

Terms and Conditions of Sale

- 1) **Acceptance of Proposal:** When this Proposal is signed by Buyer, returned to Electronics Research, Inc. (hereinafter called "ERI"), and accepted by ERI at its offices in Chandler, Indiana, USA the Proposal shall become a binding agreement for the purchase by buyer from ERI of the articles described herein, upon the terms specified, including the Terms and Conditions of Sale, attached to this Proposal and available from the ERI web site at <http://www.eriinc.com>. Refundable deposits are charged for some skids and large size cable reels. All orders are subject to a minimum charge of \$50.00 net.
- 2) **Acknowledgement of Terms:** By signing this Proposal, Buyer represents and acknowledges that he has fully read, understands, and accepts the terms of this Proposal, including the "Terms and Conditions of Sale" included herein, that this Proposal contains the complete and final agreement of Buyer and ERI with respect to the articles described herein; that all other agreements, representations, and warranties, whether oral or in writing, made prior to or at the time of the signing of this Proposal, are excluded and replaced by the terms herein; and that no change or addition to this Proposal shall be valid and enforceable unless made in writing and signed by an authorized representative of ERI.
- 3) **Buyer's Terms and Conditions:** ERI desires to provide its customers with prompt and efficient service. However, to negotiate individually the terms and conditions of each sales contract would substantially impair ERI's ability to provide such service. Accordingly, Products and services furnished by ERI are sold only on the terms and conditions stated herein, any terms or conditions on Buyer's order to the contrary notwithstanding. ERI's performance of any contract is expressly made conditional on Buyer's agreement to ERI's Terms and Conditions of Sale unless otherwise specifically agreed to, in writing, by ERI. In the absence of such agreement, commencement of performance and/or delivery shall be for Buyer's convenience only and shall not be deemed or construed to be acceptance of Buyer's terms and conditions. If a contract is not earlier formed by mutual agreement, in writing, acceptance of any Product or Service shall be deemed acceptance of the terms and conditions stated herein. In the case of a conflict between the terms and conditions stated herein and those appearing on the face of this Proposal, the latter shall control. All contracts for the sale of Products and Services shall be construed under and governed by the laws of the State of Indiana the location of ERI's primary manufacturing plant and corporate headquarters.
- 4) **Quotations, Specifications, and Prices:** ERI's prices and quotations are subject to the following:
 - a) The Buyer impliedly warrants that all information supplied for and during the construction of the proposal including oral and written correspondence, reports, plans, and specifications are adequate, accurate, workable, and practicable of design, assumes liability for any deficiencies and, if the supplied information is followed, a sufficient and satisfactory result will be achieved.
 - b) All published prices and specifications are subject to change without notice.
 - c) UNLESS OTHERWISE SPECIFIED, IN WRITING, ALL QUOTATIONS ARE FIRM FOR, AND EXPIRE, THIRTY (30) DAYS AFTER DATE THEREOF AND CONSTITUTE OFFERS: Provided, that budgetary quotations and estimates are for preliminary information only and shall neither constitute offers, nor impose any responsibility or liability upon ERI.
 - d) Change, deficiency, or delays beyond ERI's control shall entitle ERI to recover additional compensation through cause and effect relationship provided ERI offers timely notice of a claim and contemporaneous documentation supporting the claim.
 - e) Unless otherwise stated, in writing, by ERI, all prices quoted shall be exclusive of transportation, insurance, taxes (including, without limitation, any sales, use or similar tax, and any tax levied on or assessed to ERI after Product delivery by reason of ERI's security interest in Products), license fees, customs fees, duties and other charges related thereto, and Buyer shall report and pay any and all such shipping charges, premiums, taxes, fees, duties and other charges related thereto, and shall hold ERI harmless there from; provided, that if ERI, in its sole discretion, chooses to make any such payment, Buyer shall reimburse ERI in full upon demand.
- 5) **Stenographical, typographical and clerical errors are subject to correction.**
- 6) **Prices quoted are for Products only and do not include technical data, proprietary rights of any kind, patent rights, qualification, environmental or other than ERI's standard product performance tests, and other than ERI's normal domestic commercial packaging, unless expressly agreed to in writing by ERI.**
- 7) **Published weights and dimensions are approximate only. Certified dimension drawings can be obtained upon request. Manuals, programs, listings, drawings, or other documentation required hereunder must be referenced specifically.**
- 5) **Terms of Payment:** Unless credit is granted, payment is due upon delivery. All payments for Products released and shipped on approved credit accounts shall be due in upon receipt of invoice therefore. Past due balances shall be subject to a service charge not more than the amounts allowed by law. Partial shipments will be billed as made and payments therefore are subject to the above terms. Payment shall not be withheld for delay in delivery of required documentation unless a separate price is stated therefore, and then only to the extent of the price stated for such undelivered documentation. ERI may cancel or delay delivery of Products in the event Buyer fails to make prompt payment therefore, or in the event of an arrearage in Buyer's account with ERI.
- 6) **Transportation and Risk of Loss:** Transportation will normally follow Buyer's shipping instructions, but ERI reserves the right to ship Products freight collect and to select the means of transportation and routing when Buyers instructions are deemed unsuitable in ERI's judgment. Unless otherwise advised, ERI may, but shall be under no obligation to, insure to full value of the Products or declare full value thereof to the transportation company at the time of delivery, and all freight and insurance costs shall be for Buyer's account. Risk of loss and/or damage shall pass to Buyer upon delivery of the Products to the transportation company at the FOB point whether or not installation is provided by or under supervision of ERI. Confiscation or destruction of, or damage to Products shall not release, reduce or in any way affect the liability of Buyer therefore. Notwithstanding any defect or nonconformity, or any other matter, such risk of loss and/or damage shall remain in Buyer until the Products are returned at Buyer's expense to such place as ERI may designate, in writing. Buyer, at its expense, shall fully insure Products against all loss and/or damage until ERI has been paid in full or the Products have been returned for whatever reason to ERI. All Products must be inspected upon receipt and claims should be filed with the transportation company when there is evidence of shipping damage, either concealed or external. As used in the clauses appearing herein or attached hereto, (delivery) shall occur when the Product is delivered at the FOB point which shall be the point of manufacture or such other place as ERI shall specify, in writing, notwithstanding installation by or under supervision of ERI.
- 7) **Performance:** ERI will make all reasonable effort to observe its dates indicated for delivery or other performance. However, ERI shall not be liable in any way because of any delay in performance hereunder due to acceptance of prior orders, technical difficulties, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion, subcontractor, supplier or Buyer caused delays in ability to obtain or contain substantial rises in the price of labor, materials or



