

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY FOR CANADA

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These General Terms and Conditions of Sale and Delivery (herein, "Terms and Conditions") are applicable to all customers (collectively, the "Customers" and each, individually, a "Customer") of Engo Equipment Sales, Inc., a company incorporated under the *Business Corporations Act* (British Columbia) (the "Company").

1. Terms and Conditions of Sale

- 1.1. Company shall sell and deliver to Customer, and Customer shall purchase and accept from Company, the products (the "Products") and services (the "Services") described on or in any order, agreement or quotation, or any combination thereof that has been confirmed by Company (the "Order"), pursuant to the terms and conditions of the Order and those specified below, which taken together shall constitute the entire, fully-integrated agreement between Company and Customer regarding the Products and the Services (this "Agreement").
- 1.2. With the exception of the Manufacture's Representations and Warranties for Canada, no other terms or conditions, regardless of form and whether oral or written, shall be of any effect unless otherwise specifically agreed to by Company in a separate written agreement duly signed by an officer of Company. In the event of any discrepancy or contradiction between these Terms and Conditions and the individually negotiated agreement between Company and Customer, the terms and conditions of the individually negotiated agreement shall prevail. Customer will be deemed to have assented to these Terms and Conditions if any part of the Products or any Services rendered are accepted by Customer. If Customer finds any part of these Terms and Conditions not acceptable, Customer must so notify Company at once and must reject the Products delivered under this Agreement. Any additional or different terms or conditions contained in any other form or document issued by Customer shall be deemed objected to by Company and shall be of no effect. No terms and conditions of a Customer shall at any time form a part of the content of any contract or agreement between Customer and Company, even if they are not further expressly rejected by Company.
- 1.3. Unless otherwise agreed in writing or otherwise stated on the quotations, all quotations for Products and Services are valid for a period of thirty (30) days from the date of issue. Subsequent modifications in quantity or quality, if such are requested by Customer, generally will cause a modification of the quoted price. Drawings and samples enclosed with any quotation remain the property of Company. All drawings and samples shall be treated confidentially by Customer. Company reserves the right to request drawings, samples and other documents to be returned to Company after usage.
- 1.4. No Order is binding upon Company until the earlier of (i) the acceptance of the Order in writing by the Company; (ii) the delivery of the Products to Customer; or (iii) the rendering of Services. Writing shall include transmission by electronic means. Notwithstanding any prior acceptance of an Order by Company, Company shall have no obligation to deliver any Products or render any Services if Customer is in breach of any of its obligations under this Agreement or any other agreement between Customer and Company at the time Company's performance was due.
- 1.5. All verbal agreements concerning the terms of any Order, including agreements made by telephone, shall have no force and effect unless and until acknowledged by Company in writing.
- 1.6. Customer shall bear all costs associated with the cancellation or modification of an Order.
- 1.7. Orders placed with and accepted by Company may not be canceled except upon Company's written consent prior to shipment and Customer's acceptance of Company's cancellation charges which shall protect Company against all costs and losses. Company reserves the right to cancel any Order hereunder in Company's sole discretion without liability to Company (except for refund of monies already paid).
- 1.8. With respect to the Services, Customer shall (i) cooperate with Company in all matters relating to the Services and provide such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by Company, for the purposes of performing the Services; (ii) respond promptly to any Company request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Company to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as Company may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

2. Prices

- 2.1. Unless otherwise stated in Company's Order confirmation, all price quotations, are EX WORKS (per Incoterms 2020) from Engo SLR, Forch Street 9, 39040 Varna, Italy and do not include costs for shipping, packaging, postage or other freight charges, customs duties, insurance or any commodity tax, including harmonized sales tax (HST), provincial sales tax (PST), goods and services tax (GST), value added tax, use and excise taxes, and any other similar taxes, duties, and charges, including penalties and interest, imposed, levied, or assessed by any federal, provincial, territorial, local, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such organization or authority have the force of law), or any arbitrator, court, or tribunal of competent jurisdiction. (the "Taxes"), if any.
- 2.2. The price of the Products and Services shall be Company's current prices in effect from time to time or by special price quotes made to Customer in writing.
- 2.3. Prices in catalogues and brochures are not binding unless confirmed in writing by the Company in the Order confirmation.
- 2.4. Company may, without notice to Customer, increase the purchase price of the Products by the amount of any new or increased tax or duty (excluding franchise, net income and excess profits taxes) which Company may be required to pay on the manufacture, sale, transportation, delivery, export, import or use of the Products or the materials required for their manufacture or which affects the costs of such materials. Company makes no other representations or warranties regarding taxes or tax liability.
- 2.5. Customer agrees to reimburse Company for all reasonable travel and out-of-pocket expenses incurred by Company in connection with the performance of the Services.

