

Cricket Communications, Inc.
Standard Purchase Order Terms and Conditions

1. AGREEMENT. These Standard Purchase Order Terms and Conditions shall apply to any Purchase Order (a "P.O.") issued to Seller by Cricket Communications, Inc., hereinafter referred to as "Buyer." Unless otherwise provided in a written agreement executed by Seller and Buyer, such P.O. shall be governed by the terms and conditions expressly referenced in such P.O., and these Terms and Conditions, shall constitute the entire agreement (the "Agreement") between Buyer and Seller with respect to the purchase, sale and delivery of the products described in such P.O. (the "Products") and the performance of any work described in the P.O. and shall supersede all prior agreements, understandings and representations between Seller and Buyer with respect thereto. Any additional or different terms stated by Seller in any proposal, quotation, confirmation, acknowledgment, invoice, or otherwise shall be of no force and effect, and no course of dealing, usage of trade, or course of performance shall be relevant to explain or supplement any term expressed in the Agreement.

2. DELIVERY. Unless otherwise expressly specified in the P.O., all deliveries of Products shall be made FOB destination. Seller shall deliver the Products and complete the work specified in the P.O. on or before the applicable "Delivery Date" indicated in the P.O.; provided, however, that Buyer, in its sole discretion, may refuse to accept Products delivered more than two weeks prior to such Delivery Date. Time is of the essence in the performance of Seller's obligations under the Agreement.

3. TITLE AND RISK OF LOSS. Seller warrants that it has good and clear title, free from any security interest, lien, or other encumbrance, to all Products to be delivered to Buyer. Title and risk of loss or damage to the Products shall pass to Buyer upon delivery to Buyer's designated destination, subject to Buyer's right to reject non-conforming Products. Notwithstanding the foregoing, risk of loss of any non-conforming Products or deliveries shall remain with Seller unless and until Buyer finally accepts in writing such Products or deliveries.

4. INSPECTION/ ACCEPTANCE. Final inspection of Products delivered shall be made at Buyer's premises unless otherwise specified in a writing signed by both parties. Buyer shall either accept or reject Products or work within the later of (a) thirty (30) days after the Delivery Date specified in the P.O. or (b) thirty (30) days after receiving such Products or work. Any non-conformity in any Products or work shall be deemed to substantially impair the value of the Agreement to Buyer and shall entitle Buyer to reject such Products or work or to revoke its acceptance thereof. At Buyer's option, Buyer may return non-conforming Products or work to Seller, freight collect, or Buyer may modify or adapt non-conforming Products or work to render it acceptable. If Buyer elects to return such non-conforming Products or work, Seller shall issue a return authorization number for all non-conforming Products within 24 hours after Buyer's request, and such non-conforming Products or work shall be the property of the Seller. If Buyer elects to modify or adapt non-conforming Products or work, Buyer may offset all costs incurred in performing any such modifications and adaptations against any and all amounts otherwise due to Seller or, at Buyer's option, may bill Seller directly for such costs.

5. PRICE AND PAYMENT TERMS. The prices of Products delivered and work performed shall be as specified in Buyer's P.O. therefor. The P.O. will specify whether items listed therein are taxable, and Seller shall invoice Buyer accordingly. Buyer shall pay for Products and work as accepted within thirty (30) days after Buyer's receipt of Seller's invoice therefor. Buyer shall have no obligation to pay for any Products or work that is rejected or as to which acceptance is revoked in accordance with Paragraph 4 above. If Buyer rejects or revokes its acceptance of any Products or work in accordance with Paragraph 4 above after paying for such Products or work, Seller shall promptly refund the payment to Buyer.

6. WARRANTIES. Seller warrants that all Products delivered and work performed under the Agreement shall be free from defects in workmanship and material and fit for the purposes for which such Products or work is intended. Further, all Products delivered and work performed shall contain all new materials, shall strictly conform to the requirements stated in the P.O. and all other specifications furnished by Buyer therefor, and shall conform to Seller's specifications.

The foregoing warranties shall remain in effect for a period of one (1) year after Buyer's acceptance of Products delivered or work performed, except that in the case of any latent defect or any defect caused or concealed by fraud or gross negligence, the warranty period shall be extended until the expiration of one (1) year after Buyer's actual discovery of such defect. As a remedy for breach of any of the foregoing warranties, Buyer may elect, at Buyer's option, (a) the repair or replacement of non-conforming Products or work, which shall be accomplished by Seller at no charge to Buyer; (b) modification or adaptation of the non-conforming Products or work at Seller's expense in accordance with Paragraph 4 above; or (c) return of the non-conforming Products or work to Seller and a full refund to Buyer of the aggregate purchase price paid therefor.

