



## Terms and Conditions of Sale for Tower and Services (Rev 6 – 02/05/15)

### I – General Terms and Conditions

- PROPOSAL, ACCEPTANCE AND GOVERNING PROVISIONS.** The Proposal will automatically expire if not accepted by You within thirty (30) days from its date or any extension of such date approved in writing by TI, and Your acceptance of the Proposal, by purchase order or signature, shall constitute Your offer and will evidence Your intent that the sale of the Products and the furnishing of any Services shall be governed by the Proposal and the Terms. TI'S ACCEPTANCE OF YOUR OFFER IS CONDITIONED UPON YOUR ACCEPTANCE OF THE TERMS SET FORTH HEREIN AND YOUR AGREEMENT TO BE BOUND BY AND COMPLY WITH THE TERMS. THE TERMS, THE PROPOSAL, AND ALL REFERENCED ATTACHMENTS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN YOU AND TI ("Agreement"), AND NO AMENDMENT OR MODIFICATION SHALL BE BINDING ON TI UNLESS IN WRITING AND SIGNED BY AN OFFICER OF TI. THE FAILURE OF TI TO OBJECT TO PROVISIONS CONTAINED IN ANY PURCHASE ORDER OR OTHER DOCUMENT OF YOURS SHALL NOT BE CONSTRUED AS A WAIVER BY TI OF THE TERMS OR AN ACCEPTANCE OF ANY SUCH PROVISIONS. ANY CONFLICTING OR ADDITIONAL TERMS OR CONDITIONS SET FORTH BY YOU IN A PURCHASE ORDER OR OTHER DOCUMENT ARE NOT BINDING UPON TI, AND TI HEREBY EXPRESSLY OBJECTS THERETO. No purchase order shall be binding upon TI until accepted by a written acknowledgment by an authorized representative of TI at its main office or the main office of one of its operating units or by TI's delivery of the Products.
- DEFINITIONS.** (a) "Terms" means these Terms and Conditions of Sale Tower and Services; (b) "Proposal" means the proposal or quotation document provided to You by TI into which these Terms are incorporated by reference; (c) "You" and variations thereof, means the purchaser to whom the Proposal is addressed and to whom these Terms apply, including, where applicable, all individual and/or corporate guarantors; (d) "TI" means Liberty Industries L.C., doing business as Tower Innovations and any operating unit of (e) "Custom-built" means equipment set forth in the Proposal which is custom built by TI for You; (f) "Products" means the applicable broadcast, tower and lighting equipment to be sold by TI to You as set forth in the Proposal; (g) "Services" means construction, engineering and/or installation services to be furnished by TI to You as set forth in the Proposal; (h) "Rigging" means the labor, materials and machinery required to remove or re-install any Products located on a tower;
- PRICES.** TI's prices for Products and/or Services (the "Prices") are listed in the Proposal. All Prices are subject to adjustment by TI unless: (a) the required down payment has been made with Your acceptance of the Proposal, and (b) shipment is not delayed beyond the estimated delivery date(s). Prices for Products do not include any special packing or crating materials, which may be required for Custom-built equipment. All costs of special packing shall be paid by You and shall be provided prior to shipment or as soon as all packing costs are determined.
- TAXES.** The Prices do not include any applicable foreign, federal, state or local taxes. The amount of such taxes payable or paid by or assessed against TI will be billed to, and shall be paid by, You.
- PAYMENT TERMS.** (a) The Price for all Products shall be paid to TI in accordance with the progress payment schedule shown in the Proposal. All other sums owed TI, including but not limited to the Price for Services hereunder, shall be paid upon Your receipt of TI's invoice. (b) Overdue payments shall accrue interest at the rate of 16% per annum (or such lower percentage as required by applicable law) from the due date. You shall also be required to pay TI any and all collection costs and expenses TI incurs (including without limitation reasonable attorneys' fees) to collect overdue payments. (c) TI may make partial shipments of Products, and pro-rata payments shall be due for such partial shipments of Products. (d) All down payments shall be made at the main offices of Tower Innovations, 2855 Highway 261, Newburgh, IN 47630, unless otherwise directed in writing by TI. (e) Upon TI's request, You agree to provide Your latest audited financial statements, including but not limited to the balance sheet, profit and loss statement and statement of retained earnings. TI may, at its option, decline to deliver Products or provide Services, except for cash, or stop Products in transit, whenever, for any reason, TI doubts Your financial responsibility.
