



ULTRA ELECTRONICS MARITIME SYSTEMS INC. STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

In these conditions:-

- a) **'Company'** means Ultra Electronics Maritime Systems Inc;
- b) **'Customer'** means the other party to the contract;
- c) **'Products'** means goods, including Software, supplied by the Company under a contract;
- d) **'Services'** means services supplied by the Company under a contract;
- e) **'Software'** means all software material to be supplied by the Company under a contract including all copies supplied to or made by the Customer.

2. QUOTATION

A quotation by the Company is an invitation to the Customer. If the Customer wishes to proceed, it must make a written offer using the same reference as detailed on the quotation and within the validity period of the quotation. The Company may then accept the offer from the Customer. Until it does so there is no contract. The Customer agrees that the quotation fully specifies its requirements for the Products and/or Services.

3. INCORPORATION AND PRECEDENCE

These conditions shall apply to the contract between the Company and the Customer, save for any modification in writing expressly agreed by the quotation, order or acceptance. These conditions shall prevail over any terms or conditions of the Customer and over any other document or statement, save as expressly agreed in writing by the quotation, order or acceptance.

4. PRICE ADJUSTMENT

If, following the date of acceptance of the order, there is any change in the rates of exchange, any imposition or alteration of governmental tax, levy or duty, or if the cost of supplying the Products and/or Services is increased by any other factor beyond the control of the Company, the Company reserves the right at any time prior to delivery to vary the price for the Products and/or Services.

5. PAYMENT

(a) Suspension

In the event that the Customer fails to make any payment on the due date to the Company under the contract then without prejudice to any other remedy or right available to the Company, including the right of termination under Article 16, the Company shall be entitled to suspend any further deliveries or services to the Customer without liability to the Customer.

(b) Payment of Interest

Without prejudice to the Company's rights under Article 16(a), any sums not paid on the due date shall be subject to an interest charge at the rate of 4% per annum above the Base Rate of the Bank of Canada, from time to time compounded monthly on all amounts overdue until payment thereof, such to run from day to day and to accrue after as well as before any judgment made.

6. SET OFF

In the event that the Customer has not paid any sum or sums which are due and payable to the Company, the Company shall have the right at its sole discretion to reduce the Customer's indebtedness by setting off against such indebtedness any sums due and payable to the Customer.

7. DELIVERY AND RISK

(a) Though the Company will endeavor to meet any dates or times specified or requested for delivery and/or installation of the Products and for provision of Services, all dates and times specified to the Customer for delivery and installation of the Products or the provision of Services are (unless the Company at the request of the Customer has specifically agreed in writing that this Sub-Article is not to apply) estimates only and the Company shall not have any liability for delay or for any damages or losses sustained by the Customer as a result of such dates or times not being met. The Customer shall not be entitled to refuse to accept delivery of the Products or Services or treat the contract as terminated as a consequence of the Company's delay.

(b) The Company reserves the right to make deliveries in installments. Delay or other default in relation to a particular installment shall not relieve the Customer of the obligation to accept delivery of and pay for other installments. Delivery shall be FCA, 40 Atlantic Street, Dartmouth, Nova Scotia, B2Y 4N2, Canada, in accordance with Incoterms 2010.

(c) Risk in the goods shall pass to the Customer upon delivery, or if the Customer fails to take delivery, when the Company has tendered delivery.

- (d) Delivery instructions shall be provided by the Customer when placing its order. If no delivery instructions are specified, the Company (without prejudice to its other rights) shall be entitled to deliver the Products to any address of the Customer known to the Company. If the Customer fails to give the Company adequate delivery instructions, then without prejudice to any other right or remedy of the Company:
 - (i) the cost of storing and insuring the Products shall be borne by the Customer; and
 - (ii) if such failure to give adequate delivery instructions continues for more than ten (10) days the Customer shall be deemed wrongly to have repudiated the contract and the Company shall have the right to terminate the contract pursuant to Article 16 below.
- (e) If the Customer or its carrier does not accept delivery, then without prejudice to any other right or remedy of the Company:
 - (i) the cost of storing and insuring the Products shall be borne by the Customer; and
 - (ii) if such failure to accept delivery continues for more than ten (10) days the Customer shall be deemed wrongly to have repudiated the contract and the Company shall have the right to terminate the contract pursuant to Article 16 below.