7. INFRINGEMENT. In addition to the warranties set forth in Paragraph 6 above, Seller warrants that all Products delivered and work performed shall be delivered free of any claim that such Products or work infringes any patent, copyright, trade secret, or other intellectual property right of any third party. Seller shall indemnify, defend and hold Buyer and its customers harmless against any losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees), arising out of or resulting from any claim alleging facts that, if true, would constitute a breach of the warranty stated in this Paragraph 7.

In the event that any Product or work is determined to infringe any intellectual property right of any third party, Seller shall, at Buyer's option, either: (i) obtain from such third party, at Seller's sole expense, the right for Buyer and Buyer's customers to continue using the infringing Products and/or work, or (ii) modify the Products and/or work at Seller's sole expense so as to render them non-infringing, while maintaining substantially identical fit, form and function.

8. BUYER PROPERTY. All property used by Seller in connection with its performance under the Agreement which is owned, furnished, or consigned by Buyer, or is charged to or paid for by Buyer, including but not limited to materials, tools, dies, jigs, molds, patterns, fixtures, equipment, drawings, specifications and other technical documentation (the "Property") shall be and remain the property of Buyer. Unless already so marked by Buyer, Seller shall conspicuously mark all Property as belonging to Buyer and, upon request, shall furnish Buyer a list of all Property being held by Seller.

All Property shall be used only for Seller's performance under the Agreement and held at Seller's risk and insured at Seller's sole expense in an amount equal to its replacement cost, with loss payable to Buyer. Buyer may inspect and/or remove any Property at any time at no charge to Buyer, and Buyer shall have reasonable access to Seller's premises for such purpose. Seller shall return such Property to Buyer upon Buyer's demand at Seller's sole expense.

9. PATENT AND DATA RIGHTS. Seller agrees to promptly disclose to Buyer and upon request to assign to Buyer, each invention conceived or first actually reduced to practice during the performance of the Agreement. Further, Seller hereby grants to Buyer a royalty-free, non-exclusive, unrestricted, irrevocable, world-wide license to use, duplicate, or disclose for any purpose whatsoever and to authorize others to do so, all data and information (including but not limited to writings, recordings, pictorial reproductions, drawings, computer programs, other graphic representations and works of any similar nature) required to be furnished and/or actually furnished to Buyer under the Agreement.

10. CONFIDENTIALITY; PUBLICITY. Except as necessary for its performance under the Agreement, Seller shall not disclose to any person (including but not limited to any company affiliated with Seller and any consultant or independent contractor of Seller), reproduce, or use any information furnished by Buyer under or in connection with the Agreement (whether or not marked as confidential or proprietary), and, at Buyer's request, Seller shall return all such information to Buyer. Further, Seller shall not issue any news release, advertisement, publicity, or promotional material

regarding the Agreement or Seller's relationship with Buyer without Buyer's prior written consent. The provisions of this Paragraph 10 shall survive the termination or cancellation of any or all P.O.'s under the Agreement.

11. Seller's method of shipment or packing; (ii) the quantities of Products ordered; (iv) the place of delivery; and/or (v) the delivery schedule. If any such change causes an increase or decrease in the cost of, or time required for, performance under the Agreement, the Agreement shall be equitably adjusted as agreed upon by Buyer and Seller. Failure to agree to an adjustment in advance of performance shall not excuse Seller from performance with the revised P.O.

12. REPRESENTATIONS. By acceptance of Buyer's P.O., Seller is certifying that Seller is in full compliance with the Fair Labor Standards Act of 1938, as amended, and regulations issued thereunder and all other applicable Federal, State and local laws or regulations. Upon request, Seller shall furnish Buyer with satisfactory evidence of its compliance with the representation in this Paragraph 12.

13. EXPORT. Seller agrees to provide to Buyer (i) the Export Control Classification Number and Schedule B number for all Products, pursuant to the Export Administration Regulations issued by the Bureau of Export Control under the Department of Commerce, certificates of origin and NAFTA certificates of origin, if applicable, for all Products and all similar data required by any U.S. government agency in order to export the Products from the U.S., and (ii) all information requested by Buyer in order for Buyer to comply with all applicable laws, regulations and related legal reporting obligations in the country(ies) of destination, including, without limitation, all documentation and/or electronic transaction records to allow Buyer to meet Customs-related obligations, any local content/origin requirements, and to obtain all tariff and trade program duty avoidance and/or refund benefits, in each case where applicable. Seller agrees that all information provided to Buyer shall be accurate, and agrees to defend, hold harmless and indemnify Buyer against any and all financial responsibility arising from Seller's failure to supply accurate information. Such indemnity shall include, without limitation, any fines, penalties, forfeitures or counsel fees incurred or imposed as a result of actions taken by the importing country's government.

