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# HUGHES PROPRIETARY

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Job	Approvals	Date	<b><i>Hughes Network Systems, LLC</i></b>	
Originator:	Patrick Ferrara	08/02/05		
Approved:	Barry Hurwitz	08/02/05		
Checked:			<b>Title: Purchase Order Terms and Conditions</b>	
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# Purchase Order – General Terms and Conditions

## 1. Acceptance

Seller's acceptance of this Purchase Order is expressly and strictly limited to the terms and conditions herein contained and to any Supplemental Terms and Conditions attached hereto. Any additional or different terms heretofore or hereafter proposed by Seller in any quotation, acknowledgement, sales order agreement or otherwise are rejected. Seller's acceptance (as herein above provided) shall constitute assent to the terms and conditions herein contained, to any Supplemental Terms and Conditions attached hereto, and shall constitute a waiver of any additional or different terms proposed by Seller. No contract shall exist except as herein provided upon acceptance and this Purchase Order shall be the complete and exclusive statement of all the terms and conditions applicable thereto. These terms and conditions shall not be varied, supplemented, qualified, modified or interpreted by any prior course of dealing between the parties unless stated in writing and signed by an authorized representative of Hughes Network Systems, LLC (hereafter referred to as "HNS"). Any provisions herein for the delivery of goods or the rendering of services in installments shall not be construed as making the obligations of Seller severable.

Seller may accept this Purchase Order by (a) by delivering to HNS Seller's acknowledgment of receipt and/or entry of this Purchase Order; or (b) by commencement of performance of Seller's obligation hereunder. If Seller does not object to this Purchase Order within 5 business days of receipt, the Purchase Order will be considered accepted by Seller.

Acceptance by HNS of any of the goods or services delivered or performed by Seller under this Purchase Order shall not constitute acceptance of Seller's Terms and Conditions.

Seller's performance shall comply with the specifications associated with the HNS part number if such part number is designated on the face of this Purchase Order or associated documents.

## 2. Delivery

Seller agrees to deliver the goods and/or services ordered hereunder in accordance with the schedule specified in this Purchase Order for such goods and/or services, and the quantities set forth therein. Seller shall not unreasonably anticipate delivery dates.

Seller agrees to comply with the requirements of any Statement of Work (SOW) referenced on the face of this Purchase Order and/or attached as Supplementary Terms and Conditions. Such SOW shall describe processes, procedures, tasks and activities to be performed including, but not limited to, identifying Milestones, describing the sequence of events and the party responsible for each action, and setting forth dates for commencement, completion and acceptance. Milestones and other dates contained in the SOW may not be changed by Seller at any time without the prior written consent of HNS.

If Seller or HNS reasonably determines that Seller is likely to fail to meet a Milestone, or if Seller has failed to meet a Milestone and such failure is attributable to Seller, then in addition to any other rights and remedies available to HNS provided in this Purchase Order, Seller shall, at no additional cost to HNS, use reasonable commercial efforts to provide such additional Seller personnel and other resources as may be required or necessary to meet the Milestone or, if Seller has already failed to meet one or more Milestones, complete the Milestones within a re-adjusted time frame established by HNS.

## 3. Prices

Seller warrants its prices are no less favorable than those currently extended to any other customer in comparable status buying the same or like goods in similar or smaller quantities. If during the term hereof, Seller reduces the price of any of the goods as to one or more category of customers in a status comparable to HNS, the corresponding price herein shall be likewise reduced.

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4. **Payment**

Payment terms and discount terms applicable to this Purchase Order are as set forth on, or referenced in, the face of this Purchase Order including but not limited to payments associated with Milestones contained in any referenced Statement of Work. HNS may pay (without loss of discount privileges) invoices for any goods delivered or services completed in advance of the schedule date(s) on the normal maturity after the schedule date(s).

