

## TERMS AND CONDITIONS OF PURCHASE

THE FOLLOWING STANDARD TERMS AND CONDITIONS CONTAIN **VERY IMPORTANT** INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS, APPLICABLE TO ALL MIRCOM PRODUCTS (INCLUDING SOFTWARE). **PLEASE READ CAREFULLY.**

### ARTICLE 1 - DEFINITIONS

1.1. In this document,

(a) **“Administrative Charges”** means charges additional to the Price, including without limitation the charges relating to delivery, disbursements, taxes, duties, sales, excise, use, value added or other taxes, and out of pocket expenses incurred by Mircom;

(b) **“CAD”** means Canadian Dollars;

(c) **“Customer”** means the person that submits a Purchase Order to Mircom for the purchase of any Product listed in the Price List or Quote;

(d) **“Mircom”** means the Mircom contracting party, as defined in section 13.4;

(e) **“Order Acknowledgement”** means Mircom’s written communication to Customer that a Purchase Order is accepted, was entered and will be processed by Mircom, setting out any supplements, corrections or updates to any of the specifications outlined in the Purchase Order;

(f) **“Price”** means the price for Products as verified in the Order Acknowledgement, irrespective of discrepancy with the Purchase Order or price listed in the Price List or Quote;

(g) **“Price List”** means the official Mircom price book and product information publication, which typically contains Product model numbers, description, depiction, and list price, which (a) shall expire upon the earlier of Mircom’s revocation of the Price List or release of a successive Price List; (b) supercedes any listed price, terms, conditions or other representations regarding the Products in any prior publications, quotes or otherwise, except only as specifically provided in a Quote; and (c) may, at any time at Mircom’s discretion and without notice to Customer, be published, amended, replaced or revoked in whole or in part;

(h) **“Product”** or **“Products”** means each individual item being purchased, as described in the Price List or Quote, as applicable, identified with a model number, including software components of such products or stand-alone software or software licenses, as may be applicable in the context;

(i) **“Purchase Order”** means a written purchase order submitted through Mircom’s web portal or by email or fax, in each case on a properly completed official Mircom purchase order form identifying the Product, quantity, price as listed in a valid Price List or Quote, as applicable, requested delivery date, proper delivery information containing all necessary information for shipping and other relevant information for Mircom’s assessment of the order;

(j) **“Quote”** mean an official Mircom quote, issued by Mircom personnel that is expressly authorized by Mircom to issue such a quote in the specific circumstances to the Customer, which (a) may for convenience contain Product names or model numbers, (b) shall expire thirty (30) days from the date of its issuance, unless otherwise expressly provided on the Quote, (c)

shall in no way amend any information about the Product or these Terms and Conditions, and (d) at Mircom's discretion and on notice to Customer, may be amended or revoked at any time before the Customer's delivery of a Purchase Order based on such Quote; and

(k) "USD" means United States Dollars.

## **ARTICLE 2 - SCOPE AND APPLICATION**

2.1. **Application.** The purchase and sale of all Products are expressly conditioned upon the within terms and conditions (the "Terms and Conditions").

2.2. **Deemed Assent.** Customer will be deemed to have assented to these Terms and Conditions if it accepts any part of Products or if it holds itself out as acting in the capacity of an authorized distributor of Mircom products.

2.3. **Terms and Condition Updates.** Mircom reserves the right to release and replace the within Terms and Conditions at any time without notice to Customer.

2.4. **No Modifications.** No amendment, waiver or cancellation of any of these Terms and Conditions is binding upon Mircom unless in accordance with the express terms hereof or otherwise confirmed by Mircom in writing signed by an authorized representative of Mircom. Any additional terms or conditions contained in any document, including without limitation Customer order document or other correspondence, shall be deemed objected to by Mircom and of no force or effect. No employee or agent of Mircom has any right to make any representations, warranty or promise in relation to the Products, Price, warranties or otherwise relating to the sale of the Products other than as contained in these Terms and Conditions.

