



COMMUNICATIONS & POWER INDUSTRIES CANADA INC. ("CPI")
COMMUNICATIONS AND MEDICAL PRODUCTS DIVISION
AND SATCOM DIVISION
TERMS AND CONDITIONS OF PURCHASE



1. **ACKNOWLEDGEMENT OF ORDER:** These terms and conditions contain the entire understanding of the parties on the subject matter hereof. Seller accepts these terms and conditions by commencing performance or acknowledging this order. Additional or different terms and conditions proposed by Seller are hereby objected to and are ineffective unless agreed to in writing by Communications & Power Industries Canada Inc. (hereinafter referred to as "Buyer").

2. **INVOICES AND SHIPMENT:** Seller shall invoice at the prices on the face hereof or at Seller's most favoured customer price under similar circumstances, whichever is lower. Invoices shall be rendered in duplicate and shall cover not more than one order. Invoices, shipping notices, bills of lading and receipts shall be mailed promptly after shipment. An itemized packing list shall accompany all goods shipped. Delays in shipment shall be reported immediately to the Buyer who reserves the right to cancel this order if deliveries are not as promised. Seller shall provide suitable packaging to protect against hazards of shipment, storage and exposure. All packages containing hazardous materials/dangerous goods shall comply with all applicable regulations and shall be furnished with appropriate material data sheets.

3. **MARKING, DUTY DRAWBACK:** Seller shall mark each item of foreign goods with the English name of the country of origin as conspicuously and permanently as possible (or on the container for each item if the item cannot be so marked), and comply with all other marking requirements. At Buyer's request, Seller shall (a) provide a certificate of country of origin of imported goods sufficient to satisfy the customs authorities of the country of receipt, (b) designate Buyer as importer of record of imported and dutiable goods, and/or (c) furnish Buyer properly executed documents required by Customs to prove importation and duty payment, and to transfer duty drawback rights to Buyer for goods manufactured from imported material.

4. **RISKS IN TRANSIT:** The Seller assumes all risks in connection with the goods ordered herein until delivery to the Buyer as specified, and all risks in connection with articles rejected by the Buyer.

5. **OWNERSHIP AND CARE OF BUYER PROPERTY:** Goods made in accordance with Buyer's specifications, drawings or samples shall not be furnished or quoted to any other person or concern nor shall they be copied, sold, offered or advertised for sale by Seller without written authorization and consent of Buyer. All specifications, drawings, tools, jigs, dies, fixtures, materials and other items furnished by Buyer, and the work performed by the Seller the cost of which is charged against this order, shall be confidential and shall remain the property of the Buyer. The Seller shall mark all such items with the name "CPI" and the corresponding drawing number where applicable and shall be responsible for the safekeeping of such items when in Seller's custody. All material and equipment furnished by CPI shall be protected against loss or damage by insurance acceptable to Buyer, and Seller shall indemnify and save Buyer harmless from loss to and all claims which may be asserted against said property.

6. **PATENT RIGHTS ON BUYER'S DESIGN:** If the articles ordered are to be manufactured or supplied in accordance with drawings and specifications which are furnished by the Buyer, and which are not based upon drawings or specifications of the Seller or upon Seller's design, then the Seller hereby grants to the Buyer a non-exclusive fully paid up and irrevocable license to make, have made, use and sell any improvement in the articles ordered which is made or introduced by the Seller in its work hereunder.

7. **PATENT INFRINGEMENT INDEMNITY ON SELLER'S DESIGN:** Seller shall indemnify, defend, and hold harmless Buyer and subsequent purchasers against any liability, costs and expenses, relating to any actual or alleged patent infringement arising out of the manufacture, use, sale or disposal of items furnished under this contract, except when such items have been manufactured by Seller in compliance with Buyer's detail designs. Seller shall give Buyer prompt notice of any infringement claim.