- DELIVERY.** (a) TI will deliver Products FOB point of shipment, with delivery to the initial carrier constituting delivery to You. All transportation charges will be Your responsibility; however, upon Your request, TI will prepay transportation charges for which You shall reimburse TI (together with an administrative fee payable to TI). You shall have sole responsibility for filing any claims with any carrier for delay, loss or damage. (b) Any estimated or "firm" delivery dates or periods are predictions made by TI of the times within which it is likely the Products will be shipped; however, due to the difficulties inherent in predicting future delivery dates or periods, TI does not promise, guarantee or otherwise obligate itself to have the Products shipped on or before that time. TI WILL ENDEAVOR TO MEET THE ESTIMATED OR "FIRM" DELIVERY DATES OR PERIODS, BUT SHALL NOT BE LIABLE IN DAMAGES OR OTHERWISE, NOR SHALL YOU BE RELIEVED OF PERFORMANCE, BECAUSE OF FAILURE TO MEET THEM. However, as to Products which, without Your fault, have not been shipped to You within three (3) months after the estimated or "firm" delivery dates or periods applicable to such Products, You may, by providing written notice to TI, delete from this Agreement any such Products that have not been shipped to You before TI receives Your written notice of deletion, and the Price shall be proportionately reduced. THE FOREGOING RIGHT IS YOUR EXCLUSIVE REMEDY FOR ANY DELAYS IN SHIPMENT.
- DELIVERY TO STORAGE.** You agree to authorize and accept shipment of Products on the dates or periods specified by TI from time to time. To the extent You are unable to accept shipment of Products on a specified date, You agree that TI is authorized to deliver the Products into storage and bill You as though shipment still had been made to You, subject to TI's security interest. Title to such Product(s) and the risk or loss thereof or damage thereto shall pass to You when placed in storage. You shall be responsible for all storage charges and expenses and, to the extent any storage charges and expenses are incurred by TI, You shall reimburse TI for such storage charges and expenses (together with an administrative fee payable to TI).
- TITLE, INSURANCE AND RISK OF LOSS.** Subject to TI's security interest, and except as provided in Section 6A, title to the Products passes to You upon delivery to the initial carrier. Risk of loss or damage passes to You upon delivery to the initial carrier or to storage as provided in Section 6A.
- SECURITY INTEREST.** Until the Price has been paid in full, TI reserves, and You hereby grant to TI, a first priority security interest under the Uniform Commercial Code in the Products. You also agree to execute such documents and to take such other actions as are reasonably requested by TI to perfect its security interest in the Products.
- PATENT LIABILITY.** You agree that TI has the right to defend, or at its option to settle, and TI agrees, at its own expense to defend or at its option to settle, any claim, suit or proceeding brought against You on the issue of infringement of any United States patent by any Product, or any part thereof, supplied by TI to You under this Agreement. TI agrees to pay, subject to the limitations hereinafter set forth in this paragraph, any final judgement entered against You on such issue in any such suit or proceeding defended by TI. You agree that TI at its sole option shall be relieved of the foregoing obligations unless You notify TI promptly in writing of any such claim, suit or proceeding, and at TI's expense give TI proper and full information and assistance to settle and/or defend any such claim, suit or proceeding. If the Product, or any part thereof furnished by TI to You hereunder, becomes, or in the opinion of TI may become, the subject of any claim, suit or proceeding for the infringement of any United States patent, or in the event of any adjudication that such Product or part infringes any United States patent, or if the use, lease or sale of such Product or part is enjoined, TI may at its option and its expense: (a) procure for You the right under such patent to use, lease or sell, as appropriate, such Product or part, or (b) replace such Product or part, or (c) modify such Product or part, or (d) remove such Product or part and refund the aggregate payments and transportation costs paid therefore by You, less a reasonable sum for use, damage and obsolescence. TI shall not be liable for any costs or expenses incurred without TI's written authorization. THE FOREGOING CONSTITUTES THE ENTIRE LIABILITY OF TI AND YOUR SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY INFRINGEMENT RELATED TO THE PRODUCTS. NOTWITHSTANDING THE FOREGOING, THE REMEDY DESCRIBED IN THIS PARAGRAPH SHALL NOT APPLY TO ANY SUIT OR PROCEEDING ALLEGING INFRINGEMENT RESULTING FROM OR RELATED TO TI'S COMPLIANCE WITH YOUR SPECIFICATIONS OR DESIGN OR THE USE OF PRODUCTS IN COMBINATION WITH OTHER GOODS OR MATERIALS. IN NO EVENT SHALL TI'S TOTAL LIABILITY TO YOU UNDER, OR AS A RESULT OF COMPLIANCE WITH, THE PROVISIONS OF THIS SECTION EXCEED THE AGGREGATE SUM PAID TO TI BY YOU FOR THE ALLEGEDLY INFRINGING PRODUCT OR PART.
