

TERMS AND CONDITIONS OF SALE (CANADA)

1. **Construction and Legal Effect.** “Seller” means the entity set forth in Seller’s quotation, invoice or other sales documentation (collectively, “Sales Documentation”). “Buyer” means the customer identified in the Sales Documentation. Seller’s sales to Buyer are limited to and expressly made conditional on Buyer’s assent to these Terms and Conditions of Sale (“Terms”) and those terms and conditions typed, handwritten or printed on the Sales Documentation and/or typed terms appearing on applicable Bills of Lading, all of which constitute the parties’ agreement and supersede all prior writings, representations, and negotiations relating to such sales. Any term or condition proposed by Buyer, including any preprinted or customized term on Buyer’s purchase order, is expressly rejected. Any inconsistent supplemental conditions that may be supplied by Seller shall prevail over these printed Terms. Buyer’s issuance of an order to purchase Seller’s goods (regardless of the form or manner of delivery of such order and whether or not such order is signed by Buyer) or Buyer’s acceptance of the goods or payment for the goods shall operate as acceptance by Buyer of these Terms. This agreement may not be modified except in writing signed by all parties hereto by their duly authorized representatives.
2. **Prices.** Unless otherwise noted on Seller’s quotation, all prices are net Ex Works Seller’s plant and are exclusive of all sales, use and property taxes. All clerical errors are subject to correction. Prices, terms and conditions of sale may change without notice. Seller reserves the right to make price adjustments to any order to reflect exchange rate fluctuations, changes in tariffs, or other events not reasonably within its control. Any such adjustments shall be binding and shall replace any prior prices quoted in connection with the applicable order.
3. **Delivery.** Delivery and shipment dates are estimated dates only and are not guaranteed. Unless otherwise stated in Seller’s quotation or other sales documentation, title and risk of loss or damage to goods shall transfer to Buyer upon delivery Ex Works at Seller’s plant. In estimating such dates, no allowance has been made nor shall Seller be liable for any damages, losses, or penalties of any kind, resulting from Seller’s failure or delay in performing if caused by any labor difficulties, shortages, strikes or stoppages of any sort, flood, fires, earthquakes, explosions, epidemic or pandemic, war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or civil unrest, accidents, failure or delay in obtaining, or accidental damage or contamination to, goods or in or to Seller’s facility, government orders, actions, or laws affecting Seller directly or indirectly, embargoes or blockades in effect on or after the date hereof, national or regional emergency, shortages of adequate power or outages, telecommunications breakdowns, bad weather, or any causes beyond Seller’s control, or causes designated as acts of God or force majeure by any applicable statute or court of law, or in the event the goods are returned or are otherwise not able to be delivered due to lack of Buyer’s personnel onsite to accept and/or to unload the goods on the agreed delivery date. In the event any failure or delay to ship goods continues for a period of ninety consecutive days, Buyer may cancel its order for the subject goods upon three days’ written notice to Seller.
4. **Shipping.** Unless Buyer specifies otherwise in writing: (a) goods will be shipped as Seller may deem proper, and (b) routing and manner of shipment will be at Seller’s discretion. If special routing instructions are given, Buyer agrees to pay additional handling and transportation charges, if any. Buyer shall comply with all applicable governmental laws and regulations governing import, export and trade of goods.
5. **Credit and Payments.** Payment of amounts due hereunder shall be made by Buyer to Seller net thirty (30) days after the shipment date. Seller reserves the right at any time to alter or suspend credit, or to change credit terms provided herein, when in its sole opinion Buyer’s financial condition so warrants. (Failure to pay an invoice at due date, at Seller’s election, makes all subsequent invoices immediately due and payable, irrespective of terms, and Seller may withhold all subsequent deliveries under all outstanding orders until full payment is received). In the event of insolvency of Buyer, default in payment or repudiation by Buyer, or any breach of the terms of this agreement, Seller shall have the right to stop delivery of the goods and Buyer shall be liable to Seller for any and all liabilities incurred by Seller as a result thereof including, but not limited to liabilities to third parties, collection costs, attorneys’ fees, and any associated costs incurred by Seller.
6. **Claims.** It shall be the duty of Buyer to thoroughly inspect the goods purchased from Seller. All claims of any nature relating to the goods subject to this agreement, including but not limited to claims of defect in goods, non-conformity or discrepancy in quantity or delivery date, shall be made in writing to Seller’s Customer Service Department within thirty (30) days of receipt of such goods by Buyer. Failure to make any such written claim within the above-prescribed period shall constitute waiver of any such claims and shall be deemed acceptance of such goods, quantities or delivery dates.
7. **Termination.** Seller may by written notice to Buyer immediately terminate the whole or any part of this agreement in any one of the following circumstances: (a) if Buyer fails to remit payment within the time specified herein or any extension thereof authorized by Seller; or (b) if Buyer fails to perform any of the other provisions of this agreement so as to endanger performance of this agreement in accordance with its terms; or (c) if Buyer becomes insolvent, or engages in any act which reasonably causes the Seller to deem itself insecure.
8. **Warranty and Limitation of Liability.**
 - (a) Seller warrants solely to Buyer only that goods furnished hereunder shall at the time of delivery (i) conform to agreed specifications, and (ii) be free and clear of all creditor liens and encumbrances. Provided that Buyer gives notice in accordance with Article 6, if goods sold hereunder fail to conform to applicable specifications, demonstrated to Seller’s satisfaction to have existed at the time of departure from Seller’s plant, Seller, reserving the right to inspect goods, shall, at Seller’s option, replace at Seller’s expense DAP Buyer’s plant or give Buyer credit for goods determined by Seller to be non-conforming. Seller shall not be obligated to replace or provide credit for goods that shall have been subjected to alteration, contamination, improper maintenance or storage, misapplication, misuse, negligence or accident during or after shipment from Seller’s plant or to goods to which Buyer’s tests used an unrepresentative sample. The remedy set forth in this Article 8 shall be the sole and exclusive remedy available to Buyer for breach of warranty. In no event shall Buyer’s remedy exceed the purchase price of the non-conforming goods, plus any transportation

