



**Communications & Power Industries  
("CPI")  
Terms and Conditions of Sale**

**1. APPLICABLE TERMS AND CONDITIONS**

All products ("Products") sold and services ("Services") furnished by any business operations of Communications & Power Industries LLC, Communications & Power Industries Canada Inc. and their subsidiaries (collectively "CPI") to customer ("Buyer") are sold or furnished only on these terms and conditions ("Terms and Conditions of Sale") and on the face of the applicable CPI quotation ("Quotation") on which they are attached, appended, included or referenced to the exclusion of any Buyer terms and conditions in any specific order documentation, preprinted or otherwise, except as to identification and quantity of Products. Additional or different terms and conditions proposed by Buyer are objected to and shall have no effect despite any usage of trade or course of performance. CPI's acceptance of any order or performance of any contract is expressly conditional on Buyer's agreement to these Terms and Conditions of Sale, and in the absence of agreement shall be for Buyer's convenience only, shall not create any contractual obligation and shall not be construed as CPI's acceptance of Buyer's terms and conditions. Buyer's acceptance of, using or paying for any CPI Product or Service shall constitute Buyer's unqualified acceptance of these Terms and Conditions of Sale. If this contract is a U.S. Government subcontract, U.S. Government clauses which provide rights, benefits or protections to Buyer shall equally apply to provide the same rights, benefits or protections from Buyer to CPI. In all other respects these Terms and Conditions of Sale shall govern Buyer's relationship with CPI.

**2. PRICES**

CPI's prices for Products and Services are subject to the following: (a) All CPI prices ("Prices") are for Products and Services only and exclude technical data, proprietary information, patent rights, qualification, environmental or other than CPI's standard tests, and other than CPI's normal domestic commercial packaging, unless expressly agreed to in writing by CPI. CPI may change all published Prices without notice. (b) Buyer may at any time request changes to an existing order, but CPI shall not be obligated to proceed with such change unless and until Buyer provides its written agreement to CPI changes in the Price or delivery schedule. (c) Prices exclude and Buyer is responsible for all ordinary and necessary charges incidental to the sale incurred by CPI and billed by CPI to Buyer, including without limitation all charges for taxes (sales, use, excise, value-added, service or other similar taxes), license fees, customs fees, duties, insurance and other charges and costs related to transportation and special packaging requested by Buyer, if any. Buyer shall pay or reimburse CPI for these charges and costs, and CPI may adjust the total price to Buyer to include these charges and costs. If Buyer asserts that any transaction under this contract is tax exempt, Buyer shall provide to CPI a tax or levy exemption certificate acceptable to the taxing or levying authority. (d) Published weights and dimensions are approximate only, and manuals are the latest applicable version.

**3. TERMS OF PAYMENT**

UNLESS CREDIT IS GRANTED, PAYMENT IS DUE AT TIME OF ORDER OR PRIOR TO SHIPMENT. The price of each Product and Services is based upon the payment schedule set forth in CPI's Quotation. All payments for Products released and shipped on approved credit accounts shall be due in full thirty (30) days from date of shipment of Products or completion of Services upon submission of invoices unless otherwise provided. CPI may require payment at time of order, before shipment or payment secured by an irrevocable letter of credit or a bank guarantee from a financial institution with terms acceptable to CPI. If payment is made by letter of credit, all costs of collection are for Buyer's account. Any alternative payment schedule and resulting price change must be approved in writing by CPI. Buyer's failure to comply with the above is a fundamental and material breach of contract. Past due balances shall be subject to a service charge of 1 and ½ per cent per month but not to exceed the maximum amount permitted by applicable law. Buyer's failure to remit payment when due or an arrearage in Buyer's account or if CPI discovers Buyer to be insolvent shall entitle CPI to cancel, delay or suspend deliveries of Products and performance of any Services, including warranty Services, in whole or in part, until CPI receives all due payments in full. CPI may waive any default without waiving any prior or subsequent default. If CPI brings legal action to collect delinquent accounts, Buyer shall pay all costs of collection including reasonable attorneys' fees and costs of suit. Until Buyer has paid for Products in full, CPI retains a purchase money security interest or similar lien or right of repossession in all Products shipped to Buyer, or, if required by law in some countries, CPI retains title in Products solely as a security interest for the purpose of repossession or recovery of Products if the Buyer defaults on payment. Buyer shall execute all documents and make filings or recordings as requested by CPI for the perfection or other protection of CPI's security interest or lien in Products.

