



Terrasat Communications, Inc. Standard Terms and Conditions of Sale

The following shall be the terms and conditions under which Terrasat Communications, Inc. ("Terrasat") sells products. No contrary or additional terms contained in any Buyer's purchase order or acknowledgment shall govern Terrasat's shipment, unless agreed to by Terrasat in another writing:

1. PRICES AND TAXES. The prices will be those set forth in Terrasat's quotation or bid valid at the time of order. If a quotation has expired, Terrasat reserves the right to extend the validity of the quotation or issue a new quotation at its discretion. Prices are EXWORKS (Incoterms, 2000) Terrasat's Morgan Hill, CA facility, in U.S. dollars and are exclusive of all taxes, tariffs, duties and fees. In addition to all charges and fees due under any agreement or order between Terrasat and Buyer, Buyer is solely responsible for and agrees to pay amounts equal to any taxes, tariffs, duties and fees (however designated) and any interest, fines and penalties (collectively, "Tax") resulting from or arising out of that agreement or order. Buyer will pay on Terrasat's behalf any Tax levied upon Terrasat or reimburse Terrasat for any such Tax paid by Terrasat, or in lieu thereof, the Buyer shall provide Terrasat with a properly executed tax exemption certificate acceptable to the taxing authorities prior to delivery of Terrasat products. This Section will apply during and after termination of any agreement between the parties.

2. ORDERS. No order submitted by Buyer will be deemed accepted by Terrasat unless and until confirmed in writing by Terrasat's authorized representative. No order which has been accepted by Terrasat may be canceled by the Buyer except with the agreement in writing of Terrasat and on terms that the Buyer will indemnify Terrasat in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by Terrasat as a result of cancellation including, at a minimum, the terms set forth in Section 9 below.

3. PAYMENT. Payments by Buyer will be made in U.S. dollars in the U.S. pursuant to one of the following terms, without offset:

Option 1: Payment in advance in U.S. dollars due prior to shipment. Wire transfer information: Citibank, N.A., Morgan Hill Financial Center, 17085 Monterey Street, Morgan Hill, CA 95037 USA, Account name Terrasat Communications Inc., Account Number 201896347, SWIFT Code CITIUS33. Reference Invoice # and PO # and Contract #, By Order Of [Buyer's Name]; or such other wire transfer information as Terrasat may indicate. Buyer pays all shipping costs EXWORKS (Incoterms 2000).

Option 2: Confirmed, Irrevocable Letter of Credit acceptable to Terrasat and payable in U.S. dollars at sight upon presentation of documents confirming shipment (i.e. Invoice, Packing List, Air Waybill) through any major United States state or national bank. Validity must be at least 90 days for shipment and 120 days for negotiation of documents; partial shipments must be allowed; the Letter of Credit value must state EX-WORKS (Incoterms, 2000) Terrasat's Morgan Hill, CA facility. Estimated freight and handling charges can be provided upon request. Buyer pays all shipping costs EXWORKS (Incoterms 2000).

Terrasat may, at its sole discretion, grant extended credit terms up to net thirty days of invoice. Extended payment terms must be agreed in writing before any acknowledgment of the order by Terrasat.

If Terrasat agrees in writing to different or additional payment terms, then:

a. If during the period of performance of an order the financial condition of the Buyer is determined by Terrasat not to justify the terms of payment specified, Terrasat reserves the right to demand that payment be made in accordance with one of the two options above.

b. Terrasat reserves the right to make deliveries in installments, all installments to be separately invoiced and paid for by Buyer when due per invoice without regard to other scheduled deliveries. If shipments are delayed by the Buyer for any reason, payment will become due from the date on which Terrasat is prepared to make shipment. Terrasat may ship notwithstanding any contrary instructions from Buyer. Otherwise, storage will be at Buyer's risk and expense.

c. In the event of default in payment by Buyer: (i) Terrasat may suspend performance of its obligations; (ii) Buyer agrees to pay Terrasat's standard late charges of 1 and ½ % per month on the delinquent payment from the due date thereof until such payment is received; and (iii) in the event of litigation or collection activity arising out of Buyer's non-payment, Buyer will promptly pay the reasonable costs and expenses incurred by Terrasat, including attorney's fees.