## **ARTICLE 3 - PAYMENT TERMS**

3.1. **Currency.** Prices and payments pertaining to orders destined for an address in Canada shall be in CAD and for all other orders in USD.

3.2. **Administrative Charges.** Administrative Charges shall be the responsibility of and payable by the Customer in accordance with these Terms and Conditions. Mircom shall have the right to include the Administrative Charges in the same invoice as all other amounts that are payable or issue subsequent or separate invoices for all or part of the Administrative Charges, at its discretion.

3.3. **Payment Terms.** Invoices are payable without deduction or discount in accordance with the following payment terms, as applicable:

(a) for orders that are destined for an address in Canada or the United States: within thirty (30) days from the date of the invoice; or

(b) for all other orders: at the time of placing the order, by Mircom's choice of an irrevocable letter of credit at sight or bank draft.

3.4. **Late Payments.** Interest at the lesser rate of two (2) percent per month or the highest rate permitted by applicable laws shall be due and payable on overdue amounts from due date for the payment until payment of all principal and owing interest is received by Mircom.

3.5. **Non-Exclusive Remedies.** In the event of Customer's breach of an obligation to Mircom, contractual or otherwise including as it relates to payment of Mircom's invoices, Mircom may take

any recourse or pursue any remedy available to it by contract, at law or in equity, concurrently or otherwise. Without limiting the generality of the foregoing, in the event that (a) outstanding amounts are owing to Mircom by Customer or (b) Mircom perceives, in its sole opinion, that the Customer's financial condition, creditworthiness or conduct so warrants, Mircom reserves the right to require advanced payment for all future sales to the Customer, suspend delivery of Products or otherwise alter or suspend any credit extended to Customer or its affiliates. Customer shall reimburse Mircom for cost and expenses, including without limitation, legal or collection fees incurred by Mircom in connection with Mircom's pursuit of recourses or remedies against the Customer.

#### **ARTICLE 4 - ORDERS**

4.1. **Initiating an Order.** To initiate an order, Customer shall submit a Purchase Order to Mircom. Mircom shall have no obligation to assess orders placed by any other means, including verbally communicated orders.

4.2. **Order Acknowledgement without Written Purchase Order.** While Mircom has no obligation to assess or process an order that is placed without a Purchase Order, Mircom may at its sole and unfettered discretion elect from time to time to issue Order Acknowledgements for orders placed without a Purchase Order. No one or more repeated events of Mircom's acknowledgement or rejection of an order placed without a Purchase Order shall create an implied obligation for Mircom to process or right for Customer to place orders without a Purchase Order at any other time.

4.3. **Order Acknowledgement.** Mircom will endeavour to assess the Purchase Order as soon as practicable upon receipt and, at its sole discretion, reject the order or, in case of accepted orders that will be entered and processed, deliver an Order Acknowledgement to Customer. An order shall be deemed to have been placed only once an Order Acknowledgement is issued to Customer by Mircom. The specifications of an order as identified in the Order Acknowledgement shall supercede those set out in the Purchase Order and shall be binding upon Customer, including quantities, Price, and Product specifications. No modification shall be made to the specifications set out in the Order Acknowledgement except as otherwise expressly authorized in these Terms and Conditions. For clarity, at all times Mircom reserves the right to reject an order at its sole discretion.

4.4. **Minimum Orders.** Minimum orders required for each Purchase Order are two hundred and fifty dollars (\$250), in case of orders destined for an address in Canada in CAD and in case of all other orders in USD. Any order that does not meet these minimum order requirements may be, at Mircom's sole discretion and choice, (a) rejected, (b) accepted, (c) priced at higher rates than the applicable Price List or Quote, as applicable or (d) fulfilled at revised quantities. Mircom will communicate its choice to Customer in the Order Acknowledgement, which election shall be binding upon the Customer.

4.5. **Lead Time.** Customer shall request a delivery date for Products in the Purchase Order. Irrespective of the requested delivery date, Mircom will confirm an estimated the delivery date in the Order Acknowledgement. Customer agrees and acknowledges that such delivery date is only an estimate, and Mircom shall not be held responsible or liable as a result of a failure to comply with the estimated lead times or the approximate delivery date. Customer further agrees and acknowledges that the date identified by Mircom in the Order Acknowledgement shall be the approximate delivery date and supercede the date requested in the Purchase Order.

