



# Terms & Conditions of Sale

Version: October 2024

**1. Exclusive Terms & Conditions.** Rohde & Schwarz Canada Inc.'s ("**RSC**") quote ("**Quote**") together with these Terms & Conditions of Sale attached thereto constitute RSC's legally-binding, firm offer (collectively, the "**Offer**") concerning the provision of products, including hardware and software, services such as installation, assembly, calibration, training, and corrective maintenance or repairs, or a project for a custom set of products and services comprising a system or solution (collectively, "**Deliverables**") to the customer identified on the Quote ("**Customer**"). After an Offer is issued, RSC shall be entitled to make further checks and inquiries solely regarding: (a) the creditworthiness and financial standing of the Customer; and (b) the applicable "business partner due diligence" rules and regulations. RSC reserves the right to demand adequate assurances of due performance and/or advance payments or to cancel the Offer or the Agreement if such checks and inquiries reveal reasonable grounds for insecurity with respect to Customer's performance or if required by law, order, rule, or regulation. Such demand or cancellation shall be without any liability whatsoever to Customer. RSC expressly limits Customer's acceptance of this Offer to the terms hereof, and Customer's purchase order ("**Order**") constitutes acceptance without modification. RSC's order acknowledgement ("**Order Acknowledgement**") confirms receipt of Customer's Order/acceptance. RSC objects to and rejects any proposed additional or different terms in the Order or in any other communications from Customer. Proposed terms shall only apply if RSC, in its sole discretion, expressly adopts them in writing. RSC's silence shall not be deemed to constitute acceptance of proposed additional or different terms. Upon receipt of Customer's Order, this Offer, and any proposed additional or different terms agreed to by RSC in writing, if any, shall constitute the parties' legally binding contract (the "**Agreement**").

**2. Prices and Terms of Payment.** Prices exclude all sales, use, value-added, or other taxes, which shall be borne by Customer and, unless billed by and paid to RSC, shall be paid by Customer directly to the relevant government authorities. If Customer is the importer of record, payment to the broker will not relieve Customer of liability for customs-related charges, duties, or taxes, if not remitted by broker. Prices reflect RSC's costs at the time of Offer. RSC reserves the right to adjust prices if target shipment dates are later than 4 months after the Order date and RSC's costs increase prior to delivery. Unless the Agreement specifies an alternative arrangement: (i) all prices are valid for sixty (60) days from Offer date; and (ii) payment terms are conditioned upon approved credit and are Net 30 days from invoice date, without deduction or setoff. RSC may modify payment terms if, in RSC's opinion, the payment record or financial condition of Customer so warrants, or if RSC otherwise has reasonable grounds to feel insecure about receiving payment. Any dispute about the quality, condition, performance, or functioning of Deliverables or otherwise in connection with the Agreement, shall not entitle Customer to refuse to pay for the Deliverables. Customer shall make all payments to RSC when due from a bank account in Customer's name only. Customer shall be solely liable for all payments due hereunder and must ensure compliance with all applicable federal, state, and local laws, rules, and regulations, in particular with respect to the prevention of money laundering. Customer shall pay a late fee in the amount of 1.5% of the unpaid balance of any invoice(s) for each month or partial month that such invoice(s) are not paid in full in accordance with the payment terms set forth herein. Additionally, Customer shall reimburse RSC for any costs and/or expenses incurred in connection with the collection of unpaid invoices including without limitation court costs, reasonable attorneys' fees, and collection agency fees. Payments received from Customer shall be applied in the following order: (i) to reimbursement of collection costs; (ii) then to accumulated late fees; then (iii) to outstanding invoice amounts.

**3. Delivery, Quality, Substitutes.** Delivery shall be F.O.B. destination in Canada ("**Delivery Point**") via RSC's preferred carrier, unless otherwise specified in the Agreement. No illustrations, drawings, weights, performance specifications in brochures, cost estimates and data sheets, or other documents shall constitute a guaranteed specification regarding the quality of the Deliverables, unless agreed by RSC in writing. RSC may replace individual products or components with substitute products or components as a result of developments, improvements, or innovations, prior to delivery to Customer and without notice to Customer provided that (i) such successor products or components otherwise comply with the specifications of the product(s) ordered by Customer, and (ii) the price therefor remains unchanged.