5. **Invoices**

Seller shall place this Purchase Order number on all invoices and shall forward all invoices in duplicate to HNS -Accounts Payable, at the address shown on the face of this Purchase Order. All excise and state or local sales or use taxes when applicable, shall be billed as separate items on Seller's invoices unless HNS provides Seller with a tax exemption certificate in which event taxes shall not be charged. HNS shall have the right in addition to any other remedies available at law or equity to recover from Seller by offset or otherwise the process of any goods or services returned or rejected by HNS under the terms of this Purchase Order.

6. **Compliance to Materials Engineering Standards (MES)**

Seller shall comply with all applicable requirements of HNS Materials Engineering Standards MES 9000 (HNS 1020429).

7. **Acceptance of goods and services by HNS**

HNS shall accept or reject services performed hereunder or goods delivered hereunder within reasonable time after receipt. In the event of rejection by HNS, Seller shall have 30 days thereafter to cure. Seller agrees that any failure of delivered goods or completed services to conform to the specifications and requirements set out in this Purchase Order shall be deemed to impair substantially the value of the whole contract between the parties, and HNS may, at HNS' option, elect to terminate this Purchase Order for default. Upon such termination, HNS' only obligations shall be for conforming goods already delivered and for conforming services, already performed that HNS need not have redone. Seller shall be liable to HNS for all costs HNS shall incur in shipping back to Seller any nonconforming goods.

8. **Packaging and Packing**

Packaging and packing shall be provided to ensure undamaged delivery to the ultimate destination. HNS' Purchase Order numbers shall be plainly marked on all invoices, packages, bills of lading and shipping orders. Two (2) copies of each packing list shall be included inside and outside of each box or package shipment showing HNS' Purchase Order number, part number, item number, and description of the goods and/or services. When specifically requested, shipping receipts or bills of lading shall be sent to HNS' Purchasing Department.

9. **Inspection and Rejection**

Final inspection shall be made at HNS' premises unless otherwise specified in writing. Goods or services rejected, as not conforming to this Purchase Order shall be returned to Seller, freight collect and Seller shall be liable for the transportation cost plus handling expenses. Defective or rejected goods and/or services shall be held by HNS at Sellers risk. Payment for goods and/or services prior to final inspections shall not constitute acceptance thereof, nor will acceptance relieve Seller of its responsibility for latent defects.

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10. **Source Inspections and tests**

HNS may upon reasonable notice inspect Seller's facilities which will or may be used in the performance of this Purchase Order. If inspection or testing is made on the premises of Seller or any of its suppliers, Seller shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and tests shall be performed in such a manner as not to unduly delay Seller's performance. Inspection and test reports covering the goods and/or services shall be available for review and examination by HNS or its authorized representative to verify compliance with applicable specifications and/or drawings.

11. **Title and risk of loss**

- a. Seller represents and warrants it can and shall deliver good title to all goods and/or services to be delivered hereunder and to items that may become the property of HNS pursuant to this Purchase Order, free from any claim or encumbrance.
- b. Risk of loss or damage to the goods shall remain with Seller until delivery of the goods in accordance with the INCOTERM stipulated on the face of this Purchase Order.

12. **Warranty**

Seller warrants that the services performed hereunder and all goods delivered hereunder shall be free from any defects in design, workmanship and material, and shall conform strictly to specifications, drawings or samples specified or furnished. In addition, Seller warrants that only new material (not used or reconditioned) will be used in items to be delivered hereunder and warrants all services performed and goods delivered to be merchantable, and to be fit for the particular purpose for which they are required. The foregoing warranty shall survive inspection and acceptance by HNS and shall continue in effect for a period of one (1) year following HNS' acceptance (except that in the case of any latent defect or defect caused or concealed by fraud or such gross mistake or negligence as to amount to fraud, the warranty period shall be extended until one year after actual discovery of the defect by HNS). Seller agrees that any breach of warranty shall be deemed to impair substantially the value of the warranted goods or services to HNS, and in addition to all other remedies available to HNS, HNS may revoke its acceptance of nonconforming goods or services. HNS may, at HNS' option, either return for credit or refund or require prompt correction or replacement of defective or nonconforming goods and/or services and any other part thereof. Return to Seller of any defective or nonconforming goods and/or services and delivery to HNS of any corrected or replaced goods and/or services shall be at Sellers expense. Goods and/or services required to be corrected or replaced shall be subject to the provision of this clause and the clause hereof entitled "Inspection and Rejection" in the same manner and to the same extent as goods and/or services originally delivered under this Purchase Order, but only as to the corrected or replaced part or parts thereof.

