

## 1. Applicability of terms and conditions

These Terms and Conditions of Sale ("Sale Terms") apply to all our proposals and quotations ("Offers"), to all orders submitted by Customer, orally or in a purchase order or other document ("Orders"), except as otherwise specifically provided in a document we issue. We may accept and fill an Order whether or not it contains terms or conditions modifying or inconsistent with these Sale Terms, but any resulting contract and our liabilities or obligations shall be determined solely by the Sale Terms, and any inconsistent terms or conditions in an Order shall not be effective. Amendments to the Sale Terms must be in writing and signed by an authorized representative of the Seller. Sales representatives are not authorized to bind us to any representations and warranties concerning the Goods that are different from or in addition to those in the Sale Terms or to modify the Sale Terms.

## 2. Offer and Conclusion of Contract

Offers are subject to change prior to acceptance. Acceptance of Offers by Customer and of Orders by us require our written confirmation ("Seller's Confirmation").

## 3. Prices

Any Prices contained in our published price lists are subject to change without notice. Prices in written Offers are firm only for (i) any period stated in the Offer or (ii) for 30 days from the date of the Offer, after which they are subject to change without notice. Prices are quoted ex works and do not include taxes. Customer must pay all sales or other taxes and government fees applicable to the Goods or the installation and inspection of the Goods. Packaging is invoiced at cost and will not be taken back.

## 4. Tooling

Tooling manufactured by or for us remains our property even if all or part of the cost is charged to Customer.

## 5. Delivery

**5.1** The delivery date or periods for Goods shall be determined by Seller's Confirmation. We reserve the right to ship the Goods or render the services in installments.

**5.2** The Goods shall be delivered F.O.B. our dock. Risk of loss passes to Customer upon tender of the Goods to a carrier. If shipment is delayed at the request or due to the fault of Customer, we may hold the Goods at our facility at Customer's expense, and risk passes to Customer on the date that we declare the Goods ready for shipment. All costs associated with such delays shall be added to the invoice price of the Goods.

**5.3** For custom manufactured Goods and for packings, AK goods and It jointings, we may exceed or fall short of the ordered and confirmed quantity by up to 10%.

**5.4** Delivery periods shall be calculated from the latest of the date of (i) dispatch of the Seller's Confirmation, (ii) our receipt of the documentation, permits, releases which must be obtained by Customer, and (iii) our receipt of any agreed payment on account from the Goods. We will have complied with our delivery obligations if the Goods have been tendered to the carrier or declared ready for shipment by the end of the applicable delivery period.

**5.5** We shall not be liable for delay or failure to deliver or perform under the Sale Terms caused (i) by the acts or omissions of Customer; (ii) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling or order; shortages of raw materials or labor; the lack of usual means of transportation, fires, floods, explosions, strikes or other work actions, or any other accidents, contingencies, or events, at our or our suppliers' plants or elsewhere which directly or indirectly interfere with, or render substantially more burdensome, our production, delivery, or performance "Force Majeure", and at our option, the delivery period may be extended or we may rescind the applicable Order. Customer may rescind the Order by written notice if any delay caused by Force Majeure exceeds 30 days.

## 6. Warranties

**6.1** There are no express warranties other than those contained in the Sale Terms. We warrant only that at the time of delivery (i) the Goods shall be free from all defects in materials and workmanship and (ii) shall conform to our specifications in all material respects, subject to the limitations stated herein. Our warranties shall apply only for the period of 12 months from the delivery date and only if the Goods: (i) have been installed, maintained and used in conformity with any instructions we furnish from time to time and otherwise in conformity with the high industry practices; (ii) have been used only for the purpose for which the Goods were designed; (iii) have not been subjected to misuse, negligence or accident; (iv) have not been altered or repaired by persons other than us in any respect which in our judgment adversely affects the condition or operation of the Goods; and (v) have been fully paid for. The warranty does not cover problems due to normal wear and tear, normal maintenance and unknown causes. We disclaim all implied warranties including those of non-infringement, fitness for a particular purpose, and merchantability, whether arising by law, custom, usage, trade practice, course of dealing, or otherwise. Any claims for defective Goods must

be asserted in writing (i) within 2 weeks from the date of receipt if such defect can be detected upon initial inspection and (ii) immediately on discovery if such defect cannot be detected upon initial inspection, and (iii) are subject to our confirmation of the alleged defect. Our liability for defects is limited as follows:

**6.1.1** Defective parts will, at our discretion, be repaired or replaced free of charge. Replaced parts will become our property.