- WARRANTY.** TI warrants new Products purchased by You hereunder to be free from defects in material and workmanship, as follows:

**Tower Products** - For a period of five (5) years from date of installation of a tower TI will, subject to the right to inspect such Product, repair or replace, at TI's sole discretion, such warranted Product which is defective, subject to the conditions and restrictions listed below. The foregoing shall apply only if TI receives prompt written notice of any alleged defect within the applicable Tower Products warranty period defined above, the Product has been operated in accordance with the most recent version of ANSITIA-222, and TI's examination discloses that such Product has not been damaged through accident or negligence, misuse, alteration, or improper maintenance, repair, or installation. IF TI FAILS TO REPAIR OR REPLACE ANY DEFECTIVE PRODUCT, YOU AGREE THAT THE EXCLUSIVE MEASURE OF DAMAGES SHALL BE THE REASONABLE COST OF THE AFORESAID REPAIR OR REPLACEMENT OF THE DEFECTIVE PRODUCT AT THE TIME. This warranty covers the design as it was prepared for the tower, all welds and fabricated components, and all raw materials used in the manufacture of the tower. All Tower Products warranties require that the tower, after installation, shall be inspected annually by an authorized TI inspector and that the annual inspection fees and any other preventative maintenance fees shall be paid by You. Failure to perform an annual inspection or perform the recommended maintenance and maintain records in accordance with the manufacturer's instructions will void these warranties. The following items are not covered by these warranties: (a) Lighting equipment, light bulbs, hairline cracks in concrete due to weathering, antennas and lines, and any material supplied by others; (b) Damage resulting from failure to erect the tower or install foundations in accordance with TI's erection and foundation specifications; (c) Damage resulting from: structural modifications not approved in writing by TI; improper repairs or modifications; excessive ice, antenna, or line loadings; or wind forces beyond the specified design criteria; (d) Damage caused by severe physical and/or chemical abrasion such as sand blasting, salt spray, or atmospheric conditions classified "highly industrial", or resulting from electrolytic corrosion.

Repair or replacement of defective Products does not re-start the warranty periods defined above; the warranty period commences upon initial delivery or installation of the original Product, as described above.

The foregoing warranties do not apply (a) to any Products which have been repaired, worked upon, disassembled or altered by persons not authorized by TI in such a manner as to injure the stability or reliability of such Products, or (b) to any Products which have been subject to misuse, negligence or accident other than by TI, or (c) to any Products which have not been connected, installed, used or adjusted in accordance with the instructions furnished by TI, or (d) with respect to any Product which has had its serial number altered, effaced or removed, or (e) to damage resulting from: Force Majeure; intentional acts, such as sabotage, terrorism, or vandalism; accidents; and/or flying objects.

