



## Standard Terms and Conditions of Sale for GATESAIR

By submitting a purchase order, signing the Quote, or placing an order via the GATESAIR eCommerce website, the Customer agrees that these terms and conditions will govern the supply by the Seller (Note: eCommerce orders are supplied by GATESAIR) and the purchase by the Customer of the Equipment, Software licenses and/or Services described in the Quote, purchase order, and/or the eCommerce website.

### 1. Definitions

In addition to the terms defined elsewhere in this Agreement, the following terms used in this Agreement have the following meanings:

- a. **Agreement:** Collectively, the Terms and Conditions of Sale, the Quote, the Order and the Order Acknowledgement. In the event of a conflict between any term of the Terms and Conditions of Sale, the Quote, the Order and the Order Acknowledgement, the terms of the Terms and Conditions of Sale will prevail.
- b. **Component:** A separately identifiable, removable part contained within the Equipment.
- c. **Confidential Information:** All information or ideas relating to Seller and/or Seller affiliates, Goods, and Services that is designated as proprietary and confidential or that Customer should reasonably know is confidential, regardless in each case of form, format, or media (including information disclosed orally). Software and Licensed Seller Materials are the Confidential Information of Seller.
- d. **Customer:** The purchaser of Equipment, Software licenses, or Services from Seller.
- e. **Equipment:** Any hardware, including Components, and excluding any Software or Services to be provided under the Agreement;
- f. **Goods:** Collectively, the Equipment and Software licenses to be provided under the Agreement.
- g. **Order:** The Customer's purchase order and/or, if signed by the Customer, the Quote.
- h. **Order Acknowledgement:** Seller's standard acknowledgement form, which signifies Seller's acceptance of an Order.
- i. **Quote:** The price quotation of Seller itemizing the Goods and Services and their related purchase price being offered to the Customer, together with all its exhibits, including without limitation the technical proposal, technical specifications, scope of work and any maintenance or other agreement specifically referenced in the price quotation and included in the purchase price.
- j. **Seller:** The GATESAIR entity identified in the Order.
- k. **Seller Affiliate:** An entity controlling, controlled by, or under common control with Seller.
- l. **Services:** Installation, warranty, maintenance support, integration, or other services to be provided to the Customer as part of this Agreement
- m. **Service Level Agreements:** After-warranty product or support services or additional product or support services during the relevant warranty periods, as described in Section 10 of this Agreement.
- n. **Software:** The individual executable programs as itemized in the Order and to be provided as a part of this Agreement including the data structures accessed internally by such executable programs; any source code, custom code, file layouts, database dictionaries or other file schema that may be provided for use with such executable programs; all manuals, configuration lists and other associated documentation material procured under this Agreement including, without limitation, any computer or web-based training materials; all data and information obtained via Seller's websites or portals; and any updates, enhancements, upgrades or subsequent versions to any of the foregoing.
- o. **Terms and Conditions of Sale:** These Standard Terms and Conditions of Sale for GATESAIR.

### 2. Quotes/Orders

- a. **Validity of Quote:** All Quotes automatically expire and become void after thirty (30) days unless Seller transmits an Order Acknowledgement to the Customer in response to an Order. Seller's acceptance of an Order after the validity period of the Quote may be subject to changes in prices, terms and specifications, which will be reflected in the Order Acknowledgement. Upon any such change by Seller, the Customer may cancel the Order by written notice to Seller within ten (10) days after the Customer's receipt of the Order Acknowledgement; if Seller does not receive such written notice, then changes made by Seller in the Order Acknowledgement will be deemed accepted by the Customer. If the Customer cancels the Order pursuant to this Section, Seller will refund to the Customer any advance payment made by the Customer without interest or penalty.
- b. **Order Acceptance:** Seller's acceptance of an Order is contingent upon approval of the Customer's credit. Any additional or conflicting terms and conditions contained in a purchase order or other document provided by the Customer are superseded by these Terms and Conditions of Sale and are void, unless expressly accepted in writing and signed by an authorized representative of Seller. Seller may within a reasonable time reject any Order with or without cause with no liability to the Customer. Upon Seller's rejection of any Order, Seller will refund to the Customer any advance payment made by the Customer with the Order without interest or penalty.
- c. **Changes to Orders:** Seller may substitute Goods of a different model, nomenclature or design than that described in the Order without notice, provided that such substitutions do not materially adversely affect the fit, form, or function of the Goods. Prior to shipment of the Order, Seller may review requests by the Customer for changes to the Order. Acceptance of any changes requested by the Customer will be at Seller's discretion, and any changes may result in additional charges to the Customer.
- d. **Delivery:** Seller may ship in any manner convenient to Seller unless Customer specifies a shipping method in the Order. The delivery date quoted by Seller (the "Scheduled Delivery Date") is an estimate and subject to modification. Seller will use reasonable efforts to comply with the Customer's requested shipping schedule if the Customer furnishes all information necessary to permit Seller to complete the Order. Seller may make, and the Customer agrees to accept, shipments in more than one lot; payment for each lot shall be due accordingly. In no event will time be of the essence regarding the Scheduled Delivery Date.
  - (1) **Delay by the Customer:** The Customer shall take delivery of the Goods and Services on the Scheduled Delivery Date and shall not delay delivery of the Goods or Services without Seller's consent. If the Customer delays delivery of Goods or Services, such delay may give rise to a price increase by Seller for the Goods or Services prior to shipment of Goods or rendering of Services, and the Customer agrees to pay all costs associated with such delay, including without limit any storage expenses, and payments are to be made by the Customer as though shipment had been made or Services performed as scheduled. Title and risk of loss for Equipment placed in storage will be passed to the Customer upon placement of the Equipment into storage and the warranty will start on that date. If the Customer delays delivery of the Goods or Services for a period of more than ninety (90) days beyond the Scheduled Delivery Date, then Seller may cancel the Order by written notice to the Customer. Upon any cancellation pursuant to this provision, Seller will be entitled, as a minimum, to all costs actually incurred up to the time of cancellation, plus a fair and reasonable pro rata profit on such cost. Seller will prepare a cancellation notice and an invoice containing the applicable cancellation charges for submission to the Customer, which amounts will be due and payable upon receipt.

