

## 1. APPLICABILITY

The following terms and conditions (“**Terms and Conditions**”) apply to purchases of hardware, equipment and software integrated therein (“**Product**”) from Satcom Direct, Inc., Satcom Direct Communications, Inc., or any of their subsidiaries (collectively, “**SD**”). SD and any Product purchaser (“**Buyer**”) are hereinafter also referred to herein individually as a “Party” and jointly as the “Parties.”

## 2. BUYER’S ORDERS

Any offer from Buyer to purchase Products, form purchase order, or any quote from to Buyer from SD when joined with an unequivocal acceptance in full by that same Buyer shall constitute Buyer’s “**Order**”. All Orders are subject to these Terms and Conditions, regardless of whether these Terms and Conditions are expressly referenced therein, unless contrary terms appear in the Order in a writing signed by SD.

Buyers Orders should specify:

- a) Buyer’s Purchase Order number;
- b) SD’s part number and a general description of the Product;
- c) requested delivery dates;
- d) SD’s price;
- e) quantity;
- f) location to which the Product is to be shipped;
- g) any special routing, packing, labeling, handling instructions or insurance requested by Buyer, if applicable;
- h) location to which invoices will be sent for payment; and
- i) the end-use and end-user, if known, of the Product ordered and whether the Product will be used for a military or quasi-military purposes.

## 3. SD’S ACCEPTANCE OF BUYER’S ORDER

SD reserves the right to reject any Order. In SD’s sole discretion, SD may accept Buyer’s Order by either a written confirmation of acceptance, or by a tender of performance. Buyer’s Orders are subject to SD’s minimum order requirements, if any, and SD’s acceptance. SD reserves the right to limit order quantities for certain Products. An acknowledgment by SD of Buyer’s Order shall not constitute acceptance. Except as provided in this section, all provisions on any Buyer’s Order and all other documents submitted by Buyer are hereby rejected.

## 4. DELIVERY

Delivery terms are EXW at: any SD facility as chosen by SD (Incoterms 2010). SD will charge and Buyer shall pay an expedite fee if Buyer requests and SD agrees to any expedited shipping or special handling. To the extent that SD prepays any transportation charges or for any special routing, packing, labeling, handling or insurance, Buyer shall immediately reimburse SD upon receipt of an invoice for the same. Buyer bears risk of loss during shipment for initial acceptance.

## 5. ACCEPTANCE OF DELIVERY

Products are accepted upon delivery to Buyer unless SD receives written notice of rejection from Buyer explaining the basis for rejection within 10 calendar days after delivery to Buyer.

## 6. REJECTION OF PRODUCT

In the event of rightful rejection, Buyer shall thereafter follow SD’s written instructions with respect to any Product rejected. SD shall pay documented shipping costs for rejected Product, not to exceed actual non-expedited freight charges to the facility designated by SD for such return. SD bears risk of loss during return of rejected Product and any shipment to buyer thereafter of repaired or replacement Product. Upon receipt of properly rejected product, SD may, in its sole discretion:

- a) Repair or replace rejected Product, thereafter shipping the repaired or replacement Product to Buyer at SD’s expense; or
- b) cancel the Order, refunding to Buyer the purchase price for such Product.

If SD reasonably determines that rejection was improper, Buyer will be responsible for all expenses caused by or related to the improper rejection, including shipping costs, loss or damage, insurance, and the like.

## 7. TITLE TO PRODUCT/SECURITY INTEREST

Title to Product passes to Buyer only after both 1) Acceptance of Delivery and 2) payment in full therefore. SD retains a security interest in all Products shipped to Buyer for which payment in full has not been received by SD.

## **8. CHANGES TO PRODUCT**

SD may, without notice to Buyer, incorporate changes to Products that do not alter form, fit or function. SD may, at its sole discretion, also make such changes to Products previously delivered to Buyer.