4.6. **Maximum Lead Time.** Mircom will not accept orders if Customer requests a delivery date that goes beyond six (6) months after the date of the respective Purchase Order, unless addressed in a separate agreement in writing and signed by an authorized officer or representative of Mircom.

4.7. **Modifications/Cancellations, Deadline.** Orders may not be cancelled, modified or deferred by Customer unless the request is made in writing signed by an authorized representative of Customer and received by Mircom no later than forty-five (45) days prior to the scheduled shipment, and in any event subject to the discretionary written confirmation by Mircom. In the event that Order Acknowledgement identifies a shipment date sooner than forty-five (45) days from the date of the Order Acknowledgment, such order may only be cancelled, modified or deferred by Customer within the same business day of the Order Acknowledgement date only.

4.8. **Modifications/Cancellations, Costs.** In the event of modifications, deferrals or cancellations of orders, Customer shall be responsible for repayment to Mircom of charges attributable thereto including without limitation the costs incurred by Mircom for developing any work in progress, storage, price revisions, restocking fee of thirty (30) percent, third party charges and overhead as may be determined by Mircom in its sole discretion.

4.9. **Deferred Shipments.** In the case of deferred shipments, Mircom reserves the additional right to invoice Customer (a) interest at the lesser of two (2) percent per month or the highest rate permitted in Customer's jurisdiction on all amounts payable by Customer to Mircom per the Order Acknowledgements for the deferred shipment, calculated from the time Mircom is prepared to ship the Products until actual shipment thereof and/or (b) storage fees for onsite or offsite storage of the Products.

4.10. **Delivery Date.** Unless otherwise agreed to in writing by Mircom, Mircom will deliver the Products to Customer on or about the approximate delivery date set out in the Order Acknowledgement, and Mircom reserves the right to do so without further notification or communication. In the event that Customer notifies Mircom that it is not ready to accept delivery, Mircom may, at its sole discretion elect to pursue any remedies available to it hereunder or otherwise in law or equity, including without limitation any one or combination of the following: (a) complete the delivery despite the Customer's notice of non-readiness to accept delivery; (b) consider the order cancelled without a refund; (c) re-allocate the Products to other open orders for other customers; (d) update the prices charged for the Products; and/or (e) require advanced payment for any orders placed by the Customer in the future.

4.11. **Two Year Price Increase.** Customer shall accept shipment of all of the products and services outlined in an Order Acknowledgement or approved quote within two (2) years of the date thereof. In the event that shipment of all products and services is not accepted within this timeframe, irrespective of the reason, Mircom will increase the Prices outlined in the Order Acknowledgement or approved quote for such outstanding portions of the products and services identified therein, by five percent (5%). Thereafter, for each passing one (1) year, such Prices will increase for additional five percent (5%) per year. Customer shall pay the increased Prices in advance of shipment in such instance. This increase is not a penalty, but a pre-estimate of the costs incurred by Mircom due to the delay in shipments, which Customer agrees and acknowledges is fair and reasonable.

## **ARTICLE 5 - SHIPPING AND TITLE**

5.1. **Risk of Loss.** All goods will be shipped at Customer's risk. Customer shall be responsible for all freight charges and shall assume all risk of transportation of the Products. Without limiting the generality of the foregoing and for further clarity, Mircom shall have no responsibility for the Products during transportation or in storage at destination. For further clarity, Customer shall be solely responsible for the provision of complete and accurate shipping information to facilitate delivery; Mircom shall have no responsibility to verify the shipping information provided by Customer.

5.2. **Title.** Legal and beneficial ownership of the Products shall not pass to the Customer until such time as the Products have been paid for in full, including without limitation any charges payable pursuant to these Terms and Conditions such as Administrative Charges, interest, modification, deferral or cancellation charges, among others.