**4. Delivery Timelines.** Customer shall specify a requested delivery date in its Order, which date shall be within 180 days from the Order date. RSC will use reasonable efforts to meet the target shipment dates set forth in the Order Acknowledgement (the "**Delivery Timelines**"). RSC does not guarantee delivery on or by the Delivery Timelines and deliveries are further subject to Customer's timely and proper performance of its pertinent obligations including without limitation: (i) timely payments to RSC; (ii) timely provision of materials, if applicable; (iii) timely delivery of all documents, authorizations and approvals to RSC including, e.g., delivery of a duly signed end-use certificate, end-use(r) statement or compliance statement, if required for RSC to apply for an Export License or for (other) compliance reasons; and (iv) Customer's performance of its applicable obligations pursuant to Section 7. RSC is not responsible for delivery delays caused by Customer. RSC may extend the Delivery Timelines as RSC determines is necessary, including a reasonable ramp-up period, if Customer does not promptly perform its obligations. If RSC is otherwise unable to meet the Delivery Timelines in whole or in part, the parties shall agree to alternative arrangements. In the absence of such arrangements, Customer's sole and exclusive remedy for delayed deliveries not caused by Customer is the right to cancel the Order with respect to affected Deliverables if delivery is delayed for more than thirty (30) days past the Delivery Timelines. Subject to acceptance or rejection at RSC's discretion in each instance, Customer may request to reschedule an Order, provided that: (i) such request is made in writing to RSC and received by RSC no later than forty-five (45) days before the applicable Delivery Timelines; and (ii) a request to reschedule includes a new target shipment date that is within 180 days from the original Order date. For each accepted request, RSC may charge a rescheduling fee of 5% of the Order value for the affected Deliverables. In addition, if delivery is delayed at Customer's request or for other reasons not attributable to RSC, RSC may charge Customer storage fees in an amount equal to one-half percent (0.5%) of the value of the Deliverables concerned for each month or part thereof, starting on the first day after the original target shipment date. Fees assessed by RSC shall not constitute an election of remedies.

**5. Acceptance.** Customer shall accept all received Deliverables unless material defects are identified. Early delivery and partial deliveries shall be permitted insofar as Customer can be reasonably expected to accept such deliveries. If Customer fails to accept the Deliverables within ten (10) days of delivery or rejects the Deliverables without justification, the Deliverables shall be deemed to have been accepted ten (10) days following delivery ("**Acceptance**"). The Deliverables shall also be deemed to have been accepted if and when Customer takes any act inconsistent with RSC's ownership including, without limitation, if the Deliverables are resold or have been put to use.

**6. Transfer of Title and Risk of Loss.** Title to Deliverables under the Agreement and risk of loss passes to Customer upon delivery of such Deliverables at the Delivery Point. If delivery, assembly, installation, or Acceptance is delayed at Customer's request, because Customer is in default in taking delivery, or for other reasons for which Customer is responsible, then the risk of loss associated with the Deliverables affected by the delay shall be transferred to Customer upon the commencement of such delay and for the period of this delay. As collateral security for the payment of the purchase price of the Deliverables, Customer hereby grants to RSC a lien on and security interest in and to all of the right, title and interest of Customer in, to and

under the Deliverables, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as proceeds (including insurance proceeds) of the foregoing.

