

## Futurecom Systems Group, ULC Terms and Conditions of Sale - CA

**1. ENTIRE AGREEMENT.** Buyer agrees that all sales of goods and services (“Goods”) by Futurecom Systems Group, ULC (“Seller”) to Buyer are governed by these Terms and Conditions of Sale (the “Terms and Conditions”) which supersede any other or inconsistent terms of Buyer. Buyer agrees that this Agreement will also govern all sales of Goods to Buyer by any Futurecom Systems Group, ULC subsidiary, affiliate or division, in which case such subsidiary, affiliate or division will be the “Seller” under this Agreement (unless otherwise agreed in writing by such subsidiary, affiliate or division). Buyer acknowledges that these Terms and Conditions are subject to change from time to time and the parties agree that each sale of Goods will be governed by the version of Terms and Conditions available online at [www.futurecom.com](http://www.futurecom.com) at the time of acceptance by Seller of an order for such Goods. The Terms and Conditions and the order for Goods from Buyer and agreed by Seller (“Order”) or other contract documents to which they apply constitute the entire agreement between the parties with respect to Goods (“Agreement”). All references by Seller to Buyer’s specifications and similar requirements are only to describe Goods and work covered hereby and no warranties or other terms will be implied thereby or have any force or effect except as specifically provided herein or by law. No other or inconsistent terms of Buyer, no modification, amendment or waiver to this Agreement and no cancellation, change or return of any Order under this Agreement will be binding on Seller until agreed in writing by Seller’s authorized representative. Buyer may not rely on any representation, promise or term not set forth herein and Seller expressly objects to and rejects all terms not contained in this Agreement. Seller’s acceptance of Orders, whether oral or written, and/or its delivery of Goods to Buyer is based on the express condition that Buyer agrees to all of these Terms and Conditions.

**2. QUOTATIONS.** Where this Agreement is used by Seller to place a bid or provide a quote, Seller’s quotation is for prompt acceptance and Seller may change and/or withdraw without notice. Buyer’s prompt acceptance of the quotation is a material term of the bid and any subsequent agreement. In cases where freight allowance is included in the quotation, Buyer is liable for any rate increase and/or additional expense over the calculated allowance resulting from compliance with Buyer’s shipping instructions.

**3. DELIVERY.** Delivery terms are FCA Seller’s dock unless otherwise stated on each Order. All shipping dates are approximate. Tender of delivery is deemed to occur at the earliest of (A) acceptance of shipment by designated shipper, (B) allocation of Goods to Buyer at premises other than Seller’s or (C) delivery to Buyer’s representative or designee. Title to Goods will pass to Buyer on tender of delivery, subject to Seller’s right of stoppage in transit and to any interest of Seller reserved to secure Buyer’s payment or performance, irrespective of any freight allowance or prepayment of freight. If Seller holds Goods per Buyer’s instructions or because Buyer has failed to supply shipping instructions or because Seller, in its sole discretion, determines that any part of Goods should be held for Buyer’s account, Seller may invoice for the Goods and Buyer agrees to make payment at the maturity of the invoice rendered. Goods invoiced and held at any location for whatever reason will be at Buyer’s risk and Seller may charge for (but is not obligated to carry) insurance, storage and other expenses incident to such delay at its prevailing rates. Partial deliveries will be accepted by Buyer and paid for at Agreement prices and terms. When Buyer has declared or manifested an intention not to accept delivery, no tender will be necessary, but Seller may, at its option, give written notice to Buyer that Seller is ready and willing to deliver and such notice will constitute a valid tender of delivery. Buyer must report any shortages in shipments within three (3) calendar days of receipt of the initial shipment. Buyer may not make any deduction from any payment due hereunder by reason of loss or damage to Goods in transit.

