



## TERMS AND CONDITIONS OF SALE

1. **Acceptance.** The materials, products, goods or services covered by this document shall be referred to herein as the "Goods". No terms or conditions other than those set forth in this document and any documents attached to or incorporated by reference in this document shall be binding upon Seller unless accepted in writing by a duly authorized representative of Seller. Only specifications, drawings, notes, instructions, engineering notices or technical data expressly referred to in this document are incorporated hereby by reference. Acceptance of any of the Goods delivered pursuant to this document shall be conclusively deemed to be acceptance of this document and its terms and conditions, and any additional or different terms included in Buyer's purchase order, acceptance or acknowledgement shall be null and void and without any effect whatsoever.

2. **Enforceability.** This document is not an offer to sell. A purchase order from Buyer will only result in a "Contract" when it is accepted and acknowledged by a duly authorized representative of Seller at Seller's office and such Contract shall include all of the terms and conditions set out in this document and those on the face of this document. Quotations are valid for thirty (30) days from the date thereof and thereafter are subject to withdrawal or change without notice from Seller.

3. **Billing, Shipment and Payment.** Unless otherwise stated on the face of this document, prices shall be Seller's standard prices and transport and other charges prevailing on the date of shipment. All charges for packing, hauling, storage and transportation to the point of delivery are excluded unless otherwise agreed to in writing in advance by a duly authorized representative of Seller. All risk of loss shall pass to Buyer upon delivery to common carrier or Buyer's agent. Claims for loss or damages must be filed with the transportation company. Any applicable cash discount period shall be computed from the date of shipment of the Goods or issuance of an invoice, whichever occurs first. A discount shall be taken only on the purchase price for the Goods, and freight, taxes and other charges are not subject to discount. Sales, use, value added, goods and services, occupancy or excise taxes of any nature, for which Seller may become liable, whether initially or through failure of payment by Buyer, are in addition to prices listed. Unless otherwise agreed, all accounts are payable in the legal tender of the nation in which Seller is domiciled, free of exchange, collection and any other charges. Seller's performance hereunder is subject to reasonable delay resulting from fire, labor dispute, war, civil commotion, embargo, flood, delay in transportation, shortage of labor, fuel or other materials, failure of carriers or contractors, acts of God, acts or orders of government or persons purporting to act under governmental authority, or other causes beyond the control of Seller, notwithstanding that such cause may be apparent or foreseeable at the time a Contract for the sale of Goods is formed pursuant to Section 2 above. Under such circumstances, the time for performance shall be extended as may be necessary to enable Seller using reasonable commercial efforts to overcome such conditions. However, for greater certainty, Seller shall not be obligated to expend additional funds in performance hereunder in order to overcome such conditions.

4. **Delivery.** Buyer bears all risk of loss in transit. Delivery is deemed complete when the Goods are delivered to a common carrier or Buyer's agent, notwithstanding any arrangements to pay freight, express, post or other transportation charges.

5. **Changes in Specifications or Schedules.** If Buyer makes any changes in its purchase order or the specifications or schedules applicable to the Goods and such changes are accepted and acknowledged by a duly authorized representative of Seller at Seller's office, if such changes affect the cost or time required for performance, Seller shall be entitled to receive, in addition to the agreed purchase price, all such additional costs incurred by Seller for performance and Seller shall have such additional time as is reasonably required for performance.

6. **Warranties of Seller.** Seller warrants that the Goods will conform to drawings, specifications, representations or other particulars provided by, or on behalf of, the Buyer, subject to deviations within the Seller's standard operating procedures, or to practical testing or inspection standards. All Goods shall be delivered in accordance with Seller's standard practices as the same may be amended from time to time by Seller without notice to Buyer, and subject to normal tolerances, variances and limitations in respect of dimension, weight, straightness, surface condition, composition, mechanical properties, internal conditions and quality, to deviations from such tolerances, variations and limitations consistent with practical testing, manufacturing and inspection methods, and to the manufacturer's mill practice of over and under shipment.

**SELLER MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED (CONVENTIONAL OR LEGAL, INCLUDING UNDER THE CIVIL CODE OF QUEBEC) AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHICH EXCEED THE FOREGOING OBLIGATIONS ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED FROM THE CONTRACT.**

If manufacturing defects occur, as the exclusive remedy therefor, the Goods will either be repaired or replaced without charge at the option of Seller, provided such defects are brought to Seller's attention within ninety (90) days following delivery to a common carrier or Buyer's agent. Seller's liability in all events is limited to the sale price of the defective Goods. In no event shall Seller be liable for incidental or consequential damages, or, for greater certainty for lost profits or for expenses occasioned by use of defective Goods. Seller's liability as set forth above shall not be extended because of advice given by Seller in connection with the design, installation or use of any Goods. Buyer assumes full responsibility for design and specifications of the Goods and their suitability for the use to which they are to be applied, and Seller makes no warranties or representations whatsoever with respect thereto. Buyer agrees to indemnify Seller against claims by Buyer, its customers or others based on defects in design or specifications, and against recoveries beyond the limitations herein, and Buyer shall include in any contract for resale provisions with respect to limited recoveries against Seller in accordance with this document.

