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## **TERMS AND CONDITIONS OF SALE**

Between

WEGENER COMMUNICATIONS, INC.

And

[OTHER PARTY] ("Purchaser")

### **1. GENERAL**

- 1.1 The terms "we," "us," and "our" are used to refer to Wegener Communications, Inc. ("Wegener"); the terms "you" and "your" refer to Purchaser. The term "Item" is used to refer to our products or services or both provided under this Contract. All shipments, services, sales and quotations between Wegener and Purchaser are subject to these general terms and conditions of sale. They are, therefore, valid for all business transactions between Wegener and Purchaser, even in cases where they are not expressly specified or re-agreed upon.
- 1.2 Purchaser's order is binding only when accepted in writing (including confirmations via e-mail, fax or similar electronic communications) at the offices of Wegener in Duluth, Georgia. We reject any terms and conditions in Purchaser's order which are different from or additional to these terms and conditions or any changes to the order after acceptance, unless expressly approved in writing and signed by our authorized representative.
- 1.3 If Purchaser is located in the United States but wishes to export any of our Items outside the United States, Purchaser assumes all responsibility for obtaining any required export or import authorizations, permits, licenses, and the like. Purchaser agrees not to export any Items in violation of applicable export or import regulations. For Items shipped by us to a Purchaser located outside the United States, we shall obtain any required export authorization from the United States Government and Purchaser shall provide any required assistance in obtaining information or documents required for such authorization.
- 1.4 If the Items are to be used in fulfilling a contract with the United States Government we agree to comply with the mandatory government contract provisions that are applicable to us under federal law and regulations, provided Purchaser has given us written notice of the applicable provisions and we have accepted them in writing.
- 1.5 The laws of the State of Georgia, except for its rules or principles of conflict of laws, shall govern all matters relating to this sale. The United States Convention on Contracts for the International Sale of Goods shall not apply to this Contract. In the event of any dispute of any nature between the parties with regard to any matter affected by this Contract, the parties hereby consent and submit to the personal jurisdiction and venue of the trial courts of Fulton County, Georgia, U.S.A.; and to the personal jurisdiction and venue of the United States District Court for the Northern District of Georgia; and each party agrees that such forums shall be the exclusive forums for resolving disputes between the parties with respect to the subject matter of this Contract or any order submitted hereunder. Each of the parties hereby expressly waives any and all personal



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rights to object to jurisdiction and venue in said courts and in said forums in any such suit, action or proceeding. If Purchaser is not a resident of the State of Georgia, Purchaser further acknowledges and stipulates that it has sufficient contacts with the State of Georgia under this Contract to comply with the jurisdictional requirements of O.C.G.A. & 9-10-94, or in any other manner as may be permissible under the applicable rulings of said courts in which such suit, action or proceeding is instituted, provided always that a reasonable time for appearance is allowed. In the absence of Purchaser maintaining a registered office and agent in the State of Georgia for service of process, Purchaser hereby appoints the Secretary of State of Georgia as its authorized agent on whom any process or notice within the State of Georgia may be served.

**1.6 EXCEPT FOR CLAIMS FOR PERSONAL INJURY CAUSED BY ITEMS FURNISHED HEREUNDER, WE SHALL NOT BE LIABLE TO PURCHASER OR ANY OTHER PERSON OR ENTITY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS TRANSACTION OR ANY ACTS OR OMISSIONS ASSOCIATED THEREWITH OR RELATING TO THE SALE OR USE OF ANY ITEMS OR SERVICES FURNISHED, WHETHER SUCH CLAIM IS BASED ON BREACH OF WARRANTY, CONTRACT, TORT OR OTHER LEGAL THEORY AND REGARDLESS OF THE CAUSES OF SUCH LOSS OR DAMAGES OR WHETHER ANY OTHER REMEDY PROVIDED HEREIN FAILS. IN NO EVENT SHALL OUR TOTAL LIABILITY UNDER THIS CONTRACT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID FOR THE ITEMS PURCHASED HEREUNDER WHICH GAVE RISE TO OUR LIABILITY.**

1.7 Any action arising out of this transaction must be commenced within one year after the cause of action has accrued.

1.8 If any provision of this Contract is held illegal or unenforceable by any court or other authority of competent jurisdiction, such provision shall be deemed severed from the remaining provisions of this Contract and shall not affect or impair the validity or enforceability of the remaining provisions of this Contract.

