

TERMS AND CONDITIONS OF SALE

- 1. Terms of Sale** These Terms and Conditions of Sale ("Terms of Sale") govern all sales of products, equipment and/or services (collectively the "Products") by Seller to Buyer, regardless of whether Buyer issues a written or electronic purchase order for the Products (collectively the "Purchase Order"). Upon receipt by Buyer of an express acceptance or order acknowledgment from Seller, or upon commencement of performance by Seller, the Purchase Order terms and conditions specifying the identity, price and quantity of the Products, as modified by Seller's acceptance or order acknowledgment, upon these Terms of Sale becomes a binding agreement between Buyer and Seller (collectively the "Sales Agreement"); provided, however, that any other Purchase Order terms and conditions, that conflict with or are in addition to these Terms of Sale, are of no force and effect and these Terms of Sale shall exclusively govern the Sales Agreement. In the event the Purchase Order conflicts with Seller's acceptance or order acknowledgment, Seller's acceptance or order acknowledgment prevails. In the Sales Agreement, Seller shall mean the Seller itself, and/or any affiliate of Seller and/or any other company, to the extent that Seller has transferred its rights and obligations under the Sales Agreement to such affiliate of Seller and/or other company.
- 2. Price** The prices of the Products, as set forth in Seller's quotation, acceptance or order acknowledgment, do not include sales, use, excise or any other taxes or assessments levied by any federal, state, municipal or other governmental authority, unless Seller agrees otherwise in a signed writing. Seller reserves the right to change such prices upon written notice to Buyer.
- 3. Payment** Payments must be made to Seller in United States Dollars, unless Seller expressly agrees otherwise in a signed writing, within thirty (30) days of the date of Seller's invoice. Payments not received when due shall bear interest at the lower of twelve percent (12%) per annum or the maximum rate allowed by applicable law. Seller reserves the right to limit or cancel the credit of Buyer, and Seller may require payment or adequate assurance of performance from Buyer prior to taking any preparatory steps for performing the Sales Agreement or beginning the manufacture of the Products. Buyer shall execute, at Seller's request, one or more security agreements, financing statements and other documents acceptable to Seller, necessary to secure Seller's interests in the Products and payment therefor. Buyer agrees that in the event that payment by Buyer for any Products including, but not limited to, equipment, has not been received by Seller when due, Seller shall have the right, in addition to any other rights of Seller: (i) to re-possess any Products including, but not limited to, equipment, of the same type up to the value of any Products for which payment has not been received by Seller when due and/or to require Buyer to return such Products to Seller; and/or (ii) to suspend any future deliveries of Products to Buyer.
- 4. Specifications** Seller will manufacture the Products in substantial conformity with its Products specifications, if any, contained in Seller's quotation, acceptance or order acknowledgment, unless different specifications are agreed to in a writing signed by both parties. All Products and Products-related specifications are subject to applicable freight classification, Seller's customary manufacturing processes and industry courses of dealing and usages of trade.
- 5. Packaging** Seller will endeavor to comply with Buyer's packaging specifications, if any, including without limitation, unitizing, palletizing, boxing, and bundling, but Seller reserves the right to substitute any other method of packaging that is reasonably comparable to Buyer's specifications, both with respect to cost and to the risk to which the Products are subject.
- 6. Delivery** Seller will deliver the Products EXW - Ex Works Seller's plant (INCOTERMS 2010), unless Seller expressly agrees otherwise in a signed writing. Buyer shall pay all transportation costs of the Products. Seller may make partial deliveries at Seller's sole discretion. Seller will endeavor to meet the delivery date(s) provided by Buyer. If Seller is unable to meet such date(s), Buyer has no claim for damages resulting from any such delay in delivery, unless Seller expressly agrees otherwise in a signed writing.
- 7. Title and Risk of Loss** Title to the Products passes to Buyer when the Products are fully paid for. All risk of loss of the Products passes to Buyer when the Products are loaded onto the carrier.
- 8. Warranty** Seller warrants that the Products shall be free from defects in material and workmanship and will substantially conform to Seller's specifications, if any, upon delivery. Seller warrants that its services will be free from defects in workmanship and will substantially conform to Seller's specifications, if any, upon completion. **THE FOREGOING NOTWITHSTANDING, SELLER IS NOT LIABLE FOR NORMAL MANUFACTURING DEFECTS OR FOR CUSTOMARY VARIATIONS FROM QUANTITIES OR SELLER'S SPECIFICATIONS. UNLESS EXPRESSLY STATED IN THE SALES AGREEMENT, SELLER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND (WHETHER ARISING BY IMPLICATION OR BY OPERATION OF LAW) WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER.** Seller's warranty of any Products shall not apply if (i) the Products are not stored or handled appropriately, (ii) the defect in the Products resulted from damages occurring after delivery of the Products, or (iii) the defect in the Products was not reported by Buyer to Seller within thirty (30) days after delivery. If the Products or services do not conform to the warranty above and the warranty is not otherwise excluded, then Buyer shall promptly notify Seller of the defect. Seller, at its option, shall either (i) repair or replace the defective Products or re-perform the defective services, or (ii) refund the purchase price of the defective Products or defective services. **BUYER AGREES THAT SELLER SHALL ONLY BE LIABLE FOR SELLER'S OWN WILLFUL MISCONDUCT IN PROVIDING TECHNICAL SERVICES, ASSISTANCE AND/OR ADVICE TO BUYER AND, SAVE FOR SUCH RECOURSE FOR SELLER'S OWN WILLFUL MISCONDUCT, BUYER EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ALL CLAIMS AGAINST SELLER FOR ALL DAMAGES CAUSED TO THE PRODUCTS, AND/OR ALL DAMAGES TO PROPERTY AND/OR ALL INJURIES TO OR DEATHS OF PERSONS, CAUSED TO BUYER ITSELF, ITS PERSONNEL, ITS REPRESENTATIVES AND/OR ANY THIRD PARTY AS A RESULT, DIRECTLY OR INDIRECTLY, OF TECHNICAL SERVICES, ASSISTANCE AND/OR ADVICE PROVIDED BY SELLER. THE FOREGOING ARE BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE WARRANTY PROVIDED BY SELLER ABOVE.**
- 9. Limitation of Liability** NOTWITHSTANDING ANY OTHER PROVISIONS HEREOF, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ALL DIRECT AND INDIRECT LOST PROFITS, REGARDLESS OF WHETHER THOSE DAMAGES WERE FORESEEABLE. SELLER HEREBY DISCLAIMS ANY LIABILITY, WHETHER IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), FOR ANY INJURY TO OR DEATH OF PERSONS OR DAMAGE TO PROPERTY ARISING OUT OF, RELATING TO OR CAUSED BY BUYER'S USE OF SELLER'S PRODUCTS. SELLER'S LIABILITY SHALL BE LIMITED TO THE PRICE ALLOCABLE TO THE PRODUCTS, OR PORTIONS THEREOF, WHICH GIVE RISE TO A CLAIM AND NO CLAIM SHALL BE ASSERTED AGAINST SELLER UNLESS THE INJURIES, LOSSES AND/OR DAMAGES GIVING RISE TO THE CLAIM ARE SUSTAINED PRIOR TO THE EXPIRATION OF THE PERIOD OF WARRANTY SPECIFIED HEREIN.
- 10. Termination** In the event of a breach by Buyer of the Sales Agreement including, but not limited to, any insolvency or bankruptcy of Buyer, Seller may immediately terminate the Sales Agreement, upon giving written notice of termination to Buyer. If the Sales Agreement is terminated by Seller for Buyer's breach, Seller is entitled to reasonable reimbursement for any labor, material or other expenses incurred in connection with the Sales Agreement, plus Seller's normal overhead, and to payment for Products and services in process or already completed but not yet paid for. The provisions of Sections 1, 6, 8, 9, 10, 11, 12, 13 and 16 shall survive the expiration or earlier termination of the Sales Agreement.
- 11. Indemnification** To the maximum extent allowed by law, Buyer shall defend, indemnify and hold harmless Seller and its employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including,

