



Purchase Order Terms & Conditions

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These Purchase Order Terms and Conditions ("Conditions") apply to the purchase of products, goods and/or services (collectively, "Deliverables") by the Buyer ("Buyer") from the Seller ("Seller") identified on the face of the Purchase Order.

1. **Acceptance.** These Conditions govern any Buyer Purchase Order issued to Seller including a Purchase Order to which these Conditions are attached and/or incorporated by reference. The Purchase Order together with these Conditions and any specifications, drawings or other written instructions issued hereunder contain the complete and final agreement between Buyer and Seller and all prior negotiations, quotations, proposals, and writings pertaining to the Purchase Order are superseded hereby. Any different or additional terms or conditions in any Seller quotation, proposal, acknowledgment, commencement, invoice or other document or communication issued by Seller shall not be binding on or applicable to Buyer unless expressly accepted in writing by Buyer. Any reference in the Purchase Order to Seller's quotation or proposal is for the purpose of reference to the technical specifications or information contained therein and shall not incorporate by reference any different or additional terms or conditions of Seller. Seller shall immediately submit any ambiguities, conflicts or discrepancies in the specifications, drawings or other documents which are a part of the Purchase Order to Buyer for its determination and shall comply with the determination of Buyer in such matter.
2. **Changes.** Buyer may at any time, by written notice, make changes in drawings, specifications, descriptions, shipping instructions, quantities and or Delivery Schedule. Should any change increase or decrease the cost of any Deliverables, Seller shall immediately notify Buyer providing details and Buyer may make an equitable adjustment in writing in the price or Delivery Schedule or both. No change to the Purchase Order shall be valid unless agreed in writing by an authorized representative of Buyer.
3. **Delivery.** Time is of the essence for performance under the Purchase Order. Delivery of Deliverables in accordance with delivery dates specified on the face of the Purchase Order ("Delivery Schedule") is critical to the ability of Buyer to meet its contractual obligations to its customer(s). If Seller fails to meet the Delivery Schedule other than by reason of Excusable Delay, Buyer may at Buyer's sole option, without limiting or affecting its other rights or remedies available hereunder or at law or in equity: (a) direct expedited shipment and/or incur premium freight or transportation costs, and Seller shall pay upon demand all excess costs incurred thereby, including additional handling charges and other expenses; and/or (b) terminate all or part of the Purchase Order without liability. Seller shall be responsible for all other direct, consequential, and incidental damages incurred by Buyer as a result of Seller's failure to meet the Delivery Schedule, other than by reason of an Excusable Delay, including without limitation the reimbursement of any costs, penalties, and damages owed by Buyer to its customer(s) for late delivery or other performance, and the cost of obtaining replacement deliverables from an alternate source.
4. **Excusable Delay; Force Majeure.** Neither party shall be responsible for the delay in performance of its work where such delay is due to act of God, public enemy, compliance with laws, governmental acts or regulations, fire, act of civil or military authority, Governmental priority, flood, epidemic, war, riot, or other causes substantially similar to the foregoing beyond its reasonable control ("Excusable Delay"). Immediately upon the date the Seller first knows, or acting reasonably should have known, of the circumstances giving rise to an Excusable Delay, the Seller shall provide written notice to Buyer. Failure to provide timely notice shall be cause for Buyer to refuse to make a schedule adjustment. If any Excusable Delay lasts longer than thirty (30) days, Buyer may in its sole discretion terminate the Purchase Order without liability.
5. **Shipments.** All Deliverables shall be packaged in a manner sufficient to ensure delivery in an undamaged condition. Seller shall be responsible for costs or damages incurred by Buyer as a result of or caused by improper packaging. At Buyer's sole option, material delivered without proper containment, packaging, labeling and documentation may be returned to Seller at Seller's expense. All shipments and packages shall include a packing slip listing the Deliverables, quantities, Buyer part numbers (if any), and Purchase Order number. Any materials or substances considered hazardous or toxic shall be delivered in appropriate containers / packaging with the required warning labels clearly visible and the respective Material Safety Data Sheets accompanying the delivery, in compliance with all applicable laws. Seller shall notify Buyer prior to expected shipment and on the day of shipment by facsimile or electronic transmission which notice shall include the carrier's name, the waybill number, number of pieces, estimated weight (by piece and total), progressive bill number, destination, and estimated date of delivery. Unless otherwise indicated on the Purchase Order, delivery will be made to Buyer FCA Seller's shipping location (Incoterms 2010).