13. **Changes, work suspension or termination**

- a. Seller is not authorized to make changes in schedules, drawings, requirements, specifications, configurations, services, processes, and location of manufacture relating to this Purchase Order, without first notifying HNS and obtaining HNS' written approval from an authorized HNS Procurement representative before any change is implemented by Seller or any of Seller's suppliers.
- b. HNS may at any time, by written order and without notice to any sureties or assignees, order Seller to I) suspend delay interrupt or terminate all or any part of the services to be performed or the goods to be delivered hereunder or to II) make changes within the general scope of this Purchase Order. If any such order causes an increase or decrease in the cost of, or the time required for the performance of, any part of the work under this Purchase Order, then equitable adjustment shall be negotiated in the price or delivery schedule, or both and this Purchase Order shall be modified in writing accordingly. Any price adjustment shall be based on Seller's direct costs and shall not include any amounts for Seller's lost profits or overhead. Any claim by Seller for adjustment under this clause not asserted in writing within thirty (30) days from the date of the notification by HNS shall be waived. Seller shall proceed with this Purchase Order as changed whether or not a claim is made. In connection with any

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claim for adjustment under this clause, Seller shall submit cost data in such form and detail as may reasonably be required by HNS, which data shall, if requested by HNS, be verified by an Independent Certified Public Accounting firm. Where the cost of property made obsolete or excess as a result of a change is included in Seller's claim for adjustment, HNS shall have the right to prescribe the manner of disposition of such property.

- c. HNS engineering technical or other personnel may from time to time render assistance or give technical advice to or exchange information with Seller's personnel concerning this Purchase Order or the goods or services to be furnished hereunder. Such assistance, statements or exchange of information shall not constitute a waiver with respect to any of Seller's obligation or HNS' right hereunder. Any such waiver or exchange to be valid and binding upon HNS must be in writing and signed by an authorized representative of HNS.

**14. HNS' property**

- a. All property used by Seller in connection with this Purchase Order which is owned, furnished, charged to or paid for by HNS including, but not limited to, materials, tools, dies, jigs, molds, patterns, fixtures, equipment, drawings and other technical information, specifications and any replacement thereof shall be and remain the property of HNS, shall be available for inspection by HNS at any time without cost or expense to HNS, and shall be subject to removal by HNS. HNS shall have free access to Seller's premises for the purpose of inspecting or removing such property. All such property shall be identified and marked as HNS' property, used only for this Purchase Order and adequately insured by Seller at its expense for HNS' protection. Seller shall assume all liability for an maintain and repair such property and return the same to HNS in its original condition, reasonable wear and tear excepted, and when such property is no longer required hereunder, Seller shall furnish HNS with a list thereof and shall comply with any HNS disposition instructions applicable thereto.
- b. Materials furnished by HNS on other than a charge basis in connection with this Purchase Order shall be deemed to be held by Seller as bailee thereof.
- c. Unless otherwise agreed to in writing between HNS and Seller, all works created hereunder shall be created as works made for hire, and any writings, software, firmware, design, technology and technical data, inventions, developments, improvements, discoveries or other information (whether or not patentable, copyrightable, or capable of trademark protection) (collectively referred to as "Work Product") shall be the sole and exclusive property of HNS, without restriction. Seller shall promptly inform HNS, in writing, of all such Work Product made or conceived in connection with the performance of services hereunder or relating to knowledge obtained from HNS hereunder. Seller shall perform all lawful acts requested by HNS (i) to perfect HNS' title to all such Work Product, including the execution of any assignments, and (ii) to enable HNS or its nominee to obtain and maintain patent, copyright, trademark, trade secret or other legal protection therefor anywhere in the world. Seller shall advise HNS of any adversely held patent, copyright, trademark or other proprietary rights known to it which may affect any such Work Product.