(2) Excusable Delay. Seller will be excused from performance under this Agreement and not be liable to the Customer for delay in performance attributable in whole or in part to any cause beyond its reasonable control, including, but not limited to, actions or inactions of government whether in its sovereign or contractual capacity, judicial action, war, civil disturbance, insurrection, sabotage, act of public enemy or terrorism, labor difficulties, failure or delay in delivery by Seller's suppliers or subcontractors, failure in any third-party telecommunications network, transportation difficulties, shortage of energy, materials, labor or equipment, accident, fire, flood, storm or other act of nature, the Customer's fault or negligence or where compliance with any applicable environmental law or regulation by Seller is not reasonably technologically or economically feasible, or would otherwise require Seller to change its manufacturing process. In the event of an excusable delay, Seller will make reasonable efforts to notify the Customer of the nature and extent of such delay and (i) Seller will be entitled to a schedule an extension on at least a day-to-day basis, and (ii) if the delay is caused by the Customer's fault or negligence, Seller will be entitled to an equitable adjustment in price under this Agreement.

e. Shipment. Unless otherwise agreed in writing by the parties, all prices and terms are Ex Works Seller facility (Incoterms 2010) and are exclusive of freight and handling charges. All freight and handling charges indicated in a Quote are estimates only. Unless otherwise agreed by the parties in writing, the Customer will pay for all freight and handling charges to the Customer's destination and such charges will be added to the Seller invoices or paid directly by the Customer. The method of shipment normally will be determined by the Order, but if no carrier or method of shipment is specified Seller will select a carrier as a convenience to the Customer. Title to and risk of loss for Equipment and Software media sold under this Agreement will pass to Customer upon shipment.

f. Transportation Insurance. Unless otherwise agreed in writing by the parties, the Customer shall obtain transportation insurance on the Equipment and Software media.

g. Discontinued Availability/Last Time Buy. Unless otherwise agreed in writing by the parties, the Customer acknowledges that Seller has made no representation about the continued availability of the Equipment listed in any Order. Seller reserves the right, in its absolute discretion, with or without notice, without incurring any liability to the Customer or otherwise, whether in contract or tort, to discontinue manufacturing or selling any of the Equipment listed in any Order at any time. Seller may, within its discretion, provide the Customer with a limited time opportunity to purchase such quantities of the Equipment as the Customer estimates it may need ("last time buy"). The Customer's last time buy rights are limited to products available in Seller's inventory at the time of the Customer's request.

### **3. Payment Terms, Taxes, Security Interest, Insurance, and Invoicing for Demonstration, Loan, or Rental Goods**

a. Payment Terms. Unless otherwise specifically stated in the Agreement, all billed charges are due prior to shipment of the Goods or performance of the Services. An invoice delivered by fax machine or by electronic means will have the same effect as an original. All balances past due will be subject to an annual finance charge of the lesser of eighteen (18) percent or the highest rate permitted by law, and Seller may, without requirement of further notice, (i) elect to suspend further deliveries under such Order and/or any other Order with the Customer, (ii) suspend warranty Services and/or Services under a Service Level Agreement until such past due payments are received and/or (iii) terminate the Agreement.

b. Taxes. All prices are exclusive of all sales, use, excise, VAT, GST, withholding and other taxes, duties, or charges. Unless valid evidence of tax exempt status is provided by the Customer, the Customer will be liable and will indemnify Seller for all such taxes related to any Order.

c. Security Interest. As security for the full and prompt payment of all amounts and obligations owed by the Customer to Seller hereunder, the Customer grants to Seller a security interest in all Equipment supplied by Seller to the Customer hereunder and all proceeds thereof (collectively "Collateral"). Such security interest is and will continue to be a first-priority security interest in the Collateral whether by virtue of the priority accorded purchase-money security interests under the applicable Uniform Commercial Code (the "UCC") or otherwise. The Customer shall take all actions Seller deems necessary or desirable to enable Seller to perfect such security interest and maintain its first priority. The Customer irrevocably authorizes Seller to file financing statements and amendments thereto in such places as Seller deems necessary or desirable (without the Customer's signature where permitted by applicable law). If the Equipment will be inventory in the Customer's hands, the Customer agrees that Seller may notify others claiming security interests in the Customer's inventory of Seller's purchase-money security interest prior to supplying any Equipment to the Customer.

d. Insurance. If an Order for Equipment involves deferred payments, at Seller's request, the Customer shall procure and maintain insurance against fire and extended coverage perils in an amount equal to the full value of the Equipment, with loss first payable to Seller as its interest may appear. The Customer shall furnish to Seller evidence of such insurance upon request.

### **4. Termination of Agreement**

Either party may terminate the Agreement due to a material violation of the terms of the Agreement that continues unremedied for sixty (60) days following notice to the other party of such default. Nothing in this Agreement will prejudice either party's other remedies at law or equity as may be limited by this Agreement. If the Customer becomes insolvent, is the subject of any bankruptcy or insolvency proceedings, then Seller may declare all amounts and obligations of the Customer owed to Seller hereunder immediately due and payable and, if applicable, Seller shall have the rights and remedies of a secured party under the UCC. The following Sections will survive termination of this Agreement: 3.a, 3.b, 4, 8, 11, 13, 14.h.

