



## Standard Terms and Conditions of Sale

**1. Acceptance of Terms:** Capitalized terms are defined below. Unless other terms are specified in Seller's Quotation or Invoice, the following Terms and Conditions of Sale ("Terms") will govern the offer and sale of all Goods and Services provided by Seller to Buyer. Any terms and conditions of sale (other than the economic terms of the Order) that may be contained in any purchase order or other form provided by Buyer will be without force and effect, regardless of when received by Seller. By placing an Order, Buyer accepts these Terms, and the sale and delivery by Seller of Goods and Services will be conclusively presumed to be subject to these Terms.

**2. Definitions.** "Buyer" and "Seller" are identified on the Quotation or Invoice. "Goods" are all equipment, products, goods, or materials listed on a Quotation or Invoice. "Services" are services listed on a Quotation or Invoice. A "Quotation" is issued by Seller to Buyer to offer the sale of Goods and any Services and is valid for a period of 30 days from the date of issue. "Order" means Buyer's commitment to purchase Goods from Seller. An "Invoice" is a written invoice for Goods and/or Services provided by Seller to Buyer for Orders accepted by Seller in writing or by performance.

**3. Orders.** Seller will have the right to accept or reject an Order in its sole discretion. Seller's acceptance of an Order from Buyer may be subject to Buyer's credit approval and other conditions required by Seller. Buyer will not have the right to cancel an Order without Seller's prior written consent.

**4. Prices and Taxes.** Prices will be set forth in the Quotation or Seller's published price schedules. Prices and these Terms are subject to change without notice. Unless specifically stated, prices do not include sales, use, excise or other similar taxes or duties ("Taxes"). Buyer will pay any and all clearance charges, broker's fees, Taxes and other amounts payable in connection with Seller's delivery of Goods and provision of Services. If Seller is required to pay any Taxes on the Goods or Services furnished hereunder, Buyer will promptly reimburse Seller for such Taxes.

**5. Payment.** Buyer will pay all Invoices within 30 days from date of Invoice in U.S. dollars (or the currency indicated in the Invoice) in immediately available funds via wire transfer to an account designated by Seller or by check payable to Seller. Payment will not be deemed to have been received until Seller has received cleared funds. If Seller delivers Goods to Buyer in lots, Seller has the right to invoice Buyer for each lot and Buyer will pay all such Invoices as provided herein. Buyer will make all payments due in full without any deduction, whether by way of set-off, counter-claim, discount, abatement or otherwise. If Buyer fails to pay Seller any sum due, Buyer will be liable to pay interest at an annual rate equal to the lesser of (a) 18% per annum, accruing on a daily basis until payment is made; or (b) the maximum amount permitted by law.

**6. Delivery and Acceptance.** Seller will deliver the Goods EX Works, Seller's nominated facility (INCOTERMS® 2010). Buyer will pay all freight, insurance, and other shipping expenses, as well as any special packing expenses. Seller will use commercially reasonable efforts to meet the quoted delivery dates and will have the right to deliver partial shipments of Goods. Buyer is deemed to have accepted the Goods upon delivery unless Buyer notifies Seller in writing of any loss, damage, shortage or other non-conformity within 7 days from the date of delivery. In the absence of receipt of such notice, Buyer will have no right to reject the Goods or Services and will be required to pay the Invoice price for such Goods. Buyer will have no right to suspend or delay delivery of Goods. If Buyer fails to accept delivery of Goods, Seller will have the right to store or arrange storage of the Goods at Buyer's risk and expense. Buyer will promptly pay for the reasonable costs of storage and insurance of the Goods until delivery. Seller will not accept any returns of Goods without Seller's prior written authorization.

**7. Risk and Title.** The risk of loss or damage to the Goods will pass to Buyer when the Goods are delivered to Buyer or its agents pursuant to the applicable Incoterm. Title to the Goods will pass to Buyer when Seller has received payment in full of the Invoice price of the Goods. Until title has passed to Buyer, Buyer will hold the Goods on a fiduciary basis as Seller's bailee. Buyer represents that it has adequate insurance to cover the risk of loss or damage described in this paragraph. Seller warrants that title to the Goods passes to Buyer upon Seller's receipt of payment in full for such Goods.