4. DELIVERY, SECURITY INTEREST, DELAYS. Delivery will be EXWORKS (Incoterms, 2000) Terrasat's Morgan Hill, CA facility. Freight and handling charges are to be either remitted in advance or collected under a confirmed, irrevocable Letter of Credit as outlined above. All shipments are subject to availability and all references to dates are references to delivery EX-WORKS (Incoterms 2000) Terrasat's Morgan Hill, CA facility. Any dates for delivery quoted by Terrasat or provided in an accepted order are approximations only and Terrasat will not be liable for delay in shipment for any reason. Title to product transfers and Buyer assumes all risk of loss upon delivery of product by Terrasat to the initial carrier. Insurance will be provided by Terrasat upon request and the cost of insurance will be collected with freight and handling charges. In the absence of instructions to the contrary, Terrasat, on behalf of Buyer, will select the carrier but will not be deemed thereby to assume any liability in connection with the shipment nor will the carrier be construed to be an agent of Terrasat. Claims for loss or damage to products in transit must be made to the carrier and not to Terrasat. Buyer will be responsible for all storage, rigging, drayage and other charges to and at Buyer's site. Buyer hereby grants Terrasat a security interest in the products and all cash and non-cash proceeds thereof as security for all of Buyer's obligations hereunder. Upon request by Terrasat, Buyer will promptly execute any instrument required to perfect such security interest; provided that in any event Terrasat is hereby appointed Buyer's attorney-in-fact to do all acts which Terrasat deems reasonably necessary or desirable to perfect and continue to perfect such security interest and to protect the collateral. Terrasat will not be liable for any damages or penalty for delay in delivery or for failure to give notice of delay for any reason, including, but not limited to instances when such delay is due to the elements, acts of God, delays in transportation, delay in delivery by Terrasat's vendors or any other causes beyond the reasonable control of Terrasat. The delivery schedule will be extended by a period of time equal to the time lost because of such delay.

5. PATENTS. If Terrasat is notified promptly in writing of any action (and all prior claims relating thereto) brought against Buyer alleging that Buyer's use or other disposition of product infringes a United States patent or copyright, and if Terrasat determines that its product infringes a patent, Terrasat will defend such action at its expense and will pay the costs and damages awarded against

Buyer in such action, provided that Terrasat will have sole control of and authority with respect to the defense of any such action and all negotiations for its settlement or compromise. If a final injunction is obtained in such action against Buyer's use of the product or if in Terrasat's opinion the product is likely to become the subject of claim or infringement, Terrasat will, at its option and at its expense: procure for Buyer the right to continue using the product; or replace or modify the same so that they become non-infringing; or accept return of the product and refund or credit the amount of the original net purchase price, less a reasonable charge for depreciation and damage. Terrasat will not have any liability to Buyer if the alleged infringement is based upon: (a) use or sale of the product in combination with other products or devices which are not made by Terrasat; (b) use of the product in practicing any process; or (c) the furnishing to Buyer of any information, service or other assistance. No costs or expenses will be incurred for the account of Terrasat without the prior written consent of Terrasat. In no event will Terrasat's total liability to Buyer under or as a result of compliance with the provisions of this clause exceed the sum paid to Terrasat by Buyer for the allegedly infringing product. The foregoing states the entire liability of Terrasat with respect to alleged infringement of patents and copyrights by the product or any part thereof or by its operation. This Section states the entire liability of Terrasat for any infringement of patent, copyright, trademark, trade secret, or other intellectual property rights. Buyer will defend, indemnify and hold Terrasat harmless against any loss, damages, costs, fees (including attorneys' fees) and expenses awarded against or incurred by Terrasat for alleged infringement of any patents, copyrights, trademarks, or other intellectual property rights of any person or entity which result from Terrasat's use of or compliance with Buyer's designs, specifications or instructions.