5.3. **Routing and Carrier.** Mircom shall have full discretion to select the method of transportation and route of any shipment, not necessarily the lowest cost delivery. Mircom may, at its discretion, consider but will not be obligated to satisfy Customer's requests for a particular routing or carrier.

5.4. **Partial Shipments.** Mircom reserves the right to make partial shipments of an order without incurring any liability in relation to the exercise of such right, in which case Mircom shall be entitled to issue multiple invoices for pro-rata portions of the purchase price pertaining to the goods included in each part of such partial shipment.

5.5. **Cost of Shipping.** Customer shall be responsible for the cost of shipping irrespective of any circumstance, including Mircom's selection of the shipping method or partial shipments, unless expressly agreed to by a duly authorized representative of Mircom.

5.6. **Ownership of Intellectual Property.** Mircom is and shall remain the exclusive owner (or if applicable licensee) of all trademarks, logos and trade names, and other intellectual property and goodwill, whatever the nature and whether or not registered, relating to the Products. Customer has and shall obtain no right, title or interest whatsoever therein. Customer shall extend its full cooperation to Mircom in the event that the need arises for Mircom to advance or defend any claims relating to the foregoing Mircom rights or infringements thereof.

## **ARTICLE 6 - PRODUCT VARIANCES**

6.1. **Discontinuation, Changes, Substitutions.** Mircom specifically reserves the right to, at its discretion and at any time, (1) discontinue or make modifications to any Products including, without limiting the generality of the foregoing, changes to color, material equipment, specifications and models; (2) ship such Products as Mircom deems comparable in form, fit and function to the actual Products that are ordered; and (3) without penalty or liability whatsoever, cancel or reject orders for Products that cannot be replaced for whatever reason, including being obsolete.

6.2. **Illustrations.** Customer acknowledges and agrees that samples and illustrations in catalogues, Price List or Quotes do not necessarily reflect standard colors, materials and equipment.

## ARTICLE 7 - WARRANTY

7.1. **Mircom Standard Warranty.** All Mircom Products, including those containing software components and stand-alone software Products, are subject to Mircom's standard warranties, available at <https://www.mircom.com/product-warranty>, as may be amended from time to time in accordance therewith, which are incorporated herein by reference and form and integral part of the within Terms and Conditions.

## ARTICLE 8 - SOFTWARE LICENSES

8.1. **Standard License Agreement.** All Mircom software Products are subject to Mircom's standard Software License Agreement, available at <https://www.mircom.com/software-license-terms-and-conditions>, whose terms and conditions are incorporated herein by reference and form an integral part of the within Terms and Conditions.

## ARTICLE 9 - LIMITATION OF LIABILITY

9.1. **Customer Exclusive Remedy.** Customer's exclusive remedy against Mircom for any breach of any obligation, contractual, equitable or otherwise, including negligence, or any defect in any goods ordered or delivered (including under strict liability in tort and breaches by reason of alleged patent infringements) shall be, at Mircom's option, (a) the repair or replacement of goods with respect to which claims are made or (b) the refund of the purchased price for such goods, less a reasonable charge for any actual use or diminution of value thereof that has been made or caused by the Customer, in each event in accordance with the Mircom standard warranties referenced in section 7.1.

9.2. **Mircom Limitation of Liability.** UNDER NO CIRCUMSTANCES SHALL MIRCOM'S LIABILITY EXCEED THE PRICE FOR THE SINGLE SPECIFIC PRODUCT FOR WHICH LIABILITY IS CLAIMED, AND IN NO EVENT SHALL MIRCOM BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR (A) CONSEQUENTIAL, REMOTE, COLLATERAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LOSS OF REVENUE, CUSTOMER BACK CHARGES FOR LABOUR OR OTHER INCIDENTAL COSTS INCURRED BY CUSTOMER, OR (B) DIRECT DAMAGES, OTHER THAN THOSE EXPRESSLY SPECIFIED IN THESE TERMS AND CONDITIONS.

## ARTICLE 10 - CLAIMS

10.1. **Customer's Inspection Obligations.** Within forty-eight (48) hours of delivery of a shipment, Customer shall inspect each shipped Product and parts for all claims, including without limitation loss, damage, short shipment and warranty claims.

