

TERMS AND CONDITIONS: GOODS

1. **Parties.** The term "Seller" refers to the addressee set forth on the face of Buyer's purchase order, and the term "Buyer" refers to the company set forth as addressor on the face of the purchase order.
2. **Terms.** The following terms and conditions (including the contents of Schedule "A" attached hereto) apply to all Buyer's purchase orders relating to goods, in addition to any terms set forth on the face of an individual purchase order or in any plans, specifications or other documents incorporated by reference (each, collectively, the "Order"). Acceptance is limited to the terms and conditions of this Order, and no purported revisions of, additions to, or deletions from the Order shall be effective, whether in any proposal, invoice, acknowledgment or bid from Seller or otherwise, and no local, general or trade custom or usage shall be of any force or effect or be deemed to result in any variation herein unless expressly agreed to in writing by Buyer's authorized representative. The delivery of any goods contemplated by this Order shall constitute acceptance by Seller of this Order in strict accordance with all of its terms and conditions.
3. **Changes.** Buyer may make changes to the Order at any time and Seller shall accept such changes. If a change by Buyer causes an increase or decrease in the cost or time required for Seller's performance, as soon as practicable, the parties shall agree to an equitable adjustment of the purchase price and/or delivery schedule, as applicable, and incorporate such changes as a revision change to the Order. No other form of notification or verbal agreement shall be binding on Buyer.
4. **Delivery; Inspection; Acceptance.** Title to the goods will be transferred to Buyer free and clear of encumbrances of any nature. All risk of loss or damage to the goods will pass to the Buyer upon delivery. Time of delivery is of the essence. Buyer reserves the right to reject goods and to cancel all or any portion of this Order in the event of any failure to deliver in the quantity and at the time and place specified in this Order. 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. All goods shall be received subject to Buyer's inspection and acceptance, and subject to Buyer's right to reject or revoke acceptance and, unless otherwise specified, return at Seller's expense goods which fail to conform strictly to the specifications and requirements of this Order. Payment for or acceptance of nonconforming goods shall not constitute an acceptance thereof, limit or impair Buyer's right to assert any legal or equitable remedy, or relieve Seller's responsibility for defects, latent or otherwise. Any shipment made in advance of schedule will be, at Buyer's option, either accepted but entry of invoice will be deferred until such time as shipment was scheduled to be made, or returned to Seller at Seller's expense. If goods are rejected, they will be held at Seller's risk of loss or damage until received by Seller.
5. **Freight, Packing, Marking and Invoicing.** The method of transportation shall be governed by the ICC Incoterms in force at the date of the Buyer's Order. Seller shall include an accurate packing list with each shipment. Individual invoices shall be issued for each separate shipment. All invoices, packing lists, bills of lading, and each separate package within each shipment shall clearly reference the item number, Buyer's Order number and Seller's packing slip number. Partial shipments must be identified as such on the shipping memoranda and invoices.
6. **Insurance.** Seller shall maintain at its own expense, at all times during the term and any extension of this Order, the following insurance with reputable insurers whose policies are valid in the jurisdiction in which the goods are delivered: (i) all-risks property insurance under this Order or in respect of the goods covered by this Order, including without limitation product liability insurance in respect of all actual and contingent obligations and liabilities of Seller; (ii) all-risks property insurance in respect of any item owned by the Buyer which is in the custody, control or power of the Seller; and (iii) a Commercial General Liability insurance policy, with a minimum limit of five million dollars (\$5,000,000.00), inclusive of bodily injury and property damage, for any one occurrence. Seller shall include Buyer as a named-insured under any such policy, and Seller shall provide Buyer with evidence of such insurance coverage and proof of payment of premiums in respect of such insurance policies upon Buyer's request.
7. **Payment Terms.** Payment terms shall be as set forth on the face of Buyer's Order and payment shall be made within such period following receipt and acceptance of the goods and receipt, in proper form and substance, of all documentation required by this Order. This Order shall not be filled at any price higher than last quoted or charged by Seller, except as expressly agreed to in writing by Buyer. Seller warrants and agrees that the price and terms provided for the goods covered by this Order are no less favorable to Buyer than those offered to Seller's best customer under generally similar circumstances in terms of quantity and delivery schedule. Acceptance by Seller of the final payment will constitute a waiver of all claims by Seller against Buyer except those previously made in writing in accordance with this Order and still unsettled. Payments to Seller, including final payment, will not relieve Seller from any of its obligations or liabilities under this Order or otherwise.
8. **Seller's Warranties.** Seller warrants that all material, work product, and merchandise supplied under the Order: (i) shall strictly conform to all specifications,