6. **Certificates of Origin.** Upon request, Seller shall promptly furnish to Buyer all certificates of origin or domestic value-added and all other information relating to the costs and places of origin of the Deliverables and the materials and components contained therein or used in the performance thereof, as may be required by Buyer to comply fully with all customs, tariffs and other applicable governmental regulations. Seller shall indemnify and hold Buyer, its successors, assigns, representatives, employees and agents, and Buyer's customer(s) harmless from and against all liabilities, demands, claims, losses, costs, damages and expenses of any nature or kind (including fines and penalties) arising from or as a result of: (i) Seller's delay in furnishing such certificates or other information to Buyer; (ii) any errors or omissions contained in such certificates; and (iii) any non-compliance by Seller with such regulations.



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7. **Title and Risk of Loss.** Title and risk of loss or damage to the Deliverables shall pass to Buyer upon delivery to the specified destination pursuant to the applicable Incoterm. Seller warrants that upon delivery Buyer shall acquire good and clear title, free and clear of all liens, encumbrances and security interests. To the maximum extent permitted by the applicable law, Seller waives any lien or other rights that Seller might otherwise have on or in any of Buyer's or Buyer's customer's property, and covenants that neither Seller, nor any of its subcontractors or suppliers, or their respective employees, will assert any such lien or other rights.
8. **Warranty.** Seller represents, warrants, and covenants that: (1) the Deliverables delivered hereunder are new, free from defects in design (except to the extent the design was supplied to Seller by Buyer), materials, workmanship, and manufacture, and conform to the specifications; (2) Seller has the necessary knowledge, experience, and skills to provide the Deliverables; and (3) Seller performance will be completed in a competent and professional manner, and in no event with less than a reasonable standard of care and in accordance with generally accepted industry standards. In addition, Seller warrants that the Deliverables will function in accordance with the specifications published or provided to Buyer by Seller for the Warranty Period. The parties agree the Warranty Period shall be twenty-four (24) months from the later of: (a) the date the Deliverables are delivered by Seller to Buyer or to Buyer's customer (if so directed by Buyer); and (b) the date the Deliverables are put into production by Buyer or its customer, alone or as part of another machine or product. Upon notification from Buyer, at Buyer's option, Seller shall immediately repair, reperform, or replace defective or non-conforming Deliverables at Seller's expense during the Warranty Period. If Buyer determines that the Seller is unable to repair or replace the defective or non-conforming Deliverable within the time Buyer requires to meet its obligations to its customer, Buyer shall at its sole discretion and option: (i) proceed with correction of the defect or non-conformance and charge all resulting costs to Seller including without limitation all labour and other expense incurred to identify and correct the defect or non-conformity (plus reasonable overhead and profit on such costs) and any down time caused thereby; or (ii) return to Seller at Seller's expense the defective Deliverables and any other Deliverables associated with the defective Deliverables supplied by Seller, for full refunds of the purchase price paid for such Deliverables and all resulting costs incurred by Buyer including without limitation all labour and other expense incurred to identify and attempt to correct the defect or non-conformity (plus reasonable overhead and profit on such costs) and any down time caused thereby. Buyer's action to effect the cure of any defect or non-conformity shall not relieve Seller of any of its warranty obligations hereunder. The foregoing shall not be in limitation of any rights that Buyer may have at law or in equity by reason of any breach of warranty, expressed or implied, or otherwise. Such warranty shall be in addition to any warranties of additional scope given to Buyer by Seller.
9. **Replacement Parts.** Seller guarantees the availability of all necessary parts for the Deliverables for a period of ten (10) years following the Warranty Period.