**15. Patent indemnity**

Seller shall indemnify and hold harmless, HNS, its parents, subsidiaries, successors, assigns, agents, customers and users of the goods and/or services delivered hereunder from and against any loss, damage, liability cost and expenses (including attorney's fees), which may be incurred on account of any suit, claim, judgment or demand involving infringement or alleged infringement of any patent rights in the manufacture, use or disposition of any of the goods and/or services supplied hereunder, or any trademark, copyright, trade secret or any other intellectual property (the "Intellectual Property") rights, provided HNS shall notify Seller of any suit instituted against it and to the extent of its ability to do so, shall permit Seller to defend the same or make settlement in respect thereof. HNS neither represents nor warrants that the performance of any services or the manufacture, use, or disposition of any of the goods and/or services supplied hereunder will be free from any third-party claim for infringement of any Intellectual Property rights. If the manufacture, use sale or other disposition of the goods or the use of the services provided hereunder is enjoined as a result of infringement of any Intellectual Property rights, Seller shall, at no expense to HNS, a) obtain for HNS and its customers the right to use, sell or otherwise dispose of the goods and/or services,

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or b) shall modify such goods or services or shall substitute equivalent goods or services acceptable to HNS which modification or substitution is not infringing and Seller shall extend the provisions of this paragraph thereto.

**16. Assignment**

Any attempt to assign, or any actual assignment by Seller of this Purchase Order in part or in whole, without the prior written consent of HNS shall be null and void, and HNS may, at HNS' election, terminate this Purchase Order, if Seller attempts such assignment. HNS may, by written notice to Seller, assign this Purchase Order in connection with a merger, acquisition, reorganization, or similar transaction.

**17. Confidentiality**

Seller agrees that any information in any document or obtained from examination of any property furnished by HNS hereunder (whether or not marked with a confidential or proprietary legend) shall be deemed to be HNS' confidential or proprietary information. Seller shall not, except as necessary for the performance of this Purchase Order, duplicate or use such information or disclose to any third person (including any company affiliated with Seller) any such information without the prior written consent of HNS. Upon completion of the work contemplated by this Purchase Order Seller shall promptly return all such information to HNS.

**18. Termination for default**

HNS may terminate this Purchase Order for default if any of the following events occur:

- a. Seller materially breaches this agreement, or so fails to perform its obligations hereunder as to endanger the performance in accordance with its terms, and, if such breach is reasonably capable of cure within 30 days, fails to cure such default within 30 days after written notice by HNS; or
- b. The institution by or against Seller of any proceeding in bankruptcy or insolvency, or the reorganization of Seller under any law or the appointment of a receiver or trustee to take charge of Seller's property, or the assignment by Seller of its business for the benefit of creditors.

**19. Indemnification**

- a. To the extent that Seller, its agents, employees or subcontractors enter upon premises occupied by or under control of HNS, they shall do so at their own risk.
- b. Seller shall indemnify and hold harmless HNS, its directors, officers, employees, agents, parents, subsidiaries, affiliates, designees, and any subsequent owner or lessee of any of the goods and/or services supplied hereunder from and against any loss, damage, liability, cost or expense (including attorney's fees) which may be incurred on account of any suit, claim judgment, or demand arising out of any occurrence, including damage of property of personal injury or death to any person, caused by any act or omission of Seller, its agents, employees or subcontractors.
- c. Seller shall maintain sufficient public liability, property damage, employer's liability, workers compensation, product liability and occupational diseases insurance to protect HNS from the risk hereinabove provided.

**20. Publicity, promotion, and advertising**

Seller shall not, without the prior written consent of HNS, issue any new release, advertisement, publicity or promotion material regarding this Purchase Order (including denial or confirmation thereof).