## **9. PRICES AND PAYMENTS**

- a) Buyer may obtain a price quote from SD prior to placing an Order upon reasonable request.
- b) Prices for Products are in United States currency.
- c) SD's invoices are due and payable 30 calendar days from date of invoice.
- d) Payment(s) must be made in United States currency and must be accompanied by remittance detail containing the invoice number and amount paid per invoice.
- e) Payments must be in accordance with the "Remit To" field on each invoice.
- f) If in its sole discretion at any time SD determines that Buyer fails to qualify for payment terms, then SD may without notice to Buyer, modify or withdraw credit terms including, but not limited to, requiring advance payment, letters of credit, guarantees, or other security.

## **10. SD'S REMEDIES FOR NON-PAYMENT**

If Buyer is delinquent in any payment obligation to SD, SD may at its option:

- a) be relieved of its obligations with respect to guarantees, including without limitation, turnaround times, spares support and delivery lead-times;
- b) refuse to process any credit to which Buyer may be entitled;
- c) set off any credit or sum owed by SD to Buyer against any undisputed amount owed by Buyer to SD;
- d) withhold future shipments to Buyer;
- e) declare Buyer's performance in breach and terminate any Order;
- f) repossess Products for which payment has not been made;
- g) deliver future shipments on a cash-with-Order or cash-in-advance basis;
- h) charge interest on delinquent amounts at a rate of 1.5% per month or the maximum rate permitted by law, if lower, for each month or part thereof;
- i) charge storage or inventory carrying fees on Products;
- j) recover all costs of collection including, without limitation, reasonable attorneys' fees;
- k) if Buyer is delinquent on a payment schedule, accelerate all remaining payments and declare the total outstanding balance then due and owing; or
- l) combine any of the above rights and remedies as may be permitted by applicable law.

The above remedies are in addition to all other remedies available at law or in equity.

## **11. NO SETOFF BY BUYER**

Buyer may not set off or recoup invoiced amounts or any portion thereof against sums that are due or may become due from SD.

## **12. LIMITED PRODUCT WARRANTY**

SD warrants that Satcom Direct-branded Products shall be free of defects in material and workmanship for a period of twenty four (24) months from the date of installation on an aircraft (the "Warranty Period").

During the warranty period, SD shall, at its sole option and expense, repair, replace, or refund the purchase price of any defective Product, so long as 1) SD is notified of the defect upon discovery and in any event within thirty (30) days; 2) such Product is returned to SD; and 3) SD agrees that such Product is defective. Return of repaired or replacement Products to the end-user shall be at SD's expense. To the extent that title to a returned Product passed to Buyer prior to return, title to it passes to SD upon delivery to SD. Title to any replacement Product passes to Buyer upon delivery. The unexpired Warranty Period applicable to the Product returned shall apply to any repaired or replacement Products. In no event shall SD's liability exceed the purchase price actually paid for the product.

## **13. LIMITATION ON WARRANTIES**

The Warranty does not apply to any Product that:

- a) has had the serial number, model number or any other identification markings removed or rendered illegible;
- b) has been damaged by improper installation, operation, maintenance, misuse, accident, neglect, failure to continually provide a suitable operating environment (including necessary ventilation, electricity, protection from power surges,

- cooling and/or humidity), from any other cause beyond SD's reasonable control, an event of Force Majeure, or otherwise without fault, omission or negligence of SD or its employees, agents or other representatives;
- c) has been improperly installed or connected or used in contravention of the instructions supplied by SD;
  - d) has been subject to the opening of any sealed components without SD's prior written approval;
  - e) has had changes made by the end-user or anyone other than SD or its agents to the physical, mechanical, electrical, software or interconnection components of the Products supplied by SD without written authorization of SD to do so;
  - f) has been repaired or otherwise altered by anyone not under the control of, or not having the written authorization of, SD to do such repair or alteration.