**8. Security Interest.** Buyer grants Seller a security interest in the Goods in the amount of the unpaid balance of the price until paid in full. Seller will have the right to file a financing statement for such security interest and Buyer will sign any such statement or other documentation that Seller deems necessary to protect Seller's security interest upon request by Seller.

**9. Limited Warranty.**

a. **Goods.** Unless stated otherwise in the Quotation or Seller's published specifications for the Goods, Seller warrants to Buyer that Goods manufactured by Seller will be free from defects in material and workmanship for a period of 12 months from the date of shipment. The sole and exclusive remedy of Buyer under this warranty will be, in Seller's sole and exclusive discretion, to repair or replace Goods proved defective with conforming Goods. Buyer will return defective Goods to Seller, if required and authorized by Seller, freight prepaid. To the extent permitted by Seller's suppliers, Seller will pass through any warranty from a supplier for components or parts provided by such supplier in connection with the Goods sold by Seller to Buyer, and will use reasonable efforts to assist Buyer in making warranty claims subject to the supplier's warranty terms.

b. **Services.** Seller warrants to Buyer that the Services will be performed in a workmanlike manner consistent with applicable industry standards. Any reports or certifications provided by Seller are valid only as of the date given, and do not constitute a warranty or guarantee after such date. Seller will, as its sole obligation and Buyer's sole and exclusive remedy for any breach of the warranty of Services set forth herein, re-perform the Services which gave rise to the breach or, at Seller's option, refund the fees paid by Buyer for the Services which gave rise to the breach; provided that Buyer provides reasonably detailed written notice to Seller of the breach within 90 days following performance of the defective Services.

c. **Exclusions.** The foregoing limited warranties do not apply if Buyer has not paid for the Goods or Services in full, and do not extend or apply to (i) any defects or losses due to misuse, accident, abuse, neglect, normal wear and tear, improper installation, failure to maintain or improper application or matters caused by the negligence misconduct of Buyer or any third party; consumable goods (for which the sole warranty is to be free from defects and materials upon shipment); (iii) where the express warranty in these Terms exceeds Seller's published recommended replacement interval; (iv) any recall or labor charges for removal and/or replacement of the defective Goods; (v) re-performance of defective Services by a third party; (vi) any defects in goods or products not manufactured by Seller or in Services not performed by Seller; (vii) any Goods made according to Buyer's specifications for materials or design, or (viii) any defects in goods or products which arise after the date of any report, certification or summary provided as part of the Services which are certified as of a specific date.

**10. DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THESE TERMS, SELLER AND ITS SUPPLIERS MAKE NO AND HEREBY DISCLAIM ANY OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE,



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NONINFRINGEMENT OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.

**11. Confidential Information.** All technical and/or business information disclosed by a party which is either expressly identified as confidential or by its nature is implicitly confidential will be kept in strict confidence by the receiving party and not used by the receiving party, other than for the purposes of manufacture, sale, purchase or use of the Goods or to perform the party's obligations hereunder.

**12. Intellectual Property Rights.** As between Buyer and Seller, Seller owns and retains all right, title and interest in and to any patents, copyrights, mask works, trade secrets, trademarks and other intellectual property rights in and to the Goods and Services. The sale of Goods or performance of Services does not convey a license, express or implied, to use any Seller trademark or trade name, and Buyer will not use any Seller trademark or trade name in connection with any Goods or Services, other than with respect to resale of Goods pre-marked or packaged by or on behalf of Seller.