### **5. Installation, Maintenance, and Other Services**

a. Except as otherwise expressly stated in this Agreement, the Customer is responsible for the prompt installation and proper maintenance of all Equipment and Software in accordance with Seller's published instructions and good engineering practice. The Customer also shall employ sufficient technically qualified personnel and have available the proper equipment necessary for maintenance. Seller's warranty of Equipment and Software furnished under this Agreement is conditioned on such prudent practices on the Customer's part.

b. Any Services provided by Seller will commence when all necessary Goods are delivered to the site. Prior to Seller providing any Service, (i) the parties will mutually agree to a schedule for the performance of the Services which shall be outlined in a separate statement of work; (ii) the Customer shall provide timely decisions and approvals to Seller, upon which Seller will be entitled to rely, (iii) the Customer shall make available to Seller, at no charge, all personnel, information, services, security, and facilities reasonably required by Seller for the performance of the Services, (iv) procure all necessary permits, licenses and consents required for Seller to perform the Services, (v) prepare the installation site as necessary for the installation of the Goods, including without limit any facilities modification and/or construction, HVAC, communications, electrical and RF grounding work that may be required to support installation of the Goods; and (vi) ensure that the site is free of construction dust and paint overspray and is unencumbered by tradesmen or their materials. The Customer represents and warrants to Seller that the site is an asbestos-free environment and is free of other safety and health hazards to personnel.

c. Seller is not responsible for (i) work done by any parties not engaged by Seller, including contractors hired by the Customer; (ii) any items that are not specified in the Order or an approved change order; and (iii) proper operation of equipment supplied by other vendors.

d. Additional labor requirements beyond the scope of work statement set forth in the Quote will require prior approval from Seller, and such changes may result in additional charges.

e. Seller, in its sole discretion and without notice, may utilize subcontractors, or assign to any Seller Affiliate any and all obligations to perform Services under this Agreement.

## 6. Equipment Return Policy

Customer shall not return any Equipment without Seller's prior authorization. Upon authorization, Seller will issue a return authorization number, which number must appear on each individual package being returned. Seller may refuse shipments of Equipment returned without return authorization numbers. All Equipment being returned for credit must be returned within thirty (30) days from the Customer's receipt of such Equipment and in good condition. Seller will inspect all Equipment returned. If there is damage, wear and tear, or if there are missing Components or accessories, the Customer shall pay for repair/refurbishment of the returned Equipment and the applicable restocking fee. All questions regarding the Seller Product Return Policy must be directed to the appropriate Seller Technical Support Department. The Customer will (i) package and pack the Equipment being returned in a manner which is in accordance with good commercial practice and adequate to ensure safe arrival of such Equipment at the named destination; and (ii) insure the Equipment being returned for the full invoice amount. Seller will authorize the return of Equipment for the following reasons:

- a. Equipment Damaged in Shipment. Upon receipt of shipments, the Customer shall open and inspect all boxes immediately for possible freight damage. If damage is found, the Customer shall notify the delivering carrier within forty-eight (48) hours and request an inspection. After notifying the freight carrier, the Customer shall promptly contact Seller for further instructions. The Customer is solely responsible for any failure to report shortages or damages promptly.
- b. Items Shipped in Error. If the Customer receives Equipment not included on the Order, the Customer shall promptly notify the Seller. Equipment shipped in error is not subject to restocking fees provided it is returned without damage and in complete and unused condition. Seller will pay for the costs of return shipping for items shipped in error.
- c. Defective Equipment. If the Equipment that the Customer receives is defective, the Customer may make a warranty claim under Section 9 of this Agreement. Upon discovery of a warranty problem, the Customer must promptly contact the appropriate Seller service center for warranty support. The Customer shall not return the Equipment until a service representative has issued a return authorization, including a form that the Customer must fill out describing the nature of the Equipment defect.
- d. Other Reasons. For any return of Equipment for reasons other than those specified in Sections 6.a through 6.c above, the Customer's return authorization request shall include a clear statement of the reason for the return request. Seller will review the return authorization request, and at Seller's sole discretion, determine whether it will issue a return authorization. CUSTOM MANUFACTURED OR SPECIAL ORDER ITEMS ARE NOT RETURNABLE.