3. Terms of Payment

- 3.1. Unless otherwise agreed to in writing by Company, invoices issued by Company are due and payable by Customer within thirty (30) days from the invoice date. Customer shall make payments by check or wire transfer to the account indicated on the invoice without a cash discount or offset, and Company shall not be required to incur any expense to receive timely payment in full as required by this Agreement. Payments by check shall be subject to collection and shall be received by Company within said thirty (30) day period. Any objection to an invoice should be communicated by Customer via registered mail within seven (7) calendar days following receipt of the disputed invoice. Upon expiration of this period, the relevant invoice shall be considered accepted by Customer and no further disputes shall be accepted by Company. The Parties shall seek to resolve all such disputes expeditiously and in good faith. Notwithstanding anything to the contrary, Customer shall continue performing its obligations under this Agreement during any such dispute, including, without limitation, Customer's obligation to pay all due and undisputed invoice amounts. In the event of returned checks, the Company shall be entitled to charge a CAD\$100 processing fee.
- 3.2. Company may, without notice, change or withdraw extensions of credit at any time. If Company ceases to extend credit terms before shipment, Customer's sole remedy shall be cancellation of its Order. If Customer does not receive notice before shipment, its sole remedy shall be rejection of the Products immediately upon delivery.
- 3.3. If Customer fails to make payment on or before the date required, Customer shall be liable to pay, without further notice, interest on the amount outstanding with effect from the date on which the payment was due, at the lesser of the rate of two-point five percent (2.5%) per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. The specification or charging of interest shall not be deemed an agreement to extend credit.
- 3.4. Payment of interest shall be without prejudice to Company's right to claim a higher compensation in case the incurred damages exceed the interest amount. All extrajudicial and legal costs, including all costs and attorney's fees, incurred by Company in the process of compelling the Customer to fulfil its obligations are payable by Customer.
- 3.5. If Customer fails to observe these Terms and Conditions or the terms of any other agreements between Company and Customer, or if Customer becomes insolvent, all balances then due and owing to Company shall become due immediately, notwithstanding any agreed upon payment periods. Any Orders that have been confirmed by Company, but not yet filled, shall in such cases become cancelable at the sole discretion of Company, without further notice or payment of compensation to Customer.
- 3.6. Customer shall not, and acknowledges that it will have no right, under this Agreement, any Order, any other agreement, document, or law, to withhold, offset, recoup, or debit any amounts owed (or to become due and owing) to the Company whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by the Company, whether relating to Company's breach or non-performance of this Agreement, any Order, any other agreement between (a) Customer or any of its affiliates and (b) Company or any of its affiliates, or otherwise.
- 3.7. In addition to all other remedies available under this Agreement (which the Company does not waive by the exercise of any rights under this Agreement), if the Customer fails to pay any amount when due under this Agreement, the Company may (a) suspend the delivery of any Products or Services (b) cancel the Order or (c) terminate this Agreement in accordance with the terms of this Agreement.

4. Transfer of Title and Risk and Delivery Terms

- 4.1. Unless otherwise provided by the Company in writing, all Products furnished hereunder will be shipped EXW (per Incoterms 2020) and title in, risk of loss, and the right of possession to such Products shall pass to the Customer upon Company's delivery to a common carrier at Engo SRL, Forch Street 9, 39040 Varna, Italy and Company is not responsible for damage or loss in transit, regardless of whether or not Customer may have the right to reject or revoke acceptance of said Products. Company can arrange for in-transit insurance at Customer's expense but will not do so without Customer's written instructions. Unless otherwise stated in the Agreement documents, all Products will be shipped freight prepaid and billed. Charges for shipping may not reflect net transportation cost paid by Company. Company shall be responsible for all import requirements of any country into which it seeks to import the Products. Company shall be entitled to make partial deliveries or deliveries prior to the agreed-upon delivery date, provided that Company notifies Customer of the same.

