

# Terms & Conditions

## 1. ACCEPTANCE

This Quotation is an offer by Supplier to Customer to supply the products (“Products”) described in the Quotation of which these Terms and Conditions form a part, on the terms and conditions set out below. This Quotation may be withdrawn at any time before it is accepted by Customer. This Quotation is open for acceptance by Customer only within 30 days of the date hereof. This Quotation does not apply to subsequent orders from Customer for the same Product.

## 2. CREDIT VERIFICATION

For the purpose of granting credit and providing credit services, Customer consents to disclosure to Supplier of credit, financial, and related personal information (including a credit or consumer information report) from any credit bureau, authorizes Supplier to make such inquiries at any time, and directs holders of such information to provide same to Supplier. At any time after Customer’s acceptance of this Quotation, Supplier may terminate the agreement resulting from such acceptance if Supplier determines, in its sole discretion, that it considers Customer’s credit worthiness to be insufficient for Supplier’s purposes.

## 3. ENTIRE AGREEMENT

This Quotation is defined to be (a) the quotation form providing for Supplier and Customer signature, (b) the Quotation Details page(s) and any specifications and drawings attached thereto, (c) these Terms and Conditions and any additional written terms and conditions of Supplier incorporated into and attached hereto and identified in writing by Supplier as forming part of these Terms and Conditions and (d) the attached Warranty. This Quotation, upon acceptance by Customer, constitutes the entire agreement between the parties for the Supplier’s supply of the Products described in this Quotation. Other than the Quotation as defined, there are no agreements, undertakings, representations, covenants, conditions, terms or reservations, oral or written, between Supplier and Customer respecting the subject matter of this Quotation. No change, alteration or modification of this Quotation is valid unless in writing and signed by an authorized signatory of Supplier, and no course of dealings is deemed to alter the terms hereof.

## 4. TERMS OF AGREEMENT

This Quotation supersedes all previous quotations for the same subject matter from Supplier, and all purchase orders and terms and conditions from Customer. If there is any conflict or inconsistency whatsoever between this Quotation, and the terms and conditions of a purchase order or other document of Customer, then the terms and conditions of this Quotation govern, regardless of which document was first executed. Customer’s receipt and acceptance of Product from Supplier also constitutes acceptance of and consent to the terms and conditions of this Quotation.

## 5. INTERNATIONAL LAW EXCLUSION

To the extent that any Products will be delivered outside of the Dominion of Canada, the parties expressly exclude from this Quotation the application of the United Nations Convention on Contracts for the International Sale of Goods, and further exclude the application of the International Sale of Goods Contracts Convention Act, Statutes of Canada 1990-91, c.13 and Part 2 of the International Conventions Implementation Act, Statutes of Alberta 1990, c.I-6.8.

## 6. SUPPLY OF PRODUCT

Supplier hereby agrees to sell to Customer the Products. Supplier shall make reasonable efforts to deliver the Products to a common carrier for delivery to Customer by the Delivery Target Date. Supplier warrants and represents that it has good title to the Product, and the full right and authority to sell the Product to Customer. The Product upon sale to Customer shall be free and clear of all liens, claims, encumbrances, but are subject to those taxes, duties and charges for which Customer is responsible pursuant to this Quotation.

**7. TITLE TRANSFER**

Title in the Product transfers to Customer upon full payment of all amounts owed to Supplier pursuant to this Quotation. Customer hereby grants a security interest in the Products and all proceeds thereof (the "Security Interest") in favour of Supplier, to secure any balance due by Customer to Supplier in respect of the Products. Customer hereby waives entitlement under the Personal Property Security Act (Alberta) to receive a copy in writing of any financing statement or financing change statement registered with respect to this Quotation.

**8. CHANGE ORDERS**

Customer may modify, add or delete the quantities, types or specifications of any Product to be supplied pursuant to this Quotation. No such change is effective unless a written change order is issued by Supplier and signed by an authorized signatory of Supplier. If a change order results in an increase in price or time required for supply of any part of the Product to be supplied pursuant to this Quotation, then Supplier may adjust the price, anticipated delivery date or both and such adjustments are binding upon Customer. All change orders issued by Supplier are subject to all the terms and conditions of this Quotation as if the change order formed part of this Quotation.

**9. SHIPPING**

Supplier shall deliver the Product within a reasonable time (as determined by Supplier) after Customer's communication of acceptance of this Quotation to a common carrier for delivery to Customer. All Product is at the risk of Customer upon delivery of the Product to Customer, its agent or a carrier for shipment to Customer, whichever delivery first occurs. All shipments are ex Supplier's facility gate unless otherwise specified in this Quotation. All shipping and insurance charges and taxes and duties are for Customer's account unless otherwise specified in this Quotation. Supplier may deliver the Product in instalments. Unless specified otherwise in this Quotation, Customer shall arrange all loading, shipping and insurance at its own expense. Supplier is not liable for any delays in delivery, non-delivery or damage or breakage during delivery after Supplier has delivered the Product to the first of Customer, Customer's agent or a common carrier.