## 7. Licenses, Intellectual Property Rights, and Obligations

- a. Software License. Subject to the terms and conditions of this Agreement, Seller hereby grants to the Customer a non-exclusive, non-transferable (except as expressly provided in this Section 7 or in Section 14.d hereof) license to use the Software for the Customer's ordinary internal business activities and, (i) if originally installed on Equipment, only in connection with the use of the Equipment purchased by the Customer and on which the Software was originally installed, or (ii) if originally furnished as stand-alone software (i.e. furnished as strictly software products), only in connection with the hardware originally identified by the Customer and accepted by Seller. If originally installed on Equipment, the term of the license to the Software is coterminous with the Customer's ownership of the Equipment; if originally licensed as stand-alone software, the term of the license to the Software is perpetual. Seller will deliver the version of the Software identified on the Quote; if no version is identified, Seller will deliver the latest commercial generation available at the time of delivery. Seller shall be under no obligation to supply upgrades, enhancements, updates or modified versions to any Software except where so agreed in writing. The terms and conditions of the licenses granted by this Agreement will apply to any and all upgrades, enhancements, updates and modified versions of the Software that may be provided by Seller to the Customer. If required by Seller, the Customer agrees to substitute such version for the previous version and to delete and destroy any previous version and all copies. The licenses granted under this Agreement to the Software include only the functionality identified on the Quote, even if additional functionality is resident in the Software. The Customer may not sublicense, rent, lease, assign, transfer, network, display, or distribute the Software, nor may the Customer allow third parties to utilize the Software, utilize the Software on behalf of any third party or to utilize the Software for any purpose whatsoever not described in this Agreement.
- b. Third-Party Software. Software provided by Seller may originate from third party licensors ("Licensed Third Party Programs") and may require that the terms of such licensors' respective licenses be accepted prior to use. Such license terms, if any, are either attached or will appear as a part of the delivered or downloaded software. The Customer shall accept such third party license terms prior to installation of the Licensed Third Party Programs regardless of whether they are provided as part of the Licensed Third Party Program's shrink wrap package or in electronic format displayed during the program boot up or operation or in any other form. Third party licensors will be deemed to be third party beneficiaries with respect to any Licensed Third Party Programs. The terms of the third party licenses will control with respect to any Licensed Third Party Programs provided under any Order and will supersede the licenses granted in this Agreement to the extent they conflict.
- c. Materials License. Seller hereby grants to the Customer a non-exclusive, non-transferable (except as expressly provided in this Section 7 or in Section 14.d hereof) license to use Seller's proprietary documents, including schematics, drawings and user, installation, repair, maintenance, and technical manuals ("Licensed Seller Materials") solely in connection with the use of the related Equipment and Software licenses purchased by the Customer. The Customer may not sublicense, rent, lease, assign, transfer, network, display, or distribute the Licensed Seller Materials. The term of the license for the Licensed Seller Materials will be coterminous with the Customer's ownership of the related Equipment or the Software licenses, as applicable.
- d. Intellectual Property Rights. The Software, the Licensed Seller Materials and all trademarks, trade secrets, patents, copyrights, other intellectual property rights and other confidential or proprietary information contained in them and in the Equipment are and will remain the sole and exclusive property of Seller, or its Seller Affiliates, or its licensors, and the Customer shall obtain no title to or interest in them or any copy thereof. Neither party may use the other party's or its licensors' names or trademarks without prior written approval. Any rights granted under this Agreement take the form of a license. The Customer will not cause any copyright, identification labels or legal notices contained within the Software, Equipment or the Licensed Seller Materials to be modified, removed, suppressed, or in any other way made inconspicuous. The Customer shall label each copy of the Software and Licensed Seller Materials with the copyright, trademark, and proprietary notices in the same form which appear in or on the Software and Licensed Seller Materials delivered to the Customer by Seller. All copies of the Software and Licensed Seller Materials, when not in use, shall be destroyed by the Customer or maintained in a secure place within the Customer's business premises under access and use restrictions compatible with Section 7.
- e. Restrictions. Except as may be permitted by the options selections contained within the Software or by applicable third-party licenses, the Customer may not copy, reverse engineer, disassemble, decompile, modify, alter, translate, or adapt the Software, Equipment or Licensed Seller Materials or any copy, adaptation, transcription or merged portion of the Software, Equipment or Licensed Seller Materials, nor create any derivative of the Software, Equipment or Licensed Seller Materials. Notwithstanding the foregoing, the Customer may make copies of the Software only to the extent (i) required by applicable legislation or (ii) reasonably necessary for normal and industry standard back-up purposes.
- f. Termination of Licenses. The term of all licenses granted under this Agreement will remain subject to early termination by Seller upon notice to the Customer in the event of a material breach of the terms of this Agreement. Upon termination for any reason, the Customer shall immediately discontinue use of the Software and Licensed Seller Materials and shall return to Seller all copies of the Software and Licensed Seller Materials in accordance with Section 8.a below. Seller reserves the right to deactivate or remove the Software.
- g. Distribution. If required by applicable third party licenses, Seller will distribute source code, object code or the like to the parties required by the applicable third party license(s) upon request at no more than maximum price allowable under those license(s). This offer is valid for the minimum time period required by the applicable third party license(s).

h. Violation of Licenses. The Customer agrees that a violation of the license terms would cause irreparable injury to Seller or Seller Affiliates or the third party licensor for which money damages will not provide an adequate remedy, and that Seller, Seller Affiliates, or the third party licensor will be entitled, in addition to any other rights and remedies it may have, at law or in equity, to seek an injunction enjoining and restraining the Customer from doing or continuing to do any such act and any other violations or threatened violations of the licenses granted by this Agreement without proof of special damage.

**8. Confidential Information**

a. Confidential Information. Customer will keep any Confidential Information disclosed by Seller confidential and unavailable in any form to any third party without the express written consent of Seller. Customer may make reasonable and necessary disclosure of relevant Confidential Information to its officers, employees and agents who have a need to know such information pursuant to their duties, provided that it takes all reasonable precautions to prevent further disclosure or duplication of such Confidential Information. Customer acknowledges and agrees that the Confidential Information constitutes valuable proprietary information, the improper disclosure of which would cause irreparable injury to Seller.

b. Exceptions. Nothing in this Agreement will prohibit or limit the Customer’s use of information (i) previously known to it, (ii) independently developed by it, (iii) acquired by it from a third party which was not, to the Customer’s knowledge, under an obligation to the Seller not to disclose such information, or (iv) which is or becomes publicly available through no breach by the Customer of this Agreement. If the Customer receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information of Seller, it shall provide prompt notice to Seller of such receipt, and may thereafter comply with such process.

c. Technical Information. Unless specifically agreed to by Seller and identified and priced in the Quote as a separate item(s) to be delivered by Seller, the sale of Goods and Services under this Agreement confers on the Customer no right in, license under, access to, or entitlement of any kind to any of Seller’s technical data or intellectual property, irrespective of whether any such technical data or invention or any portion thereof arose out of work performed under or in connection with this Agreement, and irrespective of whether the Customer has paid or is obligated to pay Seller for any part of the design or development of the Goods or Services.

d. Customer Furnished Information. Seller will not be obliged to safeguard or hold confidential any data whether technical or otherwise, furnished by the Customer for Seller’s performance of this Agreement unless (and only to the extent that) the Customer and Seller have entered into a separate written confidentiality agreement.