**4. TRANSPORTATION AND RISK OF LOSS**

Unless otherwise mutually agreed in writing, delivery of Products ("Delivery") occurs and risk of loss or damage to Products shall pass to Buyer when CPI tenders Products to Buyer or Buyer's designated carrier in accordance with Incoterms 2010 Free Carrier (FCA), or F.O.B. at CPI's plant from which the Products are shipped (UCC), with Buyer (or CPI on Buyer's behalf) arranging for the carrier, transportation and insurance, and export clearance as applicable, all at Buyer's expense. In the absence of mutual written agreement to such terms, Delivery shall be Ex Works (EXW) from CPI's premises (Incoterms 2010). For agreed destination shipping terms, the risk of loss or damage to Products shall pass to Buyer upon arrival of the carrier at Buyer's dock or designated airport of

destination. CPI may arrange shipments to be either freight collect or freight prepaid with charges invoiced to Buyer. CPI may insure to full value of Products at Buyer's expense or declare full value to the carrier at time of shipment. Buyer shall visually inspect Products upon receipt and file with the carrier all claims of damage, concealed or external. Buyer's failure to so inspect Products is a waiver of its rights to claim incorrect or incomplete Delivery of Products. Title to the Products shall pass to Buyer upon Delivery as specified above.

## 5. FORCE MAJEURE

CPI shall not be liable for any delay in Delivery or other performance which is due to unforeseen circumstances, or to causes beyond its control, including, without limitation, strike, lockout, fire, flood, earthquake, weather, natural disasters, disease, pandemic, act of God, accident, insurrection, riot, war (declared or undeclared), terrorists, explosion, failure or breakdown of components necessary to order completion; supplier, subcontractor or Buyer caused delays; inability to obtain, or substantial rises in the prices of, supplies, labor, materials or manufacturing facilities; curtailment of or failure to obtain sufficient electrical or other energy supplies; technical difficulties; or compliance with any governmental law, regulation, or order, including but not limited to Canadian or U.S. Export Laws and regulations as described below. Unless the delay is material or indefinite (defined as exceeding six (6) months after notice), performance shall be deemed suspended during and extended for the time it is so delayed, and after the delay has ended the other party shall accept continued performance. In the interest of conservation of scarce materials, and efficient use of high value parts and components, CPI may substitute remanufactured parts and components which will meet the same quality standards as other materials and are covered by the same warranty applicable to new parts and components. CPI may, in its sole discretion and without notice to Buyer, discontinue any Product, introduce new Products, alter or incorporate changes to the configuration of any Products, including models and part numbers previously delivered to Buyer, which will meet the same quality standards as Products previously delivered.

## 6. ACCEPTANCE

The furnishing of a Product by CPI to the Buyer shall constitute acceptance of that Product by Buyer, and final acceptance is deemed to have occurred upon Delivery, unless notice of defect or nonconformity is received by CPI in writing within ten (10) days of Delivery; provided that, for Products for which CPI has agreed in writing to perform acceptance testing after installation at Buyer's facility or via remote access or at CPI's facility by a Customer Source Inspector (CSI), the completion of CPI's applicable acceptance tests, or execution of CPI's acceptance form by Buyer, shall constitute final acceptance of the Product by Buyer. Notwithstanding the above, any use of a Product by Buyer, its agents, employees, contractors or licensees, for any purpose, other than acceptance testing if applicable, after its receipt, shall constitute acceptance of the Product by Buyer. If Buyer provides CPI with a detailed written description of perceived defect or nonconformity any time before acceptance, CPI may use commercially reasonable efforts to remedy the defect, and repeat acceptance testing if applicable, or, at its option, repair or replace defective or nonconforming parts. Buyer's sole remedies after acceptance are provided in CPI's standard Warranty.

