



# TERMS AND CONDITIONS OF SALES

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As stated herein, 'Seller' is OPAL-RT Technologies Inc. and the "Buyer" is the recipient of the quotation and issuer of the purchase order. The following Terms and Conditions of sales (the "Contract") apply to the Seller's quotations and any sales that results.

## 1. GENERAL

- 1.1. Quotations are offered for acceptance within thirty (30) days unless a longer time is specified on the face of the quotation, and if not so accepted within the designated period shall be deemed withdrawn.
- 1.2. All purchase orders are subject to this Contract.
- 1.3. In this Contract, the expression "Goods" relates to the goods and services, which the Seller proposes to sell or has sold to the Buyer, being the Goods described in the Seller's Quotation and a reference to Goods includes services and electronic products of any kind.

## 2. ACCEPTANCE OF QUOTATION AND PURCHASE ORDERS

- 2.1. The quotation must be accepted by the Buyer in writing by counter-signature of the quotation for any quotation above \$100,000 US and by electronic confirmation to the Seller for the others.
- 2.2. Seller's acceptance of any purchase order is contingent upon Seller's approval of Buyer's credit.
- 2.3. Acceptance of the Buyer's purchase orders by the Seller does not constitute acceptance of the Buyers' terms and conditions of sale quoted therein, unless specifically authorized with the written consent by the Seller. In the event of the lack of enforcement of the Seller's terms and conditions of sale by the Seller or by the agent of the Seller or by the Seller's subsidiary, neither waiver of the Seller's terms and condition of sales, nor the Seller's acceptance of Buyer's conditions of purchase is to be deemed or implied. In any event, if the Buyer fails to notify the Seller in writing within ten (10) days of the Seller's order acknowledgement that any terms or conditions of that order are unacceptable to the Buyer, the Buyer shall be deemed to have accepted the Contract as set forth in the acknowledgement. Upon acceptance in this manner, the Contract cannot be canceled, revoked, or modified in any particular without the specific written consent of the Seller, after appropriate provision for payment by the Buyer for any additional costs and expenses resulting from such changes.

## 3. CERTIFICATION STANDARDS, GOODS MARKINGS

- 3.1. Seller represents and warrants that all Goods purchased by the Buyer shall be conform with all applicable laws related to product safety, electromagnetic compatibility, low voltage equipment, radio equipment and wireless, and restriction of hazardous substances. Seller, or Seller's agent, will affix the applicable regulatory mark on Goods as required.
- 3.2. Unless otherwise agreed to in a SOW or a Quotation, when required by local regulation, Buyer shall have the responsibility for assisting Seller or Seller's agent in all on site testing or action required to respect certification standards or Goods marking, notably permitting access to the Goods and Buyer's premises and by fully collaborating in obtaining and maintaining applicable certifications and markings for the Goods.

## 4. DELIVERY

- 4.1. All delivery dates quoted are estimated, are not guaranteed and do not form a term of this Contract. The Seller undertakes to make every endeavor to adhere to the delivery schedule but will not accept cancellation of Contract for, or liability for, any direct or indirect losses which may arise from late delivery .
- 4.2. Unless otherwise agreed in writing by the Seller, all costs of delivery will be for the Buyer's account.
- 4.3. The Seller is not and will not be liable for any loss or damage however it arises because of any failure to deliver or delay in delivery for any reason including, without limitation:
  - 4.3.1. Acts of God, fire, lightning ,explosion, or flood; lock-out, strike or other labor difficulty;
  - 4.3.2. shortage or unavailability of raw materials, labor, power supplies or transport facilities; or failure or inability to obtain licenses or the effect of any applicable laws, orders, rules or regulations of any government or competent authority
  - 4.3.3. Breakage, accident or other damage to or failure of machinery or equipment.

## 5. DAMAGE OR LOSS IN TRANSIT

- 5.1. All Goods are delivered EXW Montreal except if shipping fees are added into the quote then the incoterm CPT Buyer's premises will apply. Seller accepts no responsibility past the Buyer's facility for damage or loss of Goods in transit. Any such damage should be noted on the carriers paperwork and notified to the Seller within four days of receipt and the Goods held for inspection to enable a claim to be made on the carrier. If the Goods are lost or not received by the Buyer within six days of invoice, the Seller should be immediately notified.
- 5.2. In particular, at the time of delivery, the Buyer should verify the condition of the tape used for packaging of goods shipped, and notify the Seller of any issue at <https://www.opal-rt.com/contact-technical-support/> Failure to report any damage to the sealing tape of the shipped Goods will result in the Buyer being held responsible for all cost of damages.
- 5.3. The Buyer shall familiarize himself with best practices for user and machine safety, as well as important notes and warnings specific to OPAL-RT installations. These are in addition to, and do not replace, all other generic and specific safety information provided, and can be found at:  
**General safety warnings** <https://wiki.opal-rt.com/pages/viewpage.action?pageId=28508726>  
**Uncrating a large hardware platform instructions** <https://wiki.opal-rt.com/display/HDGD/Uncrating+a+Large+OPAL-RT+Hardware+Product>