**9. Warranties**

a. Standard Equipment Warranties. Unless otherwise provided by Seller in writing, Seller warrants that all Seller-manufactured Equipment will substantially conform to the Seller specifications for such Equipment and be free of any defect in materials or workmanship (the “Standard Equipment Warranty”) for the period of time specified in Table 9.a below (the “Equipment Warranty Period”); such period is measured from the date of shipment from a Seller facility. This warranty is extended to the Customer and applies to all Seller-provided Equipment purchased, installed, and used for the purpose for which such Equipment was originally designed.

Table 9.a	
Product Family	Equipment Warranty Period
Over the Air Transmitters: AM, FM, DAB and Television, Exciters, Studio-Transmitter Links	15 months from shipment
Additional Products and Accessories: (Racks, ATU, Phasors & RF Systems, AM/FM Flyaway Systems, Distribution System, HDI200 Data Importer	15 months from shipment
Customer Specials: Products specifically modified to meet a customer’s custom configuration or specification	15 months from shipment
B-Stock Equipment	90 days from shipment
Equipment Sold as Resale	As provided by Manufacturer
Replacement Parts – within Equipment Warranty Period	Longer of (i) applicable product warranty or (ii) 90 days from shipment
Replacement Parts – Post Equipment Warranty Period	90 days from shipment
Repaired Equipment – within Equipment Warranty Period	Longer of (i) applicable product warranty or (ii) 90 days from shipment
Repaired Equipment – Post Equipment Warranty Period	90 days from shipment
Used Equipment	“AS-IS” and without warranty

b. Remedy for Breach of Equipment Warranty. The Customer’s sole and exclusive remedy for any breach of the Standard Equipment Warranty will be, at Seller’s sole discretion and option, repair or replacement of the defective Equipment with functionally equivalent Equipment. Components that the Customer claims to be defective shall be made available to Seller for inspection and testing by the Customer. Unless otherwise agreed in writing, the Customer shall be solely responsible for shipping charges, customs clearance, applicable duties, and taxes for all repaired or replaced Components and Equipment under the Standard Equipment Warranty. To be entitled to rights under the Standard Equipment Warranty, the Customer shall open a service request by contacting the relevant Seller help desk by phone or web interface within thirty (30) days after discovering a suspected defect in any Equipment or Component, but in any event prior to the expiration of the applicable Equipment Warranty Period, and shall request a return authorization from Seller in accordance with Section 6 of this Agreement. Notice to a Seller dealer, systems integrator, sales representative or other third party is not notice to Seller. Following its receipt of any such Customer notice, Seller will determine whether the reported problem is covered by the Standard Equipment Warranty. If Seller determines that the problem is covered by the Standard Equipment Warranty, Seller will authorize return or repair of the defective Equipment or Component by issuing a return authorization.

c. Equipment Warranty Exclusions: To the full extent permitted by law, Seller does not warrant, guarantee and is not responsible for:

- (1) Defects, failures, damages or performance limitations caused in whole or in part by (A) power failures, surges, failures in third-party communication networks, fires, floods, snow, ice, lightning, excessive heat or cold, highly corrosive environments, accidents, actions of third parties, or other events outside of Seller’s control, or (B) the Customer’s abuse, mishandling, misuse, computer viruses, negligence, improper storage, servicing or operation, or unauthorized attempts to repair or alter the Equipment in any way.
- (2) Equipment built to the Customer’s specifications that is later found not to meet the Customer’s needs or expectations.
- (3) The performance of the Equipment when used in combination with equipment not purchased from Seller or specified or approved by Seller in writing.
- (4) Signal coverage delivered by antenna equipment whether or not supplied by Seller.

d. Additional Warranty Notes.

- (1) OEM or third party equipment that is incorporated into Seller Equipment is covered for the same period as such Seller Equipment's standard product warranty unless the OEM or third party equipment carries its own limited warranty.
- (2) Equipment Sold as Resale. Items sold as resale are such items that are not manufactured by Seller but may be utilized in conjunction with, independently of or incorporated into, Seller-manufactured Equipment (such as tubes, printers, and antenna transmission lines) and are covered only by the specific warranty terms of the supplier or original equipment manufacturer of those items. IF AN ORDER COVERS EQUIPMENT NOT OWNED BY SELLER, IT IS SOLD SUBJECT TO SELLER'S ABILITY TO ACQUIRE SUCH EQUIPMENT.
- (3) B-Stock Equipment. B-Stock equipment is defined as equipment repurchased or repurposed by GATESAIR that is reconditioned or refurbished for sale to a second generation owner is covered for a period of ninety (90) days from the date such equipment is shipped.
- (4) Repaired Equipment. Equipment that is repaired by GatesAir, or any authorized GatesAir Repair Center, is covered for a period of ninety (90) days from the date such equipment is shipped.

e. Standard Services Warranty. Seller warrants that the Services will be performed in a professional manner (the "Services Warranty"). Upon breach of the Services Warranty and Seller's receipt of notice of such breach from the Customer (which notice must specify in reasonable detail the nature of the claim and be delivered within thirty (30) days from the last day of performance of the Services), the Customer's sole and exclusive remedy will be for Seller to reperform the applicable Services at Seller's expense.

f. Software Warranties.

- (1) Software. Unless otherwise provided by Seller in writing, Seller warrants that the Software will operate substantially in compliance with Seller's specifications for the Software (the "Standard Software Warranty") for a period of ninety (90) days from the date such Software is shipped or otherwise made available by Seller (the "Software Warranty Period"). Upon breach of the Standard Software Warranty and Seller's receipt of notice of such breach, the Customer's sole and exclusive remedy will be, at Seller's sole discretion and option, repair or replacement of the defective Software with functionally equivalent Software. Seller does not warrant that the Software is error free or that the Customer will be able to operate the Software without problems or interruptions. Corrections to the Software beyond the Software Warranty Period will only be made by Seller pursuant to a separate Service Agreement.
- (2) Physical Media. During the Software Warranty Period, Seller warrants all physical media for the Software to be free of defects in material or workmanship. The Customer's sole and exclusive remedy under this limited warranty will be, at Seller's option, repair or replacement of the physical media for the Software.
- (3) Standard Software Warranty Exclusions. The Standard Software Warranty does not apply to any Software that (A) has been altered or modified, except by Seller; (B) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Seller; (C) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (D) is used in ultra-hazardous activities.