#### **14. WARRANTY DISCLAIMERS**

**TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE WARRANTIES PROVIDED IN THIS LIMITED WARRANTY CONSTITUTE SD'S SOLE AND EXCLUSIVE LIABILITY FOR DEFECTIVE OR NON-CONFORMING PRODUCTS, EQUIPMENT, SOFTWARE AND SERVICES AND SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE OR NON-CONFORMING PRODUCTS, EQUIPMENT, SOFTWARE AND SERVICES. THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**UNDER NO CIRCUMSTANCES SHALL SD BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (HOWEVER ARISING) OR FOR ANY, LOSS OF PROFIT, LOSS OF BUSINESS, LOSS OF USE, LOSS OF REVENUES OR DAMAGES TO BUSINESS, GOODWILL OR REPUTATION (WHETHER DIRECT OR INDIRECT IN NATURE) ARISING FROM ANY BREACH OF WARRANTY OR CONDITION, OR UNDER ANY OTHER LEGAL THEORY, WHETHER OR NOT SD SHALL HAVE BEEN MADE AWARE OF THE POSSIBILITY OF SUCH LOSS. NOTWITHSTANDING THE FOREGOING, SD DOES NOT EXCLUDE ITS LIABILITY (IF ANY) FOR ANY MATTER WHICH IT WOULD BE ILLEGAL FOR SD TO EXCLUDE OR TO ATTEMPT TO EXCLUDE.**

#### **15. OBTAINING WARRANTY SERVICE**

Before requesting warranty service, the end user should contact the SD Authorized Dealer that the Product was purchased from, or contact SD technical support directly. When calling, a SD representative or SD Authorized Dealer representative will help determine whether the Product requires service and, if it does, will inform the end user how SD will provide it. The end user must provide reasonable assistance in diagnosing issues with the Product and otherwise follow SD's warranty processes. SD may provide warranty service (1) at the SD Authorized Dealer's location, (2) by having the end user ship the Product to SD's repair service location, or (3) by sending the end user new or refurbished customer-installable replacement product or parts to enable the end user to service or exchange the Product. When providing replacement service requiring the return of the original Product, SD may require a credit card authorization as security for the retail price current at the time of the replacement Product and applicable shipping costs. If the end user fails to return the Product as instructed, SD will charge the credit card for the authorized amount or issue an invoice against the purchase order. Service options, parts availability and response times may vary. In accordance with applicable law, SD may require that the end user furnish proof of purchase details and/or comply with registration requirements before receiving warranty service. If the Product is capable of storing software, data and other information, the end user is responsible for protecting its contents against possible operational failures and data losses, and SD expressly disclaims any liability therefore. Before delivering the Product for warranty service, it is the end user's responsibility to keep a separate backup copy of the contents and disable any applicable security passwords. **THE CONTENTS OF THE PRODUCT WILL BE DELETED AND THE STORAGE MEDIA REFORMATTED IN THE COURSE OF WARRANTY SERVICE.** The Product will be returned to the end user configured as originally purchased, without any user data, subject only to applicable SD software updates. The end user will be responsible for reinstalling and reconfiguring all end user data, settings, and passwords. Recovery and reconfiguration of end user data are not covered under this Limited Warranty.

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Indian Harbour Beach, FL 32937  
Phone: +1.321.777.3000

#### **16. EXCUSABLE DELAY OR NONPERFORMANCE**

SD will not be liable to Buyer for any failure to meet its obligations due to any cause beyond its reasonable control including, but not limited to: government embargoes or any other government acts that interfere with performance; blockades; seizure or freeze of assets; delays or refusals to grant an export license or the suspension or revocation thereof; fires, earthquakes, floods, tropical storms, hurricanes, tornadoes, severe weather conditions or any other acts of God; quarantines or regional medical crisis'; labor

strikes or lockouts; riots, strife, insurrection, civil disobedience, landowner disturbances, armed conflict, terrorism or war, declared or not (or impending threat of any of the foregoing, if such threat might reasonably be expected to cause injury to people or property); and shortages or inability to obtain materials or components. The due date of any performance affected by such an event will be extended by the period of time that SD is actually delayed. If the inability to perform continues for longer than 6 months, either party may terminate the affected Order by providing written notice to the other party.

#### **17. CANCELLATION**

Buyer may cancel any Order or portion of an Order by giving SD written notice specifying the detailed reason for the cancellation only if either SD fails to correct a breach of these Terms and Conditions within 90 calendar days of written notice from Buyer of the breach; or in the event of insolvency or suspension of SD's operations or any petition filed or proceeding commenced by or against SD under U.S. state or federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors.

