

SOLACOM TECHNOLOGIES INC. TERMS AND CONDITIONS

1. Trade Terms

1. Provision of goods in conformity with this contract; licenses, authorization and formalities; contracts of carriage and insurance; delivery and taking delivery; transfer of risks; division of costs; notices; proof of delivery, transport document or equivalent electronic message; checking – packaging – marking; and other trade terms obligations in this contract are governed by the “The INCOTERMS 2000”.
2. Ex Works, SELLER’S warehouse is the term used.

2. Engineering Changes

All BUYER-initiated engineering changes shall be submitted to the SELLER. SELLER shall evaluate project impact and will submit a proposal outlining additional costs and schedule impact. BUYER will respond to the SELLER by written confirmation his acceptance or rejection of the SELLER’s proposal.

3. Warranties

1. SELLER warrants to the BUYER that Hardware manufactured by SELLER shall be free from defects in material, workmanship and title, and shall conform to SELLER's specifications.
2. For Hardware not manufactured by SELLER only the warranty, provided by the manufacturer shall apply.
3. SELLER's obligation set forth below shall apply only to failures to meet the above warranties (except as to title) occurring within the following periods of time and are conditioned on BUYER's giving notice to SELLER within thirty (30) days of such occurrence:
 - for all Hardware, or parts thereof, of SELLER's manufacture, one (1) year from date of acceptance or eighteen (18) months from date of shipment, whichever comes first.
 - for parts that have been repaired or reconditioned by SELLER, the remainder of the hardware warranty period or ninety (90) days from date of shipment, whichever comes last.
4. All warranty repairs are performed at no cost, Ex Works (EXW) Gatineau, Quebec, Canada. SELLER will prepay return freight except when no fault is found on the Hardware. Cost of shipment to SELLER shall be borne by BUYER. SELLER reserves the right to repair or replace any Hardware found to be defective. Under the Seller’s warranty, SELLER shall correct the failure at its option (i) by repairing the defective or damaged part or parts thereof, or (ii) by making available at SELLER's factory any necessary repaired or replacement parts. Any repaired or replacement part furnished hereunder shall be warranted for the remainder of the warranty period of the Hardware in which it is installed. Where such failure cannot be corrected by SELLER's reasonable efforts, the parties will negotiate an equitable adjustment in price. SELLER's warranty applies only to the repair or replacement of faulty or non-conforming material and labor to remove and replace such faulty material shall be provided at BUYER's expense.
5. SELLER's obligations shall not apply to warranted hardware which (i) has been modified or otherwise altered, (ii) is normally consumed in operation or, (iii) has a normal life inherently shorter than the warranty period, or (iv) is not properly stored, installed, used, maintained or repaired, or, (v) has been subjected to any kind of misuse or detrimental exposure, or has been involved in an accident.

6. The preceding paragraphs set forth the exclusive remedies for claims (except as to title) based upon defects in or nonconformity of the Equipment, whether the claim is in contract, warranty, tort (including negligence), strict liability or otherwise, and however instituted. Upon the expiration of the warranty period, all such liability shall terminate. The foregoing warranties are exclusive and in lieu of other warranties, whether oral, written, expressed, implied or statutory. NO IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT OR EXEMPLARY DAMAGES. SELLER does not warrant that the BUYER's operations will be uninterrupted or error free.

4. Software License

SELLER grants BUYER a non-transferable, non-exclusive license for the useful life of the System to use the Software (including related documentation) solely to maintain and operate the System, provided BUYER:

1. does not allow any aspect of the Software to be disclosed to a third party without SELLER's written consent and makes reasonable efforts to ensure that its employees are aware of this obligation;
2. uses the System solely for the purpose intended under the contract;
3. does not copy any part of the Software without SELLER's consent and does not attempt to develop any source code from the Software; and
4. returns to SELLER or erases or destroys any Software on any media being recycled or discarded and so certifies to SELLER, within 30 days of notice of default given by the Seller, provided said default is not cured within 30 days.
5. BUYER may transfer, by means of assignment or sub-license, the right to use the Software to any end user, provided said user is not a competitor of the Seller and who subsequently acquires the right to use the System and agrees to be bound by the terms of this License.
6. As complied with the covenants and obligations under this agreement.

The BUYER agrees that all training and procedural materials developed by SELLER in conjunction with the Software shall be the property of SELLER. The BUYER further agrees that additions and supplements to the Software which may be developed for the BUYER through the reimbursed or unreimbursed efforts of SELLER employees or agents, whether or not in conjunction with the BUYER's employees or agents, is the exclusive property of SELLER, unless otherwise specifically agreed to in writing.

5. Proprietary Rights

SELLER retains for itself, and the BUYER acknowledges that SELLER so retains, all copyright and all other proprietary rights in and to all designs, engineering details, and the Software pertaining to the System. The Software and the configuration of the Equipment shall be deemed trade secrets of SELLER. Unless SELLER and BUYER otherwise agree in writing, SELLER shall not be obligated to disclose to BUYER any proprietary information or to give BUYER any artwork or tools, including masks, drawings, and production aids developed by SELLER

6. Non-Assignability

Neither party shall assign any of its rights or obligations under this agreement, without the written consent of the other party, and such consent shall not be unreasonably withheld.