## 7. ASSIGNMENTS AND TERMINATIONS

**General:** Buyer shall not assign its rights nor delegate its performance under or related to this contract without the prior written consent of CPI. All purported assignments of rights or delegations of performance without this consent are prohibited and are void from the outset, whether voluntary or involuntary, by merger, consolidation, dissolution, operation of law, or any other manner. No contract of sale may be canceled, terminated or modified by Buyer, nor shall shipment be rescheduled or postponed by Buyer, unless by mutual agreement in writing. Any attempt to do so without CPI's written consent is void from the outset. **Termination for Default:** If Buyer notifies CPI of its intent to terminate this contract, in whole or in part, for alleged non-conformity, default or material breach of contract, Buyer shall specify its reasons in a full and final written statement of all defects on which Buyer proposes to rely. Within fifteen (15) days of receiving such notice, CPI may submit a plan to cure the alleged breach and shall be allowed additional time in which to implement the plan. If termination for default occurs, and after such termination it is determined that CPI was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as under Termination for Convenience. **Termination for Convenience:** Before the scheduled shipment date, and conditioned upon Buyer's customer having terminated its contract with Buyer for convenience, Buyer may request termination of the contract or cancellation of Delivery for its convenience only upon written notice to CPI and payments to CPI as follows. **Termination Charges:** In all cases, including Termination for Default, Buyer shall pay CPI: (1) the applicable contract prices for all work performed and Products completely manufactured and allocable to Buyer at the time CPI receives notice of termination; and (2) all costs, direct and indirect, incurred by CPI with regard to Products not completely manufactured at the time CPI receives notice of termination. Upon Termination for Convenience, whether before or after Delivery, Buyer shall pay CPI additional settlement and termination charges determined solely by CPI to cover reasonable costs of processing, order handling, shipping, retesting, repackaging and a pro rata portion of normal profit on the contract and all other Products affected by the termination. CPI may use its normal accounting practices to determine costs and other charges. To reduce termination charges, CPI will divert completed parts, material or work-in-process from terminated contracts to other customers whenever CPI determines in its sole discretion it is practicable to do so. If Buyer asks to reschedule or postpone shipment, CPI may consent on the conditions that Buyer (a) compensates CPI for any resulting costs (including but not limited to storage costs) and (b) gives written notice of its request at least sixty (60) days before the scheduled shipment date. **Termination for Impossibility:** CPI is excused from liability for damages when its failure to perform any of its obligations is due to an impediment beyond its control or performance has been delayed or made impracticable by the occurrence of a contingency the non-occurrence of

which was a basic assumption on which the contract was made. Impediments include but are not limited to changes in costs or other economic conditions, the need to allocate production and deliveries among customers, and unreasonable difficulty or expense to manufacture. If, by reason of any such impediment or force majeure, such that performance of the contract is delayed or becomes impossible, CPI shall so notify Buyer and if Buyer fails to modify the contract within a reasonable time not exceeding thirty (30) days, the contract shall terminate without liability to Buyer with respect to any deliveries affected.

## 8. PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

CPI shall, at its expense, settle or defend any proceeding or claim against Buyer alleging that as of the date of Delivery, CPI's design or manufacture of any product furnished in CPI's commercial line of Products, or manufactured to specifications set by CPI, infringes any patents or other intellectual property rights of a third party in the United States, Canada, Japan or the European Community country in which the Buyer takes Delivery of the Product or in another country where Buyer takes Delivery of the Product if CPI agrees in writing to include such a country. CPI shall pay any settlement obtained by CPI or finally awarded against Buyer as a result of this type of proceeding or claim, on condition that Buyer gives CPI written notice of the proceeding or claim within thirty (30) days after Buyer becomes first aware of it, gives CPI, at its expense, the sole right to control its defense or settlement and all related settlement negotiations, and provides all reasonable information and assistance requested by CPI to handle its defense or settlement.

**Injunctions:** If the Product is held infringing or CPI reasonably believes the Product may infringe third party rights, and its use is or may be enjoined as a result of any lawsuit or proceeding, CPI may, at its own expense and sole option (a) procure the right to continue using the Product; (b) replace the infringing Product or part with a non-infringing product or part; (c) change the infringing Product to be non-infringing; or (d) refund amounts paid by Buyer, not to exceed the purchase price, for the infringing Product or part, less reasonable depreciation, in exchange for return of the affected Product or part. **Exceptions:** Buyer shall be liable for and shall hold CPI harmless from claims arising from or related to (a) Buyer's costs and expenses of defending or settling or paying claims without CPI's prior written consent; (b) use or combination of Products with equipment, products or processes not designed, manufactured or furnished by CPI; (c) Products or components of Products manufactured or modified in compliance with Buyer's designs, specifications, requests or instructions; (d) the combination or use of Products with any other product, process, application, material or system not manufactured and furnished by CPI; (e) infringement of any patent claims covering a method or process in which such Products may be used; (f) modification of any Product made by someone other than CPI without CPI's prior written consent; and (g) versions of Products that are not the latest version if infringement could have been avoided by use of the latest version of Products available from CPI. **CPI MAKES NO OTHER WARRANTIES OF INFRINGEMENT, EXPRESS OR IMPLIED, AND IN ANY CASE SHALL NOT BE LIABLE TO BUYER FOR MORE THAN THE AMOUNT PAID BY BUYER FOR AN INFRINGING PRODUCT. THIS SECTION STATES CPI'S ENTIRE LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT OF THIRD PARTY PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS BY PRODUCTS.**