drawings, samples, or other descriptions furnished to and approved by Buyer; (ii) shall be fit and serviceable for the purpose intended, as agreed to by Buyer and Seller; (iii) shall be of good quality and free from defects in materials and workmanship; (iv) shall be new and not refurbished or reconditioned, unless expressly agreed in writing by Buyer; (v) shall not infringe any patent, copyright, trademark, trade secret or other intellectual property, proprietary or contractual right of any third party; and (vi) shall bear all warnings, labels and markings required by applicable laws and regulations. Neither receipt of material, work product or merchandise nor payment therefore shall constitute a waiver of this provision. If a breach of warranty occurs, Buyer may, in its sole discretion, and without waiving any other rights, return for credit or require prompt correction or replacement of the nonconforming goods. Seller's warranties shall survive acceptance and payment and shall run to Buyer, its successors, assigns, customers and users of the goods and shall not be deemed to be exclusive. The warranty period shall be the longer of: (i) one (1) year from the date of this Order; and (ii) the express term provided in this Order.

9. **Intellectual Property.** To the fullest extent permitted by law, Seller shall indemnify and hold harmless Buyer, and its affiliates, and their respective officers, directors, agents, shareholders, successors and assigns, and all customers and users of any product of any of them ("Indemnified Parties") from and against any and all losses, liabilities, claims, demands, costs and expenses (including reasonable lawyers' fees) (collectively, the "Losses") suffered or incurred by any of them in connection with any claim, demand, suit or judgement involving any actual or alleged infringement of any patent, copyright, trademark or other intellectual property rights ("Intellectual Property Rights") in connection with the manufacture, use or disposition of any goods, article, material supplied by Seller. Seller will, at its expense, defend all claims, actions or proceedings against Buyer relating to or based on any allegation that the goods, or any part of the goods, constitutes an infringement upon, or a misappropriation of any Intellectual Property Rights and will pay to Buyer all resulting Losses incurred by Buyer. Buyer will give Seller written notice of any such claim, action or proceeding and, at the request and expense of Seller, provide all available information, assistance and authority required to conduct its defence. If all or any part of the goods is finally determined to constitute an infringement or misappropriation of Intellectual Property Rights of a third party, or if Buyer is enjoined from using any of the goods or Intellectual Property Rights embodied therein as a result of an infringement or misappropriation claim, Seller will at its expense promptly: (i) obtain for Buyer the right to continue using the goods; (ii) replace the infringing elements of the goods with non-infringing elements, while maintaining the full functionality and integrity; or (iii) modify the goods so that they are no longer infringing, while maintaining their full functionality and integrity.

10. **Indemnification.** To the fullest extent permitted by law, Seller shall indemnify and hold harmless Indemnified Parties from and against any and all Losses suffered or incurred by any of them in connection with any actual or alleged damage to property or injury (including death) to any person arising from or in connection with the goods provided by Seller or the use thereof, Seller's performance under this Order, or Seller's performance of work on Buyer's premises or use of Buyer's property, either on or off of Buyer's premises, except for such arising solely out of the gross negligence of Buyer.

11. **Limitation of Buyer's Liability.** To the fullest extent permitted by law, Buyer shall not be liable to Seller, its employees, representatives, agents, suppliers, or subcontractors for any anticipated profits or incidental damages (except to the extent expressly provided in Section 13) or consequential damages. Without limiting the foregoing, Buyer's liability for any claim arising directly or indirectly under or in connection with the Order shall in no event exceed the cost of the goods giving rise to the claim. Buyer shall have no liability for penalties of any kind.