**4. PRICES; PAYMENT.** Prices are stated on Seller’s Order or invoice document and payment terms are “prepaid” unless credit is extended in Seller’s discretion. If credit is extended, payment terms are net thirty (30) days from date of invoice. Seller may make partial shipments. If, at any time or for any reason, Seller has cause to question Buyer’s ability to perform, Seller may demand such assurances of Buyer’s performance as Seller deems necessary in its discretion, including payment in advance for all shipments. In the event (A) Buyer fails within ten (10) calendar days of Seller’s demand to provide Seller with such assurance, or (B) Buyer is declared bankrupt or insolvent or any proceeding is brought against Buyer, voluntarily or involuntarily, under any bankruptcy or insolvency laws, or (C) Buyer fails to make payment for Goods when due, Seller may suspend its performance, cancel any Order then outstanding, receive reimbursement for its reasonable and proper cancellation charges and collect any sums due and owing, its reasonable cancellation charges and all damages resulting from Buyer’s default. Additionally, if Buyer fails to make payment for Goods when due, Buyer’s account will be deemed delinquent and Buyer will be liable to Seller for a service charge of eighteen percent (18%) per annum or the maximum allowed by law, whichever is greater, on any unpaid amount Buyer will be liable to Seller for all costs and expenses of collection, including court costs and reasonable attorneys’ fees on a solicitor-client basis. Seller’s prices do not include sales, use, excise, value-added or other similar taxes and Buyer agrees to pay the amount of any present or future such tax in addition to the price specified in each Order, unless Buyer, at the time of sale, provides Seller with all tax-exemption certificates required by taxing authorities.

**5. CANCELLATION, CHANGES AND RETURNS.** If Buyer properly requests a cancellation, change or return, Seller may, at its option: (A) charge Buyer for any costs Seller incurred prior to or as a result of such cancellation, change or return; (B) revise its prices and delivery dates to reflect such change; and/or (C) accept returned Goods for credit if, in Seller’s sole discretion, it finds such Goods to be standard stock and in good condition. The credit will be, in Seller’s sole discretion, either the invoice price less a

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percentage to be determined by Seller or the scrap value of the Goods, along with shipping and handling charges to be determined by Seller. All returned Goods must be securely packed by Buyer to ensure that returned material is not damaged during shipment.

**6. FORCE MAJEURE; DEFERRED DELIVERY.** Seller will not be liable for any expense, loss or damage resulting from delay in delivery or prevention of performance caused by any event beyond Seller's reasonable control ("Force Majeure"), including without limitation: fire; flood; storm; act of God; strike, labour dispute or labour shortage; lack of or inability to obtain materials, fuels, supplies or equipment; civil unrest or riot; accident; transportation delay or shortage; act or failure to act of Buyer or any government; or any other cause whatsoever, provided that such cause is beyond Seller's reasonable control. Seller will have such additional time for performance as may be reasonably necessary under the circumstances and may adjust the price to reflect increases occasioned by Force Majeure. Buyer's acceptance of any Goods will constitute Buyer's waiver of any claim for damages on account of any delay in delivery of such Goods. If delivery is delayed or interrupted by Force Majeure, Seller may store the Goods at Buyer's expense and risk and charge Buyer a reasonable storage rate. If Seller is delayed because it is awaiting Buyer's approval or acceptance of designs, drawings, prints or engineering or technical data, or is awaiting Buyer's approval or acceptance of Goods, Seller will be entitled to an adjustment in price equal to any increase in Seller's production costs and any other losses and expenses incurred by Seller attributable to such delays. If Buyer requests and Seller approves in writing a deferred delivery on any Order, Seller may charge Buyer for the completed portion of the Order and warehouse all completed Goods at Buyer's expense and risk of loss. As to any uncompleted portion of the Order, Seller may, at its option, cancel said uncompleted portion in accordance with Section 5 above or revise its prices and delivery schedules on the portion not completed to reflect its increased costs and expenses attributable to the delay.