8. DAMAGE OR LOSS

The Company will, at its discretion, either refund the cost, or replace, or repair free of charge any Products proved to the Company's satisfaction to have been lost or damaged in transit up to the moment of delivery provided that within three (3) days of receipt of the Products in the case of damage, or within ten (10) days of the invoice or advice note or equivalent notice whether oral or written in the case of loss, the Customer notifies both the carrier and the Company in writing of the nature and extent of the damage or loss. The Company accepts no liability for delay in transit. Unless the Products are checked on receipt, the carrier's documentation should be endorsed "unexamined."

9. ACCEPTANCE

Unless otherwise agreed, acceptance of the Products shall take place at the Company's facility in accordance with the Company's standard test and acceptance procedure against test specifications provided by the Company. The Customer or representative of the Customer acceptable to the Company may attend the Company's facility for the acceptance tests, at the Customer's own cost. The acceptance tests shall be performed by the Company. Acceptance shall be deemed to have occurred upon successful completion of such tests and issue by the Company of a certificate to that effect.

10. TITLE

Products other than Software

- (a) In no case shall title in any Products pass from the Company to the Customer before delivery.

- (b) Notwithstanding the passing of risk in any Products, full legal and beneficial ownership shall remain with the Company until the point of delivery.

Software

- (c) Subject to the terms and conditions hereof, the Company grants to the Customer a personal, non-transferable, non-exclusive license to use the Software in machine readable form in conjunction with the Products to be supplied to the Customer. Where the Customer is not the End User, the Customer shall contact the Company to arrange an appropriate End User license.
- (d) The Customer shall make no copies of the Software.
- (e) The Customer may not modify or merge with other data or software, the Software or any part thereof.
- (f) The Customer shall not reverse assemble, modify or decompile the Software except to the extent permitted by the Company acting reasonably.
- (g) The Customer shall not acquire any title to ownership of the Software other than ownership of the physical media on which the Software resides. The Customer acknowledges that the Software may have been developed by a third party software supplier named in the copyright notice(s) included with the Software and agrees that the third party shall be authorized to hold the Customer responsible for any copyright infringement or breach of the terms of Articles 10 (d), 10 (e), and 10 (f) by the Customer.
- (h) The Company may revoke the license granted to the Customer under Article 10(c) at any time if the Company terminates the Contract under Article 16 and/or if the Customer fails to comply with the conditions set out in Articles 10(d), 10(e), and 10(f), whereupon the Customer shall cease all further use of the Software and shall at its sole cost immediately return the Software to the Company.

11. SPECIFICATIONS

- (a) The Products will be supplied generally in accordance with the Company's specification. The Company's policy is one of continuous development and consequently the specifications may be revised from time to time. The Customer shall not be entitled to reject the Products or to make a claim in respect of failure of the Products to comply with any specification unless any departure from the specification is material in which case Articles 12(a) and 12(b) shall apply.
- (b) Descriptions and illustrations contained in Company catalogues or user handbooks shall not form part of the contract.
- (c) All specifications, drawings and technical descriptions submitted with or in connection with any quotation or acknowledgement of the Company remain the Company's copyright. All such copyright material and all information and "know-how" wherever supplied shall at all times be treated by the Customer as confidential and shall not, without the consent of the Company, be used by the Customer except for the purposes of the contract and the operation of Products supplied thereunder. Nor shall they, without the prior written consent of the Company, be communicated to third parties save insofar as may be necessary for the purposes of the contract and the operation of the Product supplied. The obligations on the part of the Customer to keep information confidential shall cease upon the information becoming public knowledge, other than as a consequence of breach of obligation by the Customer.