1.9 Our failure or delay to insist upon compliance of any term or condition shall not operate as and is not intended to be construed as a waiver or amendment of such term or condition or of our right to insist upon compliance with such term or condition or to take remedial steps to recover damages or other relief for non-compliance. Any express waiver of a term or condition will not operate and is not to be construed as a waiver of any subsequent breach irrespective of whether occurring under similar or dissimilar circumstances.

1.10 These terms and conditions constitute the entire understanding between the parties and supersede any previous communications, representations or agreements by either party, whether verbal or written. No change or modification of any term or condition shall be valid or binding on either party unless in writing and signed by an authorized representative of the party to be so bound.

1.11 In the event that it becomes necessary for us to bring suit against the Purchaser for the Purchaser's breach of any term or condition, for recovery of Items already delivered or for damages incurred, we shall be entitled to recover, in addition to damages and recovery of our Items, reasonable attorneys' fees and the costs and disbursements of said lawsuit.



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**1.12** The headings are for convenience only and are not to be used in the construction or interpretation of these terms and conditions.

## **2. PRICE AND PAYMENT**

**2.1** Prices for all Items are ex works (INCOTERMS 2000) our designated factory or warehouse, unless otherwise expressly agreed upon by us in writing.

**2.2** Prices do not include freight; insurance; sales, use, excise or similar taxes; or duties, all of which will be payable by Purchaser. Where appropriate, such taxes will be added to the invoice and paid by Purchaser, unless Purchaser provides us evidence of payment or certificate of exemption.

**2.3** Upon approval from Wegener's Credit Department and unless otherwise agreed to in writing by us, a 25% payment of the total purchase order price is due and payable upon acceptance of an order by us for shipment within the United States, prior to shipment from us. The remaining balance shall be paid within thirty (30) calendar days from the date of invoice, and in the case on shipment outside the United States such remaining balance must be secured by a divisible, irrevocable, confirmed letter of credit issued by a banking institution and in a form acceptable to us. Any payment owed by Purchaser which is not received by us by such due date shall accrue interest at the lower of 18% per annum or the highest rate of interest allowed by applicable U.S. law. Time shall be of the essence with respect to all of your payment obligations hereunder. We reserve the right to change the credit terms offered to you at any time, when in our opinion, your financial condition or previous payment record so warrants.

**2.4** As security for the full and prompt payment of all amounts now or hereafter owing by you to us, you grant to us a present and continuing first priority, purchase money security interest in all Items purchased by you from us. You agree and undertake to perfect, complete and consummate such security interest for the benefit of us in accordance with the relevant local laws. You irrevocably authorize, name, appoint and direct us as your true and lawful attorney-in-fact to sign, execute and file any and all UCC financing statements, continuation statements and any other documentation as we deem to be reasonably necessary to effect, protect and continue our security interest in the Items.

**2.5** Purchaser's order will be deemed a representation that Purchaser is solvent and able to pay for the Items ordered. If Purchaser fails to make payments when due, or if bankruptcy or insolvency proceedings are instituted by or against Purchaser, or if Purchaser makes an assignment for the benefit of creditors, Purchaser will be deemed in default and we will have the right to terminate our obligations by written notice to Purchaser, but such termination will not affect Purchaser's obligation to pay for Items delivered and work in progress.