10. **Indemnity.** Seller shall indemnify and hold Buyer and its customer(s), and their respective representatives, employees, agents, customers, invitees, subsidiaries, affiliates, successors and assigns, harmless from and against all liabilities, claims, demands, losses, costs, damages and expenses of any nature or kind (including consequential and special damages, personal injury, property damages, lost profits, recall or Buyer's customer's field service action costs, production interruption costs, inspection, handling and reworking charges, professional and other legal fees, and other costs associated with Buyer's administrative time, labour and materials) arising from or as a result of: (i) any breach of Seller's warranties hereunder; and (ii) any other acts or omissions or negligence of Seller or any of its subcontractors or suppliers in connection with Seller's performance of its obligations under the Purchase Order. No limitations on Buyer's rights or remedies in any Seller's documents shall operate to reduce or exclude such indemnification.
11. **Insurance.** Seller must maintain the following insurance coverages for the duration of its performance obligations under the Purchase Order and for a period of 1 year thereafter, written on an occurrence basis and underwritten by insurers with a minimum rating of A- VII by A.M. Best:
- Commercial auto liability with a limit of liability not less than \$1 million per occurrence combined single limit for bodily injury and property damage of \$1 million, including owned, non-owned and hired automobiles;
 - Commercial general liability with a limit of liability not less than \$1 million per occurrence combined single limit, including coverage for operations, completed operations, and products liability, with a \$2 million aggregate;
 - Workers' compensation with statutory limits and Employer's Liability coverage with limits of at least \$1 million;
 - Umbrella or excess liability insurance with a limit of liability not less than \$3 million per occurrence; and
 - Professional Liability (Errors & Omissions) with limits of at least \$2,000,000 if-services are provided.
12. **Intellectual Property Rights.** Seller grants Buyer and Buyer's customer(s) a fully paid-up, worldwide, perpetual, non-exclusive, transferable, royalty-free and unlimited license (with the right to sublicense) and right to use all Seller intellectual property rights incorporated into the Deliverables. Buyer and Buyer's customer(s) are entitled to make subsequent changes to the Deliverables. Seller hereby assigns and agrees to assign to Buyer any innovations, inventions, drawings or specifications conceived and/or reduced to practice in the course of or performance of the Purchase Order to the extent of designs or specifications provided by Buyer, including all intellectual property rights thereto. Seller warrants that the Deliverables and their sale, use, or existence, whether alone or in combination, will not infringe any United States, Canadian or any other foreign patent, copyright, trademark, trade secret or other intellectual property right ("Infringement"). If the sale, use, or existence of any Deliverables constitutes or are alleged to constitute



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Infringement and their use is enjoined or threatened to be enjoined, Buyer may, at its sole option, require Seller either to procure for Buyer and/or Buyer's customer(s) the right to continue using such Deliverables, to modify such Deliverables so that they become non-infringing or to remove such Deliverables and refund to Buyer the total purchase price thereof, and in addition pursue any remedy or remedies available at law or in equity. Notwithstanding the foregoing, should any third party threaten to or assert a claim or commence an action against Buyer and/or its customer(s) as a result of Buyer's use of, distribution or incorporation of Seller's Deliverables into Buyer products and/or services, Seller agrees to indemnify, defend and hold Buyer and/or its customer(s) harmless from the action or claim and to pay any and all resulting costs, damages, expenses (including attorney fees), loss or liability (including amounts paid in settlement) incurred by Buyer and/or its customer(s).

- 13. Termination for Default.** Without prejudice to any other rights or remedies which Buyer may have, Buyer may terminate the Purchase Order, in whole or in part, effective immediately and/or cancel further performance by Seller in the event that any of the following occur: (a) the Seller fails to perform any of its obligations under or is in default of any provision or requirement of the Purchase Order (collectively, a "Default") and fails to cure the Default within ten (10) business days of written notice of the Default from Buyer; (b) the Seller is adjudged bankrupt or insolvent, becomes subject to bankruptcy or insolvency proceedings, or makes a general assignment for the benefit of creditors; or (c) in the event of a change in control of Seller. In addition thereto, Buyer reserves the right, without liability, to cancel the Purchase Order in whole or in part by written notice effective when delivered to the Seller if: (i) the Deliverables are not delivered in accordance with the Delivery Schedule or if in the judgment of Buyer Seller will be unable to deliver Deliverables in accordance with the Delivery Schedule; or (ii) the Deliverables supplied by Seller are not in conformance with the specifications. In the event of partial cancellation, the rights and obligations of Buyer and Seller with respect to the Deliverables not cancelled shall continue. In the event of Default by the Seller, Buyer shall have the right to terminate the Purchase Order, in whole or in part, without further liability for Deliverables not delivered to Buyer. Seller shall indemnify and hold harmless Buyer and its customer(s) from all costs, losses and claims resulting from Seller's Default, including reasonable attorneys' fees.