- 4.2. Notwithstanding Section 4.1, for any Products that need to be installed by Company, title shall pass to Buyer upon installation of the Products at location mutually agreed to by the Parties.
- 4.3. Customer shall pay all freight, transportation, shipping, insurance and handling charges, duties, and Taxes and other taxes, duties, levies or charges imposed by any governmental authority, irrespective of whether applicable law makes such items the responsibility of Customer or Company, but excluding any taxes payable by Company with respect to its net income.
- 4.4. The Products shall be packaged as stated in Company's Order confirmation. Customer shall be exclusively responsible for, and shall provide Company with, any information necessary to comply with special labeling requirements applicable at Customer's place of business. Customer shall be solely responsible to ensure that the Products comply with all applicable laws in Customer's jurisdiction. Company is not bound to organize export clearance.
- 4.5. Customer, shall, subject to Company's available facilities at the shipping point, determine the type of transportation and shall notify Company thereof at the time Customer places each Order. If Customer shall fail to so notify Company, Company or its agent may select, at Customer's expense, any commercial air, ship, motor or rail carrier or any combination thereof for the transportation of the Products. Company will make deliveries of the Products in the quantities ordered as near as reasonably possible to the Customer's requested delivery dates.
- 4.6. Company shall use its commercially reasonable efforts to deliver the Products to Customer by the agreed upon date, subject to Section 4.1, and Company shall use its commercially reasonable efforts to meet any performance dates to render the Services specified in the Order, and any such dates shall be estimates only. However, time shall not be of the essence. In the event of a threatened delay in delivery, Company shall in any event inform Customer thereof and Company and Customer shall consult on the most practical manner to remedy any adverse consequences of such delay. Company shall not be liable to Customer for delays in delivery or damage to the Products while in transit, irrespective of whether Company or Customer determined the mode of transportation.
- 4.7. In cases of deliveries of Products manufactured to Customer's specification ("Special Orders") and unless otherwise agreed to in writing, all tools, drawings, samples, models, plans, blueprints, or other devices and/or documents used and/or developed by Company (the "Tools") in order to fulfill any Order or Special Order are the property of Company, even if the cost of development and/or manufacturing of such tools, models, plans, blueprints or other devices and/or documents was wholly or partially borne by Customer.
- 4.8. Customer is obliged to take possession of the ordered Products on the confirmed delivery dates. Should Customer for any reason, except for delivery of defective Products, not take possession of the Products at the time of delivery: (i) the Products shall be deemed to have been delivered and (ii) Company is entitled to store the Products at the sole expense and risk of Customer. Such protective measure does not suspend Customer's payment obligation.

5. Security Interest

- 5.1. If the sale of Products are made on credit to a Customer in a province other than Quebec, to secure the full payment and performance by Customer of its liabilities and obligations to Company, Company reserves and Customer hereby grants to Company a purchase money security interest in and to all of the right, title and interest to (i) all Products sold to Customer, (ii) all new goods manufactured by Customer into which the Products are integrated, and (iii) any and all proceeds, debts, accounts, receivables, and claims from the resale of the Products which may be received by or due or owing to Customer from any third party. If the sale of Products is made to a Customer in Quebec, Customer hereby hypothecates in Company's favor, the Products described in the Agreement ("Hypothecated Property"), for an amount equal to the purchase price of the Hypothecated Property, plus an additional sum equal to twenty (20%) percent of the amount of the hypothec for purposes of guaranteeing the payment of interest and incidental charges that are not already guaranteed by the amount of the hypothec. The hypothec is granted to secure payment of the balance of the purchase price of the Hypothecated Property and all other obligations of Customer to Company hereunder and pursuant to the Agreement. The security interest or hypothec hereby granted shall remain in force until payment in full of the entire purchase price for the Products has been received by Company.
- 5.2. Customer shall be in default under the Agreement, and the security interest or hypothec created hereunder shall become enforceable if: (a) Customer fails to pay the balance of the invoice value when due; (b) Customer is in default of any other obligation arising from this Agreement and fails to remedy such default within seven (7) calendar days following a written notice by Company; (c) Customer enters into any composition or similar general arrangement (formal or informal) with its creditors or is unable to pay its debts, is subject to a procedure of judicial reorganization or bankruptcy, has a receiver or administrator appointed in respect of its undertaking, assets or income or any part thereof, has passed a resolution for its liquidation, or a request is filed or an order is made by any court for its liquidation or for its administration; (d) Customer threatens, appears to or ceases to carry on its business or substantially changes the nature of its business, all as determined by Company in its sole discretion; (e) a prior notice is given by a creditor purporting to hold or holding a prior interest or by a hypothecary creditor of its intention to exercise its purported or prior interest or hypothecary rights or any other security interest, or if such right or security interest is exercised or if a secured creditor takes possession or appoints a receiver with respect to any part of the Products (or Hypothecated Property) sold; or (f) an execution is filed against Customer or a seizure is brought against the Products (or Hypothecated Property) sold and should it not be quashed within 10 calendar days thereafter. Customer acknowledges that this document may be filed with the appropriate authorities as a financing statement and/or hypothec and agrees to execute and deliver such documents as Company may request in order to perfect its security interest or hypothec.

