

IMPLEADER: Vendor shall not implead or bring an action against Purchaser or its customers or the employees of either based on any claim by any person for personal injury or death to an employee of Purchaser or its customers occurring in the course or scope of employment and that arises out of material or services furnished under the Order.

INFRINGEMENT: The following terms apply to any infringement, or claim of infringement, of any patent, trademark, copyright, trade secret or other proprietary interest based on the manufacture, installation, normal use, lease or sale of any equipment, program, documentation, service or material ("Material") furnished to Purchaser under the Order or in contemplation of the Order. Vendor shall indemnify Purchaser and its customers for any loss, damage, expense or liability that may result by reason of such infringement or claim, except where such infringement or claim arises solely from Vendor's adherence to Purchaser's written instructions or directions which involve the use of Material other than (1) commercial material which is available on the open market or is the same as such Material, or (2) Material of Vendor's origin, design or selection; and Purchaser shall so indemnify Vendor in such excepted cases. Each party shall defend or settle, at its own expense, any action or suit against the other for which it is responsible under this clause. Each party shall notify the other promptly of any claim of infringement for which the other is responsible, and shall cooperate with the other in every reasonable way to facilitate the defense of any such claim.

INVOICING AND SHIPPING: Vendor shall (1) render single invoices, or as otherwise specified in the Order, showing Order number, through routing and weight, (2) render separate invoices for each shipment within twenty-four hours after shipment and (3) mail invoices to the address shown on the Order.

Copies of bills of lading and shipping notices are to accompany all product/materials. Vendor agrees to follow the shipping, invoicing and billing instructions issued by Purchaser. The cost price set forth in each Order includes the cost of manufacturing, packaging, labeling and shipping unless otherwise specified in such Order.

If prepayment of transportation charges is authorized, Vendor shall include the transportation charges from the F.O.B. point to the destination as a separate line item on the invoice stating the name of the carrier used and method of shipment. No minimum billing charges are permitted unless expressly authorized in the Order.

PURCHASE FOR RESALE: Vendor acknowledges that the goods and services purchased by Purchaser are for resale, and therefore, Vendor will not charge or collect sales tax from Purchaser. Vendor acknowledges that it has been provided all necessary resale certificates. Vendor further acknowledges and agrees that all terms and conditions contained herein and on the face of the purchase order, shall be fully enforceable by the entity to which Purchaser resells the goods and services purchased from Vendor as if said entity were the Purchaser herein.

INSURANCE: If and when requested by Purchaser, Vendor agrees to procure, at Vendor's sole cost and expense, a policy or policies of insurance in form satisfactory to the Purchaser wherein Purchaser shall be named insured, insuring all property on Vendor's premises owned by Purchaser against loss or damage resulting from fire (including extended coverage), malicious mischief and vandalism. Satisfactory evidence of procurement and existence in full force and effect of such insurance shall be submitted to Purchaser prior to the first shipment of goods and thereafter, upon request by Purchaser. Vendor shall obtain adequate insurance to cover its liability under each Order



and shall provide copies of the applicable certificate(s) of insurance naming Purchaser as an additional insured, prior to the first shipment of goods and thereafter, upon request of Purchaser.

Vendor shall maintain and cause Vendor's subcontractors to maintain during Vendor's performance of the Order (1) Worker's Compensation Insurance as prescribed by the law of the state or nation in which the Work is performed with limits of not less than five hundred thousand dollars (\$500,000) per occurrence, (2) employer's liability insurance with limits of at least \$1,000,000 for each occurrence, (3) comprehensive automobile liability insurance if the use of motor vehicles is required, with limits of at least \$1,000,000 combined single limit for bodily injury and property damage for each occurrence; (4) Comprehensive General Liability ("CGL") insurance, including Blanket Contractual Liability and Broad Form Property damage, with limits of at least \$1,000,000 combined single limit for personal injury and property damage for each occurrence; and (5) if the furnishing to Purchaser (by sale or otherwise) of products or material is involved, CGL insurance endorsed to include products liability and completed operations coverage in the amount of \$5,000,000 for each occurrence. All CGL insurance shall designate the Purchaser, its affiliates, and their officers, directors and employees (all hereinafter collectively referred to in this clause as "Purchaser") as an additional insured. All such insurance must be primary and required to respond and pay prior to any other available coverage.

Vendor agrees that Vendor, Vendor's insurer(s) and anyone claiming by, through, under or in Vendor's behalf shall have no claim, right of action or right of subrogation against Purchaser and its customers based on any loss or liability insured against under the foregoing insurance. Vendor and Vendor's subcontractors shall furnish prior to the start of Work certificates or adequate proof of the foregoing insurance including, if specifically requested by Purchaser, copies of the endorsements and insurance policies. Purchaser shall be notified in writing at least thirty (30) days prior to cancellation of or any change in the policy.