14. TERMINATION; CANCELLATION. Unless otherwise provided in a written agreement executed by Seller and Buyer, Buyer may terminate any P.O. or any portion thereof upon giving notice to Seller of such termination not less than two (2) business days prior to the earliest applicable Delivery Date set forth in the original P.O., and Buyer will revise or revoke the P.O. accordingly. Within ten (10) business days after receiving notice of such termination, Seller shall advise Buyer in writing of any cancellation charges it desires to impose as a direct result of such termination. To the extent such charges are deemed reasonable in Buyer's sole discretion, Buyer will pay such cancellation charges within forty-five (45) days after the date of the Seller's written request therefor. Any request by Seller for cancellation charges shall be deemed waived if not asserted within ten (10) business days after Buyer's termination notice.

15. ASSIGNMENT. Seller shall not assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of Buyer, and any assignment in violation of this provision shall be null and void. Notwithstanding the foregoing, Seller may assign claims for monies due or to become due under the Agreement without Buyer's consent provided that Seller promptly furnishes Buyer with two signed copies of all documentation evidencing such assignment and further provided that payment to any assignee shall be subject to setoff or recoupment of any present or future claim(s) that Buyer may have against Seller. Regardless of any such assignment, Buyer shall continue to deal directly with Seller with respect to all matters other than payment of monies due under the Agreement.

16. INSURANCE. Whenever Seller has in its possession property of Buyer, Seller shall be deemed an insurer thereof and shall be responsible for its safe return to Buyer. Seller shall also maintain at all times during performance of its work related to the Agreement adequate Workers' Compensation insurance to cover all of its general and special employees engaged in such work, including Employer's Liability coverage; insurance to insure against claims for injury to or death of persons or destruction or damage to property (including Buyer's employees and property) which may arise from Seller's actions or omissions in the performance of its work or in the design or manufacture of its Products, such Commercial General Liability insurance shall specifically include contractual liability coverage; and Business Automobile Liability coverage including coverage for bodily injury and property damage for all owned, hired or non-owned vehicles. Seller shall have all insurance policies endorsed to waive the insurer's rights of subrogation in favor of Buyer.

17. APPLICABLE LAW. The Agreement shall be governed by the laws of the State of California. All disputes arising in connection therewith shall be heard only by a court of competent jurisdiction in San Diego County, California, and the prevailing party in any legal proceeding shall be entitled to recover its reasonable attorneys' fees incurred in connection therewith. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to the purchase of Products or services by Buyer.

18. MISCELLANEOUS PROVISIONS. No addition or modification of the Agreement shall be effective unless made in writing and signed by the respective representatives of Seller and Buyer. Any delay or failure to enforce at any time any provision of the Agreement shall not constitute a waiver of the right thereafter to enforce each and every provision thereof. If any of the provisions of the Agreement is determined to be invalid, illegal or otherwise unenforceable, the remaining provisions shall remain in full force and effect. The rights and remedies expressly provided to Buyer herein are not exclusive, but are cumulative and in addition to any other rights and remedies available at law or in equity.

19. CORRESPONDENCE. Seller shall place Buyer's applicable P.O. number on all notices, correspondence, invoices, packing slips and packages pertaining thereto. All written correspondence other than invoices shall be sent to the attention of the person identified as the "POC" or point of contact on the P.O.; all invoices shall be sent to the attention of the Accounts Payable Department; in each case at 10307 Pacific Center Court, San Diego, CA 92121-4340.

20. Seller and its employees, agents, and permitted subcontractors shall not offer or give to an officer, employee, or agent of Buyer any services, gifts, entertainment, payments, loans or other special favors which might appear to be offered to influence or possibly influence the award of a contract or to obtain favorable treatment under a contract. Seller and its employees, agents and permitted subcontractors further agree not to perform services for or engage in activities with any officer, employee or agent of Buyer that would in any way present a conflict of interest with respect to the Services performed under this Agreement. Violation of this provision may be deemed by Buyer to be a material breach and subject all contracts or agreements with Seller to termination for default, as well as any other remedy available at law or in equity.