

Invoice Terms and Conditions of Sale for BlackBerry QNX Products and Services

1. **SCOPE.** These Invoice Terms and Conditions of Sale for BlackBerry QNX products and services (the "**Terms**") shall apply to the extent that such terms and conditions are not otherwise set out in BlackBerry's standard QNX terms and conditions for BlackBerry QNX products and/or services. These Terms along with the terms and conditions applicable to the use of the specific BlackBerry QNX product and/or the provision of the applicable BlackBerry QNX service purchased (referred to herein as the "**BlackBerry QNX Solution**") shall apply to all orders accepted by BlackBerry for the BlackBerry QNX Solution. The terms and conditions applicable to the use of the specific BlackBerry QNX Solution, unless otherwise set out in a written agreement entered into between the purchaser (the "**Customer**") and BlackBerry (each a "**Party**" and together the "**Parties**") can be viewed at, as applicable, www.qnx.com/legal/licensing/document_archive/current_matrix.pdf or www.blackberry.com/legal. BlackBerry may resell or license third party goods and services which, for the purposes of these Terms only, shall be considered part of the BlackBerry QNX Solution. BlackBerry is defined as the specific BlackBerry entity or BlackBerry affiliate with which your order is placed.

2. **TAXES AND FEES.** All fees or amounts payable by Customer to BlackBerry or an authorized reseller of the BlackBerry QNX Solution, as applicable, are exclusive of any Taxes. Customer shall be responsible for and shall pay all taxes due under or in relation to these Terms, including, but not limited to, withholding taxes, charges, duties, levies or other applicable amounts ("**Taxes**"). If Customer is required to withhold any amounts (including, without limitation, Taxes) from payments ("**Withholdings**"), then the amount payable by Customer shall be increased by the amounts of such Withholdings. Customer shall promptly furnish BlackBerry with all official receipts evidencing payment of Taxes due under or in relation to these Terms.

3. PAYMENT AND INVOICING.

a. **Payment.** Unless otherwise agreed by BlackBerry, all payments must be made in the currency used by the BlackBerry entity with which Customer has placed its Order and in advance, or if approved by BlackBerry, within net thirty (30) days from the date of the invoice. Any sum not paid by Customer when due will bear interest from the due date until paid at a rate of: (i) ten percent (10%) per annum; or (ii) the maximum rate permitted by law, whichever is less.

b. **Invoicing.** Customer may not withhold payment of any invoice on the basis of any dispute, including dissatisfaction with the BlackBerry QNX Solution, other than on the basis of a clear error on the face of the invoice including, for example, a calculation error or a quantity error. Payment by Customer shall not preclude Customer from questioning any charges that Customer believes to be improper or incorrect, within a reasonable period of time.

4. **LIMITED WARRANTY.** BlackBerry's warranty obligations are only as stated in the applicable BlackBerry QNX Solution terms and conditions.

5. **NO RETURNS.** Unless otherwise provided specifically in the applicable BlackBerry QNX Solution terms and conditions, no returns shall be accepted and no refunds or credits will be provided.

6. **RESERVATION OF RIGHTS.** As between the Parties, Customer agrees that BlackBerry or its licensors retain ownership of all right, title and interest, including intellectual property rights, in all aspects of the BlackBerry QNX Solution. Customer's only rights with respect to any BlackBerry QNX Solution shall be as provided under the terms of the applicable license agreement specific to the BlackBerry QNX Solution licensed.

7. APPLICABLE LAW AND JURISDICTION; DISPUTE RESOLUTION.

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada excluding conflicts of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods. Each party irrevocably consents and submits to the exclusive jurisdiction of the courts of the city of Toronto, Ontario, and waives any objection thereto on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law. The parties waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.

8. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY THE APPLICABLE LAW:

a. IN NO EVENT SHALL BLACKBERRY, ITS AFFILIATES OR ANY OF ITS LICENSORS BE LIABLE FOR, AND CUSTOMER ON ITS OWN BEHALF AND ON BEHALF OF ITS AUTHORIZED USERS (AS DEFINED IN SECTION 9 BELOW), HEREBY WAIVES ALL OF THE FOLLOWING DAMAGES DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR THE BLACKBERRY QNX SOLUTION: (I) ALL INDIRECT, ECONOMIC, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL AND PUNITIVE DAMAGES; (II) ALL DAMAGES FOR LOST PROFITS, REVENUE OR EARNINGS, LOST OR CORRUPTED DATA, DELAYS OR FAILURE TO TRANSMIT OR RECEIVE ANY DATA, BUSINESS INTERRUPTION, FAILURE TO REALIZE EXPECTED SAVINGS AND COST OF SUBSTITUTE SOFTWARE OR SERVICES; AND (III) ALL DAMAGES RELATED TO OR ARISING OUT OF ANY THIRD PARTY ITEMS, ANY CUSTOMER FURNISHED GOODS, SOFTWARE, SERVICES OR CONTENT OR ANY FREE-OF-CHARGE SOFTWARE OR SERVICES;

b. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF BLACKBERRY, ITS AFFILIATES OR ANY OF ITS LICENSORS TO CUSTOMER, AUTHORIZED USERS, OR TO ANY THIRD PARTY CLAIMING THROUGH THEM FOR ANY DAMAGES OF ANY KIND UNDER THESE TERMS EXCEED THE AMOUNTS RECEIVED BY BLACKBERRY FROM CUSTOMER FOR THE PORTION OF THE BLACKBERRY QNX SOFTWARE, OR THE RELEVANT PERIOD OF THE BLACKBERRY QNX SERVICE, WHICH IS THE SUBJECT MATTER OF THE CLAIM IN

THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE INCIDENT GIVING RISE TO THE LIABILITY; AND

c. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET OUT IN THESE TERMS SHALL APPLY: (I) WHETHER AN ACTION, CLAIM OR DEMAND ARISES FROM A BREACH OF WARRANTY OR CONDITION, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTORY LIABILITY OR ANY OTHER THEORY OF LIABILITY; (II) WHETHER OR NOT SUCH DAMAGES COULD REASONABLY BE FORESEEN OR THEIR POSSIBILITY HAS BEEN DISCLOSED TO BLACKBERRY; AND (III) TO BLACKBERRY, AS WELL AS ITS AFFILIATES, AND THEIR RESPECTIVE SUPPLIERS, AGENTS, SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS AND EMPLOYEES.

9. **PRIVACY POLICY.** Personal information that is collected, used, processed, transferred, stored and disclosed (collectively, "**Processed**") by BlackBerry and its service providers will be treated in accordance with BlackBerry's Privacy Policy (which is incorporated by reference into these Terms and can be viewed at www.blackberry.com/legal) and as further described in the relevant licensing document. For the purposes of these Terms, "**Authorized User**" shall mean Customer and Customer's affiliates' employees and independent contractors, Customer (on its behalf and on behalf of its affiliates and Authorized Users) consents to such Processing of personal information, including the transfer of such personal information outside of the Authorized Users' jurisdiction, whether the initial collection of such personal information was: (a) from itself, from its affiliates and/or from the its Authorized Users directly; or (b) from network service providers or third parties with goods or services used with the BlackBerry QNX Solution. Further, Customer represents and warrants (on its behalf and on behalf of its affiliates and Authorized Users) that it has obtained (or its affiliate has obtained) all necessary consents to such Processing, including collection of each Authorized User's personal information as required for the use of the BlackBerry QNX Solution, goods or services used with the BlackBerry QNX Solution and as contemplated in these Terms.

10. **ENTIRE AGREEMENT.** These Terms together with the agreements specific to the BlackBerry QNX Solution ordered contain the entire agreement between the parties with respect to the subject matter hereof and supersede any and all prior oral or written agreements or representations. In absence of an express acceptance of these terms, Customer acknowledges that it has agreed to these Terms by acceptance or use of, or the payment for, the BlackBerry QNX Solution ordered hereunder. For clarity, any additional or variant Customer purchase terms are inapplicable unless pursuant to a subsequent written agreement executed by both Parties. In the event of a conflict between these Terms and the license agreements, service terms or other terms of use specific to the BlackBerry QNX Solution ordered, the terms and conditions specific to the BlackBerry QNX Solution ordered shall prevail solely as to the use and scope of the applicable product or the provision and receipt of the applicable service.

11. **DELIVERY TERMS APPLICABLE TO HARDWARE, ACCESSORIES AND/OR OTHER PHYSICAL GOODS.** Customer acknowledges and agrees that: (a) any shipment dates specified are estimates only and are subject to change; (b) any delay in Customer providing BlackBerry with any required pre-payment or required information may impact BlackBerry's ability to ship the physical goods by a particular date; and (c) Customer shall validate each shipment against attached packing slips for accuracy of items and quantities promptly upon receipt and notify BlackBerry immediately of any discrepancy between the attached packing slip and the shipment upon discovery of any nonconformity. Unless BlackBerry has received notice of any nonconformity from Customer within ten (10) business days of the shipment date, Customer shall be deemed to have accepted the shipment. Delivery shall be deemed complete and risk of loss shall pass to Customer at BlackBerry's point of shipment. All shipping costs including, without limitation, insurance, brokerage, duties, freight are extra and are the responsibility of the Customer.

12. MISCELLANEOUS

a. Customer agrees that its use of the BlackBerry QNX Solution shall be in accordance with all applicable federal, state, provincial and local laws, rules and regulations.

b. BlackBerry may change the Terms at any time without notice. BlackBerry shall notify Customer of the change by a reasonable means of notice, including posting the revised Terms at www.blackberry.com/legal and Customer should regularly visit the site to review the most current version of the Terms. The Terms in force at the time you place your order will govern your purchase.

c. BlackBerry shall not be liable for its failure to perform or the delayed performance of its obligation(s) under these Terms if such failure results from circumstances beyond its reasonable control, including but not limited to supplier strikes, lock-outs and labor disputes, third party acts, war, riot, civil disorder, acts of terrorism, curtailment of transportation, work stoppages, epidemic, malicious damage, compliance with any law or governmental order, prohibition, rule, regulation or direction not in force on the date these Terms commence, accident, fire, flood, or severe weather conditions.

d. BlackBerry may assign the Terms and Customer may assign these Terms with BlackBerry's prior written consent.

e. To the extent any provision of these Terms is determined to be invalid or unenforceable by a competent authority in any jurisdiction, then such determination will not affect the legality, validity or enforceability of the remaining parts of these Terms.

f. The provisions of these Terms are personal to the respective Parties and are not intended to confer any rights of enforcement on any third party except for BlackBerry affiliates.

g. Nothing in these Terms shall be deemed to create an agency or employment relationship between the Parties.

h. The waiver by either Party of any right provided under these Terms must be in writing signed by such Party and any waiver shall not constitute a subsequent or continuing waiver of such right or of any other right under these Terms.