**7. WARRANTY.** Seller warrants that the supplied Goods are free of defects in materials and workmanship under normal and proper use for one (1) year from the date of shipment. Seller's warranty DOES NOT cover: (A) defects or damage resulting from (i) use of Goods in other than their normal and customary manner; (ii) improper installation, testing, operation, or maintenance; (iii) alterations, modifications or adjustments carried out by Buyer without Seller's explicit approval; (iv) abuse, misuse, accident, water or neglect; or (v) use of components, accessories, parts or supplies not furnished by Buyer; (B) freight and brokerage fees to and from the repair depot; (C) scratches or other cosmetic damages to surfaces that do not affect the operation of the Goods; or (D) normal wear and tear. This warranty is conditioned on proper storage, installation, use and maintenance in accordance with Seller's written recommendations. Seller's sole obligation for breach of this warranty will be to repair or replace, at Seller's option, any defective component or Goods and pay transportation expenses for such replacement at no charge to Buyer, who will provide labour for the removal of the defective component or Goods and installation of its replacement at no charge to Seller. Buyer shall bear all risk of loss or damage to returned Goods while in transit. If Seller finds no defect in the Goods on receipt of any returned item, the item will be returned to Buyer at Buyer's expense, and Buyer will reimburse Seller for all transportation charges, labour and associated charges incurred by Seller in testing the allegedly defective item. To exercise this warranty, Buyer must contact Seller's Administration Department in Concord, Ontario, Canada to obtain a return material authorization (RMA) and shipping instructions. No Goods will be accepted for return without a Seller RMA. The repair of an item of Goods by Seller under this warranty is warranted for the balance of the original warranty period, or at least ninety (90) days from date of shipment of the repaired Goods to Buyer.

**8. LIMITATION OF LIABILITY. THE WARRANTY IN SECTION 7 IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED BY LAW OR STATUTE OR ARISING FROM TRADE USAGE OR COURSE OF DEALING. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS OR ANY OTHER MATTER. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, WILL SELLER BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (COLLECTIVELY "CONSEQUENTIAL DAMAGES"), INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, LOSS OF USE OF GOODS OR OTHER PROPERTY OR EQUIPMENT, DAMAGE TO OTHER PROPERTY, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, DOWNTIME OR CLAIMS OF BUYER'S CUSTOMERS FOR ANY OF THE AFORESAID DAMAGES. SELLER WILL NOT BE LIABLE AND BUYER AGREES TO INDEMNIFY SELLER FOR ALL PERSONAL INJURY, PROPERTY DAMAGE OR OTHER LIABILITY RESULTING IN WHOLE OR IN PART FROM BUYER'S NEGLIGENCE. PURSUANT TO SECTION 22(5) OF THE LIMITATIONS ACT (ONTARIO) ALLOWING PROCEEDINGS BASED ON CLAIMS MADE UP TO THE FIFTEENTH ANNIVERSARY OF THE DAY ON WHICH THE ACT OR OMISSION ON WHICH THE CLAIM IS BASED TOOK PLACE IS SHORTENED TO THE EFFECT THAT (i) SELLER WILL NOT BE LIABLE FOR ANY CLAIM BY BUYER WITH REFERENCE TO GOODS FOR ANY CAUSE UNLESS SUBMITTED TO SELLER IN WRITING WITHIN TEN (10) DAYS FROM THE DATE BUYER DISCOVERED, OR SHOULD HAVE DISCOVERED, ANY CLAIMED BREACH AND, (ii) EXCEPT AS PROVIDED IN SECTION 7, NO CLAIMS OF ANY NATURE, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, MAY BE BROUGHT AGAINST SELLER MORE THAN SIX (6) YEARS AFTER DELIVERY OF GOODS TO BUYER. In any contract by Buyer for resale of Goods, Buyer will effectively disclaim, as against Seller, any implied warranty of merchantability and all liability for property damage or personal injury resulting from handling, possession or use of Goods, and will exclude, as against Seller, any liability for Consequential Damages.**

