

# TERMS AND CONDITIONS OF SALE CANADA

**1. Terms.** The terms and conditions of this Purchase Order, including those on the face hereof and those set forth below and in the Supplemental Terms and Conditions attached hereto, if any, represent the entire agreement between Seller and Buyer. Acceptance is limited to the terms and conditions of this Purchase Order, and no purported revisions of, additions to, or deletions from this Purchase Order shall be effective, whether in Seller's proposal, invoice, acknowledgment or otherwise, and no local, general or trade custom or usage, shall be deemed to effect any variation herein unless expressly agreed to in writing by Buyer's authorized representative. The delivery of any goods or the furnishing of any services pursuant to this Purchase Order shall constitute acceptance by Seller of this Purchase Order subject to, and in strict accordance with, all of its terms and conditions.

To the extent that terms appearing on the face of this Purchase Order are inconsistent with those set forth herein, the terms on the face shall govern. Any reference on the face of this Purchase Order to Seller's proposal shall be exclusive of any terms and conditions attached to or referred to therein.

**2. Specifications.** All goods and services furnished pursuant to this Purchase Order shall strictly conform to the specifications, descriptions, representations and warranties set forth in this Purchase Order. No change in this Purchase Order shall be made except upon written application to, and subsequent written authority of, Buyer.

**3. Time and Place of Delivery; Buyer's Inspection; Acceptance.** Time is of the essence of this Purchase Order. Delivery will be made as specified on the face of this Purchase Order. Buyer reserves the right to reject goods and to cancel all or any portion of this Purchase Order in the event of failure to deliver at the time and place specified. Buyer's acceptance of any part of a shipment not delivered as specified herein shall not obligate Buyer to accept the remainder of that shipment or any future shipments. If Seller is required to provide Material Safety Data Sheets, they will be delivered to Buyer prior to delivery of any goods under this Purchase Order. All goods shall be received subject to Buyer's inspection and acceptance, and subject to Buyer's right to reject and return at Seller's expense goods which fail to conform strictly to the requirements of this Purchase Order. All materials are subject to inspection and testing by Buyer at manufacturer's plant.

**4. Extension of Time of Delivery.** Buyer shall not be liable to Seller for any failure of Buyer to take any delivery hereunder when due, if occasioned by any event beyond Buyer's reasonable control, including without limitation fire, flood, earthquake, lightning or other acts of God; acts of, or compliance with the directions of, civil or military authority, including any federal, provincial, state or local agency or authority; wars; riots; insurrections; sabotage; embargo; strike or other labour dispute; interruption of or delay in transportation; shortage or failure of supply of materials; or equipment breakdown. At Buyer's option, the time for delivery hereunder shall be extended to the extent of the delay occasioned by any such circumstance and the deliveries so omitted shall be made during the period of such extension.

**5. Risk of Loss.** Risk of loss of and title any goods sold hereunder shall transfer to Buyer at the time and place of delivery; provided that risk of loss prior to actual receipt of the goods by Buyer shall nonetheless remain with Seller.

**6. Shipment.** Goods must be shipped by the particular route, method and carrier as stated in this Purchase Order. In the event that Seller fails to ship goods on or before any scheduled shipping date, Buyer shall have the right to specify a more rapid method of shipment than was specified originally and Seller shall bear, at no additional cost to Buyer, any increased costs occasioned thereby.

**7. Packing, Marking and Invoicing.** A packing list shall be included with each shipment. Two copies of Seller's invoices, together with original bills of lading, properly signed by carrier's representative, shall be forwarded to Buyer not later than the day after shipments are made. Individual invoices shall be issued for each separate shipment. Buyer shall not be charged for packaging, boxing, crating or cartage. All invoices, packing lists, bills of lading, and each separate package within each shipment shall clearly reference piece number, Buyer's Purchase Order number and Seller's packing slip number. Partial shipments must be identified as such on the shipping memoranda and invoices.

**8. Payment; Waiver of Liens.** Payment will be made following receipt and acceptance of the goods and receipt, in proper form and substance, of all documentation required by this Purchase Order. Seller shall furnish to Buyer any analysis or breakdown of the price as Buyer may reasonably request. This Purchase Order shall not be filled at prices higher than last quoted or charged by Seller, except as expressly agreed by Buyer. As a condition to any payment hereunder, Seller shall furnish to Buyer, upon request, an executed waiver of liens, charges and claims in form reasonably satisfactory to Buyer.

Seller agrees to indemnify, defend and hold harmless Buyer from and against any and all liens and encumbrances arising out of Seller's performance of this Purchase Order or arising out of any claim for payment by any labourer, subcontractor or supplier of Seller.

