

## **PURCHASE ORDER TERMS AND CONDITIONS - CANADA**

### **1. DEFINITIONS**

- (a) "Buyer" means the entity identified on the face of this Purchase Order.
- (b) "Terms and Conditions" means the information on the face of the Purchase Order and these Purchase Order Terms and Conditions, and any other terms and conditions, specifications, drawings or other documents specifically incorporated into the Purchase Order by reference.
- (c) "Seller" means the vendor identified on the face of this Purchase Order.

### **2. AGREEMENT**

This Purchase Order and these Terms and Conditions contain the complete and exclusive agreement between Buyer and Seller, are the only terms upon which Buyer is willing to contract with Seller, and supersede all prior negotiations or agreements, whether written or oral. No modification, amendment, extension, renewal, revision, discharge, abandonment, waiver or other change or alteration shall be valid, enforceable or binding on Buyer unless agreed to in a subsequent writing signed by an authorized representative of Buyer. All terms and conditions proposed by Seller which are different from or in addition to this Purchase Order and these Terms and Conditions are expressly rejected. Seller's written acceptance of this Purchase Order, shipment of any equipment, goods or materials, commencement of any work, or performance of any labour or services hereunder constitutes Seller's acceptance of this Purchase Order subject to these Terms and Conditions.

### **3. DELIVERY**

- (a) Time is of the essence in connection with Seller's performance under this Purchase Order. If delivery of materials or equipment is not completed by the time prescribed herein, Buyer may call for expedited shipment and Seller will be responsible for any extra costs. In addition to its other rights and remedies, Buyer shall also have the right without any obligation to Seller to terminate this Purchase Order if not completed timely or as specified, or, without any advanced notice to Seller, to provide or procure any goods, materials or services as may be necessary in Buyer's discretion to complete Seller's work under this Purchase Order and deduct the cost thereof plus 10% of the total of such cost from any monies then due or thereafter to become due to Seller under this Purchase Order.
- (b) By written notice to Seller, Buyer may suspend delivery of any equipment, goods, materials or other performance required under this Purchase Order. Seller shall hold the equipment, goods, materials or other performance in accordance with Buyer's written instructions and shall deliver them or resume performance when notified by Buyer. In such event Buyer shall pay as sole and complete compensation Seller's actual additional direct expenses in holding the equipment, goods, materials or other performance.
- (c) All deliveries are F.C.A. Buyer's location, unless otherwise stated in the Purchase Order. Title to and risk of loss with respect to products, materials, and equipment described in the Purchase Order shall pass to Buyer upon delivery to Buyer's location, unless otherwise provided in writing by Buyer.

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### **4. PACKAGING/MARKING**

Packaging shall be either retail trade or as specified in the Purchase Order. Small items shall be boxed or palletized. All large items, e.g. long lengths of steel, shall be banded securely together. No charge will be allowed for packing, boxing, palletizing, etc. unless expressly stated in the Purchase Order. Buyer's Order Number and, where applicable, Buyer Part Numbers must appear on all Packages, Packing Slips, Bills of Lading, and Invoices. Packing Slips must accompany each shipment. No valuation is to be declared on any shipments other than that which may be required by Canadian Customs from foreign sellers. Seller must fax Bill of Lading and Packing Slip for each shipment on day of forwarding to the attention of the Buyer's purchasing department. Copies of the original paid freight bill must accompany charges for prepaid freight. Invoices in triplicate shall be issued showing G.S.T. number on each copy of invoice.

### **5. INSPECTION/ACCEPTANCE**

Upon request, Seller shall provide Buyer and its customer, at all times, with access to Seller's work in progress, wherever it is. Upon delivery, all equipment, goods, materials or work or any part thereof shall be subject to inspection by Buyer for a reasonable period (which shall in no event be less than thirty days after receipt by Buyer) provided that Buyer may also reject the equipment, goods, materials or work and hold Seller in default if, at any time after Buyer has inspected the equipment, goods, materials or work, Buyer discovers a defect not normally discoverable by visual inspection or if the defect becomes apparent after the equipment, goods, materials or work are used or integrated into a system. Payment shall not constitute a waiver of Buyer's rights to inspect or reject the equipment, goods, materials or work. All equipment, goods, materials or work rejected by Buyer shall be returned to Seller at its expense and shall not be replaced except upon written instructions from Buyer. In no event shall Seller have the right to substitute a conforming tender without the prior written approval of Buyer.

