

Terms and Conditions of Sale

GENERAL TERMS & CONDITIONS

IN CONSIDERATION of the mutual covenants and agreements contained in this agreement, it is agreed by and between the parties as follow:

1. Agreement to Buy and to Supply

(a) The Buyer agrees to purchase the Product from the Seller to meet its requirements during the term of this Agreement, and the Seller agrees to supply the Product to the Buyer to meet those requirements, on the terms and in the manner set forth in this agreement. For this purpose, it is understood and agreed that the Product shall mean all of the equipment, accessories, parts, and supplies purchased or licensed by Buyer under this Sale Agreement (the "Agreement"). All quotations, orders, acknowledgments, confirmations and invoices and the sale, lease or license by Seller of the Product, and purchased or licensed by Buyer under this Agreement shall be governed solely by the terms and conditions specified herein. Any additional or supplemental terms or conditions proposed by Buyer (whether orally or in writing) are hereby rejected by Seller.

(b) This transaction is subject to credit approval and written acceptance and confirmation by an authorized officer or employee of Seller; and such acceptance is expressly conditioned upon Buyer's agreement and assent to Seller's terms and conditions set forth herein and in the attachments, if any. Upon the express written acceptance by Seller; this Agreement shall constitute the complete agreement between the parties. This Agreement is a firm Agreement and shall not be withdrawn by the Buyer for want or lack of consideration, nor shall the Buyer attempt to amend this Agreement without the express written approval of Seller. Any additional or different provisions to this Agreement shall be deemed material and are hereby objected to and rejected. No person has authority to make any claim, representation, warranty, promise, guarantee or commitment on behalf of Seller which is not expressed herein.

(c) If the Buyer is purchasing the Product in order to resell to a Buyer's Customer; the Buyer must disclose such intention to the Seller at the time the Product is ordered. Otherwise, the Buyer may only acquire Product for its own use and not for the purpose of resale, lease or other disposition.

(d) Unless otherwise specified, all sales are final, and except in the case of defective Product subject to warranty, Product may not be returned (whether for credit, refund, exchange or otherwise) by Buyer for any reason.

(e) Once accepted by Seller; this Agreement is not cancelable, in

whole or in part, unless such cancellation is mutually agreed to in writing by both parties.

2. Purchase Price and Charges

(a) All prices are: ExWorks- seller's shipping point, as such term is understood per Incoterms 2000, and title shall pass to Buyer upon delivery to the first commercial carrier and the risk of loss, destruction and damage while in transit shall be borne by Buyer. If there is a delay in completion of shipment of the Product purchased under this Agreement due to any change requested by Buyer or any delay on Buyer's part in furnishing information required for completion of this Agreement, the price agreed upon at the time of acceptance of this Agreement by Seller is subject to increase.

(b) Seller shall arrange for the shipment of the Product to Buyer and shall charge Buyer for such shipment as set forth on the invoice delivered with respect to the shipment.

(c) Prices are exclusive of handling charges for inside delivery of equipment, uncrating and installation.

(d) Prices stated at the time of order are exclusive of all sales, use, excise, transfer and similar taxes, duties, levies, tariffs and other charges imposed by any governmental authority or agency, all of which shall be the sole and exclusive responsibility and obligation of Buyer. If such taxes are not included in an invoice for the Product, they may be invoiced separately later.

(e) The Buyer is obligated to provide the Seller with a copy of all relevant exemption certificates is the Buyer is to be exempted from Provincial or State Sales/Use Tax(es).

3. Payment of Purchase Price

(a) Invoices shall be forwarded to Buyer upon shipment and shall be due and payable to Seller in full upon receipt thereof, in accordance with the payment terms set forth in this Agreement, without abatement, set-off or deduction of any amount whatsoever and despite any defense or counterclaim Buyer may have against Seller. Payment terms are net 30 days unless otherwise stated. Any amounts which are past due shall incur interest on the unpaid amount at the rate of 1.5% per month, or the maximum lawful rate allowed under applicable law, whichever is less. In addition, Buyer shall pay all collection costs (including reasonable attorneys' fees and expenses) if collected by or through an attorney-at-law.

(b) Prices are subject to change by Seller (i) to correct errors or mistakes or (ii) if tariff, freight rates or transportation charges are



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used in determining delivery prices, to reflect changes which may occur in such rates or charges prior to shipment.