## 6. PRICE AND QUOTATION

- 6.1. Unless otherwise agreed to in writing by the Seller, all quotations expire 30 days from the date of the quotation. Prices are thereafter subject to change without notice and Goods will be invoiced at the price ruling at the date of dispatch.

- 6.2. All Goods will be charged at the prices ruling at the date of order plus any applicable Goods and Services Tax (GST) which must be paid to the Seller by the Buyer when payment for the Goods is due.
- 6.3. Prices will be rounded to the nearest whole cent in the Seller's invoices.
- 6.4. When preparing a quote, the Seller uses its best knowledge to estimate the necessary time for training, commissioning or giving expert services. If it happens that more time is necessary to complete the work, then the Seller will charge the Buyer all overtime hours at 1,25 X the regular rate.
- 6.5. The Buyer will have one (1) year from the delivery date to request and use such Seller's commissioning, training or expert services. After this delay, the Seller shall not be obligated to perform such commissioning, training or expert services and will be entitled to execute payment, as per the quotation.

## 7. TERMS OF PAYMENT

- 7.1. For orders including software only, payment must be made in cash without deduction within 30 days of the date of invoice or by letter of credit approved by the Seller, unless otherwise provided in the Seller's Quotation or agreed in writing by the Seller or specified by the Seller at the time an order is received.
- 7.2. For orders including Seller's hardware or third party software or hardware, Seller will invoice Buyer immediately after reception of the purchase order and payment is due no later than 30 days after purchase order date through bank wire transfer. The Buyer understands that the Seller will not be able to deliver any systems unless the hardware and third party software have been fully paid.
- 7.3. For Seller's distributors, payment must be made according to distributorship agreement.
- 7.4. The Seller reserves the right to vary the terms of payment and to require payment in cash in full prior to delivery if, at any time, the credit worthiness of the Buyer is, in the Seller's opinion, unsatisfactory. If the Buyer has not paid the Seller in full within 30 days of the payment being due, the Seller may, at its option, rescind the Contract and resell or dispose of the Goods without prejudice to any claims for damages against the Buyer.
- 7.5. Payment of invoices must be received not later than 30 days from the date of invoice, thereafter the Seller reserves the right to charge interest at the rate of 1% per month or part thereof for outstanding amounts owing by the Buyer.
- 7.6. Where payment is not received by the Seller within 30 days from the date of invoice, the Seller may in its absolute discretion:
  - a) *Withhold further supply, activate software time locks and dispose of stock held for the order.*
  - b) *Institute legal action for recovery of outstanding balance plus interest and costs incurred, including legal costs; and*
  - c) *Require the Buyer to pay cash on delivery for any further Goods, and*
  - d) *The Seller shall not be liable to the Buyer for any loss or damage resulting directly or indirectly from such action.*

## 8. CHANGES AND CANCELLATION

- 8.1. If the Buyer makes a change to an order causing a delivery delay or cancels an order less than thirty (30) days prior to scheduled shipment, Buyer shall pay to the Seller a fee equal to 5% of the list price of any Goods affected.
- 8.2. In addition, where any such change causes a delay in delivery of any Goods affected of greater than one (1) month from the proposed date of delivery for the Buyer's original

order, the Buyer will be charged an extra 1% per month of the purchase order until final delivery.

- 8.3. If the Buyer cancels an order for any Goods not included in the Seller's current price list, any time after the order is received by the Seller then the Buyer will be subject to that additional charge.
- 8.4. If the Buyer cancels any order or refuses to accept all or any of the Goods in an order other than in circumstances permitted in these Conditions, the Buyer will be liable for any resulting damage or loss suffered by the Seller. If the Goods have been or are in the process of being manufactured or produced specifically for the Buyer, the Buyer will pay to the Seller as liquidated damages the full Contract price of the Goods and any costs incurred by the Seller (including, but without limitation, any GST) less the current scrap value of the Goods as determined by the Seller.