**13. Infringement.** Subject to these Terms, Seller will indemnify, defend and hold harmless Buyer from third-party claims that the Goods infringe any validly issued United States patent. Seller will have no obligation for any infringement claim due to: (a) any use of Goods in combination with other products or materials or otherwise than as intended or specified by Seller; or (b) any Goods made to Buyer's specifications or design. If the Goods become, or in Seller's opinion are likely to become, the subject of an infringement claim, Seller may, at its option and in its sole discretion, (i) procure for Buyer the right to continue using such Goods; (ii) replace or modify such Goods so that they become non-infringing; or (iii) accept return of such Goods and refund Buyer the amounts actually paid by Buyer to Seller for such Goods. This indemnity is subject to: (y) Buyer's immediate written notification to Seller of the claim; and (z) Buyer giving Seller sole control of the defense of the claim and all reasonable assistance in connection with the claim. Buyer will not make any admission as to liability or compromise or agree to settlement of any claim without Seller's prior written consent. This section states Buyer's sole remedies for infringement claims.

**14. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING IN THESE TERMS TO THE CONTRARY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (A) IN NO EVENT WILL SELLER OR ITS SUPPLIERS BE LIABLE TO BUYER OR ANY THIRD PARTY FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION OR ANY OTHER LOSS), AS A RESULT OF THE OFFER, SALE OR USE OF GOODS OR SERVICES, UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, NEGLIGENCE, TORT, WARRANTY OR OTHER WRONGFUL ACT OR OMISSION OF SELLER AND EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (B) SELLER'S TOTAL LIABILITY FOR ALL CLAIMS WILL BE LIMITED TO DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL PRICE PAID TO SELLER PURSUANT TO THE ORDER UNDER WHICH LIABILITY AROSE.

**15. Indemnification.** To the fullest extent permitted by applicable law, Buyer will defend, indemnify and hold harmless Seller, its subsidiaries, affiliates, parents, partners, their successors and assigns and each of their respective past and present directors, officers, employees and agents (collectively "Seller Indemnitees") from and against any and all losses, damages, liabilities, demands, claims, actions, judgments, charges, court costs, and legal or other expenses, including, without limitation, reasonable attorneys' fees ("Liabilities"), which Seller Indemnitees may sustain, incur or become liable for in defending or compromising any suit, action, or other proceeding arising out of, related to, or in any way connected with Buyer's purchase, sale, or use of the Goods or Services, including, but not limited to, Buyer's misuse of such Goods or Services, environmental claims resulting from Buyer's use of the Goods or Services, or any other acts or omissions, willful misconduct or negligence, whether active or passive, on the part of Buyer; provided, however, Buyer will have no indemnity obligations under this paragraph for any Liabilities caused solely by the willful misconduct or negligence of a Seller Indemnitee or covered by Seller's infringement indemnification obligations set forth in these Terms.

**16. Privacy Notice:** Seller, acting as controller, collects certain personal data regarding Buyer, its employees and its representatives as required for the purposes described below, including name, title, email address, phone number and mailing address ("Personal Data"). Such Personal Data will need to be provided in order for Seller to be able to manage Seller's supply of Goods to Buyer. Seller may share Personal Data with its affiliates around the world. Seller and its affiliates will collect and use Personal Data in accordance with applicable privacy and data protection laws, solely to communicate with Buyer regarding pending and potential supply activities, for management purposes and other legitimate business purposes concerning Buyer's and Seller's business relationship. Personal Data may be transferred to Seller's global headquarters in the United States and may be shared with Seller's affiliates in the United States and other locations where Seller has offices. Personal Data may also be shared with third party suppliers of Seller and its affiliates (including hosting service providers) who will process the Personal Data on Seller's and its affiliates' behalf, and may be located in the United States or elsewhere. Buyer will inform its employees and representatives of the information set out in this clause. BUYER CONSENTS AND WILL SECURE THE CONSENT OF ITS EMPLOYEES AND REPRESENTATIVES, TO THE TRANSFER TO AND PROCESSING OF ANY PERSONAL DATA TO SELLER AND ITS AFFILIATES WHETHER LOCATED IN THE UNITED STATES OR ANY OTHER COUNTRIES FOR THE PURPOSES DESCRIBED IN THIS PARAGRAPH OR FOR ANY OTHER PURPOSE TO WHICH BUYER CONSENTS. Buyer will indemnify, defend and hold harmless Seller and its affiliates from and against any claim arising out of or in connection with Buyer's failure to comply with this clause or any privacy and data protection laws applicable to Buyer.