(c) Seller reserves the right to revise the payment terms provided for hereunder; including without limitation requiring cash payment before shipment, due to changes in Buyer's credit rating or credit worthiness, as determined by Seller in its sole discretion.

4. Security Interest; Risk of Loss

(a) Buyer hereby grants Seller a purchase money security interest ("PMSI") in the Product purchased and any proceeds thereof. The PMSI shall continue until payment in full of the entire purchase price of the Product and performance by Buyer of any other obligations hereunder. Seller is entitled to all remedies of a secured party after default under the Personal Property Security Act in addition to all other rights provided by contract and by operation of law. Buyer agrees to pay to Seller; in addition to the interest on overdue sums due, reasonable attorney fees, court costs and other expenses of Seller incurred in enforcing Seller's rights under its PMSI. The Product purchased shall remain personal property and shall not become or be deemed a fixture or a part of any real estate on which it may be located. Buyer authorizes Seller to file any instrument or document considered necessary by Seller to perfect or enforce its PMSI in the Product including, but not limited to, financing statements, chattel mortgages, deeds of trust, deeds to secure debt, mortgages or other security instruments.

(b) As of the date of arrival of the Product at Buyer's premises, and until such time as full payment for such Product has been effected by Buyer; upon request of Seller; Buyer shall obtain and maintain insurance with respect to the Product, naming Seller as loss payee, to such extent and against such risks, hazards, and liabilities as is currently maintained by companies similarly situated (provided, however; that in no event shall the amount of insurance required to be maintained against damage to or loss of the Product be less than any balance owed to Seller with respect to the Product).

5. Delivery Dates; Partial Shipments

Delivery dates made at the time of order are only estimates, and are subject to change, and Seller neither assumes any responsibility nor makes any guarantee or commitment in respect thereof. Seller reserves the right to ship all or part of the Product when the same shall be ready for shipment. If partial shipments are made, proportionate payments shall be due and payable upon receipt of the invoice for each partial shipment. In the event Buyer is unable to receive shipment or in the event Seller is prevented from making shipment due to causes beyond Seller's reasonable control, Seller shall store the Product at Buyer's risk and expense.

6. Installation/Trade-In

(a) Installation of all Product and accessories sold and delivered pursuant to this Agreement must be conducted and supervised by a licensed electrician according to the local applicable governing electrical code in order to validate the Product Standard Limited Warranty provided herein. Prior to installation, Buyer shall not handle, attempt to operate, or operate any Product except in the presence and under the supervision of a certified and licensed electrician. After installation of the Product in accordance with local governing electrical code, Buyer will not modify any Product without prior notification to and express written permission from Seller.

(b) Trade-In Product, if any, shall be expressly identified in Exhibit A and shall be readied by Buyer at Buyer's expense for pickup by Seller at the time of delivery by Seller of the Product specified on the front side hereof. Buyer's failure to observe this requirement shall subject Buyer to supplemental charges for removal and cartage at prevailing service call, labour and freight rates.

7. Remedies

Without waiving any other rights or remedies available to it under applicable law or otherwise, Seller may, at its option, defer shipment or deliveries hereunder; or under or pursuant to any other contract, agreement or other oral or written agreement with Buyer; until all past due accounts of Buyer to Seller have been satisfied in full. If Buyer fails to make payment when due and Seller determines its obligations hereunder to be insecure, Buyer shall promptly return to Seller; on demand, all Product furnished to Buyer hereunder for which payment in full has not been made, and if Buyer fails to so return such Product, Seller may, to the extent permitted by law, with or without notice and with or without legal process, enter upon any premises where such Product may be located and take possession of the same. Seller may then sell such Product, with or without notice, at private or public sale at which Seller may purchase, and the proceeds of such sale, less expenses of retaking, repairing, holding and reselling, will be applied to the unpaid purchase price without release of any deficiency, which deficiency (if any) shall be promptly paid by Buyer. Any surplus above the unpaid balance shall however be remitted by Seller to Buyer.

8. Cancellation for Breach

Failure of the Buyer to pay for the Product on the due date for payment, shall entitle the other party in each case to treat this agreement as repudiated, but without prejudice to any rights accruing due in either party at that date.

9. Indemnities



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(a) General Indemnity: Seller will indemnify and save harmless Buyer from and against any direct claims, demands, losses, or damages made against or incurred by Buyer directly related to the negligence of Seller or its employees in providing the Product and services described herein. Seller shall exercise the same degree of care, skill and diligence in the performance of its obligations hereunder as is ordinarily possessed and exercised by individuals experienced in the industry. Seller acknowledges that its qualifications and experience were a major factor in the selection of Seller to supply the Product.

