



# TERMS AND CONDITIONS OF SALE

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**APPLICATION AND SCOPE:** Please read these terms and conditions of sale ("Terms and Conditions") carefully. These Terms and Conditions, along with price lists and invoices that may accompany this agreement (which documents are hereby incorporated by reference) (collectively, the "Agreement"), constitute the entire agreement between the contracting party (the "Purchaser") and Brigade Electronics (Canada) Ltd. ("Brigade"), and override any conflicting terms specified by the Purchaser unless otherwise specifically agreed in writing by Brigade. All orders are accepted by Brigade subject to these Terms and Conditions, and by placing an order the Purchaser accepts and agrees to be bound by the Agreement. Brigade's failure to object to any provision contained in any communication or purchase order from the Purchaser shall not be deemed a waiver of these Terms and Conditions. These Terms and Conditions are subject to change without prior notice, except that the Terms and Conditions in place when the Purchaser initially places an order will govern the Agreement in question.

**PRICES:** Prices are subject to change without prior notification. Taxes are not included in the price list. Brigade will add all applicable taxes to the invoice as and where required by law.

**PAYMENT:** Payment terms for the Purchaser with open account status, are NET 30 days from date of invoice. Invoices not paid in full when due are subject to past due interest charges at a rate of 5% per annum. Payment shall become immediately due upon the commencement of any proceedings in respect of the Purchaser regarding any bankruptcy, insolvency, debt restructuring, liquidation, or reorganization or other similar proceedings (including, without limitation, proceedings under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any similar legislation).

**ORDERS:** Orders are not binding upon Brigade until any such order is accepted by Brigade, once accepted such order becomes a binding contract between the Purchaser and Brigade. Orders are accepted at Brigade's sole discretion. When required, the Purchaser will provide such information as is reasonably needed to evaluate the Purchaser's financial status. Brigade reserves the right to decline to transact business with any company or person for any reason. Confirmation of telephoned orders is not required but, if sent, should be marked 'CONFIRMATION ONLY' to avoid duplication. In the event that the Purchaser's order causes Brigade to customize products in any way, the Purchaser will be responsible for the full costs of customized products if the contract is subsequently cancelled or amended.

**DELIVERY:** Brigade will make every effort to meet requested delivery schedules; however, Brigade shall not be liable for any damages due to any delay or failure to deliver for any reason. Any delivery indication furnished by Brigade only represents the best estimate at the time required to make shipment.

**TITLE; RISK OF LOSS:** Unless otherwise agreed, shipment shall be made by carrier of Brigade's choice. Risk of loss or damage to the products shall be borne by the Purchaser upon Brigade's delivery to its shipping carrier, or, if Purchaser selects a shipping carrier, upon Brigade's delivery to the Purchaser's shipping carrier. Notwithstanding anything to the contrary, title to the products is retained by Brigade until the Purchaser has paid in full, including taxes, and has also paid for all other products supplied by Brigade to the Purchaser whether or not such payments relate to products which are the subject of a particular invoice and whether or not under the terms of trading between Brigade and the Purchaser payment is yet due to Brigade. Until such time as property and title has so passed, Brigade shall be entitled to require the Purchaser to re-deliver the products and shall also have the right to recover the

products, wherever located, without the need for prior notice. Brigade will be entitled to recover from the Purchaser all costs, including legal fees, occasioned in the repossession of products.

**PRODUCT RETURNS: Requirements.** Not all products are eligible for return. The Purchaser must obtain a valid Return Authorization ("RA") number from Brigade for all returns. RAs will be issued, at Brigade's sole discretion, in accordance with these Terms and Conditions. The Purchaser must provide contact information, order number, quantity, and reason for request within 14 days of the date of the original invoice. RAs will be issued for authorized returns under one of the following categories: (i) defective product returns; (ii) purchasing discrepancies; (iii) damaged product returns; or (iv) billing or shipping discrepancies.

(i) **Defective Product Returns:** Defective product returns are only for products purchased from Brigade that are inoperable, or do not function properly and are covered under the manufacturer's warranty. The Purchaser may request an RA for the return of defective products within 14 days of date of invoice. Upon verification that the returned Product is defective, Brigade may, at its sole discretion, either: (a) repair the defective product; (b) ship a replacement product; or (c) provide a credit.

(ii) **Purchasing Discrepancies:** Purchasing discrepancies are for products that were ordered incorrectly by the Purchaser. These include, but are not limited to: duplicate orders, ordering incorrect product, or returning product that is not needed. The Purchaser is responsible for notifying Brigade of the discrepancy within 2 business days upon receiving the product. The Purchaser is responsible for ensuring that the products are returned within 5 days after the RA number is issued, and all products must be in the manufacturer's original packaging and in condition suitable for resale. Any returns not meeting these conditions will be returned at the Purchaser's expense.

