



RADIALL USA, Inc. STANDARD TERMS & CONDITIONS OF SALE

1. **AGREEMENT.** These Standard Terms and Conditions shall apply to all offers made by Radiall USA, Inc. (hereinafter referred to as "the Seller"), and all contracts (hereinafter referred to as "the Contract") made between the Seller and any person, firm or entity (hereinafter referred to as "the Buyer") purchasing products, material, parts and services (hereinafter "the Products") from the Seller. These Standard Terms and Conditions are applicable to any quotation given by the Seller or to any order issued by the Buyer and are fully accepted by the Seller. These Standard Terms and Conditions shall constitute the entire agreement between the Seller and the Buyer with respect to the sale and delivery of the Products and the performance of any work by the Seller, and no variation or waiver or addition to these Standard Terms and Conditions shall be binding unless expressly confirmed by the Seller in writing. These Standard Terms and Conditions shall have precedence over and be preferred to any conditions appearing on the Buyer's purchase order document or other documents emanating from the Buyer and any such Buyer's conditions shall be of no force and effect unless expressly accepted in writing by the Seller. No person has authority to make any representations on the Seller's behalf and the Buyer shall not rely on any representation unless made or confirmed in writing by the Seller.

2. **OFFERS AND ORDERS.** Unless previously withdrawn, Seller's offer is open for acceptance within the period stated therein, or when no period is stated within thirty (30) days from the date thereof. Any purchase order received by the Seller, whether in response or not to such offer, and any agreement and contractual change shall only be binding on the Seller at such time as the Seller gives to the Buyer its written acceptance thereof. All price lists, brochures and other literature are as accurate as possible. They shall only be binding on the Seller if they are expressly confirmed in writing.

In the event of any variations in the order requested by the Buyer and accepted by the Seller, the Seller shall be entitled to charge the Buyer all additional costs and expenses incurred by the Seller in connection therewith and the Seller may set a new delivery date, all this subject to payment by the Buyer of the work already performed by the Seller.

No order for the Products may be cancelled by the Buyer without the written consent of the Seller. The Buyer shall indemnify the Seller against all costs incurred by the Seller in connection therewith. Notwithstanding anything to the contrary agreed in writing by Seller and Buyer, Buyer shall support cancellation fees including the order amount and handling charges.

3. **PRICES.** Prices shall be quoted for delivery of the Products to the agreed location in accordance with the ICC' Incoterms (2000) and exclusive of value added tax. The price shall include Seller's standard packing and any special packing shall be charged to the Buyer. Prices quoted relate to the stipulated quantity only. Unless otherwise agreed in writing, prices shall be quoted in the currency of the Seller's country. The quoted prices are based on the costs of materials and labor prevailing on the date of quotation. Unless otherwise agreed in writing, if before the date of actual delivery variations occur in the abovementioned costs, the Seller shall be entitled to revise the prices quoted to provide for such variations.

In the event of a change or an introduction by any governmental regulations of any taxes, levies or import duties, the Seller shall be entitled to pass on the Buyer the price increase resulting thereof.

4. **PAYMENT.** Unless otherwise agreed in writing, all accounts are strictly net and are due for payment within thirty (30) days following dispatch of the Products or, where applicable, the date on which the Products are available for collection. Interest on late payment will be charged to the Buyer at a rate of one and half percent (1.5%) a month (or part month) on the amount still outstanding. In addition, all costs and expenses, legal judicial or otherwise, incurred by the Seller in recovering the sums due shall be fully borne by the Buyer.

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If the Buyer fails to effect payment on the due date, the Seller reserves the right, in addition to any other legal rights and remedies available to it, to suspend further deliveries of Products until such time as payment is received from the Buyer or to terminate the Contract. Should the Contract be terminated by the Seller, the Buyer will be liable to the Seller for the price of all Products actually delivered or completed and ready for delivery. The Seller further reserves the right to claim the fair and reasonable price for partly completed Products based on manufacturing costs up to the date of termination.

If the Buyer fails to take delivery of the Products under any Contract within eight (8) days of the date of notification that they are ready for delivery the Seller shall have the right to invoice for payment at any time after the expiry of said period and payment shall be due thereon as if delivery had been made.

The Seller reserves the right at any time, even in the course of performance of the Contract, to require the Buyer to furnish a guarantee of payment whose terms shall be agreed upon in writing by the Seller.