**7. Customer's Obligations.** If the Deliverables include RSC's performance of services such as, but not limited to, installation, assembly, calibration, and/or corrective maintenance or repairs, then Customer shall (i) ensure RSC has safe access to and use of Customer's facilities to perform such services, and (ii) timely provide to RSC all Customer-furnished items required by RSC to perform such services, including, but not limited to, accessories and, in cases involving third party products, instructions for use, descriptions, and data sheets, before RSC's commencement of such services. Customer shall complete in advance all preparatory work necessary to permit RSC to immediately commence the provision of services upon the arrival of RSC personnel and to continue without interruption. At its own expense, Customer shall timely procure and provide all supporting personnel, ancillary work to be performed by third parties, consumer goods and materials, power supply, water, outlets and supply lines, protective clothing and protective devices, and suitable premises (including premises on which to store materials), in the required quality and suitability. Official authorizations shall also be timely obtained by Customer and at its own expense, and any site-specific rules for the prevention of accidents must be communicated to RSC in advance of RSC's arrival. Prior to the commencement of services, Customer shall make all necessary information available to RSC including, but not limited to, information on the location of hidden lines, the design of Customer's own wireless network infrastructure, and the necessary structural data etc., without having to be requested to do so by RSC. If RSC has justified doubts regarding the quality and suitability of Customer-furnished items or Customer's cooperation, RSC reserves the right to refuse performance of services or to require Customer to waive any liability in connection with such services, Customer-furnished items, or RSC's use of Customer-furnished items, as a condition of RSC's performance. If there is more than one suitable place where the services can be performed, RSC shall have the right to determine the place of performance in its sole and absolute discretion, and the transportation of such items shall be at the cost and risk of Customer.

**8. Software.** RSC and its parent company are and shall remain the exclusive owner(s) of all rights, title, and interest in and to or, as applicable, are the authorized licensees of all software (including source code and object code) incorporated or embedded in the Deliverable(s) ("**Firmware**") and all software comprising the Deliverable(s) ("**Software Product(s)**"), including without limitation any and all current and future rights in copyrights, trade secrets, trademarks, mask works, patents, design rights, trade dress, right of privacy or publicity, moral rights, and any other intellectual property rights subsisting in, arising from, or related to the Firmware and Software Products (collectively, the "**Software**") that may exist anywhere in the world, whether unregistered, registered, or comprising an application for registration. Subject to the restrictions set forth in this Section and the license limitations specified in the Agreement, RSC grants Customer the non-exclusive, non-transferable (except as permitted below), non-sublicensable license to use, as applicable, one copy of the Firmware on and solely in connection with the corresponding unit of product purchased, or one copy of the Software Product(s) in machine readable form for each license purchased, solely for Customer's internal business purposes. Customer's right to use Software Product(s) is limited to the period of time, if any, specified in the Agreement. In the absence of such specified period, or with respect to Firmware, Customer's right of use shall be unlimited in time. Customer has the right to transfer its rights of use in Firmware to third parties solely in connection with the contemporaneous transfer of the product on which the Firmware is installed. If Customer transfers the right of use to a third party, it is obliged to impose the obligations and restrictions set out in this Section on the third party. Customer shall be responsible and liable to RSC for any violation of this Section by any third parties. The foregoing license shall automatically terminate if Customer violates or fails to comply with any of the restrictions or obligations set forth in this Section. Customer may not make any copies of the Software Product(s) or portions thereof except copies made solely for backup or archival purposes. Customer may make copies of the documentation only as reasonably necessary for its authorized use of the Software Product(s). The licenses and Software Product(s) provided to Customer hereunder may not be sold, rented, assigned, sublicensed or otherwise transferred by Customer to any third party without the prior written consent of RSC. Customer may not modify or translate the Software or create derivative works based on all or any part of the Software. Customer shall not, and shall not permit others to, decompile, reverse engineer, disassemble, or otherwise attempt to derive source code for the Software, including without limitation, human-readable computer code, related programmer comments, and procedural language. Customer shall not remove, obscure, or alter RSC's copyright notice, trademarks, or other proprietary rights notices affixed to or contained within the Software or documentation and shall reproduce all titles, trademarks, and copyright and restricted rights notices in any lawful copies of the Software and documentation. Software may contain parts that are subject to separate terms of use of third parties (for example, any third-party proprietary software or open-source software) that may take precedence over the provisions set out in this Section. Upon Customer's request, RSC shall make available such third party's separate terms of use. RSC shall provide Customer with Software solely in machine-readable format (object code) and without source code or source code documentation. If, however, a third party's separate terms of use include the provision of source code, RSC shall, at Customer's request, either provide Customer with such source code that is to be made available or make it available for download. The above provisions shall also apply to any modifications, enhancements, updates, upgrades, or supplements made to the Software or associated documentation. RSC reserves any and all other rights in and to the Software and the documentation not expressly granted in this Section.