### **6. TERMINATION FOR CONVENIENCE**

Buyer may at any time terminate all or any part of this Purchase Order for its sole convenience, and Seller shall immediately stop all work hereunder, cause any of its suppliers or subcontractors to cease such work and take all other necessary steps to minimize its costs hereunder. Seller shall deliver completed equipment, goods, materials and work in progress in accordance with Buyer's instructions. Provided such termination is for any reason other than described in Paragraph 3 and 7, Buyer shall pay Seller as sole and complete compensation: (a) a percentage of the Purchase Order price equal to the percentage of the work performed in conformity with this Purchase Order; plus (b) Seller's reasonable direct expenses resulting from such termination.

### **7. TERMINATION FOR CAUSE**

Buyer may also terminate all or any part of this Purchase Order for cause in the event of any default, including but not limited to: (a) Seller's failure to comply with any of the Terms and Conditions of this Purchase Order; (b) Seller's failure to give Buyer, upon request, reasonable assurances of Seller's future performance; (c) insolvency, bankruptcy, liquidation or dissolution of Seller; or (d) any other event which causes reasonable doubt as to Seller's ability to render due performance hereunder. In the event of termination for cause, Seller shall be liable to Buyer for any and all damages sustained by reason of such default.

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### **8. CONFIDENTIAL AND PROPRIETARY INFORMATION**

- (a) Seller shall hold all information furnished by Buyer in confidence and shall not disclose any such information to any other person other than Seller's staff with a need to know or use such information itself for any purpose other than performing this Purchase Order without prior written consent from Buyer. The restrictions contained in this paragraph shall apply to drawings, specifications, technical know-how, software object code and source code, protocols, strategic business plans, financial information, product information, marketing information, methods of operation, customer information, supplier information, compilations of data, and all other documents and information communicated to Seller or learned by Seller in connection with this Purchase Order and to drawings, specifications and other documents prepared by Seller for Buyer in connection with this Purchase Order. Upon request from Buyer, Purchaser shall, at the election of Buyer, either destroy or return to Buyer all information and materials furnished by Buyer under this Purchase Order or pursuant to any other agreement between the parties, and any copies thereof, including, without limitation, all drawings, specifications, and related documents. The obligation of confidentiality herein shall continue after termination of this Purchase Order.
- (b) Seller grants to Buyer a nonexclusive, paid-up, irrevocable license to copy, distribute or otherwise use all copyrighted drawings, specifications, catalogue descriptions or other materials of Seller which are furnished to Buyer under this Purchase Order.

### **9. EQUIPMENT**

All materials, including tools, special dies, patterns, and fixtures furnished or specifically paid for by Buyer shall be: (a) the property of Buyer; (b) returned to Buyer when so instructed by Buyer; (c) used only for Buyer's requirements of this Purchase Order or as instructed by Buyer; and (d) segregated and clearly identified as property of Buyer. Seller assumes all storage costs and assumes all risk and liability for loss and damage thereto, except for normal wear, and agrees to permit inspection and supply detailed statements of inventory upon request of Buyer.

### **10. INTELLECTUAL PROPERTY/LICENSE TO REPAIR**

- (a) Seller warrants to Buyer that it is the owner or licensee of all patents, copyrights and other intellectual property embodied in or furnished as part of Seller's performance of this Purchase Order. Seller agrees to defend, hold harmless, and indemnify Buyer and its customers against all claims, demands, losses, suits, damages, liability and expenses (including license fees and attorneys' fees) arising out of any suit or claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any Canadian or foreign patent, trademark, copyright or mask work right by reason of the manufacture, use or sale of the goods or services to be furnished or performed under this Purchase Order, or for the actual or alleged misuse or misappropriation of a trade secret resulting from Seller's actions.
- (b) Seller agrees that all discoveries, designs, inventions, improvements and other intellectual property rights whether copyrightable, patentable or not which are written, conceived, discovered or made by Seller's employees or subcontractors in the performance of this Purchase Order shall be promptly disclosed to Buyer and shall become Buyer's sole property. Seller further agrees to sign and execute all assignments and other papers necessary to vest the entire right, title and interest in such discoveries, designs, inventions,

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improvements and other intellectual property to Buyer and do all other lawful acts Buyer may reasonably request relating to such intellectual property rights.