12. WARRANTY

Hardware

- (a) Any hardware Products which are found to the Company's satisfaction to be defective as a result of faulty design, manufacture or workmanship and/or materially departs from the specification in accordance with Article 11, will, at the sole discretion of the Company, either be replaced or repaired free of charge provided that:
 - i) the hardware Products (or samples thereof showing the alleged defects) are returned properly packed carriage paid to the Company's facilities at the Customer's risk within twelve (12) months from delivery as defined; and
 - ii) the hardware Products have not been misused, mishandled, overloaded, amended, modified or repaired in any way by the Customer its employees, agents or sub-contractors, or used for any purpose other than that for which they were designed; and
 - iii) if the hardware Products have been manufactured to the Customer's drawing, design or specification the defects are not as a result of faulty drawing, design or specification supplied by the Customer; and
 - iv) if the hardware Products have been installed and/or commissioned by someone other than the Company or its employees, agents or sub-contractors the defects are not as a result of faulty installation and/or commissioning; and
 - v) the defect is not due to fair wear and tear, willful damage, negligence, abnormal working conditions or failure to follow the Company's instructions; and
 - vi) sums due in respect of the subject hardware Product have been paid in totality.
- (b) The Company may at its sole discretion and if so requested by the Customer, send the Company's personnel to repair or replace the hardware Products, provided that if on arrival at the Customer's site it appears that the alleged defects do not exist or are the result of any of the causes referred to in Sub-Article 12 (a)(ii) to (v) inclusive hereof, then:
 - i) the Company shall be under no obligation to carry out any repairs or replacement and shall be entitled to recover from the Customer all costs and expenses involved in sending such personnel to the Customer's site, at the Company's normal charging rates for such personnel; and
 - ii) if the Company agrees to carry out any repairs to the hardware Products it shall be entitled to charge the Customer for all such costs and expenses referred to in Sub-Article 12 (b)(i) and all repair and replacement works, at the Company's normal charging rate for such personnel and list price for spare parts used.
- (c) Repaired or replaced hardware Products will be returned free of charge to destinations within Canada or delivered CIP (INCOTERMS 2010) named Port or Airport for other destinations.
- (d) In the case of Products not of the Company's manufacture, any warranty shall be limited to that given to the Company by the manufacturer thereof.

Software

- (e) The Company does not warrant that the Software will be error free but does warrant that the Software will be free from errors, defects or malfunctions that have a material effect upon the working and functionality of a Product, by reference to the specification for a period of ninety (90) days from the date of delivery of the Software. Software which is found to the Company's satisfaction to be so defective will, provided that all sums due in respect of such software have been paid and at the Company's discretion, either be repaired or replaced free of charge subject to the provisos set out in Article 12(a) (i)-(v) above and to Article 12(b) and 12(c) above (and for the purposes hereof reference to "hardware Products" therein shall mean "Software").

13. LIABILITY

- (a) The Customer acknowledges and agrees that:
 - i) it is responsible for the operation of the Products and should ensure that they are used safely and that it should use, maintain, store and keep the Products in accordance with any instructions, user handbook or other form of guidance relating to them; and
 - ii) the price of the Products and/or Services is quoted and agreed commercially, and at arm's length on the basis of the Company's potential liability as set out in these conditions, with the Customer having the opportunity to ask for a variation of these conditions with an appropriate adjustment to the price
 - iii) notwithstanding the Company's acceptance of liability as set out in Article 13(b) below, it would be prudent for the Customer to insure against all loss or damage the Customer may suffer as a result of the Company's acts or omissions whether negligent or not.
- (b) The Company accepts liability to the Customer:
 - i) where the Company's negligence in its performance of the contract causes death or personal injury; and ,
 - ii) where the Company's negligence in its performance of the contract causes direct physical damage to or destruction of property, subject always to the limitations in Articles 13(f); and
- (c) The Customer is required to notify the Company of any claim under Article 13(b) above as soon as reasonably possible.
- (d) Except as provided in Articles 12 and 13 all terms, warranties or conditions, express or implied and whether arising directly or indirectly as to the description or condition or fitness for any purpose or satisfactory quality of the Products and/or as to the skill or care of the Company, its servants or agents relating to the provision of Services are excluded, and the Company shall not be liable to the Customer for any negligence of itself, its servants and agents, howsoever arising.
- (e) Under no circumstances (whatever the basis of any claim against the Company whether in contract, tort (including negligence) or otherwise) except as provided in Article 13(b) (i) will the Company be liable for any loss of profit, business, contracts or revenues or for any consequential or indirect loss.
- (f) Further and in any event, under no circumstances except as provided in Article 13(b)(i) and whatever the basis of any claim against the Company (whether in contract, tort (including negligence) or otherwise) will the Company's liability, for any one claim or the total of all