If the event that Buyer makes an assignment for the benefit of creditors, files a petition in bankruptcy, or is adjudicated bankrupt or insolvent, or has a receiver or trustee in bankruptcy appointed to all or part of its assets, or if any action is taken to dissolve, liquidate or wind up the Buyer, the Seller shall have the right to terminate upon written notice and with immediate effect the Contract, without prejudice to its rights to claim compensation for all costs and damages incurred by the Seller in connection therewith.

5. RESERVATION OF TITLE. Title to any Products sold under any contract shall not pass to the Buyer until the Seller has received payment in full of all sums invoiced together with any interests accrued thereon and other charges. In the meantime the Seller shall remain the full legal and beneficial owner of the Products and the Buyer shall hold any proceeds of sale of the Products as trustee or as bail for the Seller free from any charge, lien or other encumbrance. The Buyer agrees that it will assign to the Seller upon the Seller's request all of its rights under a contract of sale against any subsequent Buyer of the Products or any of them or of the equipment in which the Products have been incorporated. Until such time as title to the Products passes to the Buyer or until such time as the Products are sold, the Buyer shall keep the Products fully insured with a reputable insurer and shall store them in such a way as they can be readily identified as being the Seller's property. The Seller has the right to recover possession of all or any of the Products or to seize any of the Products at any time and is entitled to enter upon any of the premises of the Buyer for the purpose of doing so. If the Buyer makes an assignment for the benefit of creditors, is adjudicated bankrupt or insolvent, has any proceedings commenced against it for reorganization, readjustment of debt, dissolution or liquidation, or has its business wound up, the Seller shall be entitled to claim back as its property any Products delivered but not yet paid for or not paid for in full, without prejudice to its rights to demand compensation for any losses or damage resulting thereof.

6. EXPORT CONTROL. In performing the obligations of this Agreement, the Seller and the Buyer will both comply with United States export control and sanctions laws, regulations, and orders, as they may be amended from time to time, applicable to the export and re-export of goods, software, technology, or technical data or services, including without limitation the Export Administration Regulations ("EAR"), International Traffic in Arms Regulations ("ITAR"), and regulations and orders administered by the Treasury Department's Office of Foreign Assets Control (collectively, "Export Control Laws

7. DELIVERY. Unless otherwise agreed in writing, all deliveries of Products shall be made Ex Works of Seller's factory in accordance with ICC's Incoterms (2000). All risks of loss or damage to the Products shall pass from the Seller to the Buyer when the Products are delivered to the Buyer in accordance with the agreed trade term as defined in ICC's Incoterms (2000).

The Seller may make deliveries in installments which will be invoiced individually. The Buyer will make payment in accordance with clause 4 of these Standard Terms and Conditions.

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Times specified for delivery of the Products are given and intended as estimates only unless otherwise agreed in writing. Where a firm time for delivery has been expressly agreed upon, no delivery shall be considered overdue until the Buyer has made a written request for delivery and given the Seller a reasonable opportunity to comply therewith. The Buyer shall have the right to cancel the Contract by serving written notice to the Seller if the Seller is unable due to circumstances for which it is fully responsible to comply with the extended or postponed delivery time and the Buyer has stated in writing when agreeing to the new delivery time that it will refuse to take delivery if the new delivery date is not met. In no event shall the Seller be liable for indirect, special, consequential or punitive damages arising out of or in connection with the late delivery of the Products.

The Buyer shall inspect or have inspected the Products delivered and shall notify the Seller in writing of any discrepancy regarding the quantity, specification or quality of the Products to the order within fourteen (14) days of receipt of the Products. Once this time period has elapsed, the Buyer shall be deemed to have accepted the Products. The Seller shall replace incorrect Products and deliver additional Products to meet the ordered quantity and the Buyer shall have no claim to compensation whatsoever. The Buyer shall not return any Products without the prior written permission of the Supplier. Submitting a claim shall at no time release the Buyer from its obligations under the Contract.