- (c) Seller grants Buyer a nonexclusive, royalty-free, irrevocable license to repair, rebuild and relocate the equipment or goods furnished under this Purchase Order.

### **11. INDEMNIFICATION**

To the fullest extent permitted by law, Seller shall protect, defend, indemnify and hold harmless Buyer, its successors, assigns, subsidiaries, affiliates, officers, directors, employees and customers or users against any and all damages, claims, losses, liabilities and expenses (including attorneys' fees) arising out of or resulting from the performance of this Purchase Order or arising out of the equipment, goods, materials, labour or services furnished under this Purchase Order. This indemnification obligation shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Seller or its subcontractors under worker's compensation acts, disability benefit acts or other employees benefit acts. Seller shall not settle any such claims without Buyer's prior knowledge and consent. Seller shall obtain and maintain product liability and/or other insurance protecting Buyer and each subsequent purchaser of equipment, goods, materials, labour or services furnished under this Purchase Order and Seller from all claims for damages due to bodily injury, sickness, disease, death, injury to or the destruction of property or product liability arising out of the use or sale of such equipment, goods, or materials or performance of such labour or services.

### **12. WARRANTY**

Seller warrants that all equipment, goods, materials, labour or services furnished hereunder shall conform to the Terms and Conditions of this Purchase Order, and any descriptions or samples which may have been furnished by Seller. Seller further warrants that all equipment, goods or materials furnished hereunder shall be: (a) new and free from defects in design, material and workmanship; (b) free from any lien or security interest; (c) merchantable and of the highest quality; and (d) fit for the purpose intended. It is understood that Buyer may extend this warranty to the end-user, and Seller's warranty shall remain in effect as long as Buyer's warranty to its end-user remains in effect. The end-user shall be entitled to all rights and remedies of Buyer under this Purchase Order as if a party to it. In the event of Seller's breach of any of the foregoing warranties, Buyer may, at its election and in addition to any other rights or remedies it may have in law or equity or under this Purchase Order, recover from Seller all of its costs, losses or damages resulting from such breach (including labour costs associated with the diagnosis and correction of any defect or unfitness) and: (a) return the equipment, goods or materials at Seller's expense and recover from Seller the price paid and, if elected by Buyer, purchase or manufacture similar equipment, goods or materials and recover from Seller the costs and expenses thereof; (b) accept or retain the equipment, goods or materials and equitably reduce their price; or (c) require Seller, at its expense, to promptly replace or correct the equipment, goods, materials, labour or services and, pending redelivery, to repay to Buyer any amount previously paid for such equipment, goods, materials, labour or services. If Seller fails to promptly replace or correct such equipment, goods, materials, labour or services as directed by Buyer, Buyer may repair them or have them repaired at Seller's expense or purchase or manufacture similar equipment, goods, materials, labour or services and recover from Seller the costs and expenses thereof.

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### **13. PRICES, TAXES AND DUTIES**

Seller warrants that each price for equipment, goods, material, labour or services furnished hereunder is no less favourable than that extended during the term of this Purchase Order to any other customer for the same or like items or services in equal or less quantities or similar terms and conditions. Unless otherwise provided on the face of this Purchase Order, the prices contained herein include all federal, provincial and local taxes, customs and duties. Where applicable, Buyer shall provide Seller with a tax exemption certificate acceptable to taxing authorities. If any of the items purchased hereunder are imported from any other country, Seller is responsible for all legal, regulatory, and administrative requirements related to such importation.