(b) Patent Indemnity: Seller shall indemnify Buyer from and against any direct liability (but not indirect, incidental, special or consequential damages) in respect of any claim based solely on infringement of any valid Canadian or United States Letters Patent directly related to the manufacture, sale or use of any Product furnished by Seller to Buyer hereunder; provided that Buyer shall promptly notify seller of any such claim and shall give Seller the opportunity to defend such claim in its own behalf. Seller's indemnity hereunder shall not apply to any infringement arising from the use of such Product in combination with other goods not furnished by Seller or the unauthorized alteration or modification of a Product furnished hereunder or where such infringement arises out of a particular process or particular equipment of another manufacturer where such process or equipment has been specified by Buyer.

10. Limitation on Damages

THE MAXIMUM LIABILITY OF SELLER HEREUNDER SHALL IN NO EVENT EXCEED THE LESSER OF THE ACTUAL DAMAGES INCURRED BY THE BUYER AND THE PRICE PAID BY BUYER FOR THE PRODUCT SPECIFIED HEREIN, AND BUYER HEREBY RELEASES SELLER FROM ALL OBLIGATIONS, LIABILITY, CLAIMS OR DEMAND IN EXCESS OF THIS LIMITATION. NOTWITHSTANDING THE FOREGOING, AND IN NO EVENT SHALL SELLER BE LIABLE HEREUNDER TO BUYER OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS) SUFFERED OR INCURRED BY BUYER OR SUCH OTHER PERSON EVEN IF SELLER HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

11. Limited Warranty

(a) The Seller warrants that all Product delivered to the Buyer pursuant to this Agreement, when sold by to the Seller to the Buyer, to be free from defects in material and workmanship for the period stated. Parts and Equipment found to be defective during the entire warranty period will be repaired or replaced (at the sole election of the Seller) by the Seller without charge, excluding all labour. Transportation costs to return the defective product to the Seller

shall be borne by the Buyer; and the return transportation costs shall be paid by the Seller; subject to the Exclusions set forth below. From the date of equipment shipment for the period shown below, the Seller shall provide adjustments required due to Buyer's normal use of the equipment and which are not occasioned by accident, misuse, or negligence. This warranty is limited to equipment sold by the Seller to the Buyer in the continental United States and Canada.

(b) EXCLUSIONS - This warranty SHALL NOT apply to:

(i) Damage to the Product or defective performance of the Product caused by fire, accident, acts of God, misuse, neglect, improper usage, Buyer modifications, use of parts and/or supplies which were not provided by the Seller; (ii) the Buyer's failure to provide power and space requirements and/or environmental conditions specified in any document supplied by the Seller; capacitors, ballasts, drivers, igniters.

(ii) Unless specifically agreed to by the Seller at the time of order by the Buyer, all Product resold by the Buyer to a Buyer Customer:

(c) LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES - THIS WARRANTY AND THE LIABILITIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER LIABILITIES AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, TRADE PRACTICE, OR OTHERWISE. THE SELLER HEREBY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY AND LIABILITIES SET FORTH HEREIN CONSTITUTE THE ONLY WARRANTY OF THE SELLER WITH RESPECT TO THE PRODUCT. REPAIR OR REPLACEMENT OF DEFECTIVE PARTS, AS PROVIDED ABOVE, SHALL BE THE SOLE OBLIGATION OF THE SELLER. THIS STATES THE EXCLUSIVE REMEDY AGAINST THE SELLER RELATING TO THE PRODUCT, WHETHER IN CONTRACT OR TORT OR UNDER ANY LEGAL THEORY, AND WHETHER ARISING OUT OF WARRANTIES, REPRESENTATIONS, INSTRUCTIONS, INSTALLATIONS OR DEFECTS FROM ANY CAUSE. IN NO EVENT SHALL THE SELLER BE LIABLE FOR INDIRECT, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING IN ANY MANNER WHATSOEVER, EVEN IF THE SELLER HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. NOTWITHSTANDING THE FOREGOING, THE MAXIMUM LIABILITY OF THE SELLER HEREUNDER SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE EQUIPMENT COVERED BY THIS WARRANTY.