6. PRODUCT CHANGES. Terrasat reserves the right, without prior approval from or notice to Buyer, to make changes to products or their specifications (a) which do not materially adversely affect the performance of the product or reduce performance below any contract specification; (b) when required for purposes of safety; (c) to meet product specifications, or (d) when required to conform with any applicable statutory or regulatory requirements. Terrasat reserves the right to make product improvements without incurring any obligation or liability to make the same changes in products previously manufactured or purchased. Terrasat also reserves the right to modify the pricing and availability of models in its product lines based on market conditions, component availability, and other business considerations; and to require that Buyer implement and utilize software upgrades as a condition of maintenance contracts and warranty.

7. WARRANTY

Product Manufactured by Terrasat:

a. Terrasat warrants that its equipment will be free from defects in material or workmanship at the time of shipment and that it will conform to applicable specifications.

• For all Satcom products, the buyer shall exercise any and all warranty claims within a period of twenty four (24) months.

• For all Radio products, the buyer shall exercise any and all warranty claims within a period of eighteen (18) months.

(1) The warranty does not apply to any part of a product if it has been altered, repaired or misused in a way that, in the opinion of Terrasat, affects the reliability of, or detracts from the performance of any part of the product, or if it is damaged as a result of the use of such part in or in connection with equipment not previously approved by Terrasat.

(2) The warranty does not apply to any product or parts thereof if its serial number or the serial number of any of its part has been altered, defaced, or removed.

(3) The warranty does not cover damages or losses incurred in transportation.

(4) The warranty does not cover replacement or repair necessitated by loss or damage resulting from any cause beyond the control of Terrasat.

(5) The warranty does not include the furnishing of any labor involved or connected with the removal and/or reinstallation of warranted equipment or parts on site, or any labor required to diagnose the necessity for replacement or repair.

(6) In no event shall Terrasat be liable to buyer for any indirect, special or consequential damages or lost profits arising from the use of the equipment or products, even if Terrasat has been advised of the possibility thereof, or

for any inability to use them either separated from or in combination with any other equipment or products.

b. Terrasat's warranty, as stated herein, is in lieu of all other warranties, expressed, implied, or statutory, including those of merchantability and fitness for a particular purpose, and Terrasat neither assumes nor authorizes any person to assume for it any other obligation or liability to any person in connection with the sale or use of Terrasat's products. The buyer shall pass on to any purchaser, lessees, or other user of Terrasat's products, the aforementioned warranty, and shall indemnify and hold harmless Terrasat from any claim or liability of such purchaser, lessees, or user based upon allegations that the buyer, its agents, or employees have made additional warranties or representations as to product preference or use.

c. A fixed charge established for each product will be imposed for all equipment returned for warranty that is determined by Terrasat to be operating to specification and exhibiting no faults.

8. ACCEPTANCE OF PRODUCTS. Except as provided in Paragraph 7, unqualified acceptance of products will occur upon delivery, unless Terrasat is notified in writing within ten days from Buyer's receipt that the products do not meet Terrasat's specifications or that Buyer is making a claim for shortages or other errors in delivery. Failure to give such timely notice constitutes a waiver of all such claims by Buyer. Terrasat's sole obligation for any non-conforming products will be limited to repair or replacement, at Terrasat's option, pursuant to the provisions of the foregoing Warranty clause.