THE FOREGOING WARRANTIES ARE IN LIEU OF, AND TI EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED IN FACT OR BY LAW, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, AND THE FOREGOING WARRANTIES STATE TI'S ENTIRE AND EXCLUSIVE LIABILITY, AND YOUR SOLE AND EXCLUSIVE REMEDY, IN CONNECTION WITH THE SALE OR FURNISHING OF SERVICE, PRODUCTS OR PARTS, THEIR DESIGN, SUITABILITY FOR USE, INSTALLATION OR OPERATION, WITHOUT LIMITING THE FOREGOING, TI SHALL IN NO EVENT BE LIABLE FOR RIGGING CHARGES CONNECTED WITH REPAIR OR REPLACEMENT OF DEFECTIVE PRODUCTS, INSTALLATION OR SERVICES COVERED BY THESE WARRANTIES, OR FOR ANY THIRD PARTY ENGINEERING OR CONSULTING FEES. Equipment furnished by TI but not bearing its trademark, or trade name, shall carry no warranties, except those, if any, extended by and enforceable against the manufacturer at the time of delivery to You.

- LIMITATION OF LIABILITY.** TI SHALL NOT BE LIABLE UNDER ANY THEORY OF RELIEF, INCLUDING WITHOUT LIMITATION BREACH OF WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR PRODUCTS OR SERVICES PROVIDED HEREUNDER OR TI'S ACTS OR OMISSIONS FOR: (i) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, WHATSOEVER (INCLUDING WITHOUT LIMITATION, LOSS OF ANTICIPATED VALUE OF A BUSINESS OR ITS REPUTATION) OR (ii) ANY DAMAGE OR LOSS IN EXCESS OF THE PRICE ACTUALLY PAID BY YOU UNDER THIS AGREEMENT. ANY ACTION BY YOU MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.
- FORCE MAJEURE.** (a) TI SHALL NOT BE LIABLE FOR DELAY IN PERFORMANCE OR FAILURE TO PERFORM ANY OF ITS OBLIGATIONS, IF THE DELAY OR FAILURE RESULTS DIRECTLY OR INDIRECTLY FROM FORCE MAJEURE. (b) "Force Majeure" means any law, order, regulation, direction, request, action or failure to act of You or of any government having jurisdiction over TI, its subcontractors and/or its suppliers, or of any department, agency or corporation of one or more of such governments; failure or delay of transportation; suspension or cancellation of any required license; insurrection; riots, national emergencies; war; acts of public enemies, strikes or other labor difficulties; inability to obtain necessary labor, manufacturing facilities, materials or components from TI's usual sources; fires, floods, earthquakes, lightning or other catastrophes; acts of God; extreme weather conditions; or any cause of like or different kind beyond the control of TI. (c) TI shall notify You in writing if performance of any of its obligations under this Agreement is delayed by reasons of Force Majeure. In such event, TI may, at its option (i) suspend performance of the undelivered or unperformed portions of this Agreement, pending the removal of the cause of delay, or (ii) cancel the portion of this Agreement which remains undelivered or unperformed, at any time as long as the cause of delay continues. Alternatively, You may, within thirty (30) days after receipt of TI's notice of Force Majeure, cancel the undelivered or unperformed portion of this Agreement upon written notice to TI, provided that You shall reimburse TI for its costs and expenses for TI equipment. In the event of such cancellation, You shall remain liable to TI for all obligations arising before TI's receipt of Your notice of cancellation. If performance is suspended in accordance with clause (i), TI and You shall, before resuming performance, agree in writing with respect to any revisions applicable to the suspended portion of the Agreement. In the event of failure to agree upon the revision, either You or TI may, upon written notice to the other, terminate this Agreement without liability except that You shall reimburse TI for its costs and expenses



attributable to Custom-built equipment, and a reasonable profit thereon, AND YOU SHALL REMAIN LIABLE TO TI FOR ALL OBLIGATIONS ARISING BEFORE SUCH TERMINATION. TI SHALL NOT BE LIABLE FOR DAMAGES IN ANY FORM RESULTING FROM CANCELLATION OR SUSPENSION OF PERFORMANCE IN ACCORDANCE WITH THIS SECTION.