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7. **Designs, Patterns and Special Tooling.** Title to and the right of immediate possession of drawings, software, designs, patterns, tools, jigs, dyes, equipment or other material produced by Seller for the purpose of producing the Goods shall remain in Seller. Copyrights, trademarks, patents, trade secrets and other intellectual property resulting from production of the Goods, including illustrations, drawings, calculations and other related documents prepared by Seller in connection with production of the Goods, shall be and remain the property of Seller.

8. **Patents.** Seller shall not be liable in any manner whatsoever for infringement or alleged infringement of any patent or patents covering the Goods subject to this document. Buyer, by placing its order for such Goods, exclusively covenants and agrees to assume full responsibility and liability for any and all suits which may be brought against Seller or its agents on account of such infringement or alleged infringement and Buyer agrees to indemnify Seller against all such suits.

9. **Buyer's Ability to Perform.** Buyer represents that it is solvent and can and will pay for the Goods in accordance with the terms hereof. Seller retains the right to require full payment in advance if in Seller's opinion the financial position of Buyer so requires. If a receiver or trustee for the benefit of creditors or a trustee in bankruptcy shall be appointed or threatened for Buyer, or if Buyer makes an assignment for the benefit of its creditors, then in any such event, Seller shall have the right to cancel any unfilled portion of the Contract without further liability to Buyer. Failure by Buyer to make payment within the time required by applicable payment terms shall entitle Seller to suspend work until payment is made or, at Seller's election, after fifteen (15) days' notice in writing, should such default continue, to terminate the Contract and recover the price of all work done and materials provided and all damages sustained, including but not limited to, lost profits and attorney fees incurred in connection with such default. Failure to make payments at the times provided shall be a bar to any claim by Buyer for delay in completion of the work or for breach of warranty. Amounts past due shall bear interest at the maximum lawful rate.

10. **Inspection.** Seller shall not be required to maintain or provide an inspection system unless specified or required by this document.

11. **Exclusion of Prior Dealing.** The terms and conditions set out in this document and those on the face of this document are intended by the parties to be a final expression of their agreement and are a complete and exclusive statement of the terms thereof. It is the intent of the parties to negate the effect of any prior course of dealing in the construction and interpretation of the Contract, and no such prior course of dealing shall be considered or read into this document for any purpose whatsoever.

12. **Controlling Law.** In the event both Buyer and Seller are domiciled or doing business in the United States of America, the Contract resulting from acceptance or performance by Seller hereunder shall be governed by and construed and enforced in accordance with the provisions of the Uniform Commercial Code (1972 Edition, as adopted by the United States National Conference of Commissioners on Uniform State Laws and the American Law Institute), as in effect on the date of contract formation. In the event both Buyer and Seller are domiciled or doing business within Canada, the Contract resulting from acceptance or performance by Seller hereunder shall be governed by and construed and enforced in accordance with the laws in effect in Seller's home province and the parties to the Contract hereby expressly disclaim implied warranties and other provisions that may be provided for by statute in such province, including but not limited to any legislation pertaining to the sale of goods. Where Buyer and Seller are each domiciled in a different nation, the Contract resulting from acceptance or performance by Seller hereunder, (a) where Seller is domiciled or doing business within Canada, shall be governed by and construed and enforced in accordance with the laws in effect in Seller's home province and the parties to the Contract hereby expressly disclaim implied warranties and other provisions that may be provided for by statute in such province, including but not limited to any legislation pertaining to the sale of goods, and (b) where Seller is domiciled or doing business in the United States of America, shall be governed by and construed and enforced in accordance with the Uniform Commercial Code of the United States of America (1972 Edition, as adopted by the United States National Conference of Commissioners on Uniform State Laws and the American Law Institute), as in effect on the date of contract formation, and in either instance, the United Nations Convention on Contracts for the International Sale of Goods is expressly rejected as applicable law and, thus, shall not control or govern this document or the resulting Contract in any way. This document, the resulting Contract and all documents, which relate thereto are drawn in the English language at the express wish of the parties hereto. Ce document, le contrat et tous documents qui s'y rattachent ont été rédigés en anglais à la volonté expresse des parties. We hereby acknowledge that we have consented and requested that all documents evidencing or relating in any way to our purchase be drawn up in the English language only. Nous reconnaissons par les présentes avoir demandé et consenti à ce que tous les documents faisant foi ou se rapportant de quelque manière à notre achat soient rédigés en anglais seulement.

13. **General.** As used herein, terms appearing in the singular shall include the plural and terms appearing in the plural shall include the singular. No assignment of the Contract resulting from acceptance or performance by Seller hereunder or any interest therein shall be made by Buyer without obtaining the prior written consent of Seller. Any attempted or purported assignment of such Contract without such prior written consent of Seller shall be null and void. The obligations, rights, terms and conditions of this document and the Contract resulting from acceptance or performance by Seller hereunder shall be binding on the parties hereto and their respective successors and assigns. The waiver of any provision hereof or any provision of the Contract resulting from acceptance or performance by Seller hereunder or of any breach or default hereunder or thereunder shall not be deemed a waiver of any other provision hereof or thereof or breach or default hereunder or thereunder. No provision of this document or the Contract resulting from acceptance or performance by Seller hereunder shall be deemed waived by a course of conduct unless such waiver is in writing signed by both parties and stating specifically that it was intended to modify this document or such Contract, as the case may be.