**9. Limited Warranty for Delivered Products.** RSC warrants the products, including hardware and Software ("**Delivered Product(s)**") to be free from defects in materials and workmanship under normal use and service for a period of twelve (12) months following the date of Acceptance unless a longer period is specified in the Agreement ("**Delivered Products Warranty Period**"). Delivered Products comprised of Software are additionally warranted to operate substantially in accordance with the applicable published specifications and documentation during the Delivered Products Warranty Period but are not warranted to be error free. During the applicable Delivered Products Warranty Period, Customer shall provide RSC detailed written notice of any warranty claims related to the Delivered Products to RSC. RSC's obligation under this warranty is limited to repairing or replacing, at RSC's discretion, a Delivered Product that, upon examination, RSC determines to be defective. If RSC determines the defect, failure or malfunction of a Delivered Product has been caused by misuse, use contrary to product specifications or instructions, neglect, accident, or abnormal condition of operation, repairs will be made, and Customer shall be billed for the reasonable costs of examination, repair, and travel. RSC shall not be responsible for any defect, failure, or malfunction of Delivered Product in the event that Customer shall have made modifications thereto without RSC's authorization. Delivered Products that have been repaired or replaced under this limited warranty may include remanufactured or refurbished materials or units which are equivalent to new in terms of performance and functionality. As to Delivered Products comprised of Software, only reproducible material deviations from the applicable specifications or documentation shall be deemed to constitute defects under this limited warranty. Such defect shall not, however, be deemed to exist if it does not occur in the latest version of Software supplied to Customer and if Customer can be reasonably expected to use such latest version. Furthermore, Customer shall have no claims under this limited warranty if the alleged defect is caused by or related to one of the following circumstances: (i) incompatibility of the Software with the data processing environment used by Customer, unless this is explicitly provided for in the applicable documentation; (ii) use of the Software together with software supplied by third parties which use is not expressly endorsed in the applicable documentation; or (iii) improper maintenance of the Software by Customer or third parties. Following repair or replacement of a Delivered Product under a warranty claim for defects in material and workmanship, the applicable Delivered Product Warranty Period shall continue for a period of ninety (90) days or until the expiration of the original Delivered Product Warranty Period, whichever is longer. THE FOREGOING LIMITED WARRANTY AND CORRESPONDING REMEDIES ARE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND RSC'S ENTIRE LIABILITY FOR ANY BREACH OF THE WARRANTIES SET FORTH HEREIN AND ARE IN LIEU OF ALL OTHER REMEDIES AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE.

**10. Limited Warranty for Repair Services.** RSC warrants that repair services (including parts, labor, and travel) which are not provided under a warranty claim under Section 9 to be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days following completion of such repair services unless a longer period is specified in the Agreement ("**Repair Services Warranty Period**"). During the applicable Repair Services Warranty Period, Customer shall provide detailed written notice of any defects in the repair services to RSC. RSC's obligation under this warranty is limited to reperformance of any repair service that, upon examination, RSC determines to be defective and is capable of repair. If RSC determines the defect, failure or malfunction of the repair services has been caused by misuse, use contrary to product specifications or instructions, neglect, accident, or abnormal condition of operation, repairs will be made, and Customer shall be billed for the reasonable costs of examination, repair, and travel. Repair

