

# Terms and Conditions of Quotation or Sale

## 1. SCOPE AND DEFINITIONS

1.1. These Terms and Conditions (“Terms”) apply to all quotations made and sales agreements entered into by BROMBEREK TECHNOLOGY LLC (“Seller”) with a Buyer for products (the “Products”). Seller’s agreement to sell or otherwise deliver any Products to Buyer shall not be deemed or construed to be an acceptance of any of Buyer’s terms and conditions nor a waiver of any term set forth herein. Unless Seller and Buyer enter into a separate written agreement, formally executed by Seller and specifically waiving the terms set forth herein, the purchase of any Products by Buyer shall be deemed acceptance of these Terms. No provisions in any documentation employed by or on behalf of Buyer in connection with these Terms, regardless of the date of such documentation, will affect these Terms, even if such document is accepted by Seller, with such provisions being deemed deleted.

1.2. Alterations to any Product which Seller deems necessary to comply with specifications, changed safety standards or governmental regulations, to make a Product non-infringing with respect to any intellectual property right or other proprietary interest, or to otherwise improve a Product may be made at any time by Seller without prior notice to or consent of Buyer and such altered Products shall be deemed fully conforming.

## 2. QUOTATION

2.1. Unless otherwise indicated, quotations are open for acceptance by the Buyer within thirty (30) days from the date of quotation. All prices are quoted in U.S. Dollars.

### **3. ORDERS, RESCHEDULING AND CANCELLATION**

3.1. All of Buyer's orders are subject to acceptance by Seller and Seller reserves the right to accept or reject any order from the Buyer, in whole or in part.

3.2. If the Products are furnished for or to be used in the performance of a U.S. Government contract or subcontract for which a mandatory passdown clause or clauses are applicable, Buyer shall inform Seller of such clause(s) and allow Seller to review the clause(s) in question before Seller commences performance. In the event performance is commenced prior to receiving such notice, Seller reserves the right to terminate, without any liability whatsoever, any orders related to the U.S. Government and Buyer shall indemnify Seller against any claims related to the termination of such orders.

3.3. Orders may not be cancelled or rescheduled without Seller's prior written consent. In the event that Seller in its sole discretion elects to accept a request for cancellation, the Buyer undertakes to indemnify Seller against all losses, including cost of all labour, materials, overhead, damages, charges and expenses arising out of the order and its cancellation.

### **4. TITLE AND DELIVERY**

4.1. All deliveries will be made FCA (per Incoterms 2000, as amended) Seller's facility or other location determined by Seller. Unless otherwise specified, risk will pass to Buyer upon tender to the carrier. Buyer bears the exclusive risk of loss or damage to the Products at all times after Seller has delivered such Products to the carrier. Any claim by Buyer against Seller for shortage or damage occurring prior to such delivery must be made, in writing, within thirty (30) days after receipt of shipment and accompanied by original transportation bill signed by the carrier noting that carrier received the Products from Seller in the condition claimed.

4.2. Title to hardware Products being purchased is retained by Seller until such Products are fully paid for by the Buyer and, at that time, title passes to Buyer. Title to any software provided to Buyer (the "Software") shall at all times remain with the licensor of such software.

4.3. Seller retains and Buyer hereby grants Seller a security interest in the Products described in each order, including all accessions to them until Buyer has made payment in full in accordance with the terms hereof. Buyer authorizes Seller to file a financing statement describing the Products and Buyer shall cooperate fully with Seller in executing such documents including a Uniform Commercial Code financing statement, and accomplishing such filings and/or recordings thereof as Seller may deem necessary for the perfection and protection of such security interest.

4.4. Seller will make commercially reasonable efforts to ship orders within the times quoted, however Buyer acknowledges that all delivery times or shipment dates are approximate and may change. Times quoted for shipment will date from receipt by Seller of the Buyer's order accompanied by all necessary information enabling work to commence, together with any import license and/or permits which may be necessary. Buyer acknowledges that time for delivery is not of the essence.

## **5. TAXES AND DUTIES**

5.1. The Buyer shall pay all taxes (including, without limitation, any and all federal, provincial, state or local sales, use, excise, privilege or similar taxes), levies, tariffs or duties, of any kind (collectively, the "Taxes"), on the Products, or the Buyer shall provide Seller with a tax exemption certificate acceptable to the taxing authorities. Buyer agrees to indemnify and hold harmless Seller for any liability for tax in connection with the sale, as well as the collection or withholding thereof, including penalties and interest thereon.