## 9. LIABILITY

- 9.1. **LIMITED LIABILITY : UNLESS OTHERWISE PROVIDED FOR IN THIS CONTACT, UNDER NO CIRCUMSTANCES WILL THE SELLER OR ITS SUB-CONTRACTORS OR SUPPLIERS BE LIABLE TOWARDS THE BUYER OR ANY THIRD PARTY FOR ANY, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, OR CLAIMS OR COSTS OF ANY KIND INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFITS OR OTHER ECONOMIC LOSS (RESULTING FROM A CONTRACTUAL OR EXTRA-CONTRACTUAL FAULT OR FROM NEGLIGENCE), ARISING OUT OF RELATED TO THE GOODS, EVEN IF THE SELLER HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES. CERTAIN JURISDICTIONS PROHIBIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR INDIRECT OR CONSEQUENTIAL DAMAGES, AND IT IS POSSIBLE THAT ONE OR MORE OF THE AFOREMENTIONED EXCLUSIONS OR LIMITATIONS WILL NOT APPLY TO THE BUYER. IT IS ALSO POSSIBLE THAT THE BUYER MAY HAVE OTHER RIGHTS, WHICH RIGHTS MAY VARY FROM ONE PLACE TO ANOTHER. UNDER NO CIRCUMSTANCES WILL THE SELLER TOTAL LIABILITY TOWARDS THE BUYER EXCEED THE VALUE OF THE GOODS TO THE BUYER OR THE VALUE OF THE PRODUCT IN DEFECT SUPPLIED BY THE SELLER AND PAID FOR BY THE BUYER**
- 9.2. **BUYER INDEMNIFICATION:** Except where the damages results from Buyer's or Buyer's employees, agents or contractors fault, negligence or willful misconduct, the Seller shall indemnify, defend and hold harmless the Buyer and its affiliates, and their respective directors, officers, employees, insurers, successors and assigns (collectively, the "Buyer's Indemnified Parties"), from and against any and all liabilities, damages and expenses (including, without limitation, attorneys' fees and legal costs) that they, or any of them, may sustain or incur as a result of (a) any breach of any representation, warranty or covenant made by Seller in the Contract, (b) any actual or alleged injury to or death of any person, or any actual or alleged damage to or loss of any property, arising out of (i) the manufacturing or the defect of Seller's Goods, (ii) any Services performed by OPAL-RT or any of its employees, agents, suppliers or contractors, or (iii) the negligent acts or omissions or intentional misconduct of Seller or any of its employees, agents, suppliers or contractors, (c) or otherwise and generally arising out of or having its origin in any act or omission of Seller, its agents, representatives, affiliates or employees in connection with this Contract.

**In any case, notwithstanding what precedes, except in the event of willful misconduct or gross negligence on the part of Seller, Seller's liability toward the Buyer shall**

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**not be higher than the value of the Goods sold that lead to the claimed damages.**

- 9.3. SELLER INDEMNIFICATION: The Buyer agrees to indemnify, hold harmless and defend the Seller and its affiliates, and their respective directors, officers, employees, clients, agents, insurers, successors and assigns (collectively, the "Seller's Indemnified Parties"), from and against any and all liabilities, damages and expenses (including, without limitation, attorneys' fees and legal costs) that they, or any of them, may sustain or incur as a result of:
- the negligent acts or omissions or intentional misconduct of Buyer or any of its employees, agents, suppliers or contractors;
  - the migration of the Seller's Goods to a different hardware or software environment;
  - unlawful or unauthorized third-party hacking into the Buyer's computer equipment;
  - any infringement of Seller's Intellectual Property;
  - any breach of any representation, warranty or covenant made by Buyer in the Contract.

## 10. FORCE MAJEURE EVENTS

- 10.1. Neither Party shall be liable for any delay in the performance of its obligations hereunder due to an adverse event caused by a superior force as awarded by a competent authority or court of law (hereinafter referred to as "Force Majeure
- 10.2. Seller undertakes to (i) notify Buyer immediately of any event of Force Majeure and (ii) resume its performance forthwith after the Force Majeure event ceases. If any Force Majeure event continues for an unbroken period exceeding thirty (30) days, Buyer is entitled by notice in writing to the Seller to terminate this Contract and any order associated with it. In the event of such notice being given, all Services completed and accepted hereunder before the giving of such notice, and all Services completed and accepted thereafter in accordance with and to the extent specified in such notice, shall be paid for by Buyer subject to acceptance by Buyer. In no case under such termination shall Seller be entitled to any amount which taken together with any amounts paid or due to Seller under the terminated order, would exceed the total amount payable for the Services to be supplied under the terminated order.