12. Force Majeure



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In no event shall Seller be responsible for any delay in or failure of performance hereunder where such delay or failure is due to causes beyond Seller's reasonable control, including without limitation fire, storm, flood, earthquake, explosion, accident, the failure of suppliers or subcontractors to satisfactorily meet scheduled deliveries, war, civil unrest, sabotage, epidemic, quarantine, material shortage, fuel or energy shortage, strike, work stoppage, labour unrest, freight embargo, transportation shortage or delay, the establishment of any priority systems by the Canadian or United States government or any of its agencies, governmental act, judicial order or act of God.

13. Relationship of Parties

The Seller and the Buyer are independent contracting parties and nothing in this Agreement shall make either party the agent or legal representative of the other for any purpose whatsoever; nor shall it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other:

14. Confidential and Proprietary Information

Any information, correspondence, drawings, manuals and other documents transmitted or communicated by Seller to Buyer which is: (a) by its nature; (b) described by Seller as; or (c) reasonably believed by Buyer to be, confidential and/or proprietary (whether or not marked "confidential" or "proprietary"), shall be received and treated by Buyer in secrecy and confidence, and shall not be used by Buyer for any purpose except the purpose stated herein or otherwise authorized in writing by Seller; or disclosed by Buyer to any person or firm without the prior express written consent of Seller. Such confidential and proprietary information may be disseminated within Buyer's own organization only to the extent reasonably required for the proper operation of the System.

15. Assignment

Seller may assign its obligations hereunder to Seller's parent or any subsidiary or other affiliated corporation or entity. Buyer shall not have the right to assign or transfer any of its rights or obligations under the agreement to any third party, without the prior written consent of Seller.

16. Amendment

This Agreement may be amended, modified, or supplemented only by a written instrument executed by each of the parties hereto.

17. Integration; Modification

The provisions hereof, including all attachments hereto, if any, represent the entire agreement between the parties with respect to the purchase and/or licensing of the Product, and cancel all prior understanding, written or oral. No amendment, waiver, or

cancellation of any part of the Agreement shall be valid unless in writing and signed by an authorized representative of both parties.

18. Purchase Order

If a Purchase Order is delivered by Buyer, or by any third party on behalf of Buyer; in connection with the purchase of the Product, none of the terms and conditions contained in such Purchase Order shall modify or supersede the terms and conditions of this Agreement. Seller's failure to object to terms contained in any such Purchase Order; or other communication from or on behalf of Buyer; shall not be a waiver of the terms set forth in this provision or in this Agreement.

19. No Implied Waiver

The failure of either party at any time to require performance by the other party of any provision of this agreement shall in no way affect the right to require performance at any time thereafter; nor shall the waiver of either party of a breach of any provision of this agreement constitute a waiver of any succeeding breach of the same or any other provision.

20. Severability

The parties agree that each provision contained in these Terms and Conditions of Sale shall be treated as a separate and independent clause, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses herein. Moreover, if one or more of the provisions contained in these Terms and Conditions of Sale shall, for any reason, be held to be unenforceable, such provision or provisions shall be construed by the appropriate judicial body by limiting and reducing it or them, so as to be enforceable to the extent compatible with the applicable law.

21. Governing Law

This agreement is to be construed according to the laws of the Province of Ontario.

22. Time

Time shall be of the essence.

23. Headings

All headings or captions used herein are for convenience of reference only and shall not limit or define these terms and conditions.

24. Notice



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Any notice or other writing required or permitted to be given under this agreement or for the purposes of it to any party, shall be sufficiently given if delivered personally, or if sent by prepaid registered mail or if transmitted by telex, telefax or other form of recorded communication to that party:

(a) in the case of a notice to the Buyer at _____, and

(b) in the case of a notice to the Seller at _____,

or at any other address as the party to whom the writing is to be given shall have last notified the other party. Any notice delivered to the party to whom it is addressed shall be deemed to have been given and received on the day it is delivered at that address, provided that if that day is not a business day then the notice shall be deemed to have been given and received on the first business day next following that day. Any notice mailed shall be deemed to have been given and received on the third business day next following the date of its mailing. Any notice transmitted by telex, telefax or other form of recorded communication shall be deemed given and received on the first business day after its transmission.

25. Entire Agreement

This sales agreement constitutes the entire agreement between the Seller and the Buyer with respect to the matter contained herein and supersedes all prior oral or written representations and agreements. This agreement may only be modified by a written agreement duly executed by the Seller and the Buyer.