#### **18. DISPUTES**

- a) For Products delivered in North or South America, any disputes arising under this Agreement shall be governed, interpreted, construed and enforced solely and exclusively in accordance with the law of the State of Florida, without regard to conflicts of law provisions thereof. Venue for any disputes arising under the terms of this Agreement shall be any court of competent jurisdiction physically located in Florida, and the Parties hereto agree to submit to the jurisdiction of the same and do further hereby waive any objection on grounds of *forum non conveniens* or the like. Any judgment awarded will be payable in U.S. dollars. The United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto, shall not apply.
- b) For Products delivered in any country other than one located in North or South America, any disputes arising under this Agreement shall be governed, interpreted, construed and enforced solely and exclusively in accordance with the law of England and Wales, U.K., without regard to conflicts of law provisions thereof. Venue for any disputes arising under the terms of this Agreement shall be any court of competent jurisdiction physically located in London, United Kingdom, and the Parties hereto agree to submit to the jurisdiction of the same and do further hereby waive any objection on grounds of *forum non conveniens* or the like. Any judgment awarded will be payable in U.S. dollars. The United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto, shall not apply.

#### **19. NONDISCLOSURE AND NON-USE OF SATCOM DIRECT'S CONFIDENTIAL DATA AND INFORMATION**

To the extent that SD discloses any information to Buyer that is marked "Confidential", "Sensitive", "Business Proprietary" or in any other way which indicates that it is not for public release, such information will be considered confidential. These Terms and Conditions do not supersede any confidentiality agreement executed by Buyer and SD that otherwise applies to confidential information. In the absence of any express non-disclosure agreement between the Parties, Buyer is hereby authorized to disclose SD's confidential information, but only to Buyer's employees and on a need-to-know basis. Buyer shall protect SD's confidential information against inadvertent disclosure, and will not disclose such information to any third party without SD's prior written consent.

#### **20. INDEMNITY AGAINST PATENT AND COPYRIGHT INFRINGEMENT**

SD will defend Buyer against any suit arising out of any actual or alleged patent or copyright infringement of a valid patent or copyright, to the extent such suit alleges infringement by SD's Product as delivered by SD, and SD shall indemnify Buyer for any final judgment assessed against Buyer resulting from such suit, provided that Buyer notifies SD as soon as it is aware of the third-party claim, and agrees to give sole and complete authority, information and assistance (at SD's expense) for the defense and disposition of the claim. SD will not be responsible for any compromise or settlement made or entered without prior notice to SD.

SD will have no obligation or liability with respect to:

- a) Products provided pursuant to Buyer's designs, drawings or manufacturing specifications;
- b) Products used other than for their ordinary purpose;
- c) claims of infringement resulting from combining any Product furnished hereunder with any article not furnished by SD; or
- d) any modification of the Product other than a modification by SD.

Because SD has exclusive control of resolving infringement claims hereunder, in no event will SD be liable for Buyer's attorney fees or costs.

Further, Buyer agrees to indemnify and defend SD to the same extent and subject to the same restrictions set forth in SD's obligations to Buyer as set forth in this "Indemnity Against Patent and Copyright Infringement" section for any suit against SD based upon a claim of infringement resulting from (a), (b), (c), or (d).

If a claim is brought or if SD believes that a claim is likely, SD may, at its option, and at its expense, (1) procure for Buyer the right to continue using the Product; (2) replace or modify the Product so that it becomes non-infringing; or (3) accept return of the product or terminate Buyer's license to use the allegedly infringing Product and grant Buyer a credit for the purchase price or license fee paid for such Product, less a reasonable depreciation for use, damage, and obsolescence. Further, SD may cease shipping the subject Products without being in breach of these Terms and Conditions .

Any liability of SD under this "Indemnity Against Patent and Copyright Infringement" is subject to the provisions of the "Limitation of Liability" section of these Terms and Conditions .

This "Indemnity Against Patent and Copyright Infringement" section states the parties' entire liability, sole recourse and their exclusive remedies with respect to infringement. All other warranties against infringement of any intellectual property rights, statutory, express, or implied are hereby disclaimed.