INDEPENDENT CONTRACTORS: Nothing contained in or performed pursuant to the Order is intended or should be construed as creating an agency, employee-employer, partnership, or joint venture relationship for any purpose. The conduct of and control over Vendor's business and employees shall lie solely and exclusively with Vendor.

PACKAGING AND TRANSPORTATION: Unless otherwise specified, goods are purchased F.O.B. destination. Deliveries shall be made as specified, without charge for boxing, crating, storage or any other charges unless otherwise specified. Material shall be suitably packed to assure against damage from transportation and weather and to secure lowest transportation costs in accordance with requirements of common carriers. Purchaser's order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing list shall accompany each box or package shipped showing Purchaser's Order number and symbol, item number and description of materials. Purchaser's count or weight shall be final and conclusive on shipments not accompanied by packing lists. Shipping receipts or bills of lading shall be sent to Purchaser on date material is shipped. Invoices shall be mailed in original only to the attention of Purchaser's Accounting Department immediately after each shipment. Extra freight and/or cartage charges resulting from routing differing from Purchaser's instruction will be charged to Vendor's account. No substitutions of goods or services shall be made without written authorization of Purchaser. Vendor shall make no package quantity change on any Order without written authorization of Purchaser.

PATENT INDEMNITY: Vendor on behalf of itself, its successors and assignees, warrants that the material and goods ordered hereunder, unless made pursuant to specifications furnished by Purchaser, do not and will not infringe any patents granted by the United States of America or any country foreign thereto, nor any trademark, or trade name, and covenants and agrees to indemnify and save harmless Purchaser, its affiliates, its successors, assigns, customers and users of its products against any and all claims, demands, expenses and liabilities arising from or attributable to such infringement, and Vendor agrees to defend, at its own expense, and at no expense to Purchaser, any such claims whether justified or unjustified or at the option of Purchaser to permit and assist Purchaser in the defense thereof, and to pay all reasonable attorney's fees, court costs and other expense sustained by Purchaser or its customers in defense thereof.

PATENT RIGHTS: When payment is made for experimental, developmental, or research work, as such, to be performed in accordance with special requirements of the Purchaser, Vendor agrees to disclose and on request to assign to Purchaser, each invention resulting therefrom. All proprietary rights embodied in design, tools, patterns, drawings, information, equipment, and schematics supplied by Purchaser under the Order are reserved and their use is restricted to the work to be performed hereunder. Vendor shall not disclose any details connected with the Order to any third party except as may be required to insure performance, without first obtaining the written consent of Purchaser.

PRICES: The Order must not be filled at higher prices than shown on the Order. Vendor warrants prices herein are as low as any (net)



price given by Vendor to any other customer for like material. Vendor will give Purchaser benefit of any price declines prior to date of shipment.

RISK OF LOSS: Purchaser shall not be liable nor obligated to pay for goods shipped until received at the "Ship To" location of Purchaser indicated on the face hereof and in good condition. Purchaser shall have the right to determine the "good" condition of the merchandise or parts by reserving the right to inspect the goods at the time and place of delivery before accepting them.

VENDOR'S GENERAL INDEMNIFICATION OF PURCHASER: Vendor shall forever reimburse, indemnify, defend, and hold harmless, Purchaser, its affiliates, its successors and assigns from and against any and all obligations, liabilities, actions, causes of action, losses, damages, penalties, including, but not limited to, claims of infringement of patents, copyrights, trademarks, unfair competition, bodily injury, property or other damage, arising out of any use, possession, consumption or sale of said goods or arising out of any breach of warranty, express or implied, on the part of the Vendor. If any goods or services are defective, unsuitable, mis-shipped, do not conform to all terms of the Order and all warranties implied by law, Purchaser may, at its option, return the goods to Vendor for full credit or refund of the purchase price and may charge Vendor such price and the cost of any incurred inbound and outbound freight and any reasonable handling, storage and inspection charge.

STATEMENT OF ACCOUNT AND TERMS: A statement of account must be sent to Purchaser's Accounting Department as soon as possible after the first of each month. Delays in receiving statement or invoices, and also errors and omissions on statement will be considered just cause for withholding settlement without losing any applicable discount privileges. Payment will be made on undisputed invoices or statements in accordance with the terms on the face hereof, however if payment terms are left blank then Purchaser shall have sixty (60) days from receipt of goods and services to make payment. Notwithstanding the foregoing, payment will be due only upon Vendor's full and faithful performance in accordance with the terms and conditions of the Order. Payment may be made by business check.