- 14. Termination for Convenience and Cancellation.** Buyer may at any time upon written notification to Seller, terminate the Purchase Order, in whole or in part, with respect to undelivered Deliverables without further liability other than to pay for those Deliverables that have already been delivered. For custom Deliverables, Buyer shall pay the Seller the proportionate value of the purchase price for those Deliverables completed at the time of termination, upon delivery of those Deliverables to Buyer. For such custom Deliverables cancelled before being completed, Buyer shall be liable to Seller for: (a) Seller's cost of material or work in progress, as shown on Seller's books that cannot be returned to Seller's suppliers or subcontractors for credit; and (b) any cancellation fees owed by Seller to its suppliers as a result of cancellation of the custom Deliverables; but in no event shall Buyer's liability for cancellation exceed the purchase price. Seller's standard products offered for sale by Seller to any third party in addition to Buyer shall in no event be considered custom. In addition to the foregoing, Buyer shall have the right to return to Seller for full refund without restocking or cancellation fees, any non-custom Deliverables which have been delivered to Buyer and which Buyer determines are no longer required by Buyer.
- 15. Purchase Price and Invoices.** Seller warrants that the prices in the Purchase Order shall be complete, and no surcharges, premiums or other additional charges of any type shall be added, without Buyer's prior written consent. Upon delivery of the Deliverables, Seller shall submit proper invoices to Buyer. All invoices must include the Purchase Order number, ship to address, Seller's name, Seller's GST, HST, VAT or any other applicable tax account registration number, item description, delivery date and remittance instructions. Failure to submit proper invoices may result in payment delays. Buyer shall make payment 2nd day 2nd month from receipt of valid Seller invoices. Buyer may withhold payment in whole or in part if Seller's invoice is incorrect, does not conform to Buyer's invoicing instructions, or if either the progress relating to the Deliverables or parts thereof, as stipulated in Seller's invoice, has not been achieved. Buyer shall be entitled to set off any amount owing from Seller to Buyer against any amount payable under the Purchase Order.
- 16. Material Furnished or Paid for by Buyer.** All jigs, fixtures, gauges, patterns, tools, dies, molds, materials, designs, or equipment supplied to Seller by Buyer or otherwise paid for by Buyer or developed as a result of the performance under the Purchase Order (collectively, "Buyer Property") are the exclusive property of Buyer and Seller acquires no rights therein. All Buyer Property shall: (1) be used by Seller exclusively for Buyer orders; (2) be clearly marked as Buyer Property and segregated from Seller property when not in use; (3) be properly maintained and kept in good working order by Seller (reasonable wear and tear from ordinary use excepted); (4) be insured by Seller and kept free of liens, claims, security interests or other encumbrances; and (5) be promptly returned to Buyer upon demand or termination or expiration of the Purchase Order. Seller shall not remove from the Seller's facility or dispose of any Buyer Property without the prior written consent of Buyer. Seller and its employees and subcontractors will execute whatever documents and take any other actions reasonably required to perfect and confirm Buyer's sole rights and interest in the Buyer Property.
- 17. Assignment and Subcontracting.** Seller shall not assign the Purchase Order or any right or obligation bestowed or imposed herein without the express prior written consent of Buyer. If Seller determines it necessary to subcontract portions of the work, Buyer reserves the right to prior approve such allocations of work and the selection of subcontractors. Seller shall not use a subcontractor if Buyer has a reasonable basis for objecting to such subcontractor.