**6.1.2** Customer must provide us with sufficient time and opportunity for performing all repairs or for supplying all re-placements which we consider to be necessary. In urgent cases, i.e. threat to operating safety or to avert unreasonably high damage, Customer must notify us immediately and upon written approval, may have the defects remedied by third parties and request reasonable reimbursement of the resultant costs.

**6.1.3** If the Goods are found to exhibit only a minor defect, Customer shall be entitled to a corresponding reduction in the contract price rather than repair or replacement.

**6.2.** The Seller shall not be held liable if it is deemed that the defects in the Goods result from erroneous or incomplete information, including specifications and design materials, received from Customer or from the breach of these Sale Terms by Customer, particularly with respect to instructions for installing, operating and maintaining the Goods.

**6.3** If the defect in the Goods arise from parts supplied by third party suppliers, our liability shall be restricted to the assignment to Customer of the claims held by us against our suppliers and we will provide Customer with all information reasonably needed to enforce such claims immediately on our receipt of Customer's notice of defects. Only if both Customer and Seller vigorously pursues such claim but is unsuccessful in asserting a claim for defective parts against the supplier, shall we be liable in accordance with Section 6.1.

**6.4** We shall not be liable for damage arising directly or indirectly from the following: (i) inappropriate or improper installation operation or handling on the part of Customer or a third party, or (ii) use of inappropriate operating material or substitute materials, defective construction work, unsuitable building, ground, chemical, electrochemical or electrical inputs.

**6.5** If defective Goods are processed or otherwise used or combined with third party goods, Customer shall be responsible for proving that the Goods were defective at the time of delivery.

**6.6** UNDER NO CIRCUMSTANCES SHALL WE BE LIABLE FOR EXEMPLARY, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO: LOSS OF PROFITS OR REVENUES; INCREASED COSTS; DAMAGE TO EQUIPMENT, TOOLING, PREMISES, OR

WORK-IN-PROCESS; COST OF CAPITAL; COST OF PURCHASED POWER; SUBSTITUTE OR ADDITIONAL EQUIPMENT, FACILITIES OR SERVICES, PRODUCTION INTERRUPTION OR START-UP; OR THE CLAIMS OF THIRD PARTIES FOR SUCH DAMAGES

## 7. Payment

**7.1** Our invoices are within 30 days of the date of the invoice. Any invoiced amount which is not paid when due shall bear interest at the prime rate then charged by our bankers, plus 8%, from the due date until paid in full.

**7.2** If Customer does not pay any invoiced amount in whole or in part when due and fails to cure such default within 10 days of written notice from us, we may rescind all other Orders for Goods which we have accepted prior to the date of such default.

**7.3** If after any Order has been accepted, we learn of any circumstances which may impair the creditworthiness of Customer, we may, at our option, make deliveries arising from outstanding Orders with Customer contingent upon advance payment or the provision of appropriate security within a specified time period, and if Customer fails to comply, we may rescind all outstanding Orders with Customer and all amounts owed to us by Customer shall be accelerated and payable immediately.

**7.4** Customer may not withhold or offset any payments on account of any counterclaims unless we agree in writing.

## 8. Title

**8.1** Title to Goods shall remain with us until we have received payment in full of all amounts due from Customer in respect of all deliveries and services. Payment by bill of exchange or cheque shall be deemed to occur on the date of cashing of the same.

**8.2** Before title to the Goods passes to Customer: (a) they may be processed or transformed as part of Customer's normal business operations but title to the processed or transformed Goods shall remain with us in accordance with Section 8.1. If our title to the Goods terminates because they are connected or mixed with other things, Customer shall assign to us a co-ownership interest in the product resulting from such connection or mixture which shall correspond to the proportion the invoice value of the Goods is of the total value of the resulting product; (b) Customer may not pledge the Goods nor assign them by way of security; (c) In the case of attachment by a third party of the reserved goods; Customer shall give notice to the third party of our title to the Goods and inform us without delay; (d) If the Customer is in breach of the Sale Terms, in addition to any other remedy available to us, we may seize the Goods upon written notice and Customer shall cooperate in their return; (e) Customer may sell or dispose of the Goods as part of normal business provided (A) it reserves title to such Goods vis-a-vis its customers on

