

Sunny Communications Service Plan Terms and Conditions

Provisions

1. Documents. Customer has purchased from Sunny Communications a Service Plan. These terms and conditions will cover the responsibility of the Parties with respect to the Service Plan. Other documents may be incorporated by reference herein where explicitly stated so in these Terms and Conditions.
2. Acceptance. Customer accepts the terms of these Terms and Conditions and agrees to pay the prices set forth in the purchase order. The Service Plan becomes binding only when accepted by Customer. The term of this Service Plan begins on the date of purchase indicated in the purchase order.
3. Scope of Services. Under the Service Plan, Sunny will provide professional maintenance and repair services for covered radio equipment. Work will be performed using manufacturer parts or parts of equal quality and in accordance with manufacturer standards and procedures. In the event of equipment failure, Sunny will respond and complete repairs promptly, except where delays are beyond its control. At the Customer's request, Sunny may also provide additional technical or system support services at its standard rates. Customer expressly warrants that all equipment is in good working order on the Start Date. Customer agrees to expressly identify any equipment that is labeled intrinsically safe for use in hazardous environments. Customer must promptly notify Sunny of any equipment failure. In no event shall any notification of equipment failure be made more than seven (7) business days after the failure is discovered by Customer. Sunny reserves the right to reject coverage for any equipment for which notification under this paragraph was not timely made. The time the equipment is received by Sunny, repaired and shipped back to Customer shall be considered the Turn Time for repairs. Upon receipt and inspection of the equipment Sunny shall provide a Turn Time for the equipment. If Customer requires an accelerated Turn Time they must provide written notification of such a request to Sunny. Sunny will evaluate the request in its sole discretion. If Sunny agrees to an accelerated Turn Time additional fees shall apply.
4. Excluded Services. Sunny reserves the right in its sole discretion to refuse to provide Service of equipment that has become defective or damaged from use in other than the normal, customary, intended, or authorized manner. Any use not in compliance with applicable industry standards, excessive wear and tear, accident, liquids, power surges, neglect, acts of God or other uncontrollable events may void Sunny's obligations under these Terms and Conditions. Sunny shall provide photographs of the equipment that has been deemed defective or damaged through use other than normal wear and tear. At its option, Sunny may provide to Customer an estimate for the repair of equipment that has become defective or damaged by use other than normal wear and tear, such estimates shall include parts and labor for repair of the equipment. Customer shall provide authorization to Sunny for those repair estimates that are deemed acceptable and Sunny shall repair the equipment and invoice Customer in accordance with the estimate. If Customer declines the estimate of repair, the equipment shall be returned to Customer unrepaired and removed from the scope of these Terms and Conditions. Unless specifically included in the purchase order, Service excludes items that are consumed in the normal operation of the equipment including but not limited to batteries, magnetic tapes, upgrading or reprogramming equipment, accessories, belt clips, battery chargers, custom or special products, modified units, or software, and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Sunny has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for equipment malfunction caused by the transmission medium.
5. Time and Place of Service. Service will be provided at Sunny located at 12980 West Cedar Drive Lakewood, CO 80228. Customer shall ship, at their own expense, equipment to Sunny for Service. In the event of any change of location for Sunny, Sunny will provide written notice to Customer of the new location designated for Service.
6. Contact. Sunny will communicate only with the person designated on the purchase order. Customer may contact Sunny by email at Repair@sunnycommunications.com and by phone at (720) 459-7557.
7. Payment. Customer agrees to pay the price as set forth on the purchase order along with any additional costs which may be discussed in these Terms and Conditions.
8. Term. These Terms and Conditions shall be in full force for the period stated on the purchase order. If pursuant to the warranty provisions of these Terms and Conditions, Sunny provides Services after the termination or expiration of this term set forth in the purchase order, the terms and conditions in effect at

the time of the termination or expiration will apply to those Services and Customer agrees to pay for those Services.

9. Warranty. Sunny warrants that its Services under these Terms and Conditions will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of any defective work, Customer will notify Sunny within seven (7) business days of discovery of the defective work.