Terms and Conditions of Sale (continued)

- manufacturing facilities, curtailment of or failure to obtain sufficient electrical or other energy supplies, or compliance with any law, or regulation or order whether valid or invalid, of any cognizant governmental body or any instrumentality thereof whether now existing or hereafter created, or due to any unforeseen circumstances or causes beyond its control. Provided such delay is neither material nor indefinite, ERI's performance shall be deemed suspended during and extended for such time as it is so delayed, and thereafter Buyer shall accept performance hereunder. Delay in performance shall not be considered material or indefinite unless it exceeds or is reasonably estimated by ERI to exceed a period of six (6) months. In addition, ERI's inventories and current production must be allocated so as to comply with applicable Government regulations. In the absence of such regulations, ERI reserves the right, in its sole discretion, to allocate inventories and current production and substitute suitable materials when, in its opinion, such allocation or substitution is necessary due to such circumstances or causes in the interest of conservation of scarce materials, and efficient utilization of high value parts and components. ERI's products may contain remanufactured parts and components. Such parts and components are covered by the same warranty and are subject to the same high standards of quality control applied to other parts and components. No penalty clause of any kind shall be effective. As used herein, "performance" shall include, without limitation, fabrication, shipment, delivery, assembly, installation, testing and warranty repair or replacement, as applicable.
- 8) Acceptance:** The shipment by ERI of a Product to the Buyer shall constitute acceptance of that Product by Buyer, unless notice of defect or nonconformity is received by ERI within thirty (30) days of receipt of the Product at Buyer's designated receiving address, provided, that for Products for which ERI agrees, in writing, to perform acceptance testing after installation, the completion of ERI's applicable acceptance test, or execution of ERI's acceptance form by Buyer, shall constitute acceptance of the Product by Buyer. Notwithstanding the foregoing, any use of a Product by Buyer, its agents, employees, contractors or licensees, for any purpose, after receipt thereof, shall constitute acceptance of that Product by Buyer. ERI may repair or, at its option, replace defective or nonconforming parts after receipt of notice of defect or nonconformity.
- 9) Shipment Delays/Billing in Place:** Upon completion of Buyer's order, any delay in shipment attributable to Buyer, including, but not limited to, Buyer's request to defer the delivery date, shall cause the following to occur: Thirty (30) days after the original shipment date, a storage charge of 1½% of the invoice price per month will be billed to Buyer and title to the shipment will automatically pass to Buyer. ERI will invoice Buyer for completed goods and Buyer will pay in accordance with the terms of the original sale, as the goods will be deemed to have shipped in place. ERI will insure against risk of loss until physical shipment of the goods to a common carrier. The tower shipment date is contingent upon receipt by ERI of all necessary site specific information. This information must be included with the signed proposal and tower order. Depending upon the nature of the project, site specific information may include (but is not limited to): a site survey showing plot dimensions, topography, and possible obstructions; a geotechnical report; the desired tower orientation; the desired antenna orientation; and a complete shipping address.
- 10) Change Orders:** Buyer change orders must be in writing and no change shall be made pursuant to this clause unless agreed to in writing and signed by duly authorized representatives of ERI and Buyer. If any such change causes an increase or decrease in the cost or the time required for the performance of any part of the work, an equitable adjustment shall be made in the contract price and schedule. ERI shall have no obligation to commence any extra or changed work without written agreement as to adjustments to contract price and delivery schedules affected thereby.