services under this limited warranty may include remanufactured or refurbished materials or units which are equivalent to new in terms of performance and functionality. As to repair services for Software, only reproducible material deviations from the applicable specifications or documentation shall be deemed to constitute defects under this limited warranty. Such defect shall not, however, be deemed to exist if it does not occur in the latest version of Software supplied to Customer and if Customer can be reasonably expected to use such latest version. Furthermore, Customer shall have no claims under this limited warranty if the alleged defect is caused by or related to one of the following circumstances: (i) incompatibility of the Software with the data processing environment used by Customer, unless this is explicitly provided for in the applicable documentation; (ii) use of the Software together with software supplied by third parties which use is not expressly endorsed in the applicable documentation; or (iii) improper maintenance of the Software by Customer or third parties. EXCEPT FOR THE LIMITED WARRANTY FOR REPAIR SERVICES SET FORTH IN THIS SECTION 10, RSC MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO SERVICES PROVIDED UNDER THE AGREEMENT. THE FOREGOING LIMITED WARRANTY AND CORRESPONDING REMEDIES ARE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND RSC'S ENTIRE LIABILITY FOR ANY BREACH OF THE WARRANTIES SET FORTH HEREIN AND ARE IN LIEU OF ALL OTHER REMEDIES AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE.

**11. Limitation of Liability.** IN NO EVENT SHALL RSC OR ANY OF ITS REPRESENTATIVES BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, COST OF COVER OR SUBSTITUTE GOODS, LOSS OF USE, LOSS OF PRODUCTION, OR LOSS OF DATA, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THE AGREEMENT, ANY OTHER AGREEMENT BETWEEN RSC AND CUSTOMER OR ANY DELIVERABLE PROVIDED BY RSC HEREUNDER, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT RSC WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN NO EVENT SHALL RSC'S AGGREGATE LIABILITY ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THE AGREEMENT OR ANY DELIVERABLE PROVIDED BY RSC HEREUNDER, REGARDLESS OF THE LEGAL BASIS THEREFOR (INCLUDING ANY INDEMNIFICATION OBLIGATIONS AND ANY GUARANTEES) AND INCLUDING ANY LIQUIDATED DAMAGES AND ANY CONTRACTUAL PENALTIES, EXCEED THE AMOUNT EQUAL TO FIFTEEN PERCENT (15%) OF THE NET AGREEMENT VALUE. Any action or proceeding arising from or in connection with the Agreement must be commenced within one (1) year from the date that the underlying claim or cause of action accrues, or such claim or cause of action shall be deemed untimely, and time barred.

**12. Third-Party Intellectual Property Rights Infringement.** In the event that a third-party asserts justified claims against Customer alleging that the contractual use of the Deliverables infringes upon such third-party's intellectual property rights, RSC shall be liable to Customer within the Delivered Products Warranty Period set out in Section 9 as follows: RSC shall, at its own option and expense, either obtain the corresponding right of use for the applicable Deliverables within a reasonable period of time, or modify or replace these Deliverables such that there is no longer any infringement of such third-party's intellectual property rights. If the foregoing is not possible for RSC under reasonable conditions, either party shall have the right to terminate the Agreement and Customer's use of such Deliverables or reduce RSC's remuneration, notwithstanding any claims for damages subject to Section 11. Customer shall only have such rights and claims if the Customer (i) informs RSC without delay and in writing of the claims asserted by the third party; (ii) does not acknowledge any infringement; (iii) does not preclude any defense against the claims asserted by the third-party by taking specific action or failing to take specific action; and (iv) informs RSC in writing within a reasonable time in advance of all planned defense measures and settlement negotiations involving RSC in this process upon request. If the infringement notification was unjustified, RSC shall have the right to claim reimbursement of the expenses incurred from Customer. Customer shall have no rights or claims due to any third-party intellectual property rights infringement to the extent that Customer is responsible for the infringement of such third-party intellectual property rights. Furthermore, Customer shall have no rights or claims due to third-party intellectual property rights infringement to the extent that the infringement of the third-party intellectual property rights is caused by (i) special specifications of Customer; (ii) an application that was not foreseeable by RSC; (iii) the fact that the Deliverables are modified by Customer or by third parties; or (iv) the fact that the Deliverables are used together with products not supplied by RSC. RSC's obligations as set forth in this Section shall be Customer's sole and exclusive remedy in connection with any third-party claim of infringement arising from or related to any Deliverable.