## **21. SOFTWARE LICENSE**

**"Licensed Software"** means software, including all related updates, changes, revisions and documentation, if any, that Buyer is entitled to use under these Terms and Conditions and which is not subject to a separate software license between the parties.

Subject to Buyer's compliance with these Terms and Conditions , SD grants to Buyer and Buyer accepts a nontransferable, nonexclusive license, without the right to sublicense, to use the Licensed Software in the ordinary and normal operation of the Product on which it is installed or with which it is intended to be used under this license.

SD (and its licensors, if applicable) retains all title to the intellectual property related to all material and software provided under these Terms and Conditions.

Buyer may transfer its license to use the Licensed Software to a third party only in conjunction with Buyer's sale of any SD or Buyer Product on which the Licensed Software is installed or with which it is used. Buyer's transfer of the Licensed Software as authorized herein must be under terms consistent with and no less stringent than the terms set forth in these Terms and Conditions . Except as specifically permitted in these Terms and Conditions , the Licensed Software may not be sublicensed, transferred or loaned to any other party without SD's prior express written consent.

Unless specifically authorized by SD in writing, Buyer is prohibited from making copies of Licensed Software except for backup purposes. Buyer will reproduce and include all SD proprietary and copyright notices and other legends both in and on every copy made.

Buyer may not directly or indirectly make any effort to deconstruct the software provided, including, but not limited to: translating, decompiling, disassembling, reverse assembling, reverse engineering, creating derivative works or compilations, or performing any other operation to obtain any portion of its contents. Buyer will take all reasonable actions necessary to prevent unauthorized access, disclosure or use of the software provided.

Notwithstanding the warranties provided elsewhere herein, Buyer acknowledges that Licensed Software may be product, aircraft, or sensor specific and, as such, may require reasonable adjustment or refinement to suit Buyer's specific requirements. Subject to the receipt of adequate written notice and reasonable aid from Buyer, SD will make reasonable, commercial efforts to accomplish reasonable adjustments or refinements for up to 90 calendar days after initial delivery of the Licensed Software.

Except as expressly granted herein, no license or right, including sublicensing rights, either expressly, implicitly, by estoppel, conduct of the parties, or otherwise, is granted by SD to Buyer.

## **22. SPECIAL TOOLING AND DATA**

Special tooling includes, but is not limited to, jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids and replacements items, now existing or hereafter created. SD owns all rights to special tooling including specifications, drawings, engineering instructions, data, material, equipment, software, processes, and facilities, except to the extent that title is specifically transferred in writing from an authorized representative of SD to Buyer. SD

retains all rights, title and interest in drawings, engineering instructions, specifications, and all other written data, if any furnished with the products.

### **23. EXPORT**

SD will apply for United States Government export authorizations required for delivery of any goods, services or technical data under an Order. Buyer will promptly provide all information required by SD to complete the authorization application. Buyer will apply for all other necessary import, export or re-export approvals. Buyer will comply with all applicable export and import control laws and regulations, including the United States Export Administration Regulation (EAR). Buyer is aware that U.S. export law may impose restrictions on Buyer's use of the goods, services, or technical data, or on their transfer to third parties. Buyer will immediately notify SD and cease distribution activities with regard to the transaction in question if Buyer knows or has a reasonable suspicion that the products, technical data, plans, or specifications may be redirected to other countries in violation of export control laws.

SD will not be liable to Buyer for any breach resulting from government actions which impact SD's ability to perform, including but not limited to: (1) refusal to grant export or re-export license; (2) cancellation of export or re-export license; (3) any subsequent interpretation of United States export laws and regulations, after the date of SD's acceptance of an Order, that limits or has a material adverse effect on the cost of SD's performance under an Order; or (4) delays due to Buyer's failure to follow applicable import, export, transfer, or re-export laws and regulations.

If Buyer designates the freight forwarder to be used for export shipments from the United States, then Buyer's freight forwarder will export on Buyer's behalf and Buyer will be responsible for any failure of Buyer's freight forwarder to comply with all applicable export requirements. SD will provide Buyer's designated freight forwarder with required commodity information.