- 11) Assignments and Terminations:** Any assignment by Buyer of any contract hereunder without the express written consent of ERI is void. No order may be terminated by Buyer except by mutual agreement, in writing. Terminations by mutual agreement are subject to the following conditions: (a) Buyer will pay, at applicable contract prices, for all Products which are completely manufactured and allocable to Buyer at the time of ERI's receipt of notice of termination; (b) Buyer will pay all costs, direct and indirect, which have been incurred by ERI with regard to Products which have not been completely manufactured at the time of ERI's receipt of notice of termination, plus a pro rata portion of normal profit on the contract; (c) Buyer will pay a termination charge on all other Products affected by the termination. (d) Orders for standard catalog products may be canceled prior shipment, however any order that as been cut, filled or packaged prior to Seller's receipt of cancellation notice shall be subject to a 20% re-stocking charge. (e) Orders for non-standard products or specially manufactured products may be canceled prior to the start of manufacture provided Buyer reimburses ERI for any actual costs incurred on the order prior to the effective cancellation date. After manufacture commences, orders for non-standard products or specially manufactured products may not be canceled. In the event Buyer terminates such orders, Buyer shall be liable to ERI for termination charges, including, but not limited to, reasonable profits. ERI's normal accounting practices shall be used to determine costs and other charges. To reduce termination charges, ERI will divert completed parts, material or work in process from terminated contracts to other Buyers whenever, in ERI's sole discretion, it is practicable to do so.
- 12) Returns:** Standard catalog products may be returned for credit provided such products are returned within six (6) months after the original shipment date. The minimum value accepted for return from each purchase order is \$50.00. The amount of credit issued for any returned product shall be determined solely by ERI based on the resalable condition of the product. Non-standard products, including products specially manufactured in accordance with Buyer's specifications or tuned to one or more specified operating frequency(ies), may not be returned for credit. Buyer shall obtain ERI's written return goods authorization prior to returning any product for credit.
- 13) Servicing Warning:** The Products may be dangerous if improperly installed, handled, serviced, refurbished, or reinforced. In the event that repair, maintenance or servicing need to be performed on the Products, Buyer should contact ERI immediately. ERI shall not be liable for any damages or injuries occurring in connection with maintenance, servicing or repair work on the Products done by persons other than ERI or its duly authorized representatives.
- 14) Installation:** Unless this Proposal includes installation services, Buyer is responsible for installation of the Products, including preparation and maintenance of all Products, materials, or services necessary for the operation of the Products not provided by ERI. All installations should be performed by qualified tower climbers and electricians. All OSHA, state and local safety regulations should be observed. Any photos or drawings in product literature, installation manuals, or drawings are used to illustrate a specific point and are not intended to supersede any OSHA, state or local safety regulations.
- 15) Title and Remedies:** Irrespective of and in addition to any of the provisions contained herein: (a) Until full payment of all obligations of Buyer hereunder (whether represented by notes, open account judgment, or otherwise), ERI reserves title to all of the Products furnished hereunder, or hereafter in connection therewith, whether or not the same is attached to the realty, and the same shall be considered as personal property and subject to the Purchase Money Security interest of ERI hereby granted by Buyer. (b) In addition to and in no way limited by the provisions hereof, and subject and in addition to the terms of any security agreement between ERI and Buyer, if Buyer defaults in paying or performing