**13. Confidentiality.** Customer agrees to hold in confidence the terms of the Agreement, including without limitation all pricing and discount information, and any and all non-public information disclosed to Customer pursuant to or in connection with the Agreement ("**Proprietary Information**"). Customer shall not disclose, transfer, provide or otherwise make available in whole or in part, the Proprietary Information to any third party, except to its own employees or customers who require knowledge of same in connection with the purposes authorized by the Agreement and who have appropriate obligations of confidentiality to Customer. Customer shall use the same reasonable degree of care that it uses to protect its own proprietary information of similar character. Customer agrees to secure and protect the confidential nature of the Proprietary Information and to protect same against breach, compromise, or violation of the rights of RSC and shall promptly notify RSC of any unauthorized disclosure or use of the Proprietary Information or any part thereof. Customer further agrees not to use the Proprietary Information except for its own internal business purposes or otherwise in the performance of its obligations under the Agreement.

**14. Force Majeure.** No party shall be liable or responsible to the other party or be deemed in default for any failure or delay in fulfilling or performing any obligations or duties hereunder (except for any obligations to make timely payments), when such failure or delay is directly or indirectly caused by or results from acts, events, or circumstances beyond the impacted party's control, including, without limitation, a Force Majeure Event. The term "**Force Majeure Event**" shall include, without limitation, war, invasion, hostilities (whether war is declared or not), riot or civil unrest, strike, labor stoppages or slowdowns, lockout, threats or acts of terrorism, nuclear accidents, government or sovereign acts or omissions (including without limitation failure or delay in granting any approvals, permits, licenses or allowances or a stoppage imposed by customs authorities), epidemics, pandemics, transport restrictions and restrictions of energy consumption, general shortage of raw materials and common supplies, non-delivery or late delivery by sub-suppliers or sub-contractors, telecommunication breakdowns, power outages or shortages, cybersecurity attacks, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials, acts of God, natural catastrophes and cases of unavoidable events (e.g., volcanic activity, earthquakes, thunderstorms, floods, fire, storms and other adverse weather conditions), as well as all other events that lie beyond the control of the party or its sub-suppliers or sub-contractors (whether or not similar to those listed) that are affected by such a Force Majeure Event. The party affected by a Force Majeure Event shall inform the other party of the event within a reasonable period. The contractual obligations affected by a Force Majeure Event shall be suspended and the periods for the performance of such contractual obligations shall be extended accordingly, together with a reasonable ramp-up period. Notwithstanding the foregoing, if the suspension of the contractual obligations due to a Force Majeure Event lasts longer than six (6) months, then each party shall be entitled (but not required) to, fully or partially, cancel any outstanding deliveries to the extent affected by the Force Majeure Event, without further obligation to the other party in connection therewith.

**15. Applicable Law / Arbitration.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Province of Ontario, without giving effect to its conflict of law provisions. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded. Any controversy or claim arising out of or relating to this Agreement, the breach hereof, or the Deliverables shall be finally and exclusively resolved by arbitration administered by the International Centre for Dispute Resolution (ICDR) using its Canadian Dispute Resolution Procedures and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Claims shall be heard by a panel of three (3) arbitrators, unless the parties agree upon a single arbitrator. The place of arbitration shall be the Province of Ontario. Notwithstanding the requirement to arbitrate, as to any controversy or claim arising under Section 8 (Software) or Section 13 (Confidentiality), RSC shall have the right to seek injunctive and other temporary relief that will remain in effect until the final enforcement of the arbitration award, for which each party unconditionally submits to the exclusive jurisdiction and venue of the federal or state courts of Ontario. The costs of the arbitration proceedings shall be borne by the unsuccessful party or by both parties according to their win/loss ratio. The aforementioned costs of the arbitration proceedings include the costs of the ICDR and the arbitrators' fees.

