

TERMS AND CONDITIONS OF SALE

1. **GENERAL.** The Seller ("Seller") and the Purchaser (Buyer") named on the face hereof agree that the following terms and conditions apply to the materials, goods and/or products (the "Goods") listed on the front of this agreement "Agreement") or subsequently ordered pursuant to this Agreement.
2. **ACCEPTANCE/SOLE TERMS.** This order is expressly conditioned upon Buyer's acceptance to foregoing terms. Buyer is hereby put on notice that no terms additional to or deviating from the foregoing terms shall become part of the order, unless and until letter acceptance of such additional or deviating terms, signed by an officer of Seller has been issued to Buyer. Buyer's acceptance of any goods supplied by or on behalf of, Seller shall, without limitation constitute acceptance of Seller's foregoing terms. If Buyer retains possession of the Goods for a period of ten (10) days or longer after the receipt of their shipment or makes use of the Goods at any time after their receipt, Buyer shall be deemed to have expressly assented to Seller's foregoing terms without condition or qualification, and in so doing, Buyer shall have confirmed its express intention to waive any conditions or Qualifications on Buyer's acceptance of Seller's offer.
3. **PRICE.** All prices are F.O.B. Seller's plant unless otherwise specifically set forth on the face side hereof. Prices stated are subject to change without notice in the event of (i) alterations in specifications, quantities, designs, or delivery schedules: (ii) increases in the cost of fuel, power, material supplied, or labour, and/or (iii) foreign or domestic legislation enacted by any level of government, including tax legislation which increases the cost of producing, warehousing or selling the Goods purchased hereunder. No discount will be allowed unless specifically set forth on the face side hereof. Buyer agrees to pay a delinquency charge of 1-1/2% per month or if such rate shall exceed the maximum rate allowed by applicable law, then a delinquency charge calculated at such maximum rate on the outstanding balance not paid when due, from the date such balances were due until payment with respect thereof is made in full. If in Seller's opinion, the financial condition of the Buyer at any time does not justify continuance of production or shipment on the terms of payment specified. Seller may require full or partial payment in advance. Terms or payment are those appearing on the reverse side of the invoice. All prices and payment are in Canadian dollars unless otherwise specified on the invoice.
4. **WARRANTY/REMEDY.** Seller warrants that the materials, Goods manufactured by it will be free from defects in material and workmanship for ninety days (90) following the date of shipment. THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS EXPRESSED OR IMPLIED. ALL OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE NOT EXPRESSLY HEREIN, ARE HEREBY EXCLUDED. NO AFFIRMATION OR SELLER, BY WORDS OR ACTION, OTHER THAN AS SET FORTH IN THIS WARRANT CLAUSE SHALL CONSTITUTE A WARRANTY. GOODS WHICH MAY BE SOLD BY SELLER BUT WHICH ARE NOT MANUFACTURED BY SELLER ARE NOT WARRANTED BY SELLER, BUT ARE SOLD ONLY WITH THE WARRANTIES. IF ANY, OF THE MANUFACTURERS THEREOF. Seller's warranty does not apply to any Goods which have been subjected to misuse, mishandling, misapplication, neglect, accident, improper installation or modification (including but not limited to use of unauthorized parts or attachments).