claims arising from any one act or default or from any single series of acts or defaults of the Company, its servants or agents, exceed in the aggregate the sum expressly agreed in writing in the quotation, order or acceptance.

14. PATENT INDEMNITY

- (a) Subject to Article 14(b), if the Customer is threatened with any action alleging that the Products in the form sold infringe any patent, copyright registered design, design right or other intellectual property rights then provided that the Customer promptly informs and fully co-operates with the Company and in cases where the Company so requests allows the Company to defend any action on the Customer's behalf and have the sole control of any and all negotiations for settlement, then the Company will indemnify the Customer against any award of damages and costs against the Customer arising from such action. Further, if such event occurs the Customer agrees that the Company shall have the option at its own expense either:
 - i) to modify the Products so that they do not infringe, or
 - ii) to replace the Products with non-infringing goods, or
 - iii) to procure for the Customer the right for the Customer to continue its use of the Products, or
 - iv) to repurchase the Products from the Customer at the price paid by the Customer less depreciation.
- (b) The Company shall have no liability in respect of claims for infringement or alleged infringement of third parties patent or other proprietary rights arising from the execution of the order in accordance with the Customer's designs plans or specification and the Customer shall indemnify the Company against all losses, damages, expenses, costs or other liability arising from such claims.
- (c) The above indemnity is given by the Company in lieu of any or all other liabilities the Company might have in relation to any action against the Customer for infringement of patent or other proprietary rights and under no circumstances will the Company be liable for any contingent, consequential or any loss howsoever arising.

15. EXCUSABLE EVENTS

- (a) Notwithstanding any other provision of the contract, the Company shall not be under any obligation and shall have no liability to the Customer if the Company is unable to perform the contract as a result of any cause beyond the control of the Company including without limitation, acts of God, war (whether declared or not), sabotage, riot, explosion, Government control, restrictions or prohibitions or any other Customer/Government act or omission whether local or national, fire, accident, earthquake, storm, flood, epidemic, drought, or other natural catastrophes, inability to obtain equipment, suitable raw materials, components, fuel, power or transportation, disputes with workmen, strikes or lockouts, shortage of labor.

- (b) If the Company is unable to perform any of its obligations under the contract by reason of any of the causes referred to in Sub-Article (a) of this Article then the Company shall forthwith notify the Customer of the estimated extent and duration of such inability, and any delivery program so affected shall be extended by a period not less than the period for which such excusable event endures.
- (c) In the event that the Company is unable to perform its obligations under the contract by reason of any of the causes referred to in Sub-Article (a) of this Article for a period of 6 (six) months or more then the Company may at any time after the expiration of such 6 (six) month period meet with the Customer to discuss the future implementation of the contract. If the Company and the Customer are unable to agree upon a basis for future implementation within thirty (30) days following such meeting, the Company shall be entitled to terminate the contract without liability.