9. CANCELLATION AND RESCHEDULE CHARGES. In the event Buyer defaults, Terrasat may decline to make further shipments and/or may terminate Buyer's order without affecting Terrasat's rights and remedies including, but not limited to, any right to cancellation charges and quantity price adjustments. If Terrasat continues to make shipments after Buyer's default, Terrasat's action will not constitute a waiver nor affect Terrasat's legal remedies. In the event Buyer (a) cancels any order or portion thereof with the requisite Terrasat consent; or (b) fails to meet any obligation hereunder, causing cancellation or rescheduling of any order or portion thereof; or (c) requests a rescheduling of scheduled product and such request is accepted by Terrasat, Buyer agrees to pay Terrasat a cancellation charge which shall include compensation for specific expenses and costs related to commitments already made in connection with the order a reasonable allowance for the cost of overhead, general and administrative expenses and profit in accordance with Terrasat's standard accounting practices. A minimum of 15% cancellation charge will be applicable to any order cancelled after fifteen (15) days. These charges having been agreed upon not as a penalty, but as **LIQUIDATED DAMAGES** a result of the difficulty of computing actual damages. Such cancellation/rescheduling charges may be set by Terrasat in its business judgment in each instance. Buyer may not cancel or reschedule any order or portion thereof after shipment. **IN ADDITION, TERRASAT RESERVES THE RIGHT TO READJUST ANY QUOTED PRICES SET AS A RESULT OF THE QUANTITIES ORIGINALLY ORDERED TO THE APPLICABLE PRICE FOR THE REDUCED QUANTITY TO BE SHIPPED.**

10. EXPORT. Regardless of any disclosure made by Buyer to Terrasat of an ultimate destination of the product(s), Buyer will not export, either directly or indirectly, any product(s) or non-Terrasat equipment incorporating such product(s) without first obtaining a license from the U.S. Department of Commerce or any other agency or department of the United States Government, as required. Buyer will use its best efforts to insure that none of the products will reach any country where U.S. laws would forbid Terrasat to market or distribute the products.

11. SOFTWARE LICENSE AND SUB-LICENSE.

a. Terrasat grants to Buyer the non-exclusive license to use the Software (defined below) in connection with the Products, subject to the terms and conditions set forth below. Terrasat grants to buyer the non-exclusive license to sub-license the Software to those of Buyer's customers which utilize Products. When granting to customers the right to use Software, Buyer shall incorporate in such sub-license terms that offer no less degree of protection to Terrasat's (or its licensor's) interest in the Software as those set out below.

b. "Software" means any program in machine readable code (howsoever provided by Terrasat to Buyer), and intended to be loaded into the

memory of a processor unit(s), which provides operating instructions and user-related application instructions (as well as associated documentation used to describe, maintain and use such programs), incorporated in any of the Products by Terrasat or supplied to Buyer by Terrasat for use on or in connection with any of the Products; however, Software shall not mean any source code.

c. The Products and Software include software which is licensed by third parties to Terrasat ("Third-Party Software"). Buyer agrees to comply with all of the requirements and restrictions of all licenses which apply to Third-Party Software, and Buyer authorizes Terrasat to execute and deliver all agreements and documents on Buyer's behalf in order to comply with the foregoing obligations.

d. Set out below are the terms and conditions of the software license granted by Terrasat to Buyer. In sub-licensing software to its customers, Buyer shall incorporate in such sub-licenses terms which offer no less degree of protection than those set out below: (i) The Software and the documentation are unpublished copyright works and may be used on any installation with a configuration mentioned in the Agreement, provided the Software is in use on only one installation at any one time. (ii) Neither the Software nor the documentation may be copied in whole or in part, except for backup and archival purposes. (iii) The copyright notices and trademarks contained in the Software, on the data medium, and in the documentation as supplied to Buyer must appear on all copies made by Buyer. (iv) Save for Buyer's right to grant sub-licenses to its customers to use the Software in object code form, Buyer may not transfer part, download, or in other way make available to others the Software and the documentation delivered to it. (v) Buyer shall not have the right to modify the Software or to create derivative works based on the Software, save as provided under applicable laws. (vi) No warranty applies if failure of the Software has resulted from misuse or misappropriation.

e. Buyer will be responsible for costs of installing software upgrades supplied by Terrasat.