10.2. **Waiver, Lost or Damaged in Transit.** A claim for loss or damage of a Product or parts in transit must be entered with the carrier of the Product and prosecuted by Customer. Mircom expressly waives any responsibility in relation thereto.

10.3. **Mircom's Inspection Right.** Once a claim is made by Customer, Mircom shall have the right, but not the obligation, to inspect any Product or parts on Customer's site or Mircom's site at Mircom's discretionary choice. In the event that Mircom elects to exercise the right to inspect a Product or part on Customer's site, Customer shall make it available to Mircom or its designated inspector at times mutually convenient for Customer and Mircom. Otherwise, Customer shall

return the Product or part that is the subject of a claim to Mircom's plant or designated repair center at Customer's sole cost, risk and expense, with all related transportation charges having been prepaid by Customer.

10.4. **Length of Notice of Claim.** Customer shall be deemed to have waived any claim with respect to a Product or part unless a claim is made in writing, referencing the Product or part identification, invoice and Purchase Order numbers and a detailed description of the claim and is received by Mircom within the following periods, the shortest of which shall be adhered to in the event that more than one period applies to a particular claim:

(a) breach of warranty claims, within thirty (30) days after the alleged defect, whether patent or latent, should reasonably have become apparent to Customer, having complied with its inspection obligations and acting in good faith, and in any event prior to the expiration of the applicable warranty period;

(b) short shipment claims, within five (5) days of Customer's receipt of any Product or parts; and

(c) all other claims, within thirty (30) days of Customer's receipt of the Product or part.

10.5. **Returns.** Mircom may but shall have no obligation to, at its sole discretion, authorize return of the products. Any returns, credits or claims shall be submitted in accordance with and are subject to Mircom's standard Return Material Authorization terms and conditions, available at [https://www.mircom.com/media/support/Mircom GOC RMA Terms and Conditions.pdf](https://www.mircom.com/media/support/Mircom_GOC_RMA_Terms_and_Conditions.pdf), as may be updated from time to time by Mircom in its discretion.

## **ARTICLE 11 - INDEMNIFICATION**

11.1. **Indemnification.** The Customer will forever indemnify and hold harmless Mircom, its shareholders, directors, officers, employees, representatives, agents and affiliates from and against any and all allegations, actions, suits, demands, damages, liabilities, costs, claims, losses and expenses, including without limitation, attorneys' fees, on account of any injuries or deaths of any persons including Customer's employees or damage to any property arising from the Customer's actions or omissions, including the unloading, storage, handling, installation or use of the Products or parts.

## **ARTICLE 12 - SECURITY KEY TRANSFER**

12.1. **Security Transfer Release.** Customer acknowledges that the provisions of this section are reasonable given that Customer and Mircom are committed to the promotion of safety and security of persons and property that may depend in part upon the proper servicing and maintenance of the Products. Customer understands and acknowledges that Products may contain software or hardware security access features that are capable of being restricted, amended, altered, reprogrammed, reset or transferred by Mircom to any person, including to Mircom ("**Security Transfer**"). Mircom may, from time to time, receive a request for Security Transfer from an end user of Products or another person for whatever reason, including the servicing or maintenance of Products. In that respect, Customer agrees and covenants that Mircom shall have the irrevocable and discretionary right to complete any Security Transfer, at any time and from time to time, irrespective of actual or potential adverse commercial or other impact upon Customer. Customer hereby expressly consents to any Security Transfer by Mircom and undertakes and agrees, at the

request of Mircom, whether before or after termination of this Agreement, to execute all such instruments and to do all such acts and things as may be necessary and desirable to affect a Security Transfer from time to time. Customer fully indemnifies, releases and forever discharges Mircom, its officers, directors, servants, employees and agents, as the case may be, from any and all manners of actions, causes of action, suits, claims, demands or costs of any nature whatsoever, whether in law or equity ("**Claim**"), that arises from or in connection with the Security Transfer. Customer shall not make any Claim against any other person who might claim contribution or indemnity from Mircom by virtue of the said Claim.