but not limited to, investigation expenses and attorneys' fees) that Seller may incur or be obligated to pay as a result of (i) Buyer's use, ownership, maintenance, transfer, transportation or disposal of the Products; (ii) any infringement or alleged infringement of the intellectual property rights of others arising from Buyer's plans, specifications (including, but not limited to, Buyer's trademarks and brand names) or production of the Products ordered by Buyer where such plans or specifications caused Seller to deviate from its normal product specification; (iii) Buyer's violation or alleged violation of any federal, state, county or local laws or regulations including, but not limited to, the laws and regulations governing product safety, labeling, packaging and labor practices; and (iv) Buyer's breach of the Sales Agreement.

12. **Force Majeure** Seller shall not be liable for delay in delivery of Products, or for any other interruption, delay, loss or damage which is incurred or suffered as a result of a Force Majeure, and Seller's obligations hereunder shall be excused and suspended during the period such Force Majeure remains in effect. "Force Majeure" shall mean a condition or cause beyond the reasonable control of Seller including, but not limited to, acts of God, floods, earthquakes, hurricanes, tornadoes or other severe weather conditions; acts of public enemy, war, blockade, insurrection or riot; fire, wreck or explosion; strike, lockout or labor dispute; embargoes; act of governmental authority or compliance with governmental laws, orders or regulations; plant shutdown; equipment failure; delays, shortages or failure of the supply of raw materials, energy or transportation; or circumstance beyond Seller's reasonable control not enumerated in the foregoing which reasonably shall prevent Seller from performing its obligations hereunder in the normal course of Seller's business. Seller may terminate a delivery or deliveries, without liability, if Force Majeure continues longer than three (3) months.
13. **Confidentiality, Intellectual Property** Buyer agrees to hold as confidential and not disclose or divulge to any third party any confidential information received from Seller including, but not limited to, prices, trade secrets, technological know-how, specifications and the terms of the Sales Agreement, unless Seller gives its prior written approval. Seller is not granting to Buyer in the Sales Agreement any right, title or interest in or to any of its intellectual property rights including, but not limited to, any patent, copyright, or trade names, all of which are exclusively owned by and reserved to Seller.
14. **Anti-Bribery** Buyer shall comply with Seller's Anti-Corruption and Bribery Policy and Seller's Guidelines On Appointing Agents and Other Intermediaries, copies of which have been provided to Buyer.
15. **Entire Agreement** The Sales Agreement comprises the complete and final agreement between Seller and Buyer and supercedes all prior negotiations, proposals, representations, commitments, understandings or agreements between Seller and Buyer, either written or oral, on its subject. The Sales Agreement may not be altered or modified except by the signed written agreement of Seller and Buyer.
16. **Governing Law** The validity, construction and performance of the Sales Agreement is governed by and shall be construed in accordance with the laws of the Province of Ontario, without regard to its conflict of laws principles, and the United Nations Convention On Contracts For the International Sale of Goods shall not apply to the Sales Agreement. Buyer hereby irrevocably submits and agrees to the jurisdiction of the courts of the Province of Ontario in any action, suit or proceeding related to, or in connection with, the Sales Agreement.