8. **WARRANTY:** Seller warrants all items and work to be of new material, merchantable, free from defects, and unreasonable hazards, in Seller's design, material, and workmanship, and to conform to applicable specifications of Seller and to contract requirements. Seller further warrants that all proper and necessary precautions will be taken for the safety and protection of persons and property, and that proper warnings are provided for hazards which cannot be eliminated. These warranties, Seller's service guarantees, and implied warranties, shall survive inspection, test and acceptance at all tiers, and shall run to Buyer and subsequent owners and users. In the event that a warranty period is not specified on the purchase order, the Seller hereby agrees to provide an unlimited twelve (12) month warranty from date of receipt by the Buyer.

9. **WORK ON BUYER'S PREMISES:** Should this contract require Seller to work on or be at Buyer's premises, then Seller agrees to indemnify and hold harmless from and against any losses or damages caused by, or in connection with, work contracted for by this contract (including claims of Seller's employees and third party claims) and to perform the work in accordance with the Buyer's safety rules and safety laws and regulations. Prior to commencement of work, the Seller shall supply the Buyer with satisfactory evidence of public liability, property damage and Worker's Compensation Insurance if requested by the Buyer.

10. **INSPECTION:** Seller shall maintain an inspection system adequate to ensure that all work performed and items delivered conform to the contract requirements. Buyer, the Government, and any higher tier contractors, may, at all reasonable times and places, inspect and/or test the work performed under this contract. If any inspection or test is made on the premises of Seller or a lower tier subcontractor, all reasonable facilities and assistance necessary to such inspection shall be provided by Seller without charge. Buyer may reject nonconforming work and items or require Seller to correct the defects without charge. Buyer shall, no later than 30 days from date of shipment by Seller, either accept, reject, or require correction of defects. Seller shall be liable to Buyer, as a result of nonconforming work or items, for any direct damages suffered by the Buyer, except to the extent Seller proves that such damages would have been mitigated but for the failure of Buyer to timely notify Seller.

11. **CHANGES:** Buyer may at any time, by a written notice, make changes within the general scope of this contract. If any such change causes an increase or decrease in the cost of, or the time required for completion of any part of the work hereunder, an equitable adjustment shall be made by Buyer in the form of a written Purchase Order amendment to the price and/or delivery schedule. Any claim by Seller for adjustment shall be asserted in writing within 15 days from the date of receipt of the written order directing the change; provided that Buyer may receive and act upon such claim asserted at any time before final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in an equitable adjustment, Buyer shall have the right to prescribe its disposition. Failure to agree to any adjustment shall be a dispute subject to the Disputes

clause hereof, however, nothing in this clause shall excuse Seller from diligently proceeding with the contract as changed.

12. **DEFAULT:** By written order, Buyer may terminate this contract in whole or in part if Seller: (a) fails to deliver supplies or perform services within the contract schedule; (b) fails to perform any other provisions of this contract, or by failure to make progress endangers scheduled performance hereof, and in either case does not cure such failure within a period of ten (10) days (or such longer period as Buyer may authorize in writing) after receipt of written notice from Buyer specifying such failure; or (c) fails promptly to provide adequate written assurances of performance satisfactory to Buyer when it appears that Seller may not perform in accordance with the contract and assurances are requested by Buyer. If Buyer terminates part of the work, Seller shall diligently continue performance of the remainder. Buyer may terminate at any later time for any continuing or subsequent default. Seller shall be liable to Buyer for any excess costs for reprocurring similar items or services and other damages incurred. If it is determined Seller was not in default, such termination shall be converted to termination for convenience subject to the clause herein. In no event shall Seller be entitled to profit on unperformed terminated work.

Upon any termination for default of Seller, Buyer may require Seller to transfer title and deliver, as directed by Buyer, (a) any completed supplies, and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights as Seller has produced or acquired for the performance of the terminated part of this contract; and Seller shall, at Buyer's direction, protect and preserve property in Seller's possession in which Buyer or the Buyer's customer has an interest. Payment for delivered items accepted by Buyer and for the protection and preservation of property shall be in an amount agreed upon; failure to agree shall be subject to the Disputes clause herein.