12. CONFIDENTIALITY.

a. Buyer and Terrasat each agree to use the other's Confidential Information (defined below) it receives or otherwise obtains solely for purposes of benefiting the business relationship between them. The receiving party ("Recipient") shall not duplicate any Confidential Information of the other party ("Disclosing Party") except as may be strictly necessary in furtherance of that purpose. The Recipient agrees to maintain all of the Disclosing Party's Confidential Information it receives or otherwise obtains in confidence, using at least that standard of care which it accords its own Confidential Information to protect the Disclosing Party's Confidential Information. The Recipient agrees not to disclose the Disclosing Party's Confidential Information to any other party except those of the Recipient's directors, officers, employees, agents, consultants, advisors and affiliates (collectively, "Agents") involved in furthering that purpose whose duties justify the need to know such Confidential Information. The Recipient's Agents who are to receive Confidential Information shall be advised of the confidential nature of the Confidential Information and shall have agreed in writing to be bound by the terms of this Section. The Recipient agrees that at no time shall it or its Agents use or knowingly permit any other person or entity to examine, use, or derive benefit from the Confidential Information. These obligations will survive for a period of ten years from the date of the relevant disclosure or for such longer period as such Confidential Information may be entitled to legal protection from disclosure by operation of law.

b. "Confidential Information" means information in its broadest sense, including but not limited to computer programs, databases, trade secrets, know-how, inventions, improvements, discoveries, techniques, business and marketing records, merchandising and marketing techniques, plans and data, strategies, new products, financial data, budgets, projections, work papers, files, contracts, client and supplier information and lists, schematic diagrams, and product price lists and quotations; provided, however, that this Section 12 shall not apply to Confidential Information which (i) is or becomes generally available to the public other than as a result of disclosure by or through the Recipient or its Agents; (ii) was available to the Recipient on a non-confidential basis prior to disclosure by the Disclosing Party as evidenced by documentation in the Recipient's possession (unless the Recipient knows that such Confidential

Information is subject to another confidentiality agreement); (iii) becomes available to the receiving party on a non-confidential basis from a source other than the Disclosing Party (unless the Recipient knows that such Confidential Information is subject to another confidentiality agreement); or (iv) was developed by or for the Recipient independently of and without reference to any of the Disclosing Party's Confidential Information. Any Confidential Information developed by Terrasat (alone or jointly with Buyer) in connection with any Products or services provided by Terrasat will be the exclusive property of Terrasat.

c. Upon the Disclosing Party's request, the Recipient shall immediately (i) return all Confidential Information it has received, including tangible items containing or representing Confidential Information and all copies thereof made by such party or its Agents; (ii) erase or destroy all Confidential Information it has received which is contained in computer memory or data storage apparatus; and (iii) destroy all materials incorporating or based on such Confidential Information which were prepared by or for such party or its Agents.

d. Notwithstanding the foregoing, either party may disclose any Confidential Information to the extent required by a valid subpoena or order issued by a court of competent jurisdiction or by a governmental body, provided that the party subject to such requirements shall (i) immediately notify the Disclosing Party of the existence, terms and circumstances relating to the requirement, if permitted by law; and (ii) cooperate with the Disclosing Party in asserting objections or providing a defense to such requirement or obtaining a protective or equivalent order. Buyer and Terrasat agree that the obligations under this Section 12 are of great importance to Terrasat and form a substantive condition of any transaction by it. Since monetary compensation may not adequately cover the failure of such obligations, Buyer and Terrasat specifically agrees to submit to injunctive relief from the courts where suitable and adequate relief may be obtained in order to give effect to these confidentiality obligations.