6. Manufacturer's Warranty and Disclaimers for Products/Representations for Services

- 6.1. Company does not manufacture or control any of the Products offered. However, the Products offered may be covered by the manufacturer's warranty (the "Product Warranty") as detailed in the Product's description and included with the Product. The terms and conditions of the Product Warranty apply directly between the manufacturer and Customer. To obtain warranty service for defective Products, please follow the instructions included in the Product Warranty.

- 6.2. Company represents and warrants to Customer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.
- 6.3. Company shall not be liable for a breach of the warranty set forth in Section 6.2 unless Customer gives written notice of the defective Services, reasonably described, to Company within seven (7) days of the time when Customer discovers or should have discovered that the Services were defective.
- 6.4. Subject to Section 6.3, Company shall, in its sole discretion, either: repair or re-perform such Services (or the defective part); or credit or refund the price of such Services at the pro rata contract rate.
- 6.5. EXCEPT FOR THE SERVICE WARRANTY SET FORTH IN SECTIONS 6.1 - 6.4 ABOVE, COMPANY MAKES NO CONDITION OR WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, AND ALL PRODUCTS OFFERED ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY (A) CONDITION OR WARRANTY OF MERCHANTABILITY; (B) CONDITION OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) CONDITION OR WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION, CONDITION OR WARRANTY MADE BY COMPANY, OR ANY OTHER PERSON ON COMPANY'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN SECTION Fehler! Verweisquelle konnte nicht gefunden werden. OF THIS AGREEMENT. COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.
- 6.6. SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES SO THE ABOVE DISCLAIMER MAY NOT APPLY.
- 6.7. CUSTOMER AFFIRMS THAT COMPANY SHALL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES, FOR ANY BREACH OF WARRANTY CLAIMS OR FOR ANY DAMAGES ARISING OUT OF THE MANUFACTURER'S FAILURE TO HONOR ITS WARRANTY OBLIGATIONS, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT.

7. Limitation of Liability

- 7.1. IN NO EVENT SHALL COMPANY IN REGARD TO PRODUCTS OR SERVICES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, AGGRAVATED OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR DIMINUTION IN VALUE OR LOSS OF PROFITS, SAVINGS, REVENUE, GOODWILL, OR USE, INCURRED BY CUSTOMER OR ANY THIRD PARTY, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY THE CUSTOMER OR COULD HAVE BEEN REASONABLY FORESEEN BY THE CUSTOMER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, EQUITY, NEGLIGENCE, STRICT LIABILITY, OR IMPOSED BY STATUTE, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE,
- 7.2. NOTWITHSTANDING ANY OTHER TERM AND CONDITION SET FORTH HEREIN, COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, EQUITY, NEGLIGENCE, STRICT LIABILITY, OR IMPOSED BY STATUTE, OR OTHERWISE)- SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF CUSTOMER'S ORDER, AS DESCRIBED ON THE ORDER FORM. IT IS AGREED AND ACKNOWLEDGED THAT THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN COMPANY AND CUSTOMER, THAT COMPANY'S PRICING REFLECTS THIS ALLOCATION OF RISK, AND BUT FOR THIS ALLOCATION AND LIMITATION OF LIABILITY, COMPANY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT.
- 7.3. IN JURISDICTIONS THAT LIMIT THE SCOPE OR PRECLUDE LIMITATIONS OR EXCLUSION OF REMEDIES OR DAMAGES, OR OF LIABILITY, SUCH AS LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR THAT DO NOT ALLOW IMPLIED WARRANTIES TO BE EXCLUDED, THE LIMITATION OR EXCLUSION OF WARRANTIES, REMEDIES, DAMAGES OR LIABILITY SET FORTH ABOVE ARE INTENDED TO APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CUSTOMER MAY ALSO HAVE OTHER RIGHTS THAT VARY BY STATE, PROVINCE, COUNTRY OR OTHER JURISDICTION.