the same conditions that we have reserved title in respect of delivery to Customer; (B) any claims for payment shall be assigned to us in advance up to the amount of our total claim; (C) any claims which Customer is entitled to as a result of insurance coverage for the Goods shall be assigned to us; (D) with respect to altered or commingled Goods, the assignment of claims arising from resale or insurance shall only be for the invoice value of the Goods; (E) Customer is authorized to collect in his own name those amounts which are assigned to us but such authorization may be revoked if Customer fails to punctually meet all his obligations under these Sale Terms or any other contract or agreement with us, or if bankruptcy proceedings in respect of its assets are filed for or initiated, or if it becomes insolvent, or our interest in the security provided is otherwise put at risk.

**8.3** If the value of any existing security provided exceeds the total value of our claims against Customer by more than 10%, at the request of Customer, we shall release such value of the security as we deem reasonable.

## 9. Cancellation

If Customer rescinds an Order without cause or refuses to fulfill it, we may claim damages equal to 100 % of the invoice amount less the expenses we have saved.

## 10. Confidentiality

All proposals, plans and other information, and all technology including drawings, schematics, specifications, bills of material, test results, analysis, recommendations, models, and designs, ("Information") we furnish or make available in bidding, negotiating and performing the Sale Terms is confidential and our property, whether or not marked "Confidential", and shall not be shown or disclosed to any third party or used by Customer without written consent. Customer shall not disclose, directly or indirectly any Information to any third party other than those employees and contractors of Customer having a need-to-know who are bound by contract by the same confidentiality provisions as Customer. No license or other right to Information is granted to Customer. Any design, invention or other Information developed by us in the performance of the Sale Terms or Order shall remain our property. Any intellectual property rights, including patentable features we develop, shall be our property. Should we be provided drawings or plans by the Customer in relation to the Contract, the Customer warrants that no intellectual property rights, including third-party intellectual property rights, are infringed in connection with the Contract and the Customer indemnifies us against any and all claims which may be brought against us in respect of any alleged breach intellectual property rights.

## 11. Choice of Law and Jurisdiction

The Sale Terms shall be governed, construed and enforced under the laws of the Province of Ontario and the laws of Canada applicable therein. The U.N. Convention On The International Sales Of Goods shall not apply. The courts of the Province of Ontario shall have

exclusive jurisdiction over the parties and the claims arising under or related to the Sale Terms.

## 12. Severability

Any provision found to be unenforceable by a final order of a court or tribunal shall be severed from these Sale Terms. Such severance shall be as narrow as possible and shall not affect the remainder of these Sale Terms unless the court or tribunal shall also find, on our request, that without such provision, the Sale Terms is not likely to meet the reasonable commercial expectations of the parties and in such case, the court or tribunal shall enter such judgment as necessary to reach an equitable result.

## 13. Assignment

No right or interest in the Sale Terms may be assigned by Customer without our prior written consent.

## 14. Installation or Commissioning of Equipment

**14.1** Where any works, activities or tests related to the installation or commissioning of our Goods is to be carried out by us or our agents, the Customer shall ensure that any premises where the Goods are to be installed and/or commissioned are suitable and shall provide or procure the provision of:

- 1) proper and safe storage and protection of all equipment, tools, plant and materials at such premises.
- 2) free and safe access to the premises and to the point at which the Goods are to be installed and/or commissioned.
- 3) all facilities and services necessary to enable such installation and/or commissioning to be carried out safely and expeditiously.
- 4) all necessary planning and other consents (if any) required in connection with the foregoing purposes.

**14.2.** The Customer shall take all necessary steps to ensure the safety of all of our employees and agents concerned with the installation and/or commissioning of the Goods and the Customer will indemnify and keep us indemnified from and against any claim by any such employee or agent for any injury, damage or loss suffered while engaged in such

## 15. Safety Instructions

The Customer undertakes to comply and to ensure compliance by its servants or agents with any safety precautions or instructions for safe handling given by us and to take such other steps as are necessary to preserve the health and safety of persons handling the Equipment.