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- 18. Confidentiality.** The parties acknowledge having entered into a Non-Disclosure Agreement (the "NDA"), prior to or concurrently with the issuance of the Purchase Order. The NDA remains in full force and effect, and the terms and conditions of the NDA are incorporated herein by reference, and supersede the terms hereof, such that if there is a conflict between the terms and conditions of the NDA and these Conditions, then the terms and conditions of the NDA will govern. Seller also acknowledges and agrees that the terms of the Purchase Order, the work being performed, the Deliverables being supplied, and Seller's relationship with Buyer and Buyer's customer(s) shall be treated as Confidential Information as defined in the NDA. In the absence of an NDA, Seller agrees to keep confidential and maintain the confidentiality of the confidential information of Buyer and Buyer's customer(s) and other subcontractors, including the terms of the Purchase Order, the work being performed, the Deliverables being supplied and the relationship between Seller, Buyer and Buyer's customer(s). These Conditions impose no obligation on Seller where such information: (i) was known to Seller prior to receipt of the information on a non-confidential basis; (ii) is or becomes a matter of public knowledge or publicly available through no fault of Seller; (iii) is rightfully received by Seller on a non-confidential basis from a third party; (iv) is independently developed by Seller without use of or reference to information from Buyer or Buyer's customer(s) or other subcontractors as established by the written records of Seller; or (v) is publicly disclosed by Seller with prior written approval of Buyer. Seller agrees to protect the information in strictest confidence by using the same degree of care to prevent the unauthorized use, dissemination or publication of the information as Seller uses to protect its own confidential information, provided that in no case shall such standard of care be less than a reasonable degree of care. Seller may disclose such information only to those of Seller's employees who have a need to know such information provided that such employees are under obligations of confidentiality to maintain the confidentiality of such confidential information. Seller shall not use the confidential information of the Buyer or Buyer's customer(s) or other subcontractors for any purpose other than as necessary to carry out the purposes of the Purchase Order.
- 19. Remedies; No Implied Waiver; Limitations of Liability.** If Seller is in Default, Buyer shall have all remedies available hereunder, by law and at equity. No waiver by Buyer of any one of its rights or remedies under the Purchase Order shall be construed as a waiver of any other rights or remedies nor a waiver of its rights for any succeeding breach of the same or any other provision. In no event whether as a result of breach of contract, tort, termination or otherwise, shall: (a) Buyer be liable to Seller for anticipated profits, loss of opportunity, goodwill, profit, or revenue, or for special, indirect, incidental, exemplary, punitive, or consequential damages; or (b) Buyer's liability to Seller for any loss or damage arising out of, connected with, or resulting from the Purchase Order, or Buyer's performance or breach of thereof exceed the monetary obligation Buyer would have had to Seller in the absence of such breach, tort, termination or otherwise of the Purchase Order.
- 20. Compliance with Laws and Regulations.** Seller shall be responsible for complying with all applicable federal, provincial, state and/or local laws and regulations having jurisdiction over the work covered by the Purchase Order. Deliverables manufactured or supplied by Seller shall comply with the applicable Occupational Health and Safety Act, Environmental Protection Act and all other applicable federal, state or local laws, rules, regulations, codes, ordinances, directives, policies and orders. Seller shall provide all Deliverables in a professional manner, in compliance with the highest industry standards and with care, skill and diligence. Seller shall indemnify Buyer and Buyer's customer(s) against any claims and/or damages for non-compliance with these requirements.
- 21. Relationship of the Parties.** Seller and Buyer are independent contracting parties and nothing in the Purchase Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does the Purchase Order grant either party any authority to assume or create any obligation on behalf or in the name of the other. None of the persons engaged by Seller in the performance of its obligations under the Purchase Order shall be considered as employees of Buyer.
- 22. Governing Law and Disputes.** The Purchase Order shall be governed by the laws of the jurisdiction in which the Buyer has its primary place of business (including without limitation, the applicable provincial, state and/or federal laws and without regard to its conflict of law provisions), and Seller and Buyer hereby submit to the exclusive jurisdiction of the courts of said jurisdiction for resolution of disputes. The provisions of the United Nations Convention On Contracts For The International Sale Of Goods shall not apply to the Purchase Order or the rights and obligations of the Seller and Buyer under the Purchase Order.
- 23. Survival Beyond Completion.** The terms, provisions, representations, and warranties contained in these Conditions that by their sense and context are intended to survive the performance thereof by either party or both parties hereunder (including but not limited to confidentiality, indemnification, disclaimers, representations, and warranties) shall so survive the completion of performance, expiration or termination of the Purchase Order.