**10. Service Level Agreement(s)**

In the event Customer desires to purchase technical support services in excess of the Standard Warranties identified in Section 9 of this Agreement, the parties will negotiate a mutually agreeable Service Level Agreement which outlines (i) the types of services to be provided to Customer by Seller; and (ii) the fees associated with any such additional services. Any such Service Level Agreement will be in addition and subject to this Agreement.

**11. Warranty Disclaimer; Limitations of Liability**

- a. **THE WARRANTIES AND REMEDIES SET FORTH IN THIS AGREEMENT ARE THE CUSTOMER'S SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES IN CONNECTION WITH THE EQUIPMENT, SOFTWARE OR SERVICES PROVIDED BY SELLER UNDER THIS AGREEMENT.**
- b. **TO THE FULL EXTENT PERMITTED BY LAW, SELLER MAKES NO REPRESENTATIONS NOR GIVES ANY WARRANTIES AND HEREBY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. UNLESS EXPRESSLY PROVIDED ELSEWHERE IN THIS AGREEMENT, SELLER PROVIDES ALL THIRD PARTY CONTENT AND SERVICE OFFERINGS AS-IS AND WITHOUT WARRANTY OF ANY KIND.**
- c. **TO THE EXTENT PERMITTED BY LAW, ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT (INCLUDING WITHOUT LIMITATION AND FOR THE AVOIDANCE OF DOUBT, NEGLIGENCE OR BREACH OF STATUTORY DUTY) THAT THE CUSTOMER MAY OTHERWISE HAVE AGAINST SELLER IS HEREBY EXCLUDED.**
- d. **TO THE FULL EXTENT PERMITTED BY LAW, IN NO EVENT WILL SELLER (INCLUDING, WITHOUT LIMITATION, ANY PREDECESSOR IN INTEREST TO SELLER) BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE, GOODWILL, ANTICIPATED SAVINGS, REPUTATION OR DATA, NOR FOR ANY INCIDENTAL, PUNITIVE, MORAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION AND FOR THE AVOIDANCE OF DOUBT, NEGLIGENCE OR BREACH OF STATUTORY DUTY), WARRANTY OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS SET FORTH IN THIS SECTION 11.d WILL APPLY EVEN IF THE REMEDIES PROVIDED FOR IN THIS AGREEMENT COMPLETELY FAIL OF THEIR ESSENTIAL PURPOSE.**
- e. **TO THE FULL EXTENT PERMITTED BY LAW, THE LIMIT OF SELLER'S (INCLUDING, WITHOUT LIMITATION, AND PREDECESSOR IN INTEREST TO SELLER) LIABILITY (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BY STATUTE OR OTHERWISE) TO THE CUSTOMER OR TO ANY THIRD PARTY CONCERNING THE SELLER EQUIPMENT OR SOFTWARE LICENSES SOLD TO THE CUSTOMER UNDER AN ORDER, SELLER'S PERFORMANCE OR NON-PERFORMANCE, OR IN ANY MANNER RELATED TO THIS AGREEMENT, FOR ANY AND ALL CLAIMS WILL NOT IN THE AGGREGATE EXCEED THE ACTUAL SALES PRICE PAID BY THE CUSTOMER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE APPLICABLE CLAIM FOR THE SPECIFIC EQUIPMENT, SOFTWARE LICENSE OR SERVICES PURCHASED UNDER THE ORDER THAT IS THE SUBJECT OF THE CLAIM.**
- f. Certain legislation may imply warranties or conditions or impose obligations upon Seller which cannot be excluded, restricted, or modified or cannot be excluded, restricted or modified except to a limited extent. This Agreement must be read subject to these statutory provisions. If these statutory provisions apply, to the extent to which Seller is entitled to do so, Seller limits its liability in respect of any claim under those provisions to: (1) in the case of Goods, at Seller's option: (i) the replacement of the Goods or the supply of equivalent Goods; (ii) the repair of the Goods; (iii) the payment of the cost of replacing the Goods, or of acquiring equivalent Goods; or (iv) the payment of the cost of having the Goods repaired; and (2) in the case of Services, at Seller's option: (i) the supplying of the Services again; or (ii) the payment of the cost of having the Services supplied again.
- g. Nothing in this Agreement will exclude or limit Seller's liability for fraud or gross negligence causing personal physical injury or death.
- h. The Customer acknowledges and agrees that the terms of this Agreement have been the subject of discussion and negotiation and are fully understood by the Customer, and that the mutual agreements of the Parties set forth in this Agreement were arrived at in consideration of the provisions of this Section 11.
- i. Except as expressly stated, each of the paragraphs and subparagraphs of this Section 11 is to be construed as a separate limitation, applying and surviving even if for any reason one or more of the paragraphs is held to be inapplicable or unreasonable in all or any circumstances.

j. **NON-TRANSFERABILITY OF WARRANTY.** This limited warranty is extended to Buyer as the original purchaser from Seller and is non-transferable and non-assignable. No rights against Seller shall be created by any transfer or assignment, nor shall any rights against Seller survive any transfer or assignment. Buyer or its agents or representatives shall not claim, represent or imply nor permit its customers, distributors, applicators or contractors to claim, represent or imply that this limited warranty extends or is available to parties other than Buyers, and to the limit of its legal right to do so Buyer shall cause any party to cease and desist of any such misrepresentation. This condition shall constitute a material term of this limited warranty and its violation by Buyer shall excuse Seller from its obligations hereunder.