costs paid by Seller to supply replacement goods to Buyer as described above in this Article 8. No employee or agent of Seller is authorized to make any warranty, statement, promise or understanding other than that which is specifically set forth in this Article 8. The provisions in any Technical Data sheet issued by Seller or attached hereto are descriptive only and are not warranties or representations.

THE WARRANTIES SET FORTH IN THIS ARTICLE 8 ARE THE ONLY WARRANTIES APPLICABLE TO THE GOODS SOLD HEREUNDER. ALL OTHER WARRANTIES, EXPRESS, IMPLIED, WRITTEN, ORAL OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR WARRANTIES THAT WOULD OTHERWISE ARISE FROM COURSE OF DEALING OR PERFORMANCE, ARE SPECIFICALLY DISCLAIMED AND SHALL NOT APPLY.

(b) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY HOWSOEVER CAUSED FOR ANY LOSS OF USE, REVENUE OR PROFIT (INCLUDING BUT NOT LIMITED TO BUSINESS INTERRUPTION LOSSES), OR FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES UNDER THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO ANY SUCH DAMAGES ARISING OUT OF LATE, PARTIAL AND/OR NON DELIVERY, THE SALE, USE, FURNISHING OF GOODS, OR SUITABILITY FOR GENERAL OR PARTICULAR USE) REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR RELATED TO THE SALE EXCEED (i) FOR ANY SINGLE CLAIM, THE AMOUNT INDEFEASIBLY PAID BY BUYER FOR THE APPLICABLE GOODS GIVING RISE TO THE CLAIM, AND (ii) IN THE AGGREGATE, THE TOTAL AMOUNTS INDEFEASIBLY PAID BY BUYER TO SELLER HEREUNDER. Buyer is solely responsible for determining suitability for use and Seller shall in no event be liable in this respect. The giving or failure to give advice, recommendations or safety warnings of any character by Seller shall not impose any liability upon Seller.

The provisions of this Article 8 shall survive the expiration, or earlier termination as provided herein, of this agreement or the completion of the sale.

9. Safety Warning, Handling and Buyer Indemnity. SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY HARMFUL HEALTH EFFECTS WHICH MAY BE CAUSED BY EXPOSURE TO GOODS SUPPLIED BY SELLER. Buyer warrants that it will adequately warn all of its employees and customers who may come in contact with goods supplied by Seller of any health hazards. Further, Buyer warrants it will fully comply with all applicable health and safety regulations and orders relating to the workplace handling of goods supplied by Seller. Should Buyer breach any of the duties and warranties set forth within this Article 9, BUYER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY, DEFEND AND HOLD SELLER AND SELLER'S OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES HARMLESS from and against any and all liability, claims, indirect, special, consequential, incidental, exemplary, or punitive damages (regardless of whether such damages were foreseeable), and suits of any third party (including for any death, personal injury or illness, or property loss or damage, howsoever caused and including but not limited to employees or insurers of Buyer), in any way, in whole or in part, alleged to have arisen or to have resulted from exposure to or use of, goods supplied by Seller. Further, upon acceptance of goods supplied by Seller or in the absence of any written notice of nonconformity of such goods as set forth in Article 6, BUYER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO RELEASE, INDEMNIFY, DEFEND AND HOLD SELLER AND SELLER'S OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES HARMLESS from and against any and all liability, claims, indirect, special, consequential, incidental, exemplary, or punitive damages (regardless of whether such damages were foreseeable), and suits it may possess or that may be asserted against Seller by any third party (including for any death, personal injury or illness, or property loss or damage, howsoever caused and including but not limited to contractors, subcontractors or property owners who have purchased, installed or otherwise used products or services of Buyer or have had such products incorporated into their property or products, or insurers of any of such parties or of the Buyer) in any manner arising in whole or in part, out of the production, marketing, distribution, sale, installation, use, exposure to or deficiencies of any products of the Buyer produced using the goods supplied by Seller. The provisions of this Article 9 shall survive the expiration, or earlier termination as provided herein, of this agreement or the completion of the sale.

10. Assignment. The rights and obligations of Buyer hereunder may not be assigned without the prior written consent of Seller. Any purported assignment without Seller's prior written consent shall be void and of no force and effect.

11. Non-Waiver. Any failure by Seller to require full payment or strict performance by Buyer of any of the provisions herein or to exercise any right or remedy hereunder, shall not waive or diminish Seller's right thereafter to demand strict compliance therewith or with any other provision or to exercise any such right or remedy. Waiver of any default shall not waive any other default.

12. Governing Law. This agreement shall be governed by and construed under the laws of the Province of Ontario and the federal laws of Canada applicable therein., notwithstanding the principles, if any, that would otherwise govern the choice of applicable law. The 1980 United Nations Convention for the International Sale of Goods shall not apply to this agreement or Seller's sales to Buyer.

13. Survival. In addition to the specific survival provisions herein contained, each term and provision of this agreement that would by its very nature or terms survive any termination or expiration of this agreement shall survive any termination or expiration hereof, regardless of the cause thereof.