10. Default/Termination. Unless otherwise stated, the Service Plan may be terminated for cause after receipt of thirty (30) days written notice if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within 5 days of written notice and diligently complete the correction thereafter. On termination, Sunny will be paid for all authorized work performed up to the termination date plus termination expenses. Any termination of the Service Plan will not relieve either party of obligations previously incurred pursuant to these Terms and Conditions, including payments which may be due and owing at the time of termination. All sums owed by Customer to Sunny will become due and payable immediately upon termination of the Service Plan. Upon the effective date of termination, Sunny will have no further obligation to provide Services.

11. Limitation of Liability. Except for personal injury or death, Sunny's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the contract price under the purchase order. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT SUNNY WILL NOT BE LIABLE FOR ANY, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THESE TERMS AND CONDITIONS OR THE PERFORMANCE OF SERVICES BY SUNNY PURSUANT TO THE SERVICE PLAN OR THESE TERMS AND CONDITIONS.** This limitation of liability will survive the expiration or termination of the Service Plan and applies notwithstanding any contrary provision.

12. Interest/Non-Payment/Collection. If either party, the Customer or Sunny, breaches these Terms and Conditions or defaults in satisfying any of its obligations under these Terms and Conditions, including making payment to Sunny when due, the responsible party shall pay all reasonable costs of collection or other enforcement of the of the non-breaching party. Such costs include, without limitation: reasonable attorney's fees, collection agency fees, court costs, and any other fees incidental thereto, whether or not a lawsuit is commenced. Customer shall also pay interest at the lesser of one and one-half percent (1.5%) per month or the maximum legal rate. Interest shall begin accruing on the date of the default on any outstanding balance due to Sunny. Payments will first be credited to interest and then to principal. Customer must be notified of Customer's default by Sunny and shall have five (5) days to cure such default.

13. Severability. If any Court renders any portion of these Terms and Conditions unenforceable, the remaining terms will continue in full force and effect.

14. Jurisdiction and Venue. These Terms and Conditions and the rights and duties of the parties will be interpreted in accordance with the laws of the State of Colorado in which the Services are performed. The parties stipulate that the preferred forum, venue and court for any legal action taken with regard to these Terms and Conditions shall be in the District Court for Jefferson County and waive rights to a jury trial regarding any issues under these Terms and Conditions. In the event of litigation, the prevailing party in such litigation shall be entitled to recover their respective attorney fees and costs.

15. Waiver. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

16. Force Majeure. Neither party shall be liable or responsible to the other party nor be deemed to have defaulted under or breached these Terms and Conditions for failure or delay in fulfilling or performing any obligation under these Terms and Conditions when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including but not limited to fire, floods, embargoes, pandemics, wars, acts of war (whether war is declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, instances affecting public health including pandemics, acts of God or acts, omission, or delays in acting by any governmental authority. Provided, however, that the party so affected shall use reasonable efforts to avoid or remove such causes of non-performance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either party shall provide the other party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure. The parties shall mutually seek a resolution of the delay or the failure to perform as noted above and project schedule and compensation shall be equitably adjusted.

17. Subcontract. Sunny may subcontract any of the work, but subcontracting will not relieve Sunny of its duties under the Service Plan or these Terms and Conditions.

18. Integration. These Terms and Conditions supersede all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of these Terms and Conditions except for those expressed herein. The Terms and Conditions may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

19. Binding Effect. These Terms and Conditions shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors, representatives, and assigns.

20. Headings; Exhibits. The headings of paragraphs in these Terms and Conditions are for convenience only; they form no part of these Terms and Conditions and shall not affect its interpretation. All schedules, exhibits or attachments referred to herein shall be incorporated in and constitute a part of these Terms and Conditions.

21. Dispute Resolution. The parties will use their best efforts to resolve amicably any dispute, including use of alternative dispute resolution options. The parties agree to submit any dispute to third-party mediation with JAMS, Inc. in Denver, Colorado as a condition precedent to the filing of any litigation, other than the filing for an injunction.

BY ACCEPTING THESE TERMS AND CONDITIONS CUSTOMER EXPRESSLY ACKNOWLEDGES THAT THEY HAVE READ AND UNDERSTOOD THE LEGAL RIGHTS CONTAINED HEREIN AND THAT THEY UNDERSTAND THEIR RESPECTIVE RIGHTS AND OBLIGATIONS UNDER THESE TERMS AND CONDITIONS.