### **24. TAXES**

SD's pricing excludes all taxes (including, but not limited to, sales, use, excise, value-added or other similar taxes), duties and charges (collectively, "Taxes"). Buyer will pay all Taxes resulting from an Order or SD's performance, whether imposed, levied, collected, withheld or assessed now or later. If SD is required to impose, levy, collect, withhold or assess any Taxes on any transaction under an Order, then in addition to the purchase price, SD will invoice Buyer for the Taxes unless, at the time of Order placement, Buyer furnishes SD with an exemption certificate or other documentation sufficient to verify exemption from the Taxes.

If any Taxes are required to be withheld from amounts paid or payable to SD under an Order, then Buyer shall not deduct such withholding amount from any amount due SD. Buyer shall pay the Taxes on behalf of SD to the relevant taxing authority in accordance with applicable law, and shall forward to SD within 60 days of payment proof of Taxes paid sufficient to establish the withholding amount and the recipient.

In no event will SD be liable for Taxes paid or payable by Buyer.

### **25. NOTICES**

Every notice between the parties relating to an Order will be made in writing and, if to Buyer, to Buyer's authorized representative or, if to SD, to SD's authorized representative. Notices will be deemed received when delivered either:

1. Two (2) calendar days after mailing by certified mail, return receipt requested and postage prepaid; or
2. One (1) business day after deposit for next day delivery with a commercial overnight carrier provided the carrier obtains a written verification of receipt from the receiving party.

All notices must be addressed as follows:

If to Satcom Direct:

[Satcom Direct International](#)

Farnborough Airport, Hangar 2

Farnborough, Hampshire GU14 6XA, UK

+44.1252.554.460 (Office)

Email: [sales@satcomdirect.co.uk](mailto:sales@satcomdirect.co.uk)

If to Buyer:

Either to any address shown on Buyer's Order or otherwise to Buyer's purchasing representative, if known by SD.

## 26. GENERAL PROVISIONS

- a) **Rejection of contrary terms/no waiver** Contrary terms proposed by Customer are rejected. Lack of objection to contrary terms by SD is not a waiver of these Terms and Conditions, or any of them. Neither course of dealing nor and course of trade shall operate to vary these Terms and Conditions. Buyer's silence or acceptance or use of Products is acceptance of these Terms and Conditions. Any modification or addition to these Terms and Conditions must be in writing and signed by an authorized representative of Buyer and SD.
- b) **Assignment.** Neither Party will assign any rights or obligations under these Terms and Conditions without the advance written consent of the other Party, which consent will not be unreasonably withheld. Either Party may assign these Terms and Conditions in connection with the sale or transfer of all or substantially all of the assets of the product line or business to which it pertains. Any attempt to assign or delegate in violation of this clause will be void.
- c) **Waiver.** Failure of either party to enforce at any time any of the provisions of these Terms and Conditions will not be construed to be a continuing waiver of any provisions hereunder.
- d) **Severability.** If any provision or portion of a provision of these Terms and Conditions is determined to be illegal, invalid, or unenforceable, that portion or provision will be stricken and the validity and enforceability of the remaining provisions will not be affected.
- e) **Third-Party Beneficiaries.** Except as expressly provided to the contrary in these Terms and Conditions, the provisions of these Terms and Conditions are for the benefit of the parties to these Terms and Conditions only and not for the benefit of any third party.
- f) **Headings.** Headings and captions are for the convenience of reference only and do not alter the meaning or interpretation of these Terms and Condition.
- g) **Commercial Use.** Buyer represents and warrants that all purchases of Products hereunder will not be used in the performance of a contract or subcontract with any government in a manner so as to affect SD rights to data, technology, software or other intellectual property supplied by SD.
- h) **Survival.** All rights, duties and obligations which by nature should apply beyond the term of SD's obligations under an Order shall remain in force after the acceptance and complete performance of any Order.
- i) **Merger.** The terms contained in these Terms and Conditions, together with any accepted by SD, constitutes the entire agreement between Buyer and SD with respect to an Order and supersede any prior agreements and representations, oral or written, and all other communications between Buyer and SD relating to an Order.