**ARTICLE 13 - GENERAL PROVISIONS**

13.1. **Entire Agreement.** The terms and conditions contained in this document (and any terms and conditions expressly incorporated herein by reference) constitute the entire terms and condition of sale between Mircom and the Customer unless the parties have entered into a separate written and signed agreement that supplements or supercedes the within terms and conditions.

13.2. **No Waiver.** Mircom shall not be deemed to have waived any of the said terms and conditions or to have assented to any alteration of said terms and conditions unless such waiver or assent is in writing and signed by an authorized officer or representative of Mircom or otherwise in accordance with the terms and conditions set out herein. Exceptions made or waiver of its rights from time to time by Mircom shall in no way be deemed a waiver of Mircom’s rights or Customer’s obligations hereunder on other occasions.

13.3. **Severability.** If any provision contained herein is held by a court of competent jurisdiction to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected.

13.4. **Notices, Contracting Party, Jurisdiction.** Depending on the intended destination for the Products ordered, the Mircom contracting party, address for notice and jurisdiction shall be as follows, provided that in all cases the parties expressly (a) exclude the application of the United Nations convention on Contracts for the International Sale of Goods and the implementing legislation thereto and (b) agree to the applicable governing law identified below without regard to choice or conflict of laws and to the exclusive jurisdiction of the applicable courts, identified below without regard for any defence in relation thereto, including inconvenience:

<b>Products Destined For</b>	<b>Contracting With</b>	<b>Address for Notices to Mircom</b>	<b>Governing Law</b>	<b>Courts with Jurisdiction</b>
Canada	Mircom Technologies Ltd.	25 Interchange Way, Vaughan ON L4K 5W3 Canada	Province of Ontario and controlling Canadian federal laws	Province of Ontario



Products Destined For	Contracting With	Address for Notices to Mircom	Governing Law	Courts with Jurisdiction
United States, Mexico, Central America, South America, Caribbean	MGC Systems Corp.	4575 Witmer Industrial Estates, Niagara Falls, NY 14305 USA  Copy To: 25 Interchange Way, Vaughan ON L4K 5W3 Canada Attention: General Counsel	State of Delaware and controlling United States federal laws	State of Delaware
India	Mircom Fire & Communications (India) Private Limited	No. 7, 8DA Road, 1st & 2nd Floor, V.J.R. Towers, Avani Sringeri Nagar, BTM 6th Stage, Bangalore, Karnataka 560076  Copy To: 25 Interchange Way, Vaughan ON L4K 5W3 Canada Attention: General Counsel	Applicable laws of Karnataka and the dominion of India	Bangalore, India
All Other Countries	Mircom Technologies Ltd.	25 Interchange Way, Vaughan ON L4K 5W3 Canada	Province of Ontario and controlling Canadian federal laws	Province of Ontario

13.5. **Provision of Notice.** Except as otherwise provided in these Terms and Conditions, all notices shall be given in writing and deemed effective upon (a) personal delivery, (b) second business day after mailing, or (c) the day of sending by email.

13.6. **Compliance with Laws.** Customer represents, warrants and shall at all times ensure its compliance with all applicable laws in relation to the Mircom Products, including without limitation as they relate to any applicable purchase, storage, resale, use, installation, inspection, and decommissioning. Specifically and without limiting the generality of the foregoing, Customer agrees that it is in compliance with all applicable (a) anti-corruption legislation and has not received or been offered any illegal or improper bribe, kickback, payment, gift or thing of value from any person in connection with its purchase of Mircom Products and (b) domestic and

international legislation concerning the sale of any products or services to destinations that may be subject to trade or export controls or sanctions.

13.7. **Assignment.** The Customer shall not assign any part of its rights or obligations arising from these Terms and Conditions to any person, whether by operation of law or otherwise, without Mircom's prior written consent signed by a duly authorized representative of Mircom.

13.8. **Relationship of Parties.** The parties are independent contractors. These Terms and Conditions do not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.