13. **PROPRIETARY INFORMATION.** TI retains title to and ownership of all engineering and production prints, drawings, technical data, and other information and documents that relate to the Products and Services sold to You and any intellectual property rights embodied therein. Unless advised by TI in writing to the contrary, all such information and documents disclosed or delivered by TI to You are to be deemed proprietary to TI and shall be used by You solely for the purpose of analysis, inspection, installation, and maintenance of Products purchased hereunder and not used by You for any other purpose.
14. **TERMINATION/SUSPENSION.** Without prejudice to its other rights, TI may immediately terminate this Agreement by giving notice to You or suspend the performance of TI's obligations if You:
- (a) breach this Agreement and fail to remedy Your breach within 14 days of a request by TI; or
  - (b) cease trading, are unable to pay Your debts as they fall due, make an assignment for the benefit of Your creditors, commence winding-up, have a receiver, administrative receiver or liquidator appointed over all or any of Your assets, or become subject to a bankruptcy or insolvency proceeding.
15. **TITLE AND REMEDIES.** Irrespective of and in addition to any of the provisions contained herein:
- (a) Until full payment of all obligations by You hereunder (whether represented by notes, open account judgment or otherwise), TI 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 TI hereby granted by You;
  - (b) In addition to and in not way limited by the provisions hereof, and in addition to the terms of any security agreement between TI and You, if You default in paying or performing any of its obligations, hereunder, or become 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 You, without the prior written consent of TI, sell, transfer, lease or mortgages the same, or move it to another site, or any lien is placed thereon, 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 You shall be deemed to be in default hereunder. In the event of a default hereunder by You, TI may, at its option, with or without notice, treat all amounts owing hereunder by You regardless of maturity date to be immediately due and payable, refuse subsequent deliveries, if any, hereunder; and repossess the Products previously delivered to You. In the event TI chooses to repossess Products delivered to You hereunder, TI may also: (i) upon notice, if any, as required by law, keep the Products as its own, free from any claim on the part of You, retaining as compensation for the use or decreased in value of the Products all payments made thereon by You; or (ii) within four (4) months of such repossession, upon giving You not less than fifteen (15) days advance written notice of TI's intention in that regard (or such periods as may be required by law), sell the same for the account of You either at public sale (at which TI may bid) or at private sale, whereupon the net proceeds of sale, after paying TI's costs and expense in repossessing, transporting, reconditioning, storing and selling the Products, shall be applied on the unpaid balance of the obligations of You hereunder and the surplus, if any, shall be returned to You. Provided, however, that in the event a deficiency remains, You shall continue liable to TI therefore. In exercising any of the remedies aforesaid, TI shall give such other and additional notice as are required by law.
  - (c) In any proceedings or action relating to a default by You, TI shall be reimbursed for attorneys' fees and costs incurred by TI in respect thereof.
  - (d) No remedy herein provided for shall be applicable where not permitted by law.
  - (e) When requested by TI, You shall duly acknowledge the obligations of You, and execute, acknowledge and deliver to TI, in TI's usual form, a supplement hereto, chattel mortgage, supplemental security agreement, financing statement or other additional appropriate instrument which TI may require to constitute the Products as the unencumbered security for the obligations of You hereunder, or to enable TI to comply with all applicable filing or recording laws.
15. **OTHER CONDITIONS.**
- (a) Modifications of Products may be made by TI or its suppliers prior to delivery for reasons such as improvement in performance, simplifications in design, availability of materials, etc., but not to such an extent that the performance will be materially affected.
  - (b) You shall not assign this Agreement, or any rights thereunder, without the prior written consent of TI.
  - (c) TI shall not be deemed to have waived any term or condition of this Agreement or to have assented to any exception to or modification of such terms and conditions unless such waiver or assent is in writing and signed by an authorized officer of TI. TI's failure at any time to require strict performance by You of any provision in this Agreement shall not waive or diminish TI's right thereafter to demand strict performance therewith or with any other provision. Waiver of any default shall not waive any other default.
  - (d) Any costs incurred by TI in complying with safety regulations above TI's standard costs of performance hereunder shall be reimbursed by You to TI.