Terms and Conditions of Sale (continued)

any of its obligations, hereunder, or becomes subject to insolvency, receivership or bankruptcy proceedings, or makes an assignment for the benefit of creditors, or any of the Products is misused or substantially damaged, or Buyer, without the prior written consent of ERI, sells, transfers, leases or mortgages the same, or moves it to another site, or any lien is placed hereon, or other persons have or acquire an interest therein, or it is seized or attached by the process of law, then in any such event Buyer shall be deemed to be in default hereunder. In the event of a default hereunder by Buyer, ERI may, at its option, with or without notice, treat all amounts owing hereunder by Buyer regardless of maturity date, to be immediately due and payable, (subject to such credits as are required by law in order to enforce this Contract), refuse subsequent deliveries, if any, hereunder; and repossess the Equipment previously delivered to Buyer. In the event ERI chooses to repossess Equipment delivered to Buyer hereunder, ERI may also: (i) Upon such notice, if any, as required by law, keep the Equipment as its own, free from any claim on the part of Buyer, retaining as compensation for the use or decrease in value of the Equipment all payments made thereon by Buyer; or, (ii) Within four (4) months of such repossession, upon giving Buyer not less than fifteen (15) days advance written notice of ERI's intention in that regard (or such periods as may be required by law), sell the same for the account of Buyer either at public sale (at which ERI may bid) or at private sale, whereupon the net proceeds of sale, after paying ERI's costs and expenses in repossessing, transporting, reconditioning, storing and selling the equipment, shall be applied on the unpaid balance of the obligations of Buyer hereunder and the surplus, if any, shall be returned to Buyer. Provided, however, that in the event a deficiency remains, Buyer shall continue liable to ERI therefore. In exercising any of the remedies aforesaid, ERI shall give such other and additional notices as are required by law. (c) In any proceedings or action relating to a default by Buyer, ERI shall be reimbursed (if permitted by law) for attorney's fees and costs incurred by it in respect thereof. (d) No remedy herein provided for shall be applicable where not permitted by law. (e) When requested by ERI, Buyer shall duly acknowledge the Contract, and execute, acknowledge, and deliver to ERI, in ERI's usual form, a supplement hereto, chattel mortgage, supplemental security agreement, financing statement, or other additional appropriate instrument which ERI may require to constitute the Equipment as the unencumbered security for the obligations of Buyer hereunder, or to enable ERI to comply with all applicable filing or recording laws.

