

## TERMS AND CONDITIONS OF SALE AND LICENSE

1. General. The following terms and conditions apply to all satellite telecommunications systems and manufacturers products (the "Products") sold or licensed to you ("Buyer") by National Public Radio, Inc. ("NPR"). All orders are subject to acceptance by NPR. Except as specified in Section 2, orders cannot be cancelled without NPR's written consent.
2. Prices. Product prices are as stated in the Attachment to these Terms and Conditions, "Products and Prices," and are exclusive of taxes, freight, and other applicable charges. Prices can change at any time. NPR will notify Buyer of any change in price prior to NPR's acceptance of Buyer's order and will provide Buyer with the opportunity to cancel its order at that time.
3. Payment. Payment in full must be received by NPR prior to shipment. Payment shall be net thirty (30) days from date of invoice. Late payments shall accrue interest at the rate of one percent (1%) per month.
4. Delivery. All sales and deliveries of Products shall be F.O.B. NPR's principal place of business. Buyer is responsible for all transportation, insurance, and other applicable charges. NPR will attempt to fill Buyer's order as promptly as practical following receipt of payment in full, subject to delays caused by manufacturer, transportation shortages, acts of God, or other cause beyond NPR's control. NPR shall incur no liability for any delay in delivery.
5. Title and Risk of Loss. Title to the Products shall pass to Buyer upon payment and delivery. Buyer shall bear all risk of loss and shall be liable for any loss or damage to the Products upon delivery of the Products to a carrier by NPR.
6. Software License. Notwithstanding Section 5, Buyer acknowledges and agrees that title to any software included in the Products delivered to Buyer remains with the manufacturer. Buyer is hereby granted a nonexclusive sublicense to use such software in the United States and its territories. Buyer acknowledges and agrees that the manufacturer would be irreparably damaged by any breach of this Section 6, that money damages would be extremely difficult to ascertain, and that the manufacturer shall be entitled to obtain an injunction to enforce the limitations on use contained in this Section 6.
7. DISCLAIMER OF WARRANTIES.
  - (a) BUYER ACKNOWLEDGES THAT NPR IS NOT THE MANUFACTURER OF THE EQUIPMENT, NOR THE AGENT OF THE MANUFACTURER AND THAT NPR HAS MADE NO REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO: THE DESIGN, CONDITION OR PERFORMANCE OF THE EQUIPMENT, ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EQUIPMENT, THE CONFORMITY OF THE EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY LAW, RULE, REGULATION, CONTRACT OR PURCHASE ORDER, OR WITH RESPECT TO PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT OR THE LIKE, OR LATENT DEFECTS. NPR EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES. AS TO NPR, BUYER LEASES THE EQUIPMENT "AS IS, WHERE IS".
  - (b) BUYER AGREES THAT NPR SHALL NOT BE LIABLE TO THE BUYER FOR ANY CLAIM, LOSS OR DAMAGE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHERWISE, INCLUDING WITHOUT LIMITATION, LOSS OF PROFIT, LOSS OF BUSINESS, OR OTHER FINANCIAL LOSS, WHICH MAY BE CAUSED, DIRECTLY OR INDIRECTLY, BY THE EQUIPMENT, THE INADEQUACY OF THE EQUIPMENT FOR ANY PURPOSE OR ANY USE THEREOF, BY ANY DEFICIENCY OR DEFECT THEREIN, OR BY ANY INCIDENT WHATSOEVER IN CONNECTION THEREWITH, ARISING IN STRICT LIABILITY, NEGLIGENCE, CONTRACT, TORT OR OTHERWISE, OR IN ANY WAY RELATING TO OR ARISING OUT OF THE EQUIPMENT, THIS AGREEMENT OR ANY OTHER BUYER ORDER. BUYER ASSUMES THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE PRODUCTS. NPR SPECIFICALLY DOES NOT WARRANT THAT THE PRODUCTS WILL MEET BUYER'S REQUIREMENTS OR OPERATE WITHOUT INTERRUPTION OR ERROR.
8. Repairs. NPR agrees to make available to Buyer any benefits NPR is entitled to under NPR's limited Product warranty from the manufacturer. At the time of shipment, NPR will advise Buyer as to the number of days remaining under NPR's warranty from the manufacturer, if any. In the event of a defect in a Product's

materials or workmanship during this time period, Buyer may return the Product to NPR for replacement or repair of defects without charge, or return of the purchase price, at NPR's option. Buyer agrees to provide NPR and/or the manufacturer with all information and access necessary to investigate any such claims. The foregoing remedy shall not be available for any Product (or part thereof) that has:

- (a) had the serial number or other identification marking altered, removed, or rendered illegible, by other than the manufacturer personnel;
- (b) been damaged by, or subject to, improper installation or operation, misuse, or neglect, fire, flood, lightning, government action, or other extraordinary condition beyond the reasonable control of NPR.
- (c) been repaired or otherwise altered by other than the manufacturer personnel;
- (d) been subject to the opening of any cabinet boxes without the manufacturer 's prior written consent; and/or
- (e) been used in any way other than in compliance with the manufacturer 's installation and operation instructions provided with the Product.