  - (e) In the event that any provision or part thereof of this Agreement is or becomes invalid or illegal in whole or in part, such provision shall be deemed amended so as to, as nearly as possible, be consistent with the intent expressed in the Agreement. If this is impossible, such provision or part thereof shall be deemed to be deleted, but shall not in any way invalidate any of the remaining provisions or parts of this Agreement.
  - (f) Notices shall be mailed, certified or registered mail, or sent by telegram, or facsimile to You at the address given on the cover sheet of the Proposal and to TI, Attention Director of Contracts, 2855 Highway 261, Newburgh, IN 47630, facsimile: 812-853-6652. Notice shall be effective from date of receipt by addressee.
  - (g) This Agreement, including without limitation the schedules attached hereto and/or incorporated herein by reference, conclusively supersedes all prior agreements, writings and negotiations with respect to the subject matter hereof, and any such previous agreement is modified by the deletion of the items listed herein. THIS AGREEMENT EXPRESSES THE ENTIRE INTENT AND UNDERSTANDING OF THE PARTIES AND THERE IS NO OTHER UNDERSTANDING, AGREEMENT, REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE.
  - (h) The rights and duties of the parties to this Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.
  - (i) All disputes, differences, or questions arising out of or relating to this Agreement, or the validity, interpretation, breach, violation, or termination of this Agreement shall be resolved solely by arbitration through the CPR Institute for Dispute Resolution ("CPR"). The arbitration proceedings shall be governed by and decided in accordance with the CPR Rules for Non-Administered Arbitration then in effect, unless the parties shall mutually agree otherwise in writing. Any evidentiary rules not expressly provided by the CPR Rules shall be determined in accordance with the Federal Rules of Evidence. Notwithstanding anything to the contrary provided in this Agreement, the arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. § 1, et seq. The arbitration proceeding must be completed through the rendering of the award within six months of the selection of the arbitrator(s). The award of the arbitrator(s) may be monetary damages, an order requiring performance of obligations under this Agreement or an award of injunctive, declaratory, or equitable relief or any other appropriate award or remedy. However, in no event may the arbitrator(s) issue an award of any form of exemplary or punitive damages. Nor may the arbitrator(s) make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The award rendered by the arbitrator(s) shall be final and binding upon the parties and judgment may be entered by any competent court having jurisdiction thereof. The award of the arbitrator(s) shall be accompanied by a written explanation of the basis for the award. Notwithstanding anything to the contrary provided in this paragraph and without prejudice to the above procedures, any of the parties may apply to any court of competent jurisdiction for injunctive or other equitable relief if such action is necessary to avoid irreparable damage or to preserve the status quo.
- II – Additional Terms and Conditions of Sale for Services:** (To the extent that Services are included in the Price, the following terms and conditions will apply in addition to the General Terms and Conditions)
16. **INSTALLATION AND SERVICES.** TI will, at Your request, furnish a representative to consult regarding the installation of the Products. Charges for furnishing such representative shall be at TI's per diem rate in effect at the time, plus transportation and reasonable living expenses, including standard general and administrative charges. Such consulting service shall not include the furnishing or arranging for the furnishing of any equipment, materials or services required for the actual installation of Products. You assume complete responsibility for the installation and operation of the Products and for obtaining all permits, licenses or certificates required by any regulatory body for the installation or use of the Products. TI does not provide any warranty with respect to installation, and TI's Product warranty under this Agreement shall not be enlarged or affected by, and no obligation or liability on the part of TI shall arise out of, TI's providing technical or other advice or service in connection with this Agreement or the Products furnished hereunder. Notwithstanding the foregoing, TI will pass-on to You, to the extent transferable, any installation warranty provided by any TI subcontractor that installs Products for You.
17. **PERMITS AND LICENSES.** You are responsible for obtaining all required FAA and FCC licenses and local construction permits prior to the start of work. If You do not secure a construction permit, or surrender a construction permit, You may terminate this Agreement by written notice to TI, and You shall pay (i) for all equipment items that have been shipped prior to such termination and (ii) all TI costs and expenses attributable to contract work in progress, and a reasonable profit thereon.