## 11. INTELLECTUAL PROPERTY

- 11.1. For the purpose of this Contract, the term "Intellectual Property" means (a) all inventions (whether or not patentable or reduced to practice), all improvements thereto, and all patents and industrial designs (including utility model rights, design rights and industrial property rights), patent and industrial design applications, and patent disclosures; (b) all trademarks, service marks, designs, trade dress, logos, slogans, and all other indicia of origin, and all goodwill associated with any of the foregoing; (c) all works of authorship (whether or not copyrightable), copyrights (including "look-and-feel"), mask works, database rights and moral rights; (d) all trade secrets, know-how, technologies, processes, techniques, protocols, methods, formulae, recipes, product specifications, data, scents, initials, algorithms, compositions, industrial models, architectures, layouts, designs, drawings, plans, Specifications, methodologies, ideas, research and development, and confidential information (including technical data, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals); (e) all software; and (f) all other proprietary and intellectual property rights worldwide.

- 11.2. Trademarks, know-how, computer programs, software and other Intellectual Property rights belong to Seller and shall remain Seller's sole property and Seller shall as far as reasonably protect such rights. Nothing contained in this Contract shall be construed to give the Buyer any proprietary interest in or rights to Seller's Intellectual Property, and all use by the Buyer of Seller's trademarks and symbols shall be to the benefit of Seller.
- 11.3. The sale and purchase of the Goods does not confer on the Buyer any of Seller's Intellectual Property rights. Nothing in this Contract is intended, nor shall anything in this Contract be construed to grant or convey any Intellectual Property rights of Seller to Buyer.
- 11.4. The Buyer agrees to inform Seller of any known infringement or known alleged infringement of industrial, commercial or Intellectual Property rights, belonging to Seller, or any legal action taken against the Buyer in respect of the breach of such rights. The Buyer shall safeguard Seller's interests by making information on such infringement to Seller immediately available.
- 11.5. Seller grants to the Buyer a limited, non-exclusive, non-transferable, royalty-free, worldwide right and license to Seller's Intellectual Property necessary for Seller's unrestricted use and support of the Goods provided under the Contract. This license does not confer to Buyer any right to copy and reproduce, alter or otherwise modify Seller's Intellectual Property.

## 12. RETURN POLICY

- 12.1. The Seller warrants to the original Buyer and/or ultimate Buyer of the Seller's Goods that if any part thereof proves to be defective in material or workmanship within one (1) year after the delivery of the invoice, such defective part will be repaired or replaced, free of charge, at the Seller's discretion, if shipped prepaid to Opal-RT Technologies Inc. at 1751 Richardson, suite 1060, Montreal, Quebec, Canada, H3K 3G6, in a package equal to or in the original container. The Goods will be returned freight prepaid and repaired or replaced if it is determined by the Seller that the part failed due to defective materials or workmanship. Otherwise, the fees will be charged to the Buyer (see Warranty Policy and Liability on Opal-RT's web site at [www.opal-rt.com](http://www.opal-rt.com), under Support, Return Merchandise, click on "[Please read about our RMA procedure and warranty policy](#)"). The repair or replacement of any such defective part shall be the Seller's sole and exclusive responsibility and liability under this limited warranty.

## 13. PREVAILING CONTRACT

- 13.1. These terms and conditions supersede all previous or different instruments, namely Buyer's purchase order's terms if any, unless otherwise provided by law, and no change or modification of these terms and conditions shall be of any force unless such change or modification shall be executed by an authorized officer of Seller. The terms and conditions of this instrument shall supersede any terms and conditions on any confirmation purchase orders or other documents Buyer may present, the terms and conditions herein being binding. Acceptance of any quotation is limited to the terms and conditions herein.

## 14. GOVERNING LAWS

- 14.1. This Contract created by Seller's quotation, Buyer's purchase order and Seller's acknowledgement shall be governed by and construed in accordance with the laws of the province of Québec and the laws of Canada applicable herein.

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## 15. LANGUAGE

- 15.1. The parties hereto confirm that it is their express wish that this Agreement be drawn up in English only. Les parties aux présentes confirment leur volonté expresse que la présente convention soit rédigée en anglais seulement.