13. DISCLAIMER AND LIMITATION OF LIABILITY.

a. **TERRASAT'S TOTAL LIABILITY IS LIMITED TO THE NET PRICE OF THE PRODUCTS SOLD HEREUNDER, EXCLUDING ANY CHARGES STATED SEPARATELY FROM THE PRODUCT PRICE ON THE INVOICE. BUYER'S SOLE AND EXCLUSIVE REMEDY FOR LIABILITY OF ANY KIND, INCLUDING NEGLIGENCE, WITH RESPECT TO THE PRODUCTS, SOFTWARE, AND DOCUMENTATION FURNISHED HEREUNDER IS LIMITED TO THE REQUEST FOR TERRASAT, AT TERRASAT'S OPTION, TO REFUND THAT NET PRICE FOR THE ITEMS AND MATTERS INVOLVED, EXCEPT THAT IN THE CASE OF A BREACH OF WARRANTY, BUYER'S SOLE AND EXCLUSIVE REMEDY IS TO RETURN THE PRODUCT TO TERRASAT FOR REPAIR OR REPLACEMENT IN ACCORDANCE WITH THE "WARRANTY" SECTION OF THESE TERMS AND CONDITIONS.**

b. **WITH RESPECT TO SERVICES, TERRASAT'S LIABILITY FOR ANY SERVICE IS LIMITED TO THE RE-PERFORMANCE OF THE SERVICE.**

c. **IN NO EVENT WILL TERRASAT BE LIABLE TO BUYER FOR (I) RE-PROCUREMENT COSTS; (II) INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES; (III) ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF TERRASAT PRODUCTS, WHETHER IN AN ACTION OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, EVEN IF TERRASAT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

d. **NO ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION HAS ACCRUED, OR MORE THAN EIGHTEEN (18) MONTHS AFTER SHIPMENT GIVING RISE TO THE BREACH, WHICHEVER IS LONGER, EXCEPT THAT AN ACTION FOR NON-PAYMENT MAY BE BROUGHT WITHIN EIGHTEEN (18) MONTHS OF THE DATE OF LAST PAYMENT.**

14. GENERAL PROVISIONS.

a. These terms and conditions constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all proposals, oral and written, all previous negotiations and all other communications between the parties with respect to that subject matter. **THESE TERMS AND CONDITIONS WILL PREVAIL AND GOVERN NOTWITHSTANDING ANY DIFFERENT, CONFLICTING OR ADDITIONAL TERMS AND CONDITIONS WHICH MAY APPEAR ON ANY ORDER OR OTHER DOCUMENT SUBMITTED BY BUYER, ALL OF WHICH WILL BE DEEMED NULL AND VOID. DEVIATIONS FROM THESE TERMS AND CONDITIONS ARE NOT VALID UNLESS CONFIRMED IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF TERRASAT.**

b. The rights and obligations under these terms and conditions may not be assigned without Terrasat's prior written consent and any attempt to do so without such consent will be void.

c. These terms and conditions will be governed by and construed in accordance with the internal laws of the State of California without reference to conflict of laws principles and not including the United Nations Convention on Contracts for the International Sale of Goods. Any controversy or claim arising out of or relating to these terms and conditions or any matter or transaction contemplated hereby will be triable only in a court with jurisdiction located in Santa Clara County, California, and Terrasat and Buyer each irrevocably consent to that venue and to the personal jurisdiction thereof.

d. Buyer will pay to Terrasat all costs, fees and expenses (including attorneys' fee) incurred by Terrasat in enforcing, or attempting to enforce, any of its rights under these terms and conditions or any contract of sale between them.

e. All rights and remedies, whether conferred hereby or by any other instrument or law will be cumulative and may be exercised singularly or concurrently. Failure by either party to enforce any contract terms will not be deemed a waiver of future enforcement of that nor of any other term. If any provisions of this contract are held invalid under any applicable law, rule, regulation or treaty, such invalidity will not affect other provisions of this contract which can be given effect without the invalid provisions and to this end, the provisions of this contract are declared to be severable. Notwithstanding the above, such invalid provision or clause will be construed, to the extent possible, in accordance with the original intent of the parties.

f. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Terrasat will be subject to correction without any liability on the part of Terrasat.

g. Where products include radio frequency communications equipment, certain regulations of telecommunications regulatory authorities apply. It is the sole responsibility of the Buyer to ensure compliance with all such regulations and all other applicable laws and rules and to procure and maintain at its own expense any relevant license from such regulatory authority to install, operate and maintain the equipment.