(iii) **Damaged Product Returns:** Damaged product returns are only for products purchased from Brigade and shipped via Brigade's carrier of choice that are damaged in transit from Brigade to the Purchaser. Damaged products shipped by the Purchaser's requested carrier are the sole responsibility of the Purchaser. The Purchaser shall notify Brigade and request an RA within 3 business days of receipt of such product. Failure to notify Brigade and request an RA within such time shall be deemed an acceptance of the Product as of the date of shipment.

(iv) **Billing or Shipping Discrepancies:** Billing and shipping discrepancies are for products purchased that were invoiced or shipped incorrectly. These include lost shipments, short shipments, wrong sales, and wrong shipments. The Purchaser may request an RA for verified shipping discrepancies within 14 calendar days of the invoice date. There is a 15% restocking fee on returns for any reason other than defective product returns, damaged product returns or billing and shipping discrepancies.

**INSTALLATION:** Unless the installation of the equipment is explicitly indicated in the applicable order and/or invoice to be carried out by a Brigade installation engineer, then the installation is the sole responsibility of the Purchaser.

**WARRANTY:** Brigade warrants to the Purchaser that the products will be free from defects in material and workmanship under normal use and service. The period during which the warranty applies is as stated in Brigade's catalogue and/or specification from the date of invoice. The Purchaser's exclusive remedy for breach of this warranty is that Brigade will either (i) repair or replace, at Brigade's option, any product which fails during the warranty period because of such defect (if the Purchaser promptly reported the failure to Brigade in writing); or (ii) if Brigade is unable to repair or replace, Brigade will refund the purchase price of the product upon its return to Brigade. This warranty does not apply to any product which has been subjected to misuse, abnormal service or handling, or which has been altered or modified in design or construction, or which has been serviced or repaired by anyone other than Brigade. The warranties or conditions set forth herein are in lieu of, and exclusive of, all other warranties, express or implied.

ALL EXPRESS AND IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR USE AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED.

**LIMITATION OF LIABILITY:** Notwithstanding anything herein to the contrary, Brigade shall not be liable for any consequential, incidental, special, punitive or other indirect damages, and Brigade's total liability arising at any time from the sale or use of the products shall not exceed the purchase price paid. These limitations apply whether the liability is based on contract, tort, strict liability or any other theory.

**ARBITRATION:** Any claim, dispute or controversy arising from or relating to this Agreement, its interpretation, or the breach, termination or validity thereof shall be resolved exclusively and finally by binding arbitration administered by the ADR Institute of Canada, Inc. under the procedures in effect at the time the claim is filed. Notwithstanding any choice of law provision in this Agreement, this Agreement is subject to the Arbitration Act (*Ontario*). Hearings shall be held in Toronto, Ontario.

**TERMINATION:** Without prejudice to any other rights it may have, Brigade may, by notice to the Purchaser, terminate any contract between the Purchaser and Brigade forthwith and/or immediately recover from the Purchaser all sums due from it under any contract with Brigade, notwithstanding any period of credit which may have been allowed together with any accrued interest and other legitimate charges and any loss caused to Brigade as a result of any termination if:-

- (a) any payment due by the Purchaser to Brigade is overdue in whole or in part; or
- (b) the Purchaser shall commit any breach of any of the terms of any contract with Brigade provided that if the breach is remediable Brigade has given to the Purchaser notice of such breach which has not been remedied within seven days; or
- (c) if any action, application, or any other proceeding or case shall be filed, instituted or commenced with respect to the Purchaser under any bankruptcy, insolvency, debt restructuring, reorganization, incorporation, readjustment of debt, dissolution, liquidation, winding-up or similar law, now or hereafter in effect, seeking the bankruptcy, liquidation, reorganization, dissolution, winding-up, composition or readjustment of debts of the Purchaser, the appointment of a trustee, interim receiver, receiver, receiver and manager, liquidator, administrator, or other like official for the Purchaser or all or any material part of its assets, or any similar relief; or
- (d) the Purchaser ceases or threatens to cease trading.

**FORCE MAJEURE:** If Brigade is hindered or prevented from performing any contract owing to any cause beyond the reasonable control of Brigade, or by its inability to procure services, materials or articles required for the performance of the contract except at enhanced prices, Brigade may at its sole option delay the performance of, or cancel the whole or any part of the contract, and Brigade shall not be responsible for such delay or cancellation or any inability to deliver.

**WAIVER:** Any failure by Brigade to enforce any of its rights under this Agreement shall not be taken as a waiver of any of Brigade's rights including those in these Terms and Conditions.

**GOVERNING LAW:** This Agreement and any sales hereunder shall be governed by the laws of the Province of Ontario and laws of Canada applicable therein, without regard to conflicts of laws rules.

**TRADEMARKS:** Certain trademarks, trade names, service marks and logos used or displayed on the products are registered and unregistered trademarks, trade names and service marks of Brigade and its affiliates. Nothing contained herein should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any trademarks, trade names, service marks or logos displayed on the products without the written permission of Brigade.