## 9. WARRANTY

CPI warrants that Products, parts and accessories manufactured and sold by CPI to the original purchaser are free from defects in material and workmanship and in substantial compliance with operational features of CPI's published Specifications for the applicable Product at the time of sale. CPI's warranty shall begin upon shipment from CPI and continue for the period of time specified on CPI's quotation or agreed to in writing by CPI. CPI's standard applicable warranties and Warranty Codes are incorporated by this reference. If no period of time is stated or agreed or if warranty is for Services, then the warranty period is limited to thirty (30) days from the date Products are shipped or Services are performed by CPI. Repaired or replaced Products, parts or accessories, including major repairs or rebuilt Products, are warranted only for the unexpired portion of the original warranty period for the Product when sold. Minor repairs are not warranted. Warranty for repairs is limited to material and workmanship on the repaired or replaced portion of the Product. **Remedies:** If CPI receives written notice from Buyer of a material failure to conform to any of these warranties within the warranty period specified for that warranty, and properly returns affected Products, CPI will repair or at its sole option replace any defective Products, parts or accessories. These are Buyer's sole and exclusive remedies under warranty. If in CPI's opinion repair or replacement is not feasible, or if these remedies cannot be achieved using commercially reasonable means, CPI may, at its option, refund or credit a portion of any sum paid by Buyer for non-conforming or defective Products, parts or accessories in exchange for their return to CPI. **Exclusions:** CPI's warranties are void and shall not apply to the extent malfunction is caused, as reasonably determined by CPI, by (a) accident, abuse, alteration, misuse, neglect; (b) failure to use Products under normal operating conditions or environment, or within CPI specified ratings, or according to any CPI operating instructions; (c) lack of routine care or improper maintenance, storage or use; (d) failure to comply with any operating or maintenance instructions; (e) failure to use or take any proper precautions under the circumstances; (f) user modification of Products; (g) latent defects discovered after expiration of the applicable warranty period; and (h) equipment, accessories or components furnished by other suppliers and not provided by CPI as its standard product offerings. Some experimental, developmental or special application products, or products with a life test requirement, are sold without warranty. **IN SUCH CASE, CPI WARRANTS THAT THE PRODUCTS MEET APPLICABLE SPECIFICATIONS WHEN SHIPPED BY CPI BUT CPI SHALL HAVE NO OTHER OR FURTHER RESPONSIBILITY THEREFOR, WHATSOEVER.**



**THESE LIMITED WARRANTIES ARE EXPRESSLY IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES OR OBLIGATIONS AS TO CONFORMITY OF THE GOODS, EXPRESS OR IMPLIED, RELATED TO PRODUCTS AND SERVICES. CPI DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, USE, OR APPLICATION, OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, ARISING IN FACT OR BY OPERATION OF LAW OR EQUITY, STATUTORY OR OTHERWISE.**

#### **10. WARRANTY REPLACEMENT AND ADJUSTMENT**

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

#### **11. DAMAGES AND LIABILITY**

**CPI'S TOTAL LIABILITY IN DAMAGES OR OTHERWISE SHALL NOT EXCEED THE PAYMENT, IF ANY, RECEIVED BY CPI FOR THE UNIT OF PRODUCT OR SERVICE FURNISHED OR TO BE FURNISHED, AS THE CASE MAY BE, RESULTING IN THE LOSS OR DAMAGE CLAIMED. IN NO EVENT SHALL CPI BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, SPECIAL OR EXEMPLARY LOSS OR DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST BUSINESS REVENUE, LOST PROFITS, COSTS OF DOWNTIME OR LOSS OF USE RESULTING FROM CPI'S PRODUCTS OR SERVICES, HOWEVER CAUSED, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY.** Buyer expressly waives any rights of rescission, cancellation or revocation of acceptance with respect to delivered Products. Liability to third parties for bodily injury, including death, resulting from Products is not affected by the liability limitations stated in this Section.