7. No Waiver

No waiver of any breach of any term or condition of this agreement shall be construed to waive any subsequent breach of the same or any other term or condition of this agreement.

8. Force Majeure

The parties will exercise every reasonable effort to meet their respective obligations hereunder but shall not be liable for delays resulting from *force majeure* and/or any other cause whatsoever beyond their reasonable control. Any such cause will extend the performance of the delayed obligation to the extent of the delay so incurred. SELLER will, within a reasonable time after interference by such an event, notify BUYER in writing and the time for delivery or other performance by SELLER hereunder shall be extended by at least the same length of time as such interference continues.

9. Severability

If any provision of this agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

10. Limitation of Liability

SELLER's sole obligation and liability and BUYER's sole remedy for SELLER's negligence, breach of warranty, breach of contract or for any other liability in any way connected with or arising out of this Agreement or the System shall be as follows:

1. In all situations involving performance or non-performance of the System, BUYER's sole remedy shall be as stipulated in the warranty clause of this agreement.
2. For any other claim concerning performance or non-performance by SELLER pursuant to, or in any other way related to the subject matter of this Agreement or any order under this Agreement, BUYER shall be entitled to recover actual damages; provided that SELLER's liability for damages for any cause whatsoever, and regardless of the form of the action, whether in contract or in tort (including negligence), shall be limited to the purchase price actually paid by BUYER to SELLER for the part that causes the damage or is directly related to the cause of the action.
3. IN NO EVENT SHALL THE SELLER BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING LOSS OF PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SYSTEM OR PARTS OF THE SYSTEM, THE SUPPLIES OR REPLACEMENT PART OR SERVICE FURNISHED HEREUNDER. The essential purpose of these stipulated remedies is to completely allocate the risk between the parties. The prices and charges in this Agreement reflect such allocation of risks, and, accordingly this limitation of remedies will not have failed in its essential purpose so long as SELLER is willing and able to perform as provided above.

11. Taxes

1. The prices outlined in this agreement are inclusive of federal and provincial taxes due as of the date of this agreement, as assessed by the Government of the SELLER.

2. The price of this Contract does not include, and the SELLER and its subcontractors or its assignees or their employees (hereinafter referred to as “SELLER-Taxpayers”) shall have no responsibility for paying the cost of any or all of the following (hereinafter referred to as “BUYER Taxes”) presently in effect or after the date of this Contract which may be assessed by the Government of the BUYER or any political or military, or administrative subdivision thereof with respect to events relating to or arising out of this Contract, including but not limited to custom duties, corporate or personal income taxes and/or withholding therefore, use, transfer and value added taxes, medical taxes, currency conversions taxes or charges, excise taxes, fiscal duties, fiscal stamp taxes, licenses, or any other levies, charges, duties, assessments, or taxes on any kind. In the event any BUYER Taxes are imposed on and must be paid by the SELLER-Taxpayers, the BUYER will, upon submittal by the SELLER of an invoice, increase the Contract Price by, or reimburse the SELLER for, the full amount of said taxes in United States Dollars payable in Canada.

12. Governing Law

This agreement shall be governed by the laws of the Province of Quebec, Canada, unless provided otherwise specifically by the parties in any other written agreement.

13. Indemnification

1. Subject to the limitations set out in SELLER’s warranty and the disclaimer of warranty stated above, SELLER shall assume the defense of, and indemnify and save harmless BUYER, its officers and employees from and against damages and liability for personal injury or property damages resulting directly from its fault or failure, negligence or willful misconduct connected to, or that arises from the sale or the licensing of its products or services. SELLER’s obligation to indemnify BUYER shall be limited to and not exceed the amount paid by BUYER to SELLER with regard to the product or service or activity that is the basis for such liability or that is directly related to the cause of action;
2. The BUYER shall assume the defense of, and indemnify and save harmless, SELLER, its officers and employees from and against all damages and liability resulting directly from negligence or willful misconduct of the BUYER in the performance of this agreement.

14. Confidentiality Obligations

SELLER and BUYER acknowledge that certain information that each may receive from the other, such as but not limited to non-public information concerning the business or finances or either party, and any other confidential information the disclosure of which might harm or destroy a competitive advantage of the disclosing party, may be confidential and proprietary to the disclosing party. Neither receiving party shall, directly or indirectly, disclose any information concerning the disclosing party's business methods, BUYERs or finances, or any other information which is disclosed to it by the other party, without the prior written permission of the disclosing party, unless such disclosure is specifically required in the course of the performance by the receiving party of its obligations hereunder. Information disclosed verbally shall not be considered confidential unless the confidentiality of such verbal disclosure is confirmed in writing within ten (10) days following such verbal disclosure. The obligations of both parties under this section shall not extend to any information which (i) becomes publicly available other than through the action of the receiving party, (ii) is subsequently rightfully furnished to the receiving party by a third party without restriction on disclosure, (iii) is furnished by the disclosing party to a third party without restriction on disclosure, (iv) is rightfully known by the receiving party at the time of receiving such information, or (v) is required to be disclosed by valid order of a court or other governmental body or otherwise required by law.