8. Indemnity

- 8.1. Customer agrees to defend, indemnify, and hold Company (and its agents, representatives, employees, directors, officers, related companies, successors and assigns, and customers) harmless from all claims, demands, actions, losses, damages, deficiencies, judgments, settlements, interest, awards, penalties, fines, liabilities, costs or expenses of whatever kind, including legal fees, fees, and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, as well as liabilities arising out of, relating to or resulting from any claim including any third part claim alleging:
 - (a) breach or non-fulfillment of any representation, warranty or covenant in this Agreement by the Customer or its agents, employees, or subcontractors;
 - (b) any negligent or more culpable act or omission by the Customer or its agents, employees or subcontractors (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement;
 - (c) any bodily injury (including death) to any person or damage to any real or tangible personal property caused by the acts or omissions of the Customer or its agents employees and subcontractors; and
 - (d) any failure by the Customer or its agents, employees or subcontractors to comply with any applicable law.

9. Confidentiality

- 9.1. Customer shall not use or communicate to third parties any trade secrets or know-how or any proprietary information relating in any way to the internal affairs of Company, in particular, confidential matters of which it becomes aware or receives access to as a result of placing its order with Company. Notwithstanding the foregoing, excluded from the above restrictions is any disclosure of confidential matters (i) that can be demonstrated to have been in the public domain prior to any disclosure of such information by the disclosing party, whether directly or indirectly; (ii) that becomes part of the public domain by publication or otherwise through no fault or negligence on the part of the disclosing party; or (iii) that is disclosed pursuant to a requirement of a governmental agency or as is required by operation of law. The terms "trade secrets", "know-how" or "proprietary information", as used in this section, shall include, but not be limited to, designs and plans regarding product development, materials, components, production plans, computer programs, data bases, technical data, documentation, as well as other information relating to the Products and any other scientific or technical information, design, process, procedure, formula, improvement, and confidential business or financial information that constitutes a trade secret, (collectively, the "Confidential Information"). Customer shall not copy such Confidential Information, unless approved in writing by Company. Customer shall instruct its employees, agents, and its independent subcontractors to adhere to the terms and conditions of this provision. The obligations under this provision shall survive the termination of the Agreement and/or the delivery of Products.

10. Termination

- 10.1 In addition to any remedies that may be provided in this Agreement, Company may terminate this Agreement at any time, with immediate effect without notice to Customer, if Customer: (i) fails to pay any amount when due under this Agreement and such failure continues for seven (7) days after Customer's receipt of written notice of non-payment; (ii) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or (iii) becomes insolvent, makes an assignment into bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.
- 10.2 In case of termination, Company reserves the right to claim compensation for all costs, interests and damages incurred by Company.