**17. Attorney's Fees.** If either party brings any legal action against the other party to enforce these Terms, the prevailing party will be entitled to recover reasonable attorneys' fees and costs from the non-prevailing party.

**18. Force Majeure.** Seller will not be liable for failures or delays caused by events or circumstances beyond its reasonable control.

**19. Assignment.** Buyer will not have the right to assign or transfer Quotations or Orders, in whole or in part, except with Seller's prior written consent. Seller has the right to assign its rights, or to delegate or subcontract its obligations or any portion thereof, to any affiliate or successor to its business or the assets to which these Terms relate. Seller does not owe warranty to any third party.

**20. U.N. Convention.** The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.

**21. Dispute Resolution and Governing Law.**

a. If both parties are Canadian residents, (i) any dispute, controversy or claim arising out of or relating to this Agreement including any question regarding its existence, interpretation, validity, breach or termination shall be referred to and finally resolved by arbitration in accordance with the law of Ontario; (ii) the place of the arbitration shall be Brantford, Ontario; (iii) there shall be 3 arbitrators; (iv) the language of the arbitration shall be English; and (v) if the parties fail to agree on an arbitrator(s), the appointing authority shall be ADR Chambers, Ontario.

b. If either party is a U.S. resident, any claim or controversy arising out of or relating to these Terms, including, but not limited to, its breach,



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existence, validity or enforceability (i) will be settled by binding arbitration by a single arbitrator under the Commercial Rules of Arbitration of the American Arbitration Association and conducted in New York, New York U.S.A.; and (ii) the laws of the State of New York and the United States will govern these Terms, irrespective of its conflicts of laws provisions. The arbitrator's ruling will be final and may be enforced in any court of competent jurisdiction.

c. If both Seller and Buyer are China residents, the parties agree that these Terms will be governed by and construed under the laws of China, without reference to its conflicts of laws provisions.

**22. Notices.** Each party will provide any notice required or permitted under these Terms in writing, sent by reputable overnight or international courier with confirmed delivery to that other party at the party's address on the Invoice. Notices will be effective upon receipt. Any notice provided by Buyer regarding these Terms will be simultaneously copied to the Gates Law Department, Attention: General Counsel, 1551 Wewatta Street, MC 10-A5, Denver, Colorado, 80202, USA.

**23. Legal Compliance.** Buyer represents and warrants that Buyer is in compliance, and at all times will be in compliance, with all "Applicable Laws", meaning all applicable international, national and local laws and regulations, including, without limitation, laws related to labor and employment (including wage and child labor laws), worker safety, data privacy, consumer protection, environmental protection, business operations, licensing, and authorization, zoning, import/export, shipment, non-discrimination and anti-corruption laws, including the United States Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act of 2010.

**24. Language.** These Terms are written in the English language. Should these Terms be translated into any other language for convenience or legal requirements, the English language version will control in the event of any conflict to the fullest extent allowed by applicable law.

**25. Miscellaneous.** Time for payment is of the essence. Buyer acknowledges that it has not been induced to purchase any Goods or Services from Seller by any representation or warranty not expressly set forth herein. These Terms constitute the entire agreement of the parties and supersede all existing agreements and all other oral or written communications between the parties concerning the subject matter contained herein. None of the terms and conditions contained herein may be added to, modified, superseded or otherwise altered except by a written document signed by an authorized representative of Seller. Any waiver or failure to enforce any provision herein on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Section headings contained herein are intended for convenience of reference only and will not affect the interpretation of any provision. If any provision of these Terms is held to be prohibited or unenforceable, the parties will promptly substitute for the invalid provision a valid and enforceable provision which most closely approximates the intent and economic effect of the invalid provision and the remaining provisions will continue in full force and effect. Sections 2, 10-12, 14, and 17-25 will survive termination of these Terms.