

## GENERAL CONDITIONS

The performance of work or sale of items described herein shall be governed by the terms and conditions of the written contract for such work or sale. If no such contract exists, only the following conditions apply:

**1. PRICES AND CHANGES** - Buyer shall pay (a.) the prices specified in this contract, or if not specified, Mackay Communications' prices in effect at time of shipment of work completion; (b.) for all items (components, parts, equipment, materials or services) not explicitly set forth in the contract and requested by Buyer or made necessary because of incomplete or inaccurate information from Buyer; (c.) unless prohibited by law, the amount of any tax Mackay Communications must pay on its work or because of its ownership, manufacture, transportation, sale or use of the items sold; and (d.) transportation charges. If equipment performance or utility is not materially and adversely affected, Mackay Communications may modify the items sold or their specifications and substitute equipment of another design. Buyer requested contract changes require Mackay Communications' prior written consent. Any such charges will result in an equitable and/or extension of performance time. If the parties do not agree on a price increase and Mackay Communications elects to continue performance to avoid delays, Buyer will pay Mackay Communications' reasonable estimate of the additional work's value.

**2. TERMS OF PAYMENT** - Unless progress payments determined reasonably by Mackay Communications are required (if the prices exceed \$50,000) or Mackay Communications decides reasonably that Buyer's financial condition makes advance payment necessary before contract completion, payment shall be made 30 days net from shipment or work completion. If Buyer delays contract completion, Buyer shall pay on Mackay Communications' specified reasonable pro-rata terms. Overdue payments shall carry 18% per annum interest charges or the legal maximum rate, whichever is lower. Buyer shall pay Mackay Communications' collection or litigation expenses, including reasonable attorney fees.

**3. DELAYS** - When circumstances beyond Mackay Communications' reasonable control occur, the time for contract completion shall be extended to compensate for any resulting delay for a period of time at least equal to the duration of those circumstances. Such circumstances include, but are not limited to, Buyer's acts or omissions, Acts of God, Government actions, labor disputes or shortages, civil disturbances, fires, floods, public health matters, transportation delays, plant accidents, and material or facility procurement delays.

**4. TITLE AND RISK OF LOSS** - Title and risk of loss shall pass to Buyer at the F.O.B. point specified in the contract. If Buyer causes a delay in contract completion, Buyer shall pay Mackay Communications' usual storage charges and the contract prices 30 days after receipt of Mackay Communications' notice that the items sold are ready for shipment. Risk of loss shall pass to Buyer as of the date Mackay Communications receives Buyer's postponement request. Notices of shortages or rejections for improper packing (not in accordance with Mackay Communications' usual packing methods) shall be given within 30 days after receipt of the items involved.

**5. TESTING, INSTALLATION, SUPERVISION AND INSPECTION** - Testing procedures shall be those specified in this contract or Mackay Communications' usual testing procedures. When installation is required, Buyer shall have everything in readiness for installation and shall reimburse Mackay Communications for expenses caused by Buyer's failure to be ready. Movements of items to and from Buyer's sites shall be at its expense. Mackay Communications will notify Buyer when testing and/or installation is complete and the items sold shall be deemed to have been accepted when they reach the contract's specifications. Unless notice of any defects is given to Mackay Communications promptly after completion of testing and/or installation, the items shall be deemed to have met such specifications. At Buyer's request, Mackay Communications will provide supervision of unpacking, assembly, installation, testing, and adjusting of equipment or inspection thereof at Mackay Communications' charges then prevailing in its personnel's base operations area, including overtime hours (more than 8 in any work day or 40 hour work week) and actual travel and living expenses.

**6. WARRANTY** - Mackay Communications warrants (a.) that all work shall be free from defects in workmanship or 90 days from work completion; (b.) that all parts (supplies and materials) shall be free from defects in material and workmanship for 90 days from Mackay Communications' shipment or installation date, whichever is applicable. If a defect occurs within the warranty period, Buyer shall notify Mackay Communications immediately and Mackay Communications shall (a.) correct defective work; (b.) at its option, repair or replace - but not install - any defective parts returned to Mackay Communications' designated location, shipping charges prepaid by Buyer on the return to Mackay Communications and paid by Mackay Communications on the subsequent return to Buyer; or (c.) repair or replace defective parts without extra charge for parts or labor during Mackay Communications' normal working hours and within a 25 mile radius of those Mackay Communications Service Depots where on-call technicians are then available. Items furnished by other vendors and not incorporated into the equipment sold by Mackay Communications shall only have the vendor's warranty, which shall be passed on to Buyer.

This warranty does not apply to defects not caused by Mackay Communications (for example, accidents or abuse, work done improperly or contrary to Mackay Communications' standards) or to equipment on which the serial numbers, manufacture or shipment dates are changed or removed. NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY.

**7. LIMITATION OF LIABILITY** - Mackay Communications shall not have any liability of any kind under this contract unless Buyer gives Mackay Communications notice of its claim within 30 days after the date Buyer knows or should know of its claim and files suit against Mackay Communications within 1 year after such date.

WHETHER OR NOT CAUSED BY MACKAY COMMUNICATIONS' NEGLIGENCE, MACKAY COMMUNICATIONS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL CONSEQUENTIAL, OR OTHER DAMAGES, HOWEVER CAUSED (INCLUDING LATE DELIVERY). MACKAY COMMUNICATIONS' OBLIGATION TO CORRECT, REPAIR, OR REPLACE IN ACCORDANCE WITH SECTION 7. WARRANTY SHALL BE BUYER'S EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY OR FOR NEGLIGENCE. MACKAY COMMUNICATIONS ENTIRE LIABILITY TO BUYER SHALL NOT EXCEED THE REPAIR OR REPLACEMENT VALUE, WHICHEVER IS LOWER, OF THE DEFECTIVE ITEM.

**8. TERMINATION** - If Buyer terminates any part of this contract, unless due to Mackay Communications default, Mackay Communications shall be entitled to recover all costs (direct and indirect, including reasonable general and administration expenses), as determined by Mackay Communications' standard accounting practices, incurred in performing and preparing to further perform as of the termination date, plus a reasonable profit on the contract. Buyer shall pay Mackay Communications' collection or litigation expenses, including reasonable attorney fees.

**9. APPLICABLE LAW** - North Carolina, USA law shall govern this contract's validity and interpretation.

**10. ASSIGNMENT** - No assignment of this contract by Buyer shall be valid without Mackay Communications' prior written consent.

**11. NOTICES** - Notices under this contract shall be first class mail, deemed given when received, and, when given to Mackay Communications, sent to the Manager of the *Mackay Communications Service Depot* performing this Work Order.

**12. WORK TERMS** - Mackay Communications reserves the right to determine the number of persons necessary to perform service work. Unless otherwise notified by Buyer, Mackay Communications will exercise its best judgment in performing labor at overtime rates. Certain union regulations require that rigging, cabling, cable hookups and certain other repairs be performed by outside contractors. The minimum charge per service call will be 4 hours, including travel time, plus expenses. Service calls in excess of 6 consecutive hours straight time will be charged as a full day.

**13. ENTIRE CONTRACT** - These General Conditions and Mackay Communications' written technical proposal constitute the entire contract. This contract represents the entire agreement between the parties and shall be incorporated into any order document from Buyer. No other amendments shall bind Mackay Communications unless in writing and signed by an authorized Mackay Communications representative. Terms or conditions in Buyer's order which add to or vary these General Conditions have no force or effect.