SECURITY AND NETWORK ACCESS: If in the performance of services hereunder Vendor shall require access to Purchaser's onsite premises or network, Vendor agrees to abide by any and all Purchaser then current security policies with regard to onsite and network access. Vendor represents and warrants that it shall maintain the most current version of an industry recognized anti-virus software application. Vendor shall install and keep current any and all service packs and patches for operating systems and applications. Such versions must be at least as protective as Purchaser's current security software application.

REMEDIES: The rights and remedies herein provided in case of default or breach by Vendor of the Order are cumulative and shall not affect in any manner any other remedies that Purchaser may have by reason of such default or breach by Vendor. The exercise by Purchaser of any right or remedy herein provided shall be without prejudice to Purchaser's right to exercise any other right or remedy provided herein, at law, or in equity. Vendor agrees that any breach of the Order is likely to cause irreparable harm to Purchaser, and in the event of any actual or threatened breach of the Order by Vendor, that Purchaser shall be entitled to equitable relief.

AUDIT: Vendor shall maintain at its principal place of business complete and accurate books and records regarding its performance of its obligations under the Order, including, but not limited to: (i) financial records; and (ii) shipping information and records. Purchaser shall have the right, upon two (2) days prior written notice, to review, audit and make copies of Vendor's books and records for the purpose of determining Vendor's compliance with its duties and obligations under the Order. Purchaser shall be entitled to conduct an audit regardless of the existence of any claim, dispute, controversy, mediation, arbitration or litigation between the parties. Any audit conducted by Purchaser shall be conducted by Purchaser or its representative(s) at Vendor's offices during normal business hours. If an audit reveals that Vendor has miscalculated any item bearing upon amounts paid to Vendor resulting in an overpayment by Purchaser, Vendor agrees to: (i) repay to Purchaser the amount of any overpayment made together with interest thereon at the highest rate allowed by law computed from the date of the overpayment; and (ii) pay all reasonable costs and expenses, including reasonable attorney's fees and accountants fees incurred by Purchaser in connection with its audit and with enforcing the collection of such amounts.



SURVIVAL: Upon expiration or termination of the Order for any reason, all further rights and obligations of the Purchaser and Vendor shall cease, except that neither shall be relieved of any obligations hereunder which specifically survive or logically would be expected to survive or are to be performed after expiration or termination of the Order.

TIME OF ESSENCE: Time is of the essence in the Order. The goods and services shall be delivered on or before the close of business on the day specified on the Order or according to the schedule thereon stated. Purchaser shall have the right to demand all of the goods or services at one time during the scheduled period or in portions, as directed by Purchaser, from time to time during that period. Vendor's failure to meet any arrival date shall constitute a material breach of the Order, as a result of which, Purchaser may terminate the Order.

VARIATION IN QUANTITY: Purchaser assumes no liability for material produced, processed or shipped in excess of the amount specified in the Order.

CHANGES: If the goods to be furnished hereunder are to be specifically manufactured in accordance with Purchaser's specifications, Purchaser may by written request make changes to specifications. Any difference in price or time for performance resulting from such change, will be equitably adjusted and the request modified in writing accordingly.

WARRANTY: Vendor warrants and represents that the goods shipped shall (a) be free of defects in design, workmanship and materials, including, without limitations, such defects as could create a hazard to life or property; (b) conform in all respects with all applicable federal, state and local laws, orders and regulations, including, but not limited to, those regarding occupational safety and health; (c) not infringe or encroach upon Purchaser's or any third party's personal contractual or proprietary rights, including patents, trademarks, copyrights, rights of privacy or trade secrets; (d) conform to all of Purchaser's specifications, if any, delivered to Vendor, which may change from time to time. If Purchaser was shown any sample of the goods, Vendor warrants that the goods shipped will be of equal or superior quality thereto.

Vendor represents and warrants that any services provided under the Order shall be performed by qualified personnel in accordance with Purchaser's specifications, published documentation, industry standards and applicable laws and regulations, whether local, state or federal. Services shall be deemed non-conforming if Vendor, in Purchaser's sole discretion, fails to comply in any material respect with Purchaser's specifications, published documentation, or industry standards.

Vendor represents and warrants to Purchaser that it owns all right, title, and interest, including, without limitation, all rights under all copyright, patent and other intellectual property laws, in and to, or has licensing rights to, any software programs and other information and technology procured under the Order, whether as a stand-alone good or embedded component of a procured good. Notwithstanding the foregoing, Vendor grants Purchaser a perpetual, non-exclusive, worldwide, transferable license to use such software programs and other information and technology necessary for the successful operation, use, and functionality of the good or service.