

## **Terms and Conditions of Sale**

1. **Acceptance Agreement:** These Terms and Conditions supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms. These Terms and Conditions represent the final and complete understanding of the parties and may be amended or cancelled only by written agreement signed by both parties. These Terms and Conditions expressly limit acceptance to these provisions. No order shall have any force or effect until acknowledged in writing by Seller. Any proposal for additional or different terms or any attempt by Buyer to vary in any degree any of the provisions of these Terms and Conditions is hereby deemed material and is objected to and rejected. No terms of any document or form submitted by Buyer shall be effective to alter or add to the provisions contained in these Terms and Conditions. Unless otherwise stated herein, Buyer's receipt of any portion of the goods ("Goods") shall constitute acceptance of these Terms and Conditions, unless Buyer immediately returns all such Goods.
2. **Prices:** Seller's prices are subject to change without notice. Unless otherwise specified, all quotations are binding only for immediate acceptance.
3. **Terms of Payment:** All payments are due net 15 days from date of invoice except as otherwise agreed upon in writing by the parties. All orders are subject to acceptance at Seller's office. No discounts shall be taken except as specifically allowed in writing by Seller. The price for the Goods and all other amounts due to Seller from Buyer shall be paid without abatement, deduction, or setoff. The date of payment of an invoice shall be the date the payment is received by Seller at the location designated on the invoice.
4. **Taxes:** Prices do not include any sales, use, excise, privilege, or other taxes or assessments now or hereafter imposed or levied by or under the authority of any federal, state, or local law, rule, or regulation concerning the Goods sold hereunder or the manufacture or sale thereof. If Seller pays any such taxes or assessments, Buyer shall, upon demand, immediately reimburse Seller for such amounts.
5. **Risk of loss:** All risk of loss or damage to Goods shall pass to Buyer upon delivery thereof to Buyer, to its designated agent, or to a carrier for delivery to Buyer, whichever occurs first. Unless otherwise agreed by Seller in writing, all shipments shall be FCA Shipping Point per INCOTERMS 2010.
6. **Delivery:** All shipping and delivery dates are estimates and are based upon prompt receipt of all necessary information from Buyer. Seller shall not be liable for any claim, loss, expense, or damage of any kind whatsoever for delays in delivery.

7. **Warranties and Limitations on Warranties:**

- A. Seller expressly warrants that, for a period of 12 months after start-up or 18 months after readiness or offer to ship, the Goods will conform to the descriptions and specifications specifically agreed to in writing by Seller and will be free from defect in material and workmanship. THESE ARE SELLER'S ONLY WARRANTIES. SELLER MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED.
- B. If Buyer notifies Seller in writing within the warranty period of a defect in any Goods or part thereof sold by Seller to Buyer, and if Seller determines, after appropriate tests and inspection by Seller, that such Goods or part thereof are not in conformity with the warranty given hereunder, Seller will repair or replace, at its sole option, FCA Shipping Point per INCOTERMS 2010, the defective Goods or part thereof, provided Buyer returns such Goods or part thereof to Seller's plant, freight prepaid. No Goods or part thereof shall be returned without Seller's prior approval. This shall be Buyer's exclusive remedy for Seller's liability hereunder. Any claims not made within the warranty period are deemed waived by Buyer. In lieu of repairing or replacing the defective Goods or part thereof, Seller may, at its sole option, refund the purchase price therefor.
- C. Except with respect to title, Seller's warranty does not attach to Goods or parts thereof not manufactured by Seller. Seller will, as an accommodation to Buyer, pass on to Buyer whatever warranty, if any, it receives from the manufacturer of such Goods or part, but only to the extent allowed by such manufacturer.
- D. Seller's liability to Buyer, or anyone claiming through or on behalf of Buyer, with respect to any claim or loss arising out of any Goods sold by Seller to Buyer or alleged to have resulted from an act or omission of Seller, whether negligent or otherwise, and whether in tort, contract, or otherwise, including failure to deliver, delay in delivery, or breach of warranty, shall be limited to an amount equal to the purchase price of the Goods or part thereof with respect to which such liability is claimed or, where appropriate and at the option of Seller, to replacement of the Goods or part thereof. In no event shall Seller be liable for any bodily injury, death, or property damage resulting from or in any way arising out of the Goods or their sale, use, or manufacture. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES, OR EXPENSES.