## **3. TITLE AND DELIVERY**

**3.1** Shipments are ex works (INCOTERMS 2000) our designated factory or warehouse, unless otherwise expressly agreed upon by us in writing. Title to the Items and all risks of loss and damages will pass to Purchaser upon delivery to a common carrier at the ex works place of delivery. Purchaser will be responsible for all insurance and transportation charges from the ex



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works place of delivery. Wegener will, at the request of Purchaser and as its agent, make all necessary shipping arrangements and purchase full value insurance for the Items while in transit. Wegener will invoice Purchaser and Purchaser agrees to reimburse Wegener for all charges incurred on behalf of Purchaser, including insurance, transportation costs and any packaging costs which may result from Purchaser specifying a particular mode of transportation.

3.2 The shipment schedule quoted to Purchaser runs from the date of our acceptance in writing of Purchaser's order, which shall occur after the satisfaction of each of the following:

- a. our receipt of a signed and acknowledged purchase order from Purchaser;
- b. our receipt of the down payment and, in the case of international orders, a letter of credit, in each case as previously referenced in Section 2.3 above; and
- c. our receipt of all information necessary to properly configure the Items.
- d. For Items to be exported from the United States, the shipment schedule is also subject to the receipt of all necessary export documents and authorizations.

3.3 We will try to meet specified delivery dates; however, all terms and dates are estimates only and are not binding, unless a written agreement to the contrary is made. Delays in delivery do not entitle Purchaser to cancel any order, refuse Items or claim damages. Even if binding terms or dates are agreed upon, we do not accept responsibility for delays in delivery and services caused by force majeure or similar circumstances, which make delivery or service difficult if not impossible for us. This includes problems in procuring material, plant stoppages, floods and other acts of God, shortage of energy, strike, lock-out, shortage of personnel, lack of means of transport, governmental regulations, etc. as well as when such circumstances affect our suppliers or their subcontractors. Such circumstances entitle us to postpone the delivery or service by the period of their duration plus a reasonable starting up time or to cancel any order or part thereof not yet fulfilled. In the case of a restriction lasting longer than three months, you are entitled to cancel that portion of any order not yet filled. Such right of cancellation shall be your exclusive remedy.

3.4 If the shipment of Items is impossible because of extraordinary circumstances which are beyond our control, we are entitled, without prejudice, to invoice you immediately and to store such Items elsewhere at your risk and expense, if our own storage capacity is not sufficient. Wegener is entitled to execute partial shipment or service at any time. In the event of orders having to be shipped on call, such shipments shall be spread over the agreed delivery period as evenly as possible, provided no agreements to the contrary were made. Quantities left in our stock after expiry of the agreed delivery period can be canceled by us without prejudice to damages. The invoicing of Items produced, but not called by the time of expiry of the delivery period, will be made at the end of the delivery period. We are entitled to store such Items elsewhere at your risk and expense.

3.5 Acceptance shall be accomplished by using applicable test procedures or programs we establish. Non-conforming Items must be rejected within ten (10) calendar days after receipt or they will be deemed accepted. If installation by us is not included in the purchase order, acceptance tests shall be performed at our designated facility. If Purchaser's order specifies source inspection, we will give Purchaser at least five (5) calendar days advance notice of the date of such acceptance tests. If installation by us is included in the purchase price, acceptance shall occur at the installation site when we demonstrate that the applicable diagnostic or verification programs work properly or the



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Item is otherwise demonstrated to be in normal operating condition. If installation by us is scheduled or delayed by the Purchaser more than thirty (30) calendar days after delivery, Purchaser shall be deemed to have accepted the Items on the thirty-first (31) calendar day after the date of delivery.