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**9. CONTROLLING LAW; CONSENT TO VENUE; DISPUTE RESOLUTION.** This Agreement and all rights and obligations hereunder will be governed by, and construed and enforced in accordance with, the laws of the province of Ontario, Canada, without regard to its conflicts of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. All disputes, claims or controversies (individually or collectively, a "Dispute") between Seller and Buyer arising out of or relating to this Agreement, including without limitation Disputes based on or arising from an alleged tort, will be finally resolved by binding arbitration in accordance with the Arbitration Act (Ontario) and the National Arbitration Rules of the ADR Institute of Canada, Inc. (the "Institute"). Disputes will be arbitrated in Toronto, Ontario, Canada in the English language. Defenses based on statutes of limitation and similar doctrines will be applicable in any such proceeding, and commencement of an arbitration proceeding under this Agreement will be deemed commencement of an action for such purposes. The Dispute will be arbitrated before three (3) arbitrators. In accordance with the National Arbitration Rules of the Institute, each party will appoint an arbitrator and the two (2) arbitrators will jointly appoint the third arbitrator who will act as chair of the tribunal. If a party fails to make a required appointment, or the arbitrators appointed by the parties are unable to agree on appointment of a third arbitrator, then a party may request the Institute to make the required appointment. Notwithstanding the foregoing, Seller reserves the right to resolve or bring any Dispute in a court of competent jurisdiction in Toronto, Ontario, Canada, and the parties irrevocably agree that, except when the Dispute is arbitrated, the exclusive venue for all Disputes between the parties will be the appropriate provincial or federal court in the judicial district of Toronto, Ontario, Canada, to which jurisdiction each party irrevocably submits.

**10. COMPLIANCE WITH LAWS.** Each party represents and warrants, in connection with transactions contemplated by this Agreement, and any other agreement contemplated by or entered into pursuant to this Agreement, that it will comply with all applicable federal, provincial and local laws and regulations, including without limitation: (A) all applicable laws and regulations regarding export controls, economic sanctions, trade embargoes and anti-boycott restrictions, and all applicable anti-corruption laws, including but not limited to the United States Foreign Corrupt Practices Act (as amended) and the United Kingdom Bribery Act (collectively, "Applicable International Trade and Anti-Corruption Laws"); and (B) all applicable equal opportunity requirements and laws prohibiting discrimination against any person because of veteran status, disability, race, creed, color, national origin, religion, age or sex in any term or condition of employment. Each party acknowledges and confirms that it and its officers, directors, employees, agents, contractors, designees and/or any other party acting on its behalf (collectively "Related Parties") are familiar with the provisions of Applicable International Trade and Anti-Corruption Laws. Each party agrees to indemnify, defend and hold harmless the other party and its employees from and against any and all claims, demands, costs, penalties and fines arising in connection with any alleged breach by the indemnifying party or any of its Related Parties of this Section. Seller may terminate this Agreement in its entirety, without liability to Buyer, if Seller believes in good faith that Buyer or any of its Related Parties has violated or intends to violate this Section.

**11. MISCELLANEOUS.**

- (A) No waiver of any provision, right or remedy contained in this Agreement, including the terms of this Section 11(A), is binding on or effective against Seller unless expressly stated in writing and signed by Seller's authorized representative. Buyer expressly agrees that no right or remedy provided for in this Agreement can be waived through course of dealing, course of performance or trade usage. Buyer expressly agrees and acknowledges that reliance on any waiver without Seller's written consent is unreasonable. Waiver by Seller of any breach will be limited to the specific breach so waived and will not be construed as a waiver of any subsequent breach. Seller's approval or consent to any action proposed by Buyer will not be considered an agreement to the propriety, fitness or usefulness of the proposed action, and will not affect Buyer's obligation to strictly comply with this Agreement and all related Orders.
- (B) Buyer may not assign this Agreement or any rights or obligations hereunder without Seller's prior written consent. Any attempted assignment in violation of this Section is void; however, this Agreement and the Terms and Conditions contained herein are enforceable against Buyer's successors and permitted assigns.
- (C) Seller's remedies in this Agreement are cumulative and in addition to any other remedies available to Seller, whether at law, equity or otherwise.
- (D) If any provision or part of a provision contained in this Agreement is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the Agreement will remain in full force and effect.
- (E) No provision of this Agreement may be construed against Seller as the drafting party.
- (F) The parties have expressly agreed that this Agreement, and all correspondence relating to this Agreement, be drafted in English. Les parties ont expressément convenu que l'entente, ainsi que toute correspondance s'y rapportant, soient rédigées en anglais.