16) Patents and Other Intellectual Property Rights: ERI will, at its own expense and as set forth herein, defend any action brought against Buyer in respect to any claim that the design or manufacture of any Product in ERI's commercial line of Products or manufactured to specifications set by ERI and furnished hereunder, constitutes an infringement of any patents or other intellectual property rights of the United States. Subject to the provisions in the DAMAGES AND LIABILITY section hereof, ERI will pay all damages and costs either awarded in a suit or paid, in ERI's sole discretion, by way of settlement, which are based on such claim of infringement, provided, that Buyer promptly notifies ERI, in writing, of such claim or infringement and gives ERI full authority, information and assistance in settling or defending such claim, or ERI will, in its sole discretion and at its own expense, either procure a license which will protect Buyer against such claim without cost to Buyer, replace said product with a non infringing product or remove said product and refund an equitable portion of the price paid by the Buyer to ERI for said Product. ERI shall have no liability whatsoever hereunder with respect to any claims settled by Buyer without ERI's prior written consent. ERI EXPRESSLY EXCLUDES from any liability hereunder, and Buyer shall hold ERI harmless from and against, any expense, loss, costs, damages or liability resulting from claimed infringement of patents, trademarks, copyrights or other intellectual property rights: (a) arising from a use of or a combination of said Product with other equipment, processes, programming applications or materials not furnished under this contract; (b) based on items made with the Products

furnished under this contract; (c) arising out of compliance by ERI with Buyer's designs, specifications or instructions; and/or (d) arising from use or manufacture by anyone of inventions in connection with Products or services sold, used or intended for sale or use in performing contracts with the United States or related subcontracts. The foregoing states ERI's entire liability for any claim based upon or related to any alleged infringement of any patent or other intellectual property rights.

- 17) Limited Two (2) Year Warranty:** ERI warrants to the original purchaser that its product is free from defects in material or workmanship (a) existing at the time of shipment from the factory or (b) that develop under normal use in a properly installed and maintained system, for a period of twenty four (24) months following the date of shipment from the factory. (c) Expressly excluded from the terms of this limited warranty are defects caused by: (i) faulty installation, (ii) lack of proper inspection and maintenance, (iii) unusually severe weather, (iv) physical abuse or tampering, and/or (v) usage not in accordance with published ratings, specifications, or instructions. Further, unless Electronics Research, Inc. supervises the delivery and installation of the product, ERI assumes no responsibility for subsequent damage which may result from improper or incorrect handling or installation of said product.
- a) Any defective warranted component of an ERI product will be repaired or replaced at the place of manufacture without charge if all defective components are returned by the purchaser to ERI at Chandler, Indiana and factory inspection discloses that such defects are as claimed and are not the result of modification or previous repair of the product without ERI's authorization; misuse; negligence; accident or damage by lightning, intrusion of water, or foreign materials into the system; excessive power; or improper operation or maintenance.
 - b) Under some circumstances, continuity of service may necessitate immediate shipment of repair or replacement parts before factory inspection of defective parts. Under these conditions, ERI requires that Buyer place an order for replacement parts and will require that all defective parts be packaged and returned to ERI for factory inspection and determination of warranty status. If failure is determined to be covered by this warranty, credit will be issued for parts ordered by Buyer to expedite replacement.
 - c) Other than the replacement of defective parts or components FOB Chandler, Indiana, USA, ERI shall not be responsible for any costs, expenses, or loss of income incurred by the purchaser arising from the identification, removal, shipment, and replacement of defective parts.
 - d) "Resale Equipment", which is defined as equipment purchased from another manufacturer or supplier and resold by ERI, shall only carry such manufacturer's or supplier's standard warranty in effect at the time of product shipment from the supplier.
 - e) This warranty shall be void if the purchaser does not (1) pressurize the antenna and transmission line system with dry nitrogen or dry air furnished by the Buyer immediately following the installation of the system to initially check for installation leaks and (2) maintain the antenna under a positive pressure, according to the installation instructions, at all times including prior to installation, using either dry nitrogen or dry air. This warranty is also void in the event that the antenna and/or transmission line system is pressurized above ERI's published instructions.
 - f) Adequate VSWR monitoring and protection equipment must be installed and properly maintained in the transmission system to prevent system damage from ice, lightning and other natural phenomena. Failure to properly install and maintain the VSWR protection equipment voids this warranty. ERI recommends purchase of an ERI manufactured or approved VSWR protection unit at the time of antenna purchase.
 - g) THE FOREGOING WARRANTY IS AND SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED,