**16. No Re-Export to Russia, Belarus and other countries.**

- 16.1 The Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or Belarus or for use in the Russian Federation or Belarus any Deliverables supplied under or in connection with the Agreement.
- 16.2 The Customer shall undertake its best efforts to ensure that the purpose of Section 16.1 is not frustrated by any third parties further down the commercial chain, including by possible resellers.
- 16.3 The Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of Section 16.1.
- 16.4 Any violation of Sections 16.1, 16.2 or 16.3 shall constitute a material breach of an essential element of the Agreement, and RSC shall be entitled to seek appropriate remedies, including, but not limited to: (a) termination or rescission of the agreement; and (b) a penalty of fifteen percent (15 %) of the total value of the Agreement or price of the Deliverables exported, whichever is higher.
- 16.5 The Customer shall immediately inform RSC by email to trade-compliance@rohde-schwarz.com about any problems in applying Sections 16.1, 16.2 or 16.3, including any relevant activities by third parties that could frustrate the purpose of Section 16.1. The Customer shall make available to RSC information concerning compliance with the obligations under Sections 16.1, 16.2 or 16.3 within two (2) weeks of RSC's request of such information.
- 16.6 The provisions of this Section 16 shall also apply with regard to the sale, export or re-export to any other country for which the European Union imposes the same or similar obligations as the European Union has done for Russia and Belarus with the no-Russia clause and no-Belarus clause, respectively.

**17. Export Control, Embargoes and Sanctions**

- 17.1 The Customer shall comply with all applicable export, re-export, (economic, financial or trade) sanction and embargo laws and regulations (including, without being limited to, the respective laws and regulations of the Customer's country, the United Nations, the European Union, the United States and any other relevant country) with regard to the sale, lease, supply, transfer, export and/or re-export (hereinafter collectively referred to as "**Transaction**") of the Deliveries. This comprises in particular the obligation of the Customer not to, directly or indirectly, carry out a Transaction regarding the Deliveries to any (natural or legal) person, region or country if such Transaction would be in violation of applicable laws and regulations. The Customer shall impose these obligations on any third parties further down the commercial chain, including possible resellers.
- 17.2 The Transaction of the Deliveries by RSC may, fully or partially, be prohibited or require a license or authorization from the competent authority or authorities (herein referred to as "**Export License**"). RSC shall be released from its contractual obligations if and to the extent such Export License is not available, is not granted, granted with restrictions, granted with delay or, fully or partially, canceled, suspended or not renewed. RSC shall inform the Customer of such an event within a reasonable period and shall be entitled to, fully or partially, terminate the agreement without incurring any liability whatsoever in respect of the issues with the Export License or the aforementioned release and/or termination.
- 17.3 If the Customer or a (natural or legal) person who owns or controls the Customer or has other decisive influence on the Customer or if the country or region in which the Customer resides is or becomes subject to any export, re-export, (economic, financial or trade) sanction and/or embargo laws and regulations (including, without being limited to, the respective laws and regulations of the Customer's country, the United Nations, the European Union, the United States and any other relevant country), RSC shall be entitled to claim release from its contractual obligations and to, fully or partially, terminate the agreement without incurring any liability whatsoever in respect of the imposed laws and regulations or the aforementioned release and/or termination.

**18. Final Provisions.** If any term or provision of the Agreement is found to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of the Agreement. The Agreement constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous discussions, negotiations, understandings, arrangements, agreements, representations, and warranties, both written and oral, with respect to such subject matter. No waiver under the Agreement is effective unless it is in writing, identified as a waiver, and signed by an authorized representative of the party waiving its right(s). Any waiver properly authorized on one occasion is effective only in that instance and only for the purpose stated and does not operate as a waiver on any future occasion. Customer acknowledges that the Deliverables may be subject to export restrictions and end user certification. Customer shall not export, re-export, or transfer, directly or indirectly, any Deliverable or technical data received hereunder, to any country or user to which such actions are restricted by Canada or local country law or regulation without first obtaining any required governmental license, authorization, certification, or approval. Customer shall be responsible for Canadian export duties, fees, licenses, and such, in addition to any import duties imposed by the country of destination.

ROHDE & SCHWARZ CANADA INC., 1 Hines Road, Suite 100, Kanata Ontario K2K 3C7 Canada