5.2. The prices of the Products are those specified in the applicable order. Unless otherwise agreed in writing by Seller, all prices quoted are exclusive of Taxes, transportation and insurance costs.

## **6. CREDIT AND PAYMENTS**

6.1. All orders must be prepaid in full. Buyer may request to be granted credit. If Seller approves Buyer for credit, terms of payment are net 15 unless otherwise agreed with the Seller. Late payments are subject to 1.5% interest charge per month (18% per annum). If credit is not approved by Seller, all

Buyer orders must be prepaid in full. Seller reserves the right to require Buyer to pay outstanding invoices via wire transfer. Seller reserves the right to withhold shipment in the event Buyer is in arrears.

## **7. INDEMNIFICATION**

7.1. Subject to the conditions herein, Seller will defend any action brought against the Buyer, to the extent that it is based on a claim that the Products supplied by Seller infringes an existing Canadian or U.S. patent issued as at the date of the applicable order. Subject to the conditions herein, Seller will indemnify Buyer against the costs and damages finally awarded in any action arising directly out of a claim of infringement of such Canadian or U.S. patent, provided that (a) Seller shall be notified in writing by the Buyer within ten (10) days of the receipt by the Buyer of any notice of such claim; (b) Seller shall have sole control of the defence of any action and all negotiations for its settlement or compromise, and Buyer shall cooperate with Seller and take all required action to assist Seller in such defence; (c) the claim relates directly to the use of the Products in a manner or for a purpose expressly specified by Seller; (d) the claim does not arise from the alteration or modification of the Products or the use of the Products in combination with the products or services of any party other than Seller; (e) the claim is not related to aspects of the Products that were made in accordance with materials, designs or specifications furnished or designated by Buyer and (e) that the Buyer shall not have made and shall not make any admissions in respect of such alleged infringement.

7.2. The sale of Products by Seller does not convey any license by implication, estoppel, or otherwise, under patent, copyright, trade secret, trade mark or other intellectual property right covering combinations of said Products with other devices or elements unless otherwise provided for by a separate agreement between the parties.

7.3. Notwithstanding the foregoing, Seller has no liability for, and Buyer will indemnify Seller against, any claim based upon: (a) the combination, operation, or use of any Products supplied hereunder with, equipment, devices, or software not supplied by Seller; (b) services offered or used by Buyer through operation of the Products or revenue received by Buyer from its services; (c) alteration or modification of any Products supplied hereunder; or (d) Seller's compliance with Buyer's designs, specifications, or

instructions. Notwithstanding any other provisions hereof, Seller shall not be liable for any claim based on Buyer's use of the Products as shipped after Seller has informed the Buyer of modifications or changes in the Products required to avoid such claims and offered to implement those modifications or changes, if such claim would have been avoided by implementation of Seller's suggestions.

7.4. To the extent the Products or any part thereof become the subject of a claim for infringement or the use of the Products or an part thereof is enjoined in an infringement suit, Seller may, at its sole option and expense, defend the claim, procure for the Buyer the right to continue using said Products, replace or modify the Products so that they become non-infringing, and/or remove said Products and refund the purchase price and the transportation costs thereof less a reasonable amount for depreciation.

7.5. THE FOREGOING STATES THE ENTIRE LIABILITY OF SELLER WITH RESPECT TO ANY INFRINGEMENT OR CLAIM OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, MASK WORK OR OTHER INDUSTRIAL OR INTELLECTUAL PROPERTY RIGHT. THE FOREGOING INDEMNITY IS GRANTED TO BUYER SOLELY FOR ITS BENEFIT.

## **8. WARRANTY**

8.1. Seller warrants that the Products will be free from defects in material for a period of twelve (12) months commencing on the date of shipment. Any description of the Products provided to Buyer is for illustrative purposes only and is not part of the basis of the bargain nor does it constitute a warranty that the Products shall conform to the description. Seller shall incur no liability under the foregoing warranty unless: (a) the allegedly defective Products are returned prepaid to Seller within fifteen (15) days of the discovery of the alleged defect in accordance with Seller's then current repair procedures; and (b) Seller's tests disclose that alleged defect is due solely to defects in material or workmanship. This warranty is personal to Buyer only and shall not extend to any third party.