Buyer must receive from NPR a written Return Material Authorization ("RMA") number for each Product before returning it for repair. If no RMA number is included, NPR will not be obligated to accept any Product returned, nor to make any exchange, repair, or replacement. Buyer is responsible for all transportation, insurance, and related costs associated with returning a Product for repair (including NPR's costs associated with shipment to the manufacturer). Buyer shall not be responsible for costs associated with return shipments to Buyer.

- 9. LIMITATION OF LIABILITY. NPR SHALL NOT BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, OR OTHER SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES SUFFERED BY BUYER, OR ANY OTHER ENTITY, RESULTING FROM THE USE OF, OR INABILITY TO USE, ANY OF THE PRODUCTS, EVEN IF NPR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NPR'S TOTAL CUMULATIVE LIABILITY, FOR ALL EVENTS GIVING RISE TO LIABILITY, WHETHER IN CONTRACT OR IN TORT, SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY BUYER FOR THE PRODUCTS.
- 10. Export. Buyer agrees that it will not, directly or indirectly, export the Products, or any technical information about the Products, to any country for which the United States Export Administration Act, any regulation thereunder, or any other U.S. law or regulation, requires an export license or other U.S. Government approval, unless the appropriate export license or approval has been obtained.
- 11. Indemnity. Buyer shall indemnify NPR and hold it harmless from all costs, expenses (including attorneys' fees), losses, liabilities, damages, and settlements that NPR may incur as a result of any claim or suit resulting from Buyer's breach of any of these Terms and Conditions.
- 12. Entire Agreement. These Terms and Conditions (including the Attachment) constitute the entire and exclusive agreement of the parties with regard to their subject matter and supersede and control over all other terms and conditions in any other verbal or written communication (including any Buyer purchase order) previously or hereafter delivered. These Terms and Conditions may only be changed or supplemented by a written agreement executed by both NPR and Buyer.
- 13. Waiver. None of the Terms and Conditions shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have granted the waiver or consent.
- 14. Severability. Should any of the Terms and Conditions violate any law, or be held invalid or unenforceable by a court, then such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties, in accordance with applicable law, and the remainder of the Terms and Conditions shall remain in full force and effect.
- 15. Governing Law. These Terms and Conditions will be governed by and construed in accordance with the laws of the District of Columbia without reference to its rules regarding conflicts of law. Any disputes under this Agreement shall be litigated in the local or Federal courts located in the District of Columbia.

16. Assignment. NPR may assign any or all of its rights or delegate any or all of its obligations hereunder to any entity.
17. Additional Product(s). Once this Agreement is fully executed and delivered, Buyer may order additional Product(s) by phone or facsimile order. Such order(s) and the subject Product(s) shall be deemed to be automatically subject to the Terms and Conditions of this Agreement; provided, however, that Product prices (as set forth in Attachment A) may vary. In the event of any such price variation, NPR will advise Buyer of any price variation within 15 days of Buyer placing its order. NPR will issue you a revised Attachment A (showing the additional Product ordered and applicable pricing) within 30 days of your order.

AGREED AND ACCEPTED:

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NATIONAL PUBLIC RADIO, INC.

By: \_\_\_\_\_

BUYER

Name: \_\_\_\_\_  
(Print full name of organization)

James B. Elder  
Vice President for Finance &  
Administration

By: \_\_\_\_\_  
(Authorized Signature)

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(Print full name of authorized signatory)

Title: \_\_\_\_\_

Buyer's Taxpayer ID Number: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT A - PRODUCTS AND PRICES**

<u>PRODUCT DESCRIPTION</u>	<u>EACH</u>	<u>QUANTITY</u>	<u>TOTAL</u>
Comstream ABR202 BPSK/QPSK Multirate Digital Audio Receiver	\$ 1,450.00	_____	\$ _____
C-Band PLL-LNB	\$ 315.00	_____	\$ _____
Shipping & Handling (per ABR202) (\$25 for UPS Ground, \$40 for 2nd Day, \$75 for Overnight)			\$ _____
Sales Tax (DC - (5.75%), NY (8.25%), IL (6.25%), CA (8.25%), OH (5.00%), AL (4.00%+CR)) (CT (6.00%), GA (4.00%+CR), LA (4.00%), OH (5.00+CR), NJ (6.00))			\$ _____
<b>****Please provide proof of tax exemption if applicable****</b>			
GRAND TOTAL			\$ _____

AGREED AND ACCEPTED:

\_\_\_\_\_  
Company Name

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip Code

Date: \_\_\_\_\_

Ship to:

Company \_\_\_\_\_

Street \_\_\_\_\_

City, St, Zip \_\_\_\_\_

Attn: \_\_\_\_\_

Phone # \_\_\_\_\_

(Please include to the attention of  
and a phone number)

Credit Card Orders:

<b>MasterCard/VISA #:</b> _____
<b>Exp Date:</b> _____
<b>Billing Name:</b> _____

Mail w/ payment to:

NPR Satellite Services, Attn: Andrew Rennell, 635 Massachusetts Ave., NW, Washington, DC 20001

\*Please note, orders cannot be processed without receipt of payment.