Terms and Conditions of Sale (continued)

INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR APPLICATION OR PURPOSE. THERE ARE NO WARRANTIES, REPRESENTATIONS OF FACT, OR PROMISES WITH RESPECT TO SIGNAL COVERAGE OR STRENGTH. Buyer is responsible for obtaining all necessary federal, state, and local permits and licenses, and for posting such permits and licenses at the site prior to commencement of work. Buyer shall indemnify and hold ERI harmless from any claims, suits, fines or penalties (and the cost of contesting the same) arising out of the failure to obtain such permits or licenses. ERI accepts no responsibility for Buyer's compliance with any applicable local, state, or federal regulations or requirements; including but not limited to, those standards with respect to radiation exposure limits or protection requirements. The liability of ERI shall be limited to repair and replacement at the factory of defective parts for a period of two (2) years following the date of shipment. After ERI has completed performance hereunder, Buyer shall keep and maintain the products in good condition, in accordance with all regulations or recommendations of any government agency or body and in accordance with generally accepted maintenance standards in ERI's industry. Buyer shall forever protect, defend, indemnify and hold ERI free and harmless against any and all claims, demands, liabilities, cause of action (including, without limitation, legal costs and expenses and reasonable attorney's fees) arising out of, or relating to Buyer's failure to completely discharge its obligations hereunder. Under no circumstances shall ERI be obligated or liable for special, incidental, indirect, consequential or other damages, losses or expenses, in connection with, or by reason of the foregoing warranty, or by reason of some other type of expressed warranty or implied warranty found to exist notwithstanding the foregoing disclaimers.

18) Warranty Replacement and Adjustment: All claims under warranty must be made promptly after occurrence of circumstances giving rise thereto and must be received within the applicable warranty period by ERI or its authorized representative. Such claims should include the Product type and serial numbers and a full description of the circumstances giving rise to the claim. Before any Products are returned for repair and/or adjustment, written authorization from ERI or its authorized representative for the return and instructions as to how and where these products should be shipped must be obtained. Any product returned to ERI for examination shall be sent prepaid via the means of transportation indicated as acceptable by ERI. ERI reserves the right to reject any warranty claim not promptly reported and any warranty claim on any item that has been altered or has been shipped by non acceptable means of transportation. When any Product is returned for examination and inspection, or for any other reason Buyer shall be responsible for all damage resulting from improper packing or handling, and for loss in transit notwithstanding any defect or non conformity in the Product. In all cases ERI has sole responsibility for determining the cause and nature of failure, and ERI's determination with regard thereto shall be final. If it is found that ERI's Product has been returned without cause and is still serviceable, Buyer will be notified and the product returned at its expense; in addition, a charge for testing and examination may, in ERI's sole discretion, be made on Products so returned.

19) Damages and Liability: ERI'S AGGREGATE LIABILITY IN DAMAGES OR OTHERWISE SHALL NOT EXCEED THE PAYMENT, IF ANY, RECEIVED BY ERI FOR THE UNIT OF PRODUCT OR SERVICE FURNISHED OR TO BE FURNISHED, AS THE CASE MAY BE, WHICH IS THE SUBJECT OF CLAIM OR DISPUTE. IN NO EVENT SHALL ERI BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, LIQUIDATED, OR SPECIAL DAMAGES, HOWSOEVER CAUSED. Liability to third parties for bodily injury, including death, resulting from ERI's performance shall be determined in accordance with applicable law and shall not be affected by the liability limitations stated above in this paragraph.

20) Disputes: All disputes under any contract concerning Products not otherwise resolved between ERI and Buyer shall be resolved in a court of competent jurisdiction for the location of ERI's manufacturing plant from which the Products are shipped, and in no other place. Provided, that in ERI's sole discretion, such action may be heard in some other place designated by ERI (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Buyer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with, the Products or services furnished by ERI, may be brought by Buyer more than one (1) year after the cause of action has occurred. If any part, provision or clause of the terms and conditions of sale, or the application thereof to any person or circumstances, is held invalid, void or unenforceable, such holding shall not affect and shall leave valid all other parts, provisions, clauses or applications of the terms and conditions remaining, and to this end the terms and conditions shall be treated as severable.