**9. Seller's Representations and Warranties.** Seller expressly represents and warrants that for a period of one year after Buyer's acceptance of the goods or services hereunder, or for such longer period as may be expressly provided in this Purchase Order or under applicable law, all goods and services covered by this Purchase Order will: (a) strictly conform to Seller's specifications, drawings, samples and other written materials and descriptions, or, to the extent the goods were purchased to Buyer's specifications and drawings as set forth or referred to in this Purchase Order, that the goods strictly conform with those specifications and drawings; (b) be free from defects in design, material and workmanship; (c) be of merchantable quality and suitable for the particular purposes intended, whether express or reasonably implied; and (d) bear all warnings, labels, and markings required by applicable laws and regulations

In addition, Seller represents and warrants that (e) none of the goods covered hereby, to the extent they are subject to laws prohibiting adulteration or misbranding, is adulterated or misbranded within the meaning of such laws as of the date of delivery to Buyer; (f) all goods covered hereby may be introduced into interstate or inter-provincial commerce without violation of applicable laws and regulations; (g) all services have been performed in a good and workmanlike manner; and (h) all goods and services furnished or rendered pursuant to this Purchase Order have been produced, sold, delivered or rendered to Buyer in compliance with all applicable laws and regulations, including those set forth in Section 14.

**10. Buyer's Remedies.** Buyer's acceptance of all or any part of the goods or services provided hereunder shall not be deemed a waiver of the failure of such goods or services to conform to all of the representations and warranties set forth in Section 9. Buyer retains the right to cancel any portion of the remaining order, to reject any portion of the goods or services delivered, or to revoke acceptance as to any portion of the goods or services accepted, and return such goods to Seller and to recover the purchase price, any excess costs of cover, and damages, including manufacturing costs, costs of removal or recall, transportation and custodial expenses, injury to person or property incurred by Buyer, all in addition to Buyer's other remedies under this Purchase Order or applicable law. If Seller becomes insolvent or makes an assignment for the benefit of creditors, or files or has filed against it any petition in bankruptcy, Buyer shall have the right to cancel this Purchase Order immediately.

**11. Patent Copyrights Trademarks.** Seller represents and warrants that the goods furnished under or used in connection with this Purchase Order (except those furnished according to Buyer's specific design) and Buyer's express or reasonably implied intended use thereof, do not and will not infringe any patent, copyright, trademark, trade secret or other proprietary right of any third party. If any claim, suit or proceeding is made or instituted against Buyer alleging any such infringement, Seller shall indemnify, defend and hold Buyer harmless from and against any damages, liabilities, judgments, costs and expenses (including without limitation reasonable legal fees) it may incur in connection with any such claim, suit or proceeding. In the event that the goods or Buyer's use is held in any suit or proceeding to constitute an infringement, or if Seller determines that there is a substantial risk of finding of such infringement, Seller agrees, as appropriate, and at its expense to: (a) procure for Buyer, at no expense to Buyer, the right to continue using the goods, (b) replace the goods with equivalent goods that meet the requirements of this Purchase Order and that do not infringe any such rights, or (c) modify the goods so that they become non-infringing.

**12. Indemnification.** To the fullest extent permitted by law, Seller agrees to indemnify, defend, and hold harmless Buyer, its affiliates, and their respective directors, officers, employees and agents (the "Indemnified Parties") from and against all claims, demands, causes of action, losses, costs and expenses (including without limitation reasonable legal fees and costs of defense) (collectively, "Losses") arising out of or incident to Seller's performance hereunder, or the presence of Seller, its employees, agents or invitees ("Seller Parties") on Buyer's premises, provided that such Losses are attributable to (a) the negligence or willful misconduct of the Seller Parties, (b) the failure of the Seller Parties to comply with applicable laws, or (c) bodily injury, sickness, disease or death (including but not limited to bodily injury, sickness, disease or death of the employees of Seller or Buyer), or to damage to or destruction of tangible or moveable property (including the loss of use thereof); in each case regardless of whether or not caused in part by the negligence or other fault of any Indemnified Party hereunder; provided that Seller shall not be liable for Losses caused by the sole negligence or willful misconduct of any Indemnified Party. To the extent Quebec law governs the purchase, this provision shall not serve to exclude or limit the Seller's liability for material injury caused to another through an intentional or gross fault.

Seller's indemnification obligations under this Section 12 shall not be limited by applicable workers' compensation or other disability or employee benefit laws, and, solely as respects the indemnities set forth in this Section, Seller hereby expressly waives any rights it may have to assert any immunities or defenses that it may have under such laws against any Indemnified Party.