- a. If any of the goods are found by Seller to be defective, such Goods will, at Seller's option, be replaced or repaired at Seller's cost or Seller will refund the purchase price or give Buyer a reasonable allowance thereof. The parties hereto expressly agree to Buyer's sole and exclusive remedy against the Seller shall be for the repair or replacement of the defective Goods or the refund of the purchase price or allowances thereof. Buyer hereby agrees that this exclusive remedy shall not be deemed to have failed of its essential purpose so long as the Seller is willing and able to repair or replace defective Goods in the prescribed manner or refund the purchase price or give Buyer an allowance thereof.
 - b. Any warranty claim by Buyer with reference to the Goods sold hereunder shall be deemed waived by the Buyer unless submitted in writing to Seller with the earlier of (i) 30 days following the date Buyer discovered, or by reasonable inspection should have discovered, any claimed breach of the foregoing warranty, or (ii) 90 days following the date of shipment. Any cause of action for breach of the foregoing warranty shall be brought within one year from the date of alleged breach was discovered or should have been discovered, whichever occurs first.
 - c. Seller's remedies relating hereto shall be cumulative and in addition to any other remedies provided herein or by law or in equity.
5. **LIMITATION OF LIABILITY.** SELLER'S LIABILITY (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, OR STRICT LIABILITY) FOR ITS GOODS SHALL BE LIMITED TO REPAIRING OR REPLACING (AT SELLER'S OPTION) GOODS FOUND BY SELLER TO BE NON-CONFORMING, OR AT SELLER'S OPTION, TO REFUNDING THE PURCHASE PRICE OF THE NON-CONFORMING GOODS. At Seller's request, Buyer will send, at Buyer's sole expense, any allegedly defective Goods to Seller's plant.
6. **DISCLAIMER OF CONSEQUENTIAL AND INCIDENTAL DAMAGES** IN NO EVENT SHOULD SELLER BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT INCLUDING WITHOUT LIMITATION BREACH OF ANY OBLIGATION IMPOSED ON SELLER HEREUNDER OR IN CONNECTION HEREWITH. THE REMEDY UNDER THE WARRANTY PROVISION IS LIMITED TO REPAIR OR REPLACEMENT. Consequential damages for purposes hereof shall include, without limitation, loss of use, income or profit or losses sustained as the result of injury (including death) to any person or loss of or damage to property (including without limitation, property handled or processed by the use of the goods). Buyer shall indemnify Seller against all liability, cost or expense which may be sustained by Seller on account of any such loss, damage or injury.
7. **ACCEPTANCE OF GOODS, DELIVERY AND TRANSPORTATION.** Upon Buyer's receipt of shipment, Buyer shall immediately inspect the Goods. Unless Buyer provides Seller with written notice of any claim or shortages of or defects in the Goods eight (48) hours after receipt of shipment, such Goods shall be deemed finally inspected, checked and accepted by Buyer. In the absence of shipping and packing instructions, Seller shall use its own discretion in choice of carrier and method of packing. Seller shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance so requested shall be at Buyer's expense and valuation. Seller expressly reserves the right to over ship or under ship Goods by up to twenty (20%) percent.
8. **TITLE AND RISK OF LOSS.** Title to any Goods sold and risk of loss of such Goods passes to Buyer upon delivery by Seller to carrier, and any claims for losses or damage shall be made by Buyer directly to carrier.

9. **CREDIT TERMS.** All orders and shipments shall at all times be subject to the approval of the Seller's Credit Department. The Seller reserves the right to decline to make shipment whenever, for any reason, there is doubt as to Buyer's financial responsibility and Seller shall not in such event be liable for breach or nonperformance of this contract in whole or in part.
10. **SECURITY INTEREST.** To secure prompt payment of the purchase price for the goods identified on the face hereof Buyer hereby grants to Seller a purchase money security interest in the goods purchased from Seller and all proceeds thereof (the "Collateral"). Buyer agrees to execute and deliver to Seller such security documentation as the Seller requires and shall take such other action, as may be required to perfect Seller's security interest in the Collateral.
11. **COSTS OF COLLECTION.** If, at any time or times, Seller incurs legal expenses or other costs of expenses in connection with: (i) any litigation, contest, suit, dispute, proceeding or action in any way relating to the Collateral; (ii) any attempt by Seller to enforce any rights of Seller against Buyer or any other person which may be obligated to seller hereunder, or (iii) any attempt to inspect, verify, protect, preserve, restore, collect, sell, liquidate or dispose of the Collateral; then, in any such event, the expenses and costs (including attorney's fees) relating to any of the foregoing events or actions shall be payable by Buyer on demand to Seller and shall be considered additional obligations hereunder secured by the Collateral. Seller reserves the right to revoke any credit extended to Buyer at any time, because of Buyer's failure to pay for any goods when due or for any reason deemed good and sufficient by Seller.
12. **TAXES.** Any sales, surtaxes or similar taxes, export charges, withholdings, assessments, fees or other levies, taxes or surcharges now or hereafter imposed in connection with the production, sale, delivery, use or proceeds of the goods herein specified (except for taxes on seller's net income) shall be payable by Buyer, and if such taxes or fees are paid or are required to be paid by Seller, the amount thereof shall be added to and become part of the price payable by Buyer hereunder, unless Buyer provides Seller with a valid tax exemption certificate.
13. **PACKAGING.** Prices stated are based on Seller's standard packaging. Seller reserves the right of packaging the Goods in pallets, bulk or individual cartons. Packaging will be standard commercial package and acceptable to commercial carrier. Special customer packaging will be furnished only when specified and so stated herein, and the cost thereof shall be borne by Buyer.
14. **DELAYS.** Unless expressly specified to the contrary, Goods in stock will be shipped immediately, and Goods not in stock will be shipped as soon as possible. However, all shipping dates are approximate, and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. Seller will not be liable for any damage, loss, fault, or expenses arising out of delays in shipment or other nonperformance of this Agreement caused by or imposed by: (a) strikes, fires, disasters, riots, acts of God, (b) acts of Buyer, (c) shortages of labour, fuel, power, materials, supplies, transportation, or manufacturing facilities, (d) governmental action, (e) subcontractor or supplier delay including, but not limited to failure by subcontractor or supplier to make timely delivery, or (f) any other cause of condition beyond Seller's reasonable control. In the event of any such delay or nonperformance, Seller may, at its option, and without liability, cancel all or any portion of this Agreement and/or extend any date upon which any performance hereunder is due.