8.2. The liability of Seller under this warranty shall, in any event, be limited at Seller's option to either repair, or replacement of, the defective Products at its own expense or to reimburse the Buyer its price paid to Seller for the defective Products. The provision of any warranty does not apply to any Products that have been used for a purpose for which they were not designed, have been altered in any manner,

used in any way as to adversely affect their performance and reliability, or have been subject to misuse, abuse, neglect, alteration, accident, repair, operation outside the environmental specifications for the Products, improper installation, improper handling during or after shipment, improper testing or the like after shipment, or for any other cause not attributable to defects of material or workmanship on the part of Seller.

8.3. TO THE GREATEST EXTENT PERMISSIBLE BY APPLICABLE LAW, THE LIMITED WARRANTIES CONTAINED IN THIS SECTION ARE SELLER'S (INCLUDING ITS LICENSORS') EXCLUSIVE WARRANTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS, UNDERTAKINGS OR TERMS OF ANY KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND/OR LACK OF WORKMANLIKE EFFORT. SELLER (INCLUDING ITS LICENSORS) DOES NOT WARRANT THAT THE PRODUCTS WILL BE ERROR FREE OR THAT THEIR OPERATION WILL BE UNINTERRUPTED. NO SELLER AGENT, REPRESENTATIVE, OR DEALER IS AUTHORIZED TO MODIFY, EXTEND OR ADD TO THIS WARRANTY ON BEHALF OF SELLER. BUYER SHALL NOT MAKE ANY REPRESENTATIONS, CONDITIONS OR WARRANTIES OF ANY KIND WHATSOEVER RELATING TO THE PRODUCTS OR TO SELLER.

8.4. TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, BUYER ACKNOWLEDGES AND AGREES THAT THIRD PARTY PRODUCTS ARE MADE AVAILABLE TO BUYER BY SELLER STRICTLY "AS IS", WITHOUT WARRANTY, CONDITION OR TERM OF ANY KIND, EITHER EXPRESS OR IMPLIED, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND/OR LACK OF WORKMANLIKE EFFORT. BUYER SHALL BE ENTITLED TO ALL WARRANTIES PROVIDED DIRECTLY BY THE MANUFACTURER OF SUCH THIRD PARTY PRODUCTS TO END USERS. BUYER SHALL PURSUE ALL CLAIMS

RELATED TO THIRD PARTY PRODUCTS WITH THE APPLICABLE MANUFACTURER AND DOES HEREBY IRREVOCABLY RELEASE SELLER FROM ANY SUCH CLAIMS.

## **9. RETURNS**

9.1. No Products are to be returned without written authorization from Seller (Return Merchandise Authorization) and then only in accordance with Seller's terms and instructions. A 30 day return policy is only applicable for end-user customers for the following Products: AV.io 4K, AV.io HD, AV.io SDI, DVI2USB 3.0, SDI2USB 3.0, DVI2PCIe Duo, DVI2PCIe, KVM2USB and KVM2USB 3.0. Products not listed under 9.1 are not covered by the 30 day return policy. Returns must be requested within thirty (30) days of receiving the product. Buyer must obtain a Return Merchandise Authorization (RMA) number that is clearly marked on the outside of the return package and all returns must be in the original packaging and include all items. Returns under the 30 day return policy will be subject to a fifteen percent (15%) restocking fee unless otherwise prohibited by law.

## **10. INTELLECTUAL PROPERTY RIGHTS**

10.1. Buyer acknowledges the great value of the goodwill associated with the name and trademarks of Epiphan. Buyer shall not obscure, effect or permit the removal or alteration of any patent numbers, trade names or marks, copyright markings or other proprietary rights markings, labels, serial numbers, or the like affixed to any Product or Product package.

10.2. All intellectual property rights, including, without limitation, all copyrights, patent rights, trade secrets and trademarks in and to the Products shall, at all times, remain with Seller or its licensors. Buyer shall acquire no right whatsoever to all or any part of the Products and/or Seller intellectual property except the right to use the Products and/or Seller intellectual property in accordance with these Terms and Seller and its licensors reserve all rights not expressly granted to Buyer.