8. **WARRANTY.** The Seller warrants that any product supplied under purchase orders issued by Buyer and accepted by The Seller, where properly used, stored and maintained, and if properly assembled and installed, shall be in compliance with all purchase order requirements and shall be free from defects in workmanship and material for a period of 12 months after delivery of the products. Buyer shall give The Seller, within ten (10) days of the discovery of any non-compliance, written notice of the claimed defect and satisfactory proof thereof. The Seller shall, within ten (10) days of the receipt of the return product, provide Buyer with written notice of the results of investigation and the scheduled reworked or replaced product delivery schedule. The Seller's obligation and Buyer's exclusive remedy under this warranty shall be limited to repair or replacement by The Seller at its cost of the products which prove defective within the applicable warranty period or to a refund of the purchase price of such defective products. Warranty replacements do not constitute an extension of the original warranty for the products. The Seller's warranty does not extend to (i) any damage or loss due to misuse, accident, disaster, abuse, neglect, [normal wear], or damage or loss due to work not performed by The Seller or its contractors, (ii) damage or loss caused by product which has been repaired or altered by Buyer or a third party without The Seller's prior written approval, and (iii) defects arising out of incorrect or insufficient data, drawings, specifications or instructions furnished by Buyer. Except as expressly provided herein, the seller makes no representation or warranty of any kind, express or implied, as to merchantability, fitness for a particular purpose or any other matter with respect to the products.

9. **TOOLING.** All tools, moulds and fixtures which are developed by the Seller under the Contract or made by the Seller under any purchase order from the Buyer shall be and remain at all times the exclusive property of the Seller.

10. **CONFIDENTIALITY.** All parties to the Contract shall maintain in strict confidence and shall not, without the other party's prior written authorization, disclose to third parties any documents and confidential information designated by the furnishing party as confidential, and furnished to the other party pursuant to the Contract. The receiving party shall not use the other party's confidential information for any other purpose than the performance of the Contract. Neither party shall be liable for disclosing any confidential information if it is known or becomes known to the general public otherwise than through an act of negligence by the receiving party. Upon termination of the Contract either party shall return to the other party all confidential information which is in its possession. The Buyer shall not make any advertisement, publicity or communication regarding the Contract or the Seller's relationship with the Buyer without the Seller's prior written consent. The parties' obligations under this Clause shall survive the termination of the Contract.

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11. **FORCE MAJEURE.** The Seller shall not be liable for the non performance or delayed performance of any of its obligations under the Contract, if such performance is hindered or delayed by an event which is beyond the Seller's reasonable control, including, without limitation, acts of God, war, acts of terrorism, civil unrest, embargos, natural disasters, fire, explosions, accidents, strike, lock-out and other general labor disputes, exceptional weather conditions, breakdown or general unavailability of transport facilities, general shortages of energy and materials. The Seller shall promptly notify the Buyer of the occurrence of the Force Majeure event with indication of the scope and effect of such event on the performance of its obligation. The performance of the Seller's obligations shall be suspended for the term of the Force Majeure event. Should the Force Majeure event last for more than sixty (60) days from the date on which the excused performance was originally due, the Buyer shall be entitled to terminate the Contract on fifteen (15) days prior written notice. The Buyer shall pay the price for all Products delivered up to the date of termination.

12. **LIABILITY.** In no event shall the Seller be liable to the Buyer and any third party for loss of production, loss of business or profit or any other indirect, special or consequential damages.

13. **INDEMNITY.** The Buyer shall indemnify and hold the Seller harmless from any liabilities, claims, costs (including reasonable attorney's fees), expenses and damages in connection with the infringement by the Seller of a third party's patent, copyright or other intellectual property right which arises from the Seller's compliance with the Buyer's design or specifications.

14. **ASSIGNMENT.** The Buyer shall not assign the Contract in whole or in part to any third party without the Seller's prior written consent.

15. **APPLICABLE LAW.** The Contract shall be governed by and construed in accordance with the laws of the State of Arizona. The U.N. Convention on Contracts for the International Sale of Goods shall not apply. Any dispute arising, under, out of, or in connection with this Contract, which could not be settled amicably, shall be settled in accordance with the Rules of the American Arbitration Association by one or more arbitrators appointed in accordance with said Rules. The arbitration proceedings shall take place in Phoenix, Arizona. The arbitration award shall be final and binding and shall be enforceable in any court of competent jurisdiction.

16. **MISCELLANEOUS PROVISIONS.** If any of the provisions hereof is determined to be invalid, illegal or otherwise unenforceable, the remaining provisions shall remain in full force and effect. Any delay or failure of the Seller to enforce at any time any provision hereof shall not constitute a waiver of the right thereafter to enforce each and every provision hereof.

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