15. **TERMINATION, CANCELLATION AND CHANGES.** Orders cannot be terminated, cancelled or modified, or shipment deferred after acceptance of Buyer's order by Seller, except with Seller's written consent and subject to reasonable charges for expenses incurred and work executed by Seller or its suppliers. Purchase shall be obligated to accept any portion of the goods shipped or delivered by Seller pending Seller's written approval of cancellation. Orders for custom made material may not be cancelled after Seller has been in production unless Seller agrees in writing.
16. **RETURNED PRODUCTS.** Delivered Goods returned to Seller require prior written approval from seller before such goods will be accepted. Handling, inspection, restocking and invoicing charges will be assessed, if applicable, plus any outgoing packing and freight expenditures paid by Seller. All returns allowed must be shipped to Seller prepaid and must be in excellent resale condition. Goods processed to Purchaser's specifications are not returnable.
17. **NO WAIVER.** Forbearance or failure of Seller to enforce any of the terms and conditions stated herein, or to exercise any right accruing from default of Buyer, shall not affect or impair Seller's rights arising from such defaults; nor shall forbearance or failure be deemed a waiver of Seller's rights in case of any subsequent default of Buyer.
18. **SEVERABILITY.** If any provision of this Agreement is unenforceable or invalid, this Agreement shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.
19. **ASSIGNMENT.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of buyer and Seller provided, however, that buyer may not assign or transfer this contract, in whole or in part, except upon the prior written consent of Seller.
20. **GOVERNING LAW.** This Agreement shall be interpreted and enforced in accordance with the local, domestic laws of the Province of Ontario and of the federal laws of Canada applicable therein exclusive of the choice of law rules thereof.
21. **ALTERNATIVE DISPUTE RESOLUTION**
 - a. Any dispute or claim arising from or relating to this Agreement or performance under it shall be resolved amicably through discussions between Buyer and Seller attempting in good faith to negotiate a resolution thereof; provided, however, that either buyer or Seller may seek injunctive relief from a court of proper jurisdiction where appropriate, in order to maintain the status quo while this procedure is being followed.
 - b. Any and all differences, disputes, claims or controversies arising out of or in any way connected with this Agreement, whether arising before or after the expiration or termination of this Agreement, and including without limitation, its negotiation, execution, delivery, enforceability, performance, breach, discharge, interpretation and construction, existence, validity and any damages resulting therefrom or the rights, privileges, duties and obligations of the parties under or in relation to this Agreement (including any dispute as to whether an issue is arbitrable) shall be referred to arbitration under the Ontario *Arbitration Act, 1991*, S.O. 1991, c.17, as amended, or any successor legislation in effect at the time of the arbitration.
 - c. The right to seek to arbitrate any matter hereunder or to seek any remedy which may have been available pursuant to an arbitration hereunder shall be brought within 2 years from the date at which the facts giving rise to the subject matter proposed to be arbitrated were known or ought to have been known with reasonable diligence by the party seeking to invoke the arbitration or seeking the remedy.
 - d. A party desiring arbitration hereunder shall give written notice of arbitration to the other party containing a concise description of the matter submitted for arbitration ("Notice of Arbitration"). Within 10 days after a party gives a Notice of Arbitration, the parties shall jointly appoint a