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21. Hughes Network Systems is an equal opportunity employer. Seller certifies that the goods furnished hereunder have been or will be produced in compliance with all applicable requirements of the Fair Labor Standards Act as amended, and the regulations of the United States Department of Labor issued thereunder. In the course of performance of its obligations under this Purchase Order, Seller agrees to comply with all applicable federal, state, and municipal laws and ordinances, and all rules and regulations thereunder. Seller agrees to indemnify and hold HNS harmless from any loss, damage, cost or expense (including attorney's fees) arising from Seller's noncompliance with the requirements of this article. This Purchase Order shall be governed and construed in accordance with the laws of the State of Maryland (without reference to any conflict of law rules).

Notwithstanding the Parties choice of governing law, the Parties each represent, warrant, and covenant that they will comply with all applicable laws of the Seller's country and the United States, including, without limitation, the U.S. Foreign Corrupt Practices Act. Further, the Parties agree and recognize that applicable United States law restricts or prohibits the provision or export of certain technical data or information without a license to persons or entities who are not United States nationals, including but not limited to persons or entities who are nationals of the Seller's country (in the event Seller is not a U.S. company).

It is expressly agreed that the execution of this Purchase Order and the subsequent delivery of goods and services under this Purchase Order will be subject to all applicable export controls imposed or administered by the U.S. Department of State and the U.S. Department of Commerce as well as by any other U.S. Government Agency that may impose any such controls, including but not limited to controls governing the export of technical data, equipment, software and know-how.

22. **Notice of labor disputes**

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Purchase Order, Seller shall immediately give notice to HNS thereof, including all relevant information.

23. **Waiver**

The waiver by HNS of any breach of any term or condition contained in the Purchase Order shall not be deemed to be a waiver of any subsequent breach of the same or any other term or condition.

24. **Time**

Time is of the essence in the performance of this Purchase Order by Seller.

25. **Entire agreement**

This Purchase Order and any attachments hereto and/or documents incorporated herein constitute the complete, final and exclusive statement of the terms of this agreement between Seller and HNS and supersede all prior representations, understandings and communications relating thereto. The invalidity in whole or in part of any provision of this Purchase Order shall not affect the validity of other provisions. No modifications or additions to this Purchase Order shall be binding on HNS unless in writing and signed by an authorized representative of HNS.

26. **Dispute Resolution**

Any dispute or disagreement arising between Seller and HNS in connection with this Contract, which is not settled to the mutual satisfaction of Seller and HNS within thirty (30) days (or such longer period as may be mutually agreed upon) from the date that either Party informs the other in writing that such dispute or disagreement exists, shall be settled by arbitration in Washington, D.C. in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect on the date that such notice is given. The decision of the arbitrator(s) shall be final and binding upon the Parties. Each Party shall bear the cost

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of preparing and presenting its case. The cost of the arbitration, including the fees and expenses of the arbitrator(s), will be shared equally by the Parties unless the award otherwise provides. At the request of either Party, both Parties will instruct the Arbitrator to render a decision within forty-five (45) days of submission of the dispute for consideration.

**27. Country of Origin**

- a. Seller shall include with the packing slip, for each line item on the purchase order, a commercial invoice, when required, which clearly states the country of origin of the device, as well as the description, value, quantity, manufacturer's name and terms of the sale (i.e. FOB Destination, Delivered Duty Paid, etc.)
- b. Every packing slip must indicate the country of origin for the goods listed.
- c. A Certificate of Origin must be submitted to HNS Procurement for every part number shipped to HNS. If Seller regularly provides goods to HNS, one Certificate of Origin may be provided for these parts on an annual basis. These Certificates of Origin do not relieve the Seller of responsibility to provide country of origin information on every packing slip, and/or a Commercial invoice when required.
- d. Failure to comply with the above requirements may result in incorrect duties assessed to HNS by Customs. Once identified by HNS auditors, at HNS discretion, these duty charges will be debited against Seller's payable account.

**28. Freight Costs**

Seller shall pay all freight and duty costs unless otherwise agreed by Seller and HNS and so noted on the face of this Purchase Order and/or on an existing agreement between the parties.