**12. Indemnification**

- a. Seller will defend the Customer against any third-party claim that any Equipment or Software infringes a patent, copyright, trademark, or trade secret. If any Equipment or Software is, or in Seller’s opinion is likely to be, held to constitute an infringing product, Seller will, at its expense and option either, (i) procure the right for the Customer to continue using such Equipment and/or Software, (ii) modify the Equipment and/or Software to make it non-infringing, or (iii) accept return of the Equipment and/or Software and replace the same with substantially equivalent non-infringing Equipment and Software. If Seller is unable to reasonably accomplish one of the foregoing, Seller may then direct the return of the offending portion of the Equipment and/or Software and provide to the Customer a pro-rata refund of the original purchase price for such portion of the Equipment and/or Software. Seller will have no obligation to indemnify the Customer, however, if the claim of infringement is caused by (i) any Equipment, Software, or portion of them, manufactured to specifications furnished by the Customer or on the Customer’s behalf, or in accordance with industry standards, (ii) the Customer’s failure to use corrections or enhancements made available by Seller, (iii) the Customer’s use of the Equipment and/or Software in combination with any product not owned, developed or approved in writing by Seller, (iv) the use of such Equipment and/or Software in combination with other equipment or software not furnished by Seller, (v) the use of such Equipment and/or Software in a manner not normally intended by Seller, or (vi) any patent, copyright, trademark or trade secret in which the Customer, or any of the Customer’s affiliates has a direct or indirect interest. **THE FOREGOING REMEDIES CONSTITUTE THE CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES AND SELLER’S (INCLUDING, WITHOUT LIMITATION, ANY PREDECESSOR IN INTEREST TO SELLER) ENTIRE LIABILITY WITH RESPECT TO INFRINGEMENT.**
- b. The Customer shall defend and hold Seller harmless from and against any civil or criminal proceedings resulting from Customer violations or alleged violations of the laws and regulations described in Section 14.a below.
- c. Each party shall indemnify and hold harmless the other party, its employees and agents, from and against any claims, demands, loss, damage or expense relating to bodily injury or death of any person or damage to real and/or tangible personal property to the extent proximately caused by the gross negligence or willful misconduct of it, its personnel or agents in its performance under this Agreement.
- d. To receive the foregoing indemnities, the party seeking indemnification must notify the other in writing of a claim or suit promptly and provide it with reasonable cooperation (at the indemnifying party's expense) and full authority to defend or settle the claim or suit. Neither party will have any obligation to indemnify the other for any settlement made without its written consent.

**13. Applicable Law, Venue, Jurisdiction and Arbitration**

- a. **Applicable Law.** This Agreement, and any disputes related to this Agreement, will be governed by and interpreted in accordance with the laws of the location listed in the “Choice of Law” column of Table 13 below based upon the Customer’s business address as set forth in the Quote and/or Order, regardless of any principles requiring the application of any other law. The United Nations Convention on International Sale of Goods shall not apply to this Agreement.
- b. **Applicable Venue.** The parties agree that the exclusive venue for any action related to the dispute or interpretation of this Agreement will be as indicated in the “Venue” column of Table 13 below based upon the Customer’s business address as set forth in the Quote and/or Order, and each party irrevocably submits to the jurisdiction of that venue in any such action and waives any objection it may now or hereafter have to venue or personal jurisdiction in that venue. The prevailing party in any action related to the dispute or interpretation of this Agreement will be entitled to recover its reasonable attorney’s fees incurred in pursuing the action, including those fees incurred throughout all bankruptcy and appellate proceedings.
- c. **Jury Waiver.** IF APPLICABLE, THE PARTIES FURTHER AGREE, TO THE EXTENT PERMITTED BY LAW, TO WAIVE ALL RIGHTS TO A TRIAL BY JURY OF ANY ACTION RELATING TO THE DISPUTE OR INTERPRETATION OF THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. THE PARTIES SPECIFICALLY ACKNOWLEDGE THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER AN ADEQUATE OPPORTUNITY TO NEGOTIATE ITS TERMS.
- d. **Arbitration.** If arbitration is indicated in the “Venue” column of Table 13 based upon the Customer’s business address as set forth in the Quote and/or Order, all disputes arising out of or in connection with this Agreement including its existence, validity or termination will be referred to and finally resolved by arbitration in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution, which rules are deemed to be incorporated into this Agreement by reference. The appointing authority will be the International Centre for Dispute Resolution, the international division of the AAA. There will be a panel of three [one, if the parties agree the amount in controversy does not exceed U.S. \$250,000] arbitrators who will be appointed by agreement between the parties or failing such agreement in accordance with ICC rules. If the dispute concerns intellectual property issues, the arbitrators will possess expertise in intellectual property law. The chairperson of the arbitration panel shall, among other things: (a) have authority to resolve discovery disputes and issue appropriate subpoenas and orders to facilitate discovery; and (b) conduct the arbitration in the English language. The arbitration panel shall render its decision in the English language and have authority to award injunctive and other emergency relief, which will be enforceable by either the panel or any court with jurisdiction over the enjoined party or its assets. The arbitration panel shall not have authority to award punitive, special, or consequential damages. Any monetary award of the panel will be payable in US Dollars free of any tax and reductions and will include interest from the date of breach of this Agreement to the date when the award was paid in full at a rate determined by the arbitral panel.
- e. **Injunctive Relief.** Notwithstanding any provisions in this Agreement, the Customer agrees that Seller, as well as Seller Affiliates or third-party licensors, has the right to seek temporary or permanent injunctive or other similar relief in any court or other authority of competent jurisdiction in respect of any claims of breach of confidentiality, breach of license grants for the Software and/or Licensed Seller Materials, infringement of the intellectual property rights, or for an order of specific performance or other injunctive relief as permitted under applicable law.