21) General Conditions:

- a) ERI reserves the right to change or modify its design and construction of the products and/or to substitute materials equal to or superior to or functional equivalents to that originally specified herein provided, however, that any substitution, change or modification shall not materially and adversely affect Buyer's ability to use the products.
- b) ERI reserves the right to make changes in design and construction of the products it manufactures for others and to make and/or add improvements in such products at any time without incurring any obligation to install the same in the products sold herein.
- c) The Buyer shall at its expense engage any qualified engineer necessary to approve ERI's design, obtain building permits, or insure structural integrity of existing structure considering any ERI addition or appurtenance unless otherwise specified in this Proposal. ERI shall furnish construction and installation drawings and engineering data for its products upon request.
- d) This Proposal is submitted in accordance with the ANSI/EIA/TIA-222 standard in effect as of the date of this Proposal, unless otherwise stated in the body of this Proposal. This standard is intended to set the minimum criteria for the structural design, fabrication and construction of antennas and antenna support structures. It is the responsibility of the Buyer to provide site specific data and design requirements and any requirements differing from those contained in this standard to ERI prior to accepting this Proposal. Please refer to the applicable edition of the ANSI/EIA/TIA-222 standard for further information.
- e) No delay or failure on the part of ERI in exercising any right or remedy under any contract resulting from, and/or partial or single exercise thereof, shall constitute a waiver of such right or any other remedy. ERI's rights and remedies under any contract resulting here from are cumulative and not alternative.
- f) If any term of any contract resulting here from or the application thereof shall be illegal, such illegality shall not affect any other term or condition thereof, and such shall continue in full force and effect.
- g) Any contract resulting here from shall be binding upon the heirs, personal representative, successors and permitted assigns of the parties. Buyer may not assign its rights or obligations under this quotation, or any contract resulting here from, without the prior written permission of ERI.
- h) Buyer is responsible for any and all recycling of products, packaging, reels, shipping crates, and other items associated with the fulfillment of order, as well as for compliance with any mandated "green" initiatives.

Terms and Conditions of Sale (continued)**22) Special Terms and Conditions Applied to Field and Installation Services:**