10.3. Buyer disclaims any rights or interest in Seller's intellectual property. Buyer acknowledges the great value of the goodwill associated with the name and trademarks of Seller. Buyer shall not, either directly or indirectly, remove, obscure, effect or permit the removal or alteration of any patent numbers,

trade names or marks, copyright markings or other proprietary rights markings, labels, serial numbers, or the like affixed to any Products or Product package or any related documentation, software, advertising, displays, media or designations.

## **11. LIMITATION OF LIABILITY**

11.1. TO THE GREATEST EXTENT PERMISSIBLE BY APPLICABLE LAW, IN NO EVENT AND UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE), CONTRACT OR OTHERWISE, SHALL SELLER AND ITS AFFILIATES AND SUBSIDIARIES, INCLUDING THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS AND LICENSORS BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR ANY LOSS OF USE, REVENUE, BUSINESS OR PROFIT, LOST OR DAMAGED DATA, FAILURE TO REALIZE EXPECTED SAVINGS, OR OTHER COMMERCIAL OR ECONOMIC LOSS OR FOR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE.

11.2. THE MAXIMUM AGGREGATE LIABILITY OF SELLER AND ITS AFFILIATES AND SUBSIDIARIES, INCLUDING THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS AND LICENSORS IN ANY CONNECTION WITH THESE TERMS AND/OR THE PRODUCTS, WHETHER IN TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE), CONTRACT OR OTHERWISE SHALL NOT EXCEED THE AMOUNT PAID FOR THE SPECIFIC ITEM OR PRODUCT THAT IS THE SUBJECT MATTER OF OR THAT IS DIRECTLY RELATED TO SUCH CLAIM. THIS LIMITATION SHALL APPLY EVEN IN THE EVENT OF A FUNDAMENTAL BREACH OR A BREACH OF THE FUNDAMENTAL TERMS OF THESE TERMS.

11.3. NOTWITHSTANDING ANYTHING IN THESE TERMS TO THE CONTRARY, THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO SELLER'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT.



## 12. CONFIDENTIALITY

12.1. Confidentiality. The parties acknowledge that they may receive confidential and/or proprietary information relating to the business of the other party or its licensors, including without limitation designs, presentations, drawings, schematics, software tools, software (in source and object forms), user interface designs, architecture, objects and documentation (both printed and electronic), , technical information, characterization, design rules, formulae, physical descriptions or views, logical views or binary representations, performance and interface information, proprietary command architecture, proprietary scheme constructs (commands, format, syntax, and semantics), defects, bugs, proprietary circuit behaviour information, Buyer-supplied data, circuit, logic elements technical and marketing information, know-how and/or trade secrets, which are identified as confidential and/or proprietary at the time of disclosure or that a reasonable person would consider, from the nature of the information, as confidential and/or proprietary (the “Confidential Information”). The parties will only use such Confidential Information in the performance of these Terms. The receiving party shall treat the Confidential Information as confidential to and as the property of the disclosing party and use a degree of care not less than the degree of care it uses with respect to its own information of like nature to prevent unauthorized access, use or disclosure, which in any event shall be no less than a reasonable degree of care. The receiving party will not disclose these Terms or Confidential Information, except to the receiving party’s directors, officers, employees and contractors who have a need to know for the purpose of carrying out the business relationship and who are bound by written confidentiality obligations no less protective of the disclosing party’s confidential information than this Section. As soon as practicable, receiving party shall notify disclosing party of any breach of these Terms. Each party will use and maintain reasonable security measures (which measures shall be at least those used by the receiving party to protect its own Confidential Information) to protect the other party’s Confidential Information. The receiving party shall not transmit, maintain, remanufacture or duplicate all, or any part of, the Confidential Information except in accordance with the terms and conditions of these Terms. The receiving party shall be directly liable for the acts or omissions of its directors, officers, employees and contractors with respect to such confidentiality obligations. The receiving party agrees to segregate all such Confidential Information from the confidential information of others in order to prevent commingling.

12.2. The foregoing obligation of confidentiality does not apply to information that: (a) is or becomes generally known or available through no fault of the receiving party; (b) is known by the receiving party prior to the time of disclosure and is not subject to restriction, as evidenced by receiving party's written records; (c) is independently developed by the receiving party, as evidenced by receiving party's written records; (d) is lawfully obtained from a third party, who has the right to make such disclosure without restriction; (e) is released for publication by disclosing party in writing; or (f) is required to be disclosed by law.