- E. If Buyer or any third party repairs or modifies all or part of the Goods without the prior written consent of Seller, or if the Goods are not installed or used in compliance with Seller's directions, this warranty shall be void.
8. **Inspection:** Buyer shall inspect the Goods as soon as possible, but at least within seven days, after receipt, and Buyer shall immediately notify Seller in writing of any claims that the Goods do not conform to Seller's warranty for such Goods.
9. **Returns:** Goods are custom and may not be returned by Seller.
10. **Indemnification:**
- A. If the Goods are manufactured in accordance with specifications or other directions provided by Buyer, Buyer shall indemnify, defend, and hold harmless Seller against all claims, losses, liabilities, and expenses (including attorneys' fees), which Seller may incur or become liable to pay with respect to such Goods, including (without limitation) product liability claims, claims relating to patent, trademark, copyright infringement, or unfair competition, claims of non-compliance with any federal, state, or local law or regulation, and any other claim of any third party which relates to or in any way arises out of such specifications or other directions provided by Buyer.
- B. Buyer shall indemnify, defend, and hold harmless Seller against all claims, losses, liabilities, and expenses (including attorneys' fees), which Seller may incur or become liable to pay which relate to or in any way arise out of Goods being subjected to, in whole or part: (i) improper installation or storage; (ii) accident, damage, abuse or misuse; (iii) abnormal operating conditions or applications; (iv) operating conditions or applications above the rated capacity of the Goods; or (v) any use or application other than or varying in any degree from that for which the goods were designed.
11. **Patents:** Except as provided in Section 10 with respect to Goods manufactured in accordance with specifications or directions provided by Buyer and except for Goods or components thereof manufactured by others and resold by Seller, and provided Buyer has made all payments due hereunder, Seller shall defend, at its expense, any suit or proceeding brought against Buyer based upon any claim that the Goods or any part thereof infringe any United States patent issued as of the date of Seller's quotation and shall pay any damages and costs awarded therein against Buyer, provided that Seller is notified promptly in writing of such claim and is given full authority, information and assistance by Buyer to defend or settle the suit. If the Goods or any part thereof are deemed to infringe any such patent, Seller shall, at its expense and sole option either: procure for Buyer the right to continue using said Goods or part; replace them with non-infringing Goods or parts; modify them so they become non-infringing; or remove them and refund the purchase price for them.

12. **Force Majeure:** Seller shall not be liable for any delay in or failure of performance hereunder due to any contingency beyond its reasonable control.
13. **Termination:** Seller shall have the right to terminate this Agreement or to cease work hereunder, in whole or in part, at any time, if (i) Buyer is in default of or commits a breach of any of the provisions of these Terms and Conditions or any other agreement it has with Seller, (ii) a petition initiating a proceeding under any applicable law relating to bankruptcy, insolvency, or reorganization is filed by or against Buyer, (iii) Buyer executes an assignment for benefit of creditors, (iv) a receiver is appointed for Buyer or any substantial part of its assets, or (v) Seller shall have any reasonable ground for insecurity with respect to Buyer's ability to perform and Buyer is unable to provide Seller with adequate assurance of its ability to perform within ten days after written request therefor by Seller.

Seller's right to terminate under this section is not an exclusive remedy. Seller shall be entitled to all other rights and remedies it may either at law or in equity. No termination hereunder shall affect any accrued rights or obligations of either party as of the effective date of such termination.

14. **Storage:** In absence of agreed shipping dates, Seller shall have the right to invoice Buyer and ship the Goods once they are ready for shipment. If Buyer is unwilling to accept shipment of the Goods on the agreed shipping date or as provided in the prior sentence, Seller may, at its option, place the Goods in storage and bill Buyer for the storage charges. In such case, risk of loss shall pass to Buyer when the Goods are placed in storage, and the date the Goods are placed in storage shall constitute the date of shipment for purposes of beginning the warranty period.
15. **Waiver:** Failure of Seller at any time to require Buyer's performance of any obligation hereunder shall not affect Seller's right to require performance of that obligation or of any other obligation of Buyer hereunder. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein.
16. **Miscellaneous:** Buyer shall not assign any of its rights or obligations hereunder without Seller's prior written consent. These Terms and Conditions shall be construed in accordance with the laws of Ontario, Canada, without regard to any rules on conflicts of laws. The section headings contained herein are not part of these Terms and Conditions and are included solely for the convenience of the parties.