18. **SITE READINESS.** Unless otherwise stated in the Proposal, the Proposal is based on work being carried out in one continuous operation without interruption or delays due to missing materials such as coax lines, transmission line hangers, antenna, reflectors, or electrical power. All material necessary for completing installation to be furnished by You must be on the tower site prior to starting of erection or scheduled in such a manner as to avoid delaying erection crew. TI must be given unrestricted access to the installation site.
- Unless otherwise specified in TI's Proposal, You are responsible for the following list of items and these must be completed prior to crew arrival:
- (a) Provide one (1) tag-line path adequate based on the height of tower, cleared of all obstruction in order to permit a truck to be driven thereon.
  - (b) Clear a fire lane down each guy radial 25 ft. wide on each side of the guy line, and extend this lane 50 ft. beyond the outer guy anchor; a 10 ft. width of this 50 ft. lane must be cleared of all obstructions in order to permit a truck to be driven thereon.
  - (c) Grade the area immediately surrounding the tower so as to permit the moving of trucks, cranes and or tower equipment required to handle and erect the tower.
  - (d) Clear an adequate area based on the height of tower adjacent to the center of the tower to permit unloading, sorting, assembling and working space.
  - (e) Provide necessary fittings and gas required in pressure checking all of the transmission lines.
  - (f) Provide electrical power to the base of the tower.
  - (g) Provide necessary police service to direct traffic in the event the guy lines should cross a public or private road.
  - (h) Provide toilet facilities, utilities and site security as required by TI.
  - (i) Provide site survey for tower location.
19. **WEATHER.** The labor portion of Services, including tower erection and antenna installation, assumes weather suitable for outdoor construction. During any installation work included in TI's obligations under this Agreement, TI or TI's subcontractor may encounter a "Weather Day." "Weather Day" is any continuous 24 hour period in which the weather (including, but not limited to wind and/or precipitation) prevents TI or TI's subcontractor's installation crew from working on the project for at least 5 hours during daylight hours. The installation crew foreman is responsible for the safety of the installation wind and the protection of the materials and equipment, and has the sole discretion in determining what days constitute Weather Days. You shall reimburse TI at TI's normal weather day rate then in effect for each Weather Day that is declared while the installation crew is on site.
20. **PERFORMANCE.** Installation of all wiring and all transmission lines shall be to the Transmitter building wall, if an ice bridge is purchased. All construction fees, service charges, and required permits are Your responsibility. TI shall not be responsible for delays arising from causes beyond its reasonable control, including but not limited to the following:
- (a) When the foundations are specified as part of the Proposal, it is assumed that this work will be done on normal ground with solid bearing capacity of at least 4,000 lb. per sq. ft. in accordance with EIA specifications. It shall be Your responsibility to supply soil bearing capacity and TI shall have an absolute right to rely on written test reports furnished by You in the preparation of foundation drawings and in the installation of foundations.
  - (b) Blasting, cribbing, fill, removal of obstructions, including but not limited to, planking, snow, road building, clearance for easy access to the site, existence of swamp, sand, mud, water and frozen ground are not considered normal.
  - (c) Installation does not include the removal of asphalt, concrete, spoils or other such items involved in the preparation of site nor any cost incurred due to the adding of compacting material of foundations. If any of the above conditions are encountered, the foundation price shall be increased to include the additional cost incurred, plus a reasonable profit allocable to the work performed.
21. **ENVIRONMENTAL INDEMNITIES.** You shall, at Your sole cost and expense, defend, indemnify and hold harmless TI from and against all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including without limitation, reasonable attorneys', consultant and expert witness fees and disbursements) whether incurred as the result of a third party claim or a claim to enforce this Agreement which may be imposed upon, incurred by or asserted or awarded against any member of Tower Innovations resulting from or arising out of the presence of contamination, pollution, and/or Hazardous Materials, or constituents or degradation products of Hazardous Materials, in, at, on or under any site owned or operated by You, except to the extent that TI directly caused such contamination, pollution or Hazardous Materials or constituents or degradation products of Hazardous Materials to be present at the site.