11. Intellectual Property

- 11.1. Customer acknowledges Company and its affiliates are the sole and exclusive owners of the brands, trademarks, designs, patents, copyrights, and other intellectual property relating to Company's Products ("Intellectual Property Rights"), and that no right or license is conveyed by Company to Customer to manufacture, have manufactured, modify, import or copy such products. Customer agrees that it will reference brands of Company or its affiliates only in connection with the use or sale of Products delivered to Customer hereunder, and not in connection with the sale of any other product, except as separately authorized by Company in writing.
- 11.2. Customer shall not:
- take any action that interferes with any of Company's rights in or to Company's Intellectual Property Rights, including Company's ownership or exercise thereof;
 - challenge any right, title, or interest of Company in or to Company's Intellectual Property Rights;
 - make any claim or take any action adverse to Company's ownership of Company's Intellectual Property Rights;
 - register or apply for registrations, anywhere in the world, for Company's trademarks or any other trademark that is similar to the Company's trademarks or that incorporates Company's trademarks in whole or in confusingly similar part;
 - use any mark, anywhere that is confusingly similar to Company's trademarks in whole or in confusingly similar part;
 - engage in any action that tends to disparage, dilute the value of, or reflect negatively on the Products;
 - alter, obscure, or remove any of Company's trademarks, or any other proprietary rights notices placed on the Products or other materials that Company may provide.

12. Patent Indemnity

- 12.1. If a Product delivered by Company to Customer becomes or, in Company's opinion, may become the subject of any claim, suit or proceeding for infringement of any patent, the Company and its affiliates may at its option and expense (i) obtain for Customer the right to use, lease or sell the Product, (ii) replace the Product, (iii) modify the Product, or (iv) remove the Product and refund the purchase price paid by Customer less a reasonable amount for use, damage or obsolescence. Company and its affiliates will not be liable for any infringement arising from any modification of a Product, from any combination of a Product with any other product(s), or from the use of a Product in practicing a process or unintended applications. Company's total liability to Customer will not, under any circumstances exceed the purchase price paid for the allegedly infringing Product. Customer agrees, at its expense, to protect and defend Company and its affiliates against any claim of patent infringement arising from compliance with Customer's designs, specifications or instructions and to hold Company and its affiliates harmless from damages, costs and expenses attributable to any such claim.

13. Force Majeure

- 13.1. Company shall not be liable or responsible to the Customer or any other person, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in the performance of any term or obligation under this Agreement when and to the extent that such failure or delay is caused by or results from acts beyond the Company's reasonable, including, but not limited to, epidemics, pandemics, including the 2019 novel coronavirus disease (COVID-19) pandemic, health crises, fires, storms, floods, earthquakes, explosions, accidents, acts of the public enemy, wars, invasions, hostilities (whether war is declared or not), terrorist threats, cyber-attacks or acts, riots and public disorder, action by any governmental authority, sabotage, strikes, lockouts, labor disputes, labor shortages, work slowdown, stoppages or delays, shortages or failures or delays of energy, materials, supplies or

equipment, transportation embargoes or delays, or other industrial disturbances, acts of God, breakdown in machinery or equipment, and, except as otherwise set forth in this Agreement, statutes, laws, ordinances, regulations, rules, codes, constitutions, treaties, common law, governmental orders, or other originating from any federal, provincial, territorial, local, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision.

14. Export Control and General Compliance with Laws

- 14.1. Customer shall at all times comply with all laws applicable to this Agreement, Customer's performance of its obligations hereunder, and Customer's use or sale of the Products. Without limiting the generality of the foregoing, Customer shall (a) at its own expense, maintain all certifications, credentials, licences, and permits necessary to conduct its business relating to the purchase or use of the Products and (b) not engage in any activity or transaction involving the Products, by way of shipment, use, or otherwise, that violates any law.
- 14.2. Customer acknowledges that the Products, including any software, documentation, and any related technical data included with, or contained in, such Products, and any products utilizing any such Products, software, documentation, or technical data (collectively, "Regulated Goods") may be subject to Canadian export control laws and regulations, including the EIPA and its associated regulations, including the Export Control List. Without limiting the generality of Section 14.1, Customer shall not, and shall not permit any third parties to, directly or indirectly, export, re-export, or release any Regulated Goods to any jurisdiction or country to which, or any party to whom, the export, re-export or release of any Regulated Goods is prohibited by applicable law. Customer shall be responsible for any breach of this Section by its, and its successors' and permitted assigns', parent, affiliates, employees, officers, directors, shareholders, partners, customers, agents, distributors, resellers, or vendors that are not Customer or Customer's Representatives. Without limiting the generality of Section 14.1, Customer shall comply with all applicable laws, and complete all required undertakings (including obtaining any necessary export licence or other governmental approval), prior to exporting, re-exporting, or releasing any Regulated Goods. Customer shall provide prior written notice of the need to comply with such laws to any person, firm, or entity