12.3. Buyer acknowledges that disclosure or use of the Confidential Information contrary to these Terms will cause Seller irreparable harm for which damages may not be an adequate remedy and further acknowledges that in addition to any other remedies that may be available to Seller at law, Seller may apply for all available equitable relief including injunctive relief.

## **13. GENERAL PROVISIONS**

13.1. Entire Agreement: These Terms are the entire agreement between the parties with respect to its subject matter and supersedes and replaces all prior oral or written agreements, representations, negotiations or understandings between the parties relating to such subject matter. No change, modification, supplement or amendment of these Terms shall be valid or binding unless (a) executed in writing by both parties and (b) such document specifically references the changing, modifying, supplementing or amendment of these Terms.

13.2. No Assignment: Buyer may not transfer or assign these Terms without the prior written consent of Seller. The parties agree that Seller is hereby entitled to assign, subcontract and/or transfer all or part of its rights and obligations under these Terms to any third party. A change in control of Buyer shall be deemed an assignment hereunder.

13.3. Governing Law: These Terms shall be governed by the laws of the Province of Ontario, Canada, without giving effect to: (a) the principles of conflicts of law and that body of law applicable to choice of law; (b) the United Nations Convention on Contracts for the International Sale of Goods, and/or its implementing and/or successor legislation and/or regulations; and/or (c) the Uniform Commercial Code

and/or its implementing and/or successor legislation and/or regulations, as applicable respectively. The parties agree that the courts of such jurisdiction constitute a convenient forum for any litigation and both parties attorn and submit to the jurisdiction of such courts. Except to the extent required by law, the parties waive trial by jury. If either party employs attorneys to enforce any rights arising out of or relating to these Terms, the prevailing party shall be entitled to recover reasonable legal fees. Each party hereby agrees to comply with all applicable laws, regulations and government orders in performing its obligations under these Terms.

13.4. Notice: All notices required under these Terms shall be deemed effective when received, and sent by either (a) registered mail, (b) certified mail, return receipt requested, or (c) overnight mail.

13.5. Force Majeure: Neither party shall be responsible for delays or failure of performance hereunder other than payment, resulting from acts beyond the reasonable control of such party.

13.6. Waiver: No party will be deemed to have waived the exercise of any right that it holds under these Terms unless such waiver is made in writing. Failure or delay by either party to exercise any of its rights, powers or remedies hereunder shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

13.7. Export / Import: Buyer represents and warrants that (a) no relevant agency has suspended, revoked or denied Buyer's export and/or import privileges; (b) Buyer is not located in or under the control of a national or resident of, a jurisdiction where this transaction is prohibited; and (c) Buyer shall not, in any manner whatsoever, either remove, convey, export, import or transmit the Products from or to Buyer's jurisdiction in violation of the applicable laws and regulations.

13.8. Survival: The scope and definitions, payment obligations, title and delivery, taxes and duties, general provisions, limitations of liability, exclusions of warranties, intellectual property rights, ownership and proprietary rights and confidentiality requirements set forth in these Terms shall survive the expiration of these Terms or termination of these Terms by either party for any reason. Termination shall

be without prejudice to any other right or remedy to which either party may be entitled under these Terms, or in law.

13.9. Severability: Should any provision or part of any provision of these Terms be found illegal, invalid or unenforceable by a court of competent jurisdiction, such provision, or part thereof, shall be read down to the extent necessary to ensure that such provision, or part thereof is not illegal, invalid or unenforceable but, if that is not possible, such provision, or part thereof, shall be deemed severed, and the remainder of these Terms shall remain in full force and effect.

13.10. Third Party Beneficiaries: Buyer acknowledges and agrees that Seller's licensors are third party beneficiaries to these Terms, with the right to enforce the obligations and benefit from the protections set forth in these Terms.

13.11. Remedies: Except as specifically provided in these Terms, the rights and remedies provided in these Terms and all other rights and remedies available to either party at law or in equity are, to the extent permitted by law, cumulative and not exclusive of any other right or remedy now or hereafter available at law or in equity, neither asserting a right or employing a remedy shall preclude the concurrent assertion of any other right or employment of any other remedy.