Notwithstanding any defenses Seller may have, Buyer may set off, withhold or recover from Seller such sums as may be claimed or withheld by the Buyer's customer based upon or relating to any breach or alleged breach by Seller or any of its subcontractors or suppliers at any tier of any representations, certifications, or obligations under this contract or applicable laws, regulations, or orders of government agencies. Seller shall indemnify, defend, and hold harmless Buyer and any higher tier contractor to which Buyer owes a similar obligation from any and all loss, damage, expense, and liabilities, including administrative expenses and attorney's fees, relating in any way to any claims by the Government or by any other person or entity arising out of or relating to any such breach or alleged breach. The rights and remedies of Buyer provided in this contract and by law are cumulative. Waiver of any one default shall not waive subsequent or continuing defaults of the same or any other provision. In no event shall Buyer be liable for anticipated profits, or for incidental or consequential damages. Buyer shall not be liable for penalties, or for any amount in damages or otherwise in excess of the price allocable to the units of product or work giving rise to the claim.

13. **TERMINATION FOR CONVENIENCE:** Buyer may at any time, by written notice, direct Seller to terminate this purchase order in whole or in part and such termination shall not constitute a default. In such event, unless Seller shall have defaulted or been in default in performance hereof, Buyer and Seller shall have all rights and obligations accruing to it, both at law or in equity, including Buyer's rights to title and possession of goods paid for. Seller shall be reimbursed for actual, reasonable, and substantiated costs, plus a reasonable profit for work performed to date of termination. Buyer may take immediate possession of all work so performed upon notice of termination. Seller's appropriate obligations under the warranty, patent, and confidentiality provisions of this purchase order shall survive such termination.

14. **DELAY:** Seller shall immediately notify Buyer of any threatened or actual labor dispute or other matter which may delay Seller's performance, and the anticipated duration of the delay. Seller agrees to insert the substance of this provision in all subcontracts and purchase orders it places on its suppliers. Excusable delays are those delays which arise out of causes beyond the control and without the fault or neglect of Seller, including acts of God or of the Government, fires, floods, strikes, embargoes, unusually severe weather, or delays of Seller's subcontractor(s) or supplier(s), arising from causes beyond the control and without the fault or neglect of both Seller and such supplier(s) or subcontractor(s) and Seller could not have obtained the supplies or services from other sources in sufficient time to permit Seller to meet the delivery schedule. Notwithstanding any other provision hereof, Buyer may terminate this contract in whole or in part without cost to Buyer where any actual or projected excusable delay is material or indefinite, would result in frustration of purpose of this contract, or would require reprocurement under Buyer's contractual obligations.

15. **DISPUTES:** Any claim or controversy relating in any way to this contract or its performance which is not settled by mutual agreement shall be decided by the Buyer, which shall furnish a written decision to Seller. Buyer's decision shall be final and conclusive unless, within fifteen (15) days of receipt of such decision, Seller gives Buyer written notice that it desires to contest Buyer's decision. Such contest shall be considered a dispute, which shall, at the election of the Buyer, be disposed of either by binding arbitration or by a court of competent jurisdiction of Buyer's place of business.

16. **ASSIGNMENT:** Except for the standard purchase of parts and supplies, Seller may not assign or subcontract any portion of this order without the prior written consent of Buyer. Claims for moneys due or to become due hereunder may be assigned by Seller, provided Buyer is promptly given copies of such assignment. Whether or not assigned, all payments shall be subject to set off or recoupment for any present or future claims which Buyer may have against Seller.

17. **COMPLIANCE WITH LAW:** Buyer and Seller agrees that this purchase order contract is made and executed at Georgetown, Ontario, and is and shall be subject to construction under the laws of the Province of Ontario.

18. **COMPLIANCE WITH TERMS OF GOVERNMENT CONTRACT:** When a contract is noted on this order with the Government of Canada or the United States or any Crown company or agency of the Government of Canada or the United States, the Seller agrees that in performance hereof it will comply with all statutes and regulations in force relating to such contracts where applicable.

Buyer reserves the right, where items included in this order may be used in the fulfillment of Government contracts or subcontracts, to cancel by written notice any part or all of this order when corresponding parts of its Government contracts are cancelled. Upon such cancellation Seller will be compensated to the extent and as provided in the applicable prime contract and in accordance with applicable Government laws and regulations.