### **14. COMPLIANCE WITH LAWS**

Seller shall comply with all applicable federal, provincial, and local laws, executive orders, rules and regulations. Seller agrees to indemnify and hold Buyer and its customers harmless from and against any loss, damage or expense caused by the failure of Seller, its employees, agents, subcontractors or representatives to comply with any applicable law, order, rule or regulation.

### **15. ASSIGNMENT/SUBCONTRACTING**

No part of this Purchase Order may be assigned or subcontracted without the prior written consent of Buyer.

### **16. SETOFF**

Any claim by Seller for money due or to become due from Buyer shall be subject to deduction or setoff by Buyer for any counterclaim arising from this Purchase Order or any other transaction with Seller.

### **17. REMEDIES/WAIVER**

The rights and remedies provided Buyer in this Purchase Order shall be cumulative and additional to any other or further remedies provided in law or equity. Buyer's failure to insist on performance of any of the Terms or Conditions contained in this Purchase Order or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not constitute a waiver of any other or subsequent right, privilege or breach.

### **18. CHOICE OF LAW AND FORUM; PERSONAL JURISDICTION; ATTORNEY'S FEES**

This Purchase Order is to be governed by and construed under the laws of the province of Ontario and the federal laws of Canada applicable therein excluding its conflicts of law rules. The exclusive jurisdiction for any dispute arising hereunder shall be in the Ontario courts and Seller consents to personal jurisdiction in thereof. Seller agrees that it will not commence any lawsuit against Buyer arising from or related to this Purchase Order or the work or materials furnished hereunder except in one of the aforementioned courts. The Buyer and Seller agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Purchase Order. Seller shall pay Buyer's costs in enforcing this Purchase Order, including all attorneys' fees, expert's fees and expenses, clerical and other expenses reasonably incurred by Buyer.

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### **19. LIMITATION OF LIABILITY**

In no event shall Buyer be liable for incidental or consequential damages, including but not limited to loss of profits, loss of use of equipment, facilities, capital or money, whether such liability is grounded in contract, tort or any other cause whatsoever. Seller must commence suit with respect to any claim arising out of or in connection with this Purchase Order within one (1) year after the cause of action occurred and before acceptance of final payment, failing which Seller's claim is extinguished and fully and finally released by the Seller, and Seller consents to a dismissal of any such claim or proceeding in a court or forum with costs.

### **20. CHANGES AND ALTERATIONS**

No changes in quantity, price, requirements, terms, conditions, or delivery shall be made without Buyer's specific written authorization. Buyer shall have the right, by written order, to make changes to the Purchase Order, including changes to specifications, drawings, quantity, or time of delivery. If Seller claims that such changes require a change in price or time for performance, Seller shall notify Buyer in writing within 3 days of the occurrence of the event giving rise to the claim or prior to commencing the changed work (whichever occurs first). Buyer's notice shall include sufficient documentation in support of the claim to enable Buyer to evaluate its merits. Failure by Seller to provide such notice shall constitute Seller's acknowledgement that no equitable adjustment to price or time is justified. Pending resolution of any such claim, Seller shall proceed with its work under this Purchase Order.

### **21. REQUIREMENTS FOR MANUFACTURED EQUIPMENT**

Seller shall not proceed with any manufacturing until general arrangement, sequence of operation, and/or the function of the equipment have been approved by Buyer. Seller shall deliver reproducible AutoCAD drawings of certified General Arrangement Drawings complete with wiring diagrams and sequence of operation. If requested, Seller shall provide four sets of: (a) Installation Instructions; (b) Operating and Maintenance Manuals; (c) Parts List; and (d) Suggested Spare Parts List for maintenance stock with Price List.

### **22. LANGUAGE**

The parties hereto confirm that it is their wish that this Purchase Order as well as all other documents relating to it, including notices, be drawn up in English only. Les parties aux presents conferment que c'est leur volonte que la presente convention de meme que tous les documents, y compris les avis, s'y rattachant, soient rediges en anglais seulement.

### **23. MISCELLANEOUS**

These Terms and Conditions are binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns, as the case may be. If any provision contained herein is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and all other provisions shall remain in full force and effect. These Terms and Conditions shall survive the termination of the Purchase Order.