- a) This Proposal is based on work carried out in one continuous operation without interruption or delays due to Buyer supplied missing materials, such as, but not limited to antennas, transmission lines, transmission line hangers, installation drawings, tower components, or electrical power. All material necessary for completing installation, to be furnished by Buyer, must be on the tower site prior to starting of installation or scheduled in such a manner as to avoid delaying crew.
 - b) Downtime resulting from situations beyond the control of ERI or its subsidiary ERI Installations, Inc. as described in "a)" above, will be billed at normal labor rates.
 - c) This quotation on labor to install tower and/or antenna and other related equipment is based upon weather and time of day suitable for outdoor construction. Installation, field services and hazardous operations shall not be performed under adverse weather conditions for the safety of ERI personnel. Adverse weather delays shall be charged to Buyer at normal day rates. Certain operations may be performed under adverse weather conditions by mutual agreement and shall be billed at special rates provided in the quotation. Adverse weather conditions (weather days) include, but are not limited to, the following:
 - i) Daytime temperatures below 30 degrees Fahrenheit and/or wind chill factors less than 10 degrees Fahrenheit.
 - ii) Snow in excess of 3 inches in a 24 hour period.
 - iii) Ice or sleet accumulations of 1/4 inch on the antenna or ground.
 - iv) Rain in excess of 3 inches in a 5 hour period.
 - v) Abnormal mud conditions which prohibit the access of ERI personnel or the operation of equipment.
 - vi) Winds in excess of 20 mph, when the antenna and/or transmission line is being installed.
 - vii) The tower site shall be accessible to workman and installation equipment, using two wheel drive vehicles, under their own power.
 - viii) In the event adverse weather causes a delay, ERI will notify the Buyer of those conditions and charges immediately. The responsibility for determine this condition rests with the ERI supervisor on site.
 - d) Should any conditions exist such that the use of union trades for installation of the tower, accessories and/or foundations is necessary, the prices quoted are subject to adjustment unless a union stipulation has been specifically noted in this inquiry. Unless provided by ERI, the foundations must be completed so as to permit continuous work from time ERI's crew reports on the job, and must be finished in accordance with ERI's specifications.
 - e) The Buyer assumes all liability resulting from site conditions differing from those specified or agreed to by the Buyer.
 - f) Unless otherwise specified in this proposal, it is also Buyer's responsibility to:
 - i) To provide one (1) tagline path (75 feet wide and equal in length to the height of the tower) at the work face, cleared of all obstructions in order to permit a truck to be driven thereon.
 - ii) Clear a guy path alley and fire lane down each guy radial 25 feet wide on each side of the guy line, and extend this lane 50 feet beyond the outer guy anchor, a 10 feet width of this 50 feet lane must be cleared of all obstructions in order to permit a truck to be driven thereon.
 - iii) So grade the area immediately surrounding the tower site so as to permit the moving of trucks, cranes and/or other equipment required to handle and install the tower or related appurtenances.
 - iv) Clear an area a minimum of 200 feet x 200 feet adjacent to the center of the tower to permit unloading, sorting, assembling, working space, and shall provide a hoist and equipment area 20 feet x 50 feet with capabilities for anchoring.
 - v) Provide a free and clear radius of 100 feet at the tower base for construction equipment and to allow staging and landing during tower construction and for future service work. This area shall have a rock/gravel surface bedding to support heavy equipment.
 - vi) Provide fittings and gas required in pressure checking all of the antennas and transmission lines, if required.
 - vii) A safe and secure work site to prevent theft and vandalism of contractor provided equipment and materials and Buyer delivered materials.
 - viii) Provide electric power to the base of the tower suitable for powering construction equipment and tools. This also includes permanent electric power for the tower lighting system, if required, in accordance with the current revision of FAA circular AC 70/7460-1
 - ix) Provide the police service to direct traffic, if in the event the guy lines should cross a public or private road and secure the site from theft or vandalism of ERI equipment.
 - x) Provide toilet facilities if required by regulations.
 - xi) Provide scaled site survey of proposed tower location specifying tower location and orientation, property boundaries, site topography, overhead or buried utility service lines, or any other construction hazards or obstructions.
- g) When foundations are specified as a part of this quotation, it is assumed, unless otherwise by Buyer, that this work will be done under "assumed normal" soil conditions as described by the latest revision of the ANSI/EIA-222 code. It shall be the responsibility of the Buyer to supply specific soil descriptive parameters and ERI shall have an absolute right to rely on written test reports furnished by Buyer in the preparation of foundation drawings and in the installation of foundations. Normal soil conditions do not include rock, saturated soil, frozen soil, peat, or other soil variations similar or dissimilar.
 - h) The installation price does not include: but not limited to, items such as; clearing or grading of tower site, installing, re-locating or repairing utility services, profiles, surveys, grounding systems unless specified, blasting, rock removal, water evacuation, cribbing, fill, removal of obstructions or snow, planking, road building, clearance for site access.
 - i) If necessity dictates non-included labor or materials to be expended resulting from but not limited to, compliance to OSHA or local safety standards, inadequate site accessibility, non-included specified soil conditions, non-included labor or material requirements, then ERI shall be allowed to increase the installation and materials price to include any additional cost incurred, plus a reasonable profit.
 - j) ERI has the right to complete individual assignment early and be compensated for delay damages if other segments of the project, not in ERI control, affect an early completion of any segment of ERI's obligations or assignments provided ERI submits a reasonable plan to place the purchaser on notice of the intent to finish early and documentation of delays.
 - k) If requested or approved by the Buyer, ERI may provide accelerated services including overtime and/or multiple crews, as required to maintain the schedule or provide other services and the Buyer agrees to compensate ERI for such services.

Revised 08/31/2006