12. **Laws and Regulations.** Seller shall comply with all applicable laws (including federal, provincial and municipal statutes, regulations and bylaws) of whatever nature concerning the manufacture, packaging, packing and delivery of goods and shall on request supply Buyer with any necessary declarations and documents stating the origin of the goods and the manner in which they qualify for Ontario preferences. Unless otherwise specified in this Order, Seller will obtain, at its cost, all permits and other consents required in respect of the goods.

13. **Termination for Convenience.** Buyer may, by written notice to Seller, terminate the Order, or any part thereof, for any or no reason, for Buyer's convenience. Upon notice of termination, Seller shall immediately stop all work and cause its suppliers and/or subcontractors to stop all work in connection with the Order. If Buyer terminates for convenience, Buyer shall pay Seller for goods accepted as of the date of termination, and, subject to Section 11, for Seller's actual, reasonable, out of pocket costs incurred directly as a result of such termination. Buyer shall have no responsibility for work performed after Seller's receipt of notice of termination.

14. **Termination for Cause.** Buyer may, by written notice to Seller, terminate the Order, or any part thereof, if Seller breaches any of the terms and conditions of the Order, becomes insolvent or is declared bankrupt. By way of example, (a) failure by

Seller to make timely, complete and conforming delivery of goods, or (b) breach of the representations or warranties set forth in the Order, shall entitle Buyer to terminate the Order for cause. If Buyer terminates for cause, Buyer shall have no payment obligations to Seller. Should a court of competent jurisdiction subsequently determine that Buyer's termination for cause was wrongful or unjustified, then such termination shall be automatically considered a termination for convenience under Section 13 and Seller shall have all rights under that provision, but no other rights or claims for damages.

15. Confidentiality. Seller acknowledges that it may, in providing the goods under the Order, be exposed to or acquire proprietary confidential information of Buyer or any of its affiliates, including, without limitation, information or materials concerning any of Buyer's or any such affiliate's customers, organization, work, know-how, processes, financial information, manufacturing techniques or technology and products and product applications ("Confidential Information"). Seller agrees to hold the Confidential Information in strict confidence and not to copy, reproduce, sell, assign, license, market, transfer, or otherwise disclose to any person or entity any such Confidential Information or to use any of such Confidential Information for any purpose other than in the performance of Seller's obligations under this Order. Seller agrees to notify its agents, employees and subcontractors of this confidentiality requirement and to obligate them in writing to abide by it for the express benefit of Buyer and its affiliates.

16. Use of Buyer's Name. Seller shall hold the business relationship with the Buyer and any Buyer's affiliate in strict confidence and shall not publish any advertising, promotion or other printed material or show any presentations or participate in any other activity which would disclose that it had or has a business relationship with Buyer or its affiliates and/or any details of that relationship.

17. Survival; Remedies Cumulative. All agreements, representations and warranties of Seller herein (including, without limitation, those regarding confidentiality and indemnification) shall survive delivery and final payment or an earlier termination of any Order. All of the rights and remedies available to Buyer under any Order are in addition to, and not in limitation of, the rights and remedies otherwise available at law or in equity.

18. Governing Law. This Order and the conduct of the parties with respect to the formation and performance of this Order are governed by and are to be construed and interpreted in accordance with the laws of Ontario and the laws of Canada applicable in Ontario. The parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Ontario and the Federal Court of Canada.

19. Miscellaneous. The invalidity, illegality or unenforceability of any provisions of any Order shall not affect the continuation in force of the remainder of said Order. No waiver of any obligation of Seller shall be effective unless in writing signed by Buyer and no waiver in any single instance shall be considered a waiver of any other or similar obligation. Any Order shall inure to the benefit of Buyer and its successors and assigns, shall be binding upon Seller and its successors and assigns and may not be assigned or delegated by Seller without the express written consent of Buyer.

20. Dispute Resolution. All disputes, disagreements, controversies, questions or claims arising out of or relating to this Order, or in respect of any legal relationship associated with or arising from this Order, including with respect to this Order's formation, execution, validity, application, interpretation, performance, breach, termination or enforcement, will be determined by litigation in the Superior Court of Justice of Ontario at Ottawa, to the jurisdiction of which the parties irrevocably attorn.