**29. Bar Coding**

Seller shall insure all delivered material shall be bar coded in accordance with the provisions of HNS Document 1027650, "Supplier Bar Code Labels Specification". Failure to do so, will cause the Receiving Department to reject the incoming material prior to receipt. This may result in the material being returned or disposed at HNS's discretion. This may also impact timely payment of Seller invoice.

**30. Quality Data for Critical Parts**

As required and defined by HNS, Supplier shall agree to a Production Part Approval Process (MES 9000 - 1020429) with specific deliverables to satisfy Approval of Production Parts prior to release for production quantities. On a sustaining basis, to verify 'lot-to-lot' consistency, the Supplier shall supply production lot related quality and process control data for Critical Parts. Suppliers shall be notified if they are supplying a Critical Part to HNS, and the frequency and content of the quality and process control data shall be mutually agreed between HNS and the Supplier.

**31. ROHS and WEEE**

In accordance with European Union Directive 2002/95/EC on the Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment (the "ROHS Directive") and European Union Directive 2002/96/EC on Waste Electrical and Electronic Equipment (the "WEEE Directive") and any statute or statutory provision or subordinate legislation introduced or modified from time to time to implement such Directives into EU Member State Law:

For materials ordered in accordance with Seller's data sheets which show that the material is compliant with the ROHS Directive and/or the WEEE Directive or for materials whose HNS provided specifications require that the material be compliant with the ROHS Directive and/or the WEEE Directive, the Seller warrants and undertakes to HNS that such material (1)complies and has at all material times complied with the ROHS Directive and/or the WEEE Directive and (2) is correctly labelled in accordance with the WEEE Directive and

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that it will provide evidence of such compliance to HNS as soon as reasonably practicable after HNS's request so to do and in any event within 10 business days of such request.

The Seller will give to HNS as soon as reasonably possible such information and assistance as HNS in its reasonable opinion requires to comply with HNS's obligations under the WEEE and/or ROHS Directives. For the avoidance of doubt, the HNS's obligations referred in this clause include obligations as to:

- a. the provision of such information as may from time to time be required by any EU Member State Government relating to the supplied materials;
- b. component design;
- c. labelling products, including in accordance with Annex IV of the WEEE Directive; and
- d. auditing.

### **32. CLAUSE INCLUSION AND FLOW DOWN**

Seller agrees to include the FAR Clause 52.219-8, "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities and will further require all subcontractors (except small business concerns), who receive subcontracts in excess of \$650,000, (\$1,500,000 for construction) to adopt a plan that complies with the requirements of Clause 52.219-9, "Small Business Subcontracting Plan."

### **33. EQUAL EMPLOYMENT OPPORTUNITY**

Each party, and any of its respective contractors or subcontractors, shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), if applicable. These regulations prohibit discrimination against qualified protected veterans and qualified individuals with disabilities and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.

### **34. CODE OF CONDUCT**

Seller agrees to comply with the "Supplier Code of Conduct" (Document number 1039426) as shown on the website, <https://www.hughes.com/resources/support>.

### **35. DUTY DRAWBACK**

Upon request of HNS, Seller shall also provide, on a timely basis, to HNS any documentation, including copies of the complete import document package for the goods delivered under this Purchase Order, in support of any duty drawback claim(s) which may be filed by HNS and shall cooperate with and provide reasonable assistance to HNS in connection with HNS's drawback claims in respect of the goods delivered under this Purchase Order. In addition, Seller shall assign its right to any drawback claims to which it may be entitled or for which HNS has reimbursed Seller for any taxes, duties or fees paid on the goods delivered under this Purchase Order, by providing written evidence in the form requested by HNS. Seller hereby agrees that the goods delivered under this Purchase Order will not be designated by Seller for any other drawback purpose.

### **36. EEE Counterfeit Mitigation**

HNS suppliers and sub-tier suppliers shall have a documented procedure compliant to the current revision of AS5553 for the detection, prevention, mitigation, disposition, and reporting of suspected EEE counterfeit parts.

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