- single arbitrator (the "Arbitrator"). If the parties fail to appoint an Arbitrator within such time, an Arbitrator shall be designated by a judge of the Ontario Court Superior Court of Justice upon application by either party.
- e. The Arbitrator may determine: all questions of law, fact and jurisdiction with respect to the dispute or the arbitration (including questions as to whether a dispute is arbitrable) and all matters of procedure relating to the arbitration. The Arbitrator may grant legal and equitable relief (including injunctive relief), award costs (including legal fees and the costs of the arbitration), and award interest and, without limiting the generality of the foregoing or the Arbitrator's jurisdiction at law, may:
- (i) determine any question of good faith, dishonesty or fraud arising in the dispute;
 - (ii) order any party to furnish further details of that party's case, in fact or in law;
 - (iii) proceed in the arbitration notwithstanding the failure or refusal of any party to comply with this Section or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that the Arbitrator intends to do so;
 - (iv) receive and take into account written or oral evidence tendered by the parties that the Arbitrator determines is relevant, whether or not strictly admissible in law;
 - (v) make one or more interlocutory determinations and/or interim awards;
 - (vi) hold meetings and hearings, and make a decision (including a final decision) in Ontario (or elsewhere with the concurrence of the parties to the arbitration);
 - (vii) order the parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any documents or classes of documents in their possession or power that the Arbitrator determines to be relevant;
 - (viii) order the preservation, storage, sale or other disposal of any property or thing under the control of any of the parties; and
 - (ix) make interim orders to secure all or part of any amount in dispute in the arbitration.
- f. The arbitration shall take place in the Municipality of Metropolitan Toronto at such place therein and time as the Arbitrator may fix. The arbitration shall be conducted in English. Within 20 days of the appointment of the Arbitrator, the parties shall either agree on the procedure to be followed for the arbitration or the Arbitrator shall determine the appropriate procedure, in accordance with the principles of natural justice, to be followed. It is agreed that the arbitration and all matters arising directly or indirectly (including all documents exchanged, the evidence and the award) shall be kept strictly confidential by the parties and shall not be disclosed to any third party except as may be compelled by law.
- g. No later than 20 business days after hearing the representations and evidence of the parties, the Arbitrator shall make his or her determination in writing and deliver one copy to each of the parties. The decision of the Arbitrator shall be final and binding upon the parties in respect of all matters relating to the arbitration, the conduct of the parties during the proceedings, and the final determination of the issues in the arbitration.
- h. There shall be no appeal from the determination of the Arbitrator to any court. Judgment upon any award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.
- i. The costs of any arbitration hereunder shall be borne by the parties in the manner specified by the Arbitrator in his or her determination.
- j. Submission to arbitration under this Section is intended by the parties to preclude any action in matters, which may be arbitrated hereunder, save and except for enforcement of any arbitral award hereunder.

22. ENTIRE CONTRACT. Upon Seller's acceptance of buyer's order, the terms and provision set forth herein shall constitute the entire Agreement between Buyer and Seller and no statement, correspondence, sample or other terms shall modify of effect terms hereof. If any term of this

Agreement conflicts with any statement, correspondence, sample or other terms (other than a signed side letter pursuant to section 2 of the Agreement), purchase order or invoice, this Agreement shall supersede.

- 23. CHOICE OF LANGUAGE.** The parties confirm that it is their express wish that this Agreement, as well as any other documents relating to this Agreement, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. Les parties aux présents confirment leur volonté expresse que cette convention, de même que tous les documents s'y rattachant, y compris tous avis, annexes et autorisations s'y rattachant, soient rédigés en langue anglaise seulement.