**10. ACCEPTANCE**

Customer is deemed to have accepted the Product upon delivery of the Product to the first of Customer, Customer's agent or a common carrier for shipment to Customer.

**11. PRICE**

All prices quoted are in Canadian Dollars unless stated otherwise in this Quotation. The prices quoted, unless stated otherwise in this Quotation, do not include taxes, duties or any other charges of any kind levied by any governmental or regulatory authority on the prices or any part of them, all of which taxes, duties and other charges are to the account of and shall be paid by Customer.

**12. PAYMENT**

Unless specified otherwise in this Quotation, Customer shall pay 100% of the total price stated in this Quotation, plus 100% of all applicable taxes, duties and other charges required to be paid by Customer hereunder, to Supplier within 30 days from the date of the invoice. Customer shall pay Supplier interest monthly, calculated from the due date for each payment at the rate of 1.5% per month (18% per year) on all amounts which are outstanding for more than 30 days after payment is due, until the date of actual payment, whether before or after judgment. Customer shall pay all costs and expenses of Supplier incurred in collecting payment of any overdue amount or interest from Customer, including actual legal fees paid or payable by Supplier.

**13. DEFAULT AND TERMINATION**

A party may terminate this Quotation in part as to Product specified by the terminating party, or in full, at any time by written notice to the other party if:

- (a) the other party does not cure a breach of this agreement within 30 days after receipt of written notice of breach from the party giving notice; or
- (b) prior to completion of supply of Product, the party receiving notice has become insolvent, has assigned itself or has been petitioned into bankruptcy or a receiver has been appointed of any part or all of its business.

If Customer terminates this Quotation pursuant to this clause, Customer shall forthwith pay Supplier an amount equal to the proportion of the Product actually delivered before the effective date of termination, plus labour charges and prepaid expenses incurred by Supplier before the effective date of termination. Customer releases all claims it may have against Supplier as a result of Supplier's breach and the termination. If Supplier terminates this Quotation pursuant to this clause, Customer shall pay forthwith to Supplier the full amount required to be paid by Customer pursuant to this Quotation, to the extent not already paid by Customer.

#### **14. INTELLECTUAL PROPERTY RIGHTS**

Customer shall not contest the title of Supplier, or any party through which the Supplier claims, to all patent, trade secret, trade-mark and other intellectual property rights pertaining to the Product. Customer shall not contest the right of Supplier to manufacture or design the Product. Customer shall not take any action to the detriment of Supplier's interests in the Product. Customer shall not, either directly or through others, attempt to identify the chemical composition of the Product.

#### **15. FORCE MAJEURE**

Supplier is not liable for any delay or failure to perform any of its obligations pursuant to this Quotation by reason of any event beyond its control and which renders performance of its obligations hereunder impossible, unreasonable, or commercially impracticable, including an Act of God, war, revolution, insurrection, rebellion, civil commotion, riot, terrorism, act of a public enemy, sabotage, labour dispute or strike or lockout or slowdown, explosion, fire, flood or storm or other natural catastrophe, equipment failure, power or other utility failure, inability to obtain sufficient, suitable or timely energy or labour or materials, embargo, law or ordinance or regulation, or plant breakdown.

#### **16. EXPORT COMPLIANCE**

Goods supplied pursuant to this Quotation may be subject to laws and regulations governing the export of products and technology from Canada. If the Product supplied hereunder is to be exported from Canada, then Supplier's performance of its obligations hereunder is subject to Customer obtaining the necessary approvals, licenses and permits required by Canadian law. Customer shall not ship or divert any of the Product hereunder, or any technical information relating thereto, to any country outside Canada in violation of Canadian export laws. Customer shall indemnify Supplier from all claims, damages, costs and expenses resulting from any breach of these provisions by Customer.

#### **17. WARRANTY AND LIABILITY**

Customer agrees that the provisions of the Warranty forming part of this Quotation contain the entire agreement of the parties with respect to warranties of and liability for the Products. Customer shall indemnify Supplier for any claim against Supplier arising in respect of any claim with respect to a Product beyond that provided for in the Warranty.

#### **18. GENERAL**

All Quotations are governed by the laws of the Province of Alberta and its courts have exclusive jurisdiction over any disputes arising from any Quotations, except to the extent that Supplier seeks to enforce its rights under a Quotation in other jurisdictions. Time is of the essence in the performance of obligations under all Quotations. No waiver by either party of the full and strict performance of any obligation of the other party pursuant to any Quotation is effective unless in writing. All post-delivery obligations and indemnities survive any termination of a Quotation. Customer may not assign its rights and obligations under a Quotation without the written consent of Supplier, which may be arbitrarily withheld. Consent to assignment does not release Customer from its obligations under a Quotation. All notices required or permitted to be given under a Quotation are properly given if in writing and delivered by whatever means to the parties at their addresses shown in a Quotation. Notices are deemed received only upon their actual arrival at the addressee's address as aforesaid. Either party may change its address by notice as aforesaid. All Quotations are binding upon and enure to the benefit of the parties hereto and their successors and permitted assigns.