- 3.6 Any software of documentation delivered in connection with an order is delivered under a nonexclusive, non-transferable license to use and execute the same only in connection with the Items delivered hereunder. Purchaser may not modify, reproduce, decompile, reverse engineer or transfer software or documentation without our prior written consent. Purchaser agrees not to sublicense, rent, lease, sell or otherwise transfer the software or documentation except with our express written consent. Moreover, Purchaser shall not obscure or cover any copyright notice, mask work notice or other proprietary legends placed on or embedded in the software or documentation or otherwise appearing in or on the Items. Purchaser acknowledges and agrees that nothing herein gives it any right, title or interest in the software or documentation except for its limited express rights set forth above. Additionally, the Purchaser acknowledges and agrees that we maintain exclusive ownership of and to all aspects of Item design and in and to the software and documentation, in all forms, all copies thereof, and all derivative works and compilations, including without limitation, any and all worldwide copyrights, patents, trade secrets, mask works and proprietary and confidential information rights associated therewith. Purchaser may be required to enter into a separate license agreement which will supersede this section with regard to the subject of such license agreement.**

#### **4. WARRANTY**

- 4.1** We warrant good title to any hardware furnished under this Contract. For software, we warrant that we have the right to grant any software license issued or granted to Purchaser. We warrant that services will be performed in good and workmanlike manner. We also warrant that during the Warranty Period (as defined below), each Item we deliver (other than separately licensed software and services) will:

- a. be free from material defects in workmanship and materials; and
- b. under ordinary use, conform in all material respects to its published specifications current at the time the Item was shipped.

- 4.2** Items may include refurbished goods, subassemblies or components, which we warrant as provided in this Section 4.

- 4.3** The Warranty Period begins on the date the Item is delivered and extends for a period of 12 months thereafter. We will repair or replace, at our option, any product returned to us by Purchaser, at Purchaser's risk and expense, during the Warranty Period, which fails to satisfy this Warranty, unless the failure was the result of shipping; improper installation, maintenance or use; abnormal conditions of operation; attempted modification or repair by the Purchaser; or an act of God. We will re-perform any services which do not conform to this Warranty provided we have received notice of non-conformance within the Warranty Period. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.**



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**PURCHASER'S SOLE REMEDY FOR ANY BREACH OF WARRANTY IS THE REPAIR OR REPLACEMENT, AT OUR OPTION, OF THE FAILED ITEM. WE SPECIFICALLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, TO CUSTOMERS OF PURCHASER.**

## **5. INFRINGEMENT OF INTELLECTUAL PROPERTY**

- 5.1 We will pay all costs, damages and attorneys' fees (other than attorneys' fees and punitive damages attributable to acts of Purchaser) finally awarded in any suit by a third party against Purchaser to the extent based upon a finding that the design or construction of the Item, as furnished, infringes the proprietary rights of such third party provided that Purchaser promptly notifies us in writing of any allegation of such infringement and we are given the right at our expense to settle such charge and, through attorneys of our own choice, to defend or control the defense of any suit based upon such charge. Provided, however, that our entire obligation to indemnify Purchaser shall not exceed the total amount paid to us by Purchaser for the allegedly infringing Item purchased under this Contract.
- 5.2 In the event that the use of an Item becomes, or in our opinion may become the subject of any claim, suit or proceeding, or if the manufacture, use or sale of an Item is enjoined, we may, at our option and expense, do one or more of the following:
- a. obtain for Purchaser the right to use the Item;
  - b. modify the Item so that it becomes noninfringing or replace the Item with a noninfringing item, while remaining in compliance with the published specifications in all material respects;
  - c. cease to deliver the Item to Purchaser; or
  - d. require Purchaser to return to us the allegedly infringing Item and upon return, pay to Purchaser an amount equal to the price paid by Purchaser for the Item, less depreciation (based on a five-year life, with straight-line depreciation) up to the time that Purchaser ceases to use the Item as a result of such claim.
- 5.3 Notwithstanding any other provision of this Section, we shall have no liability for any infringement arising from or occurring as a result of:
- a. use of the Item in combination with other items, unless we sold or made them all as a combination, or
  - b. incorporation of a specific design or modification at the request of Purchaser, or
  - c. failure by Purchaser to implement changes, replacements or new releases recommended by us and made available at no cost to Purchaser, where the infringement would be avoided by such changes, replacements or new releases.
- 5.4 This Section 5 sets forth our entire liability to Purchaser with respect to the infringement of intellectual property by the Item, and we make no warranty of noninfringement, express or implied.**

**As of 5/1/00**