<b>Table 13</b>		
<i>Customer Location</i>	<i>Choice of Law</i>	<i>Venue</i>
North America (including Caribbean)	Mason, OH, U.S.A.	Courts with appropriate jurisdiction located in Mason, Ohio, U.S.A.
Central America/South America	Mason, OH, U.S.A.	Arbitration located in Mason, Ohio, U.S.A.
Europe/Middle East/Africa	England	Arbitration located in London, UK
Asia/Pacific	England	Arbitration located in Sydney, NSW, Australia

**14. General Provisions**

- a. **Compliance with Applicable Laws.** The Customer shall comply with any and all laws and regulations applicable to the Customer’s performance under this Agreement (including, without limitation export control laws, waste recycling and other environmental laws, and anti-bribery laws such as the United States Foreign Corrupt Practices Act of 1977 (FCPA) and the United Kingdom Bribery Act of 2010), and shall promptly act to correct any noncompliance once identified.

- b. Equipment, Software and Services Sold to Lessors. If this transaction is (1) covered by a lease payment arrangement from a third party leasing company or (2) financed by a third party, and if payment to Seller is dependent on the Customer's signing a release such that payment can be made by the lessor or finance company to Seller, then the Customer agrees that the release for payment purposes will be executed at such time as 90% of the Equipment (by price) is shipped, the Equipment is substantially ready for on-air service or the Customer puts the delivered Equipment into service, whichever is earliest.
- c. Default. If the Customer defaults in any of its obligations under this Agreement, including, but not limited to failure to pay all sums when due, the Customer will be liable for all costs resulting from Seller's attempt to enforce its rights, including, but not limited to collection agency fees, legal fees, and court costs.
- d. Assignment. The Customer shall not assign any of its rights under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner. Any purported assignment of rights in violation of this Section 14.d is null and void.
- e. Independent Contractor. Each party is an independent contractor with respect to its performance of this Agreement, and neither party nor any of its employees will be considered an employee or agent of the other party. Nothing herein will constitute a partnership or joint venture between the parties.
- f. Enforceability. If a court or validly appointed arbitrator finds any term of this Agreement invalid, illegal or otherwise unenforceable, the same will not affect the other terms of this Agreement or the whole of this Agreement, but such term will be deemed modified to the extent necessary to render such term enforceable, and the rights and obligations of the parties will be construed and enforced accordingly, preserving to the fullest permissible extent the intent of the parties set forth in this Agreement.
- g. No Waiver. Waiver, delay or failure by Seller to enforce any of the remedies, terms or conditions of this Agreement will not be a future waiver of any such right, or be a waiver of any other term, condition or remedy contained in this Agreement.
- h. Notices. All notices must be in writing in the English language and will be effective when received by (1) personal delivery, (2) registered, certified or nationally recognized overnight mail, proof of receipt requested, or (3) fax, if confirmed within three (3) business days by one of the other methods provided in this Section 14.h, at the addresses or fax numbers indicated in the Order or to such other addresses or fax numbers as the parties may specify by giving notice pursuant hereto. A copy of all notices must be sent to :GATESAIR, 5300 Kings Island Drive, Suite 101, Mason, OH 45040, USA, Attention: Legal Department (fax +1-513-459-3796).
- i. Assumption of Risk and Reliance on Legal and Other Advisors. Each party acknowledges (a) the risks of its undertakings under this Agreement, (b) the uncertainty of the benefits and obligations under this Agreement, and (c) its assumption of such risks and uncertainty. Each party has consulted such legal, financial, technical or other experts it deems necessary or desirable before entering into this Agreement, and has conducted its own due diligence and requested and reviewed any contracts, business plans, financial documents and other written material as in such party's opinion will be the basis of that party's decision to enter into this Agreement. Each party represents and warrants that it has read, knows, understands, and agrees with the terms of this Agreement, and this Agreement will not be construed against either party as the drafter or under any other rule of contract interpretation.
- j. Publicity. Seller may, without the prior written consent of the Customer, use in advertisements and/or any other media, any information relating to any Order or this Agreement.
- k. Clauses Incorporated by Reference. The following Federal Acquisition Regulations/Defense Federal Acquisition Supplement ("FAR/DFARS") clauses are incorporated into this Agreement by reference, to the extent these clauses are applicable, with the same force and effect as if they are included in full text: 52.203-13 Contractor Code of Business Conduct, 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act, 52.219-8 Utilization of Small Business Concerns, 52.222-26 Equal Opportunity, 52.222-35 Equal Opportunity for Veterans, 52.222-36 Affirmative Action for Workers With Disabilities, 52.222-39 Notification of Employees Rights Under the National Labor Relations Act, 52.222-50 Combating Trafficking in Persons, 52.247-64 Preference For Privately Owned U.S. Flag Commercial Vessels.
- l. Entire Agreement. This Agreement supersedes all previous proposals, negotiations, conversations, and understandings, whether oral or written, and constitutes the sole and entire agreement between the parties pertaining to its subject matter. No modification or deletion of, or addition to these terms, will be binding unless made in writing and signed by duly authorized representatives of both parties.
- m. Third Party Rights. Except as expressly provided in this Agreement, no person or entity who is not a party to this Agreement will have any right to enforce any provision of this Agreement except that any Seller Affiliate will have the right to enforce any provision relating to any of its Confidential Information or any intellectual property or other right or interest in any of the Equipment or Software belonging to that Seller Affiliate as if it were an original party to this Agreement and whether or not Seller is joined as a party to the relevant proceedings. In particular, but without limiting the generality of the preceding sentence, the benefit of Software Warranty will not confer any benefit or right of any kind on any sublicensee of the Customer.
- n. Language. This Agreement may be translated into languages other than English. In the event there is any conflict between the provisions of the English version of this Agreement and a non-English translation, the English version will prevail.