16. TERMINATION

- (a) Without prejudice to any other right and remedy available to the Company, and in particular the right to accept a wrongful repudiation and recover un-liquidated damages, the Company shall have the right forthwith by written notice to suspend and/or to terminate the contract in whole or in part:
 - i) if the Customer commits any breach of any of the terms of the contract; or
 - ii) if the Customer, being an individual, dies, or suffers an interim order to be made against him, or enters into a voluntary arrangement with his creditors, or suffers the making of a statutory demand or the presentation of a petition for bankruptcy order, or if the Customer being a body corporate, enters into any liquidation or calls any meeting of its creditors, or has a receiver or receiver manager of all or any of its undertaking or assets appointed, or suffers the appointment or the presentation of a petition for the appointment of an administrator or is deemed to be unable to pay its debts, or if any distress execution or other legal process is levied on or against any Products or property of the Company or the Customer, or against any premises where the same may be, or if the Customer suffers any analogous proceedings as referred to in this Article under foreign law or if the Customer permits any judgment against it to remain unsatisfied for seven (7) days; or
 - iii) if the Customer is in breach of any other contract entered into by the Customer with the Company; and such termination will be without prejudice to the Company's accrued rights including any rights to damages, but the Company shall be relieved of any further performance.
- (b) On termination in any case, the Customer shall immediately pay any sums due to the Company and redeliver to the Company all goods of which the Customer has not already become owner. For the avoidance of doubt, the provisions of Article 7 (as to risk) and Article 10 (as to the Company's title and ancillary remedies and Software) and Article 13 (as to the limitation of the Company's liability) shall continue after termination.
- (c) In the case of termination under Article 16(a) by the Company following breach by the Customer, the Customer shall pay all the Company's costs and expenses, and the Company's loss consequent on such breach and termination being the Total Contract Price.

17. IMPORT AND EXPORT CONSENTS

- (a) Where applicable, the Company shall endeavor to obtain an export license and all other necessary consents to enable the Products to be exported to the Customer. A pre-requisite for the issue of an export license is receipt of an End User Certificate which shall be supplied to the Company in a timely manner. It is the responsibility of the Customer to provide this End User Certificate to the Company.
- (b) In the event that the Company is unable to obtain an export license or visas or consents for personnel required to provide Services outside Canada, the Company shall not be held liable for its failure to perform the contract. The Customer shall be responsible for obtaining all consents necessary for the import of the Products to the country of its destination and, if required, any visas or consents required for the entry of the personnel into the country of destination.

18. INSTALLATION, COMMISSIONING AND SUPPORT

If the Services required by the Customer are special services such as installation, commissioning, training development or management services, any additional terms of the Company applicable to such Services shall be as specified in the quotation, order or acceptance except that in the event of any conflict these conditions shall prevail.

19. ENTIRE AGREEMENT AND AMENDMENTS

These conditions, the order and acceptance supersede all previous conditions, understandings, commitments, agreements or representations whatsoever whether oral or written relating to the subject matter hereof. The Customer acknowledges and agrees that save as expressly set out in these conditions, the Company will not have any liability for any untrue statement or representation made by it or on its behalf (whether or not negligently) upon which the Customer relied in entering into the contract unless such untrue statement or representation was made fraudulently. The contract shall not be varied except by written agreement signed by the Company and the Customer.

20. ASSIGNMENT

The Customer shall not assign, pledge, charge or deal in or makeover in any way the benefit of the contract without the prior written consent of the Company.



21. WAIVER

No waiver by the Company of any breach of any provision of the contract shall be held to be a waiver of any other or subsequent breach and the failure of the Company to enforce any provision shall not be deemed a waiver of any right subsequently to enforce any provision.

22. HEADINGS

The headings of these terms and conditions shall not be deemed to be part hereof or be taken into consideration in the interpretation or construction hereof of the contract.

23. SEVERABILITY

If any of the words or provisions of these conditions shall be deemed to be invalid, illegal or unenforceable for any reason, then the contract shall be read as if the invalid, illegal or unenforceable words or provisions had to that extent been deleted and the validity of the remaining provisions shall not be affected.