**13. Labour Work and Services- Insurance.** In supplying any services hereunder, Seller represents and warrants that it is, and undertakes such performance as, an independent contractor, with sole responsibility for the payment of all federal and/or provincial and/or territorial health insurance, employment insurance, Canada Pension Plan payments and/or other similar taxes incurred hereunder. Any performance by Seller under this Purchase Order on Buyer's premises shall be in full compliance with Buyer's safety and other rules and procedures and with all federal, provincial and laws and regulations regarding workplace safety, including without limitation, laws pertaining to occupational safety and health. Prior to commencement of any services or work provided hereunder on Buyer's premises and until the satisfactory completion thereof, Seller shall, at its expense, maintain the following minimum insurance coverages on an "occurrence" basis (and not on a "claims made" basis):

Kind of Insurance, Minimum Limits:

Workers' Compensation: \* Statutory

Employer's Liability:  
\$1,000,000 bodily injury by accident, each accident  
\$1,000,000 bodily injury by disease, policy limit  
\$1,000,000 bodily injury by disease, each employee

Commercial General Liability Combined Single Limits:  
Including Contractual Liability - \$1,000,000 Occurrence  
and Products/Completed - \$2,000,000 **General  
Operations**

Aggregate: \$2,000,000 Products/ Completed Operations Aggregate

Business Auto Liability Combined Single Limits (Any Auto) including Hired and Non- Owned  
Autos - \$1,000,000 per accident

**Seller shall furnish to Buyer certificates of insurance showing the above coverages and providing for at least thirty (30) days prior written notice of cancellation or modification resulting in a reduction below the required minimum coverages and naming Buyer as an additional insured. If Seller fails to furnish such certificates or maintain such insurance, Buyer shall have the right to cancel this Purchase Order immediately. Seller, for itself and its insurers, hereby waives subrogation against Buyer, and Seller agrees that, with respect to claims against Buyer arising out of Seller's performance hereunder, Seller's insurance shall be primary, and Buyer's insurance shall be excess. Seller's obligations to maintain such insurance shall in no way limit the liability or obligations assumed by Seller hereunder.**

**14. Laws and Regulations.** All goods furnished or services rendered pursuant to this Purchase Order shall be produced, sold, delivered, or rendered to Buyer in compliance with all applicable laws and regulations, including without limitation, all applicable environmental and occupational health and safety laws and regulations.

**15. Termination.** Buyer may at any time, without cause, terminate this Purchase Order in whole or in part upon written notice to Seller. In such event, Seller shall be entitled to receive payment, in proportion to the Purchase Order price or the value of the goods delivered, the services rendered, or the work performed prior to termination. Payment shall be Seller's sole remedy and Seller hereby waives any and all other remedies. Upon Buyer's request, Seller shall preserve, protect and deliver to Buyer, at Buyer's expense, materials on hand, work in progress, and completed work, both in its own and in its suppliers' plants.

**16. Assignment and Set-Off.** Seller shall not assign its rights or delegate its performance hereunder, nor any interest herein, without Buyer's prior written consent and any attempted assignment or delegation without such consent shall be void. Buyer shall be entitled at all times to set-off any amount owing from Seller to Buyer, whether under this Purchase Order or otherwise, against any amounts otherwise payable to Seller.

**17. Confidentiality.** Seller and its directors, officers, employees and agents shall not disclose to any third party any information pertaining to the goods provided or services performed hereunder, or pertaining to Buyer's business or operations which Seller obtains or has access to in connection herewith, without the prior written consent of Buyer or unless required by law.

**18. No Waiver of Defaults.** No failure by Buyer to enforce at any time any of the terms or conditions of this Purchase Order shall constitute a waiver thereof or in any way impair Buyer's right at any time to avail itself of such remedies as it may have to enforce such terms or conditions. No waiver by Buyer hereunder will be effective unless in writing and signed by Buyer.

**19. Survival Remedies Cumulative.** All agreements and representations of Seller herein (including those regarding, confidentiality, indemnification and warranties) shall survive delivery and final payment hereunder, or any earlier termination hereof. All of the rights and remedies available to Buyer hereunder are in addition to, and not in limitation of, the rights and remedies otherwise available at law or in equity.

**20. Severability v.** Any provision of this Purchase Order that is unenforceable in any jurisdiction shall be ineffective to the extent of such unenforceability (but shall be enforced to the maximum extent permissible) without invalidating the remaining provisions hereof.

**21. Governing Law.** This Purchase Order shall be governed by the laws of the Province of Quebec and the laws of Canada applicable therein, without giving effect to its principles of conflicts of law.

**22. English Language.** The parties hereby confirm their express wish that this Purchase Order and all related documents be drafted in the English language, but without prejudice to any such documents which may from time to time be drawn up in French only or in both French and English. Les parties aux presentes confirment leur volonte que bon de commande et tout document s'y afferents soient rđdiges en langue anglaise, mais sous toutes reserves cependant de tous tels documents qui pourraient a l'occasion etre rediges en franc;;ais seulement ou a la fois en franc;;ais et en anglais.