#### **12. DISPUTES/ARBITRATION**

The parties shall resolve any dispute, controversy or claim of any kind arising out of or relating to this contract, or its breach, termination or invalidity, or the Products or Services, including the jurisdiction of the arbitration panel and claims in tort, by arbitration in Palo Alto, California before a single arbitrator appointed by the American Arbitration Association (AAA) as the appointing authority under its Commercial Arbitration Rules then in effect, or by a judicial referee. The substantive law of California, excluding its conflicts of laws rules, and, if applicable, the United Nations Convention for the International Sale of Goods (CISG) govern the validity, construction and performance of this contract. The arbitrator shall not have authority to award punitive or exemplary damages or other damages not measured by the prevailing party's actual damages, and shall not make any ruling, finding or award that does not conform to these Terms and Conditions of Sale. Each party shall bear its own attorneys' fees. Any award, order or judgment pursuant to arbitration is final and binding, and is the sole and exclusive remedy regarding all claims and counterclaims presented. Either party may serve any paper in any legal or arbitral proceeding by personal delivery, commercial courier, or any form of mail requiring a return receipt. Either party may seek in any court of competent jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, including injunctive or other relief to prevent any unauthorized copying, disclosure, use, retention or distribution of its intellectual property and to collect payment for Products or Services. The interim or provisional relief is to remain in effect until the arbitration award is rendered or the controversy is otherwise resolved. The party seeking this relief does not waive any other right or remedy under this contract. All obligations under this contract shall, if reasonably possible, continue during the arbitration proceedings, and no payments due or payable by the Buyer shall be withheld on account of such proceedings. No claims, regardless of form, arising out of or relating to this contract or the Products or Services furnished by CPI under this contract may be brought by Buyer more than one (1) year after the cause of action has accrued or performance under this contract has been completed or terminated, whichever is earlier.

#### **13. CONFIDENTIALITY AND PROTECTION OF INTELLECTUAL PROPERTY**

Buyer agrees that all data, designs, drawings, circuitry, engineering instructions, specifications, service manuals, and all material, software, processes, patents, copyrights, trademarks, trade secrets, equipment, facilities, special tooling and test equipment, fixtures, patterns, special gauges, manufacturing aids and their replacements, used in the manufacture, assembly, testing, servicing, or delivery of Products ("Intellectual Property"), is and shall remain the property of CPI. CPI retains all rights, title and interest in and to all Intellectual Property furnished to Buyer or any user, and no rights or licenses are granted by CPI, expressly or by implication, with respect to any Intellectual Property owned or controlled by CPI. Buyer shall not re-engineer, reverse engineer, or otherwise reproduce





in any form or create or attempt to create or permit, allow or assist others to create or manufacture CPI's Products derived from Intellectual Property. If Buyer has executed, or shall execute, a Nondisclosure Agreement with CPI (NDA) prior to the issuance of this contract or thereafter, Buyer agrees that CPI Intellectual Property covered by the NDA consists of and includes, but is not limited to, the foregoing Intellectual Property, and that the terms and conditions of the NDA shall apply in addition but not contrary to the obligations of this section.

#### **14. COMPLIANCE WITH LAWS**

CPI and Buyer shall comply with all applicable federal, state, and local laws and regulations and orders of agencies of their respective countries, including but not limited to the following. **Export Controls:** Certain Products, technology, and documentation sold or provided by CPI to Buyer may be subject to export control laws, regulations and orders of the applicable departments of the United States, Canada or foreign agencies or authorities, including but not limited to U.S. Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR), and Import and Export Permits Act ("Export Laws"). Buyer shall comply with all applicable Export Laws, and shall not export, or transfer for the purpose of re-export, any Product to any prohibited or embargoed country or to any denied, blocked, or designated person or entity under any such United States, Canadian or foreign law, regulation or order. Buyer is responsible to obtain any license to export, re-export or import as may be required, unless previously and expressly agreed upon by CPI in writing. **Foreign Corrupt Practices Act:** CPI and Buyer will strictly comply with the requirements of the U.S. Foreign Corrupt Practices Act, similar statutes in other countries, and the United Nations Convention against Corruption which prohibit offering, giving or promising, directly or indirectly, money or anything of value (entertainment, gifts, travel) or kickbacks to any official or government or political party official or instrumentality to assist in obtaining or retaining business or securing improper advantage.

#### **15. ENTIRE AGREEMENT**

These Terms and Conditions of Sale, any CPI Specifications and other related documents expressly agreed to in writing by both parties contain the complete and exclusive statement of the terms and conditions of agreement of CPI and the Buyer with respect to this subject matter, and supersede all previous written or oral agreements, understandings, representations, and warranties between CPI and Buyer. These Terms and Conditions of Sale and other related contract documents signed by both parties are intended to be the final expression of the terms of their agreement and may not be amended, modified or rescinded, by usage of trade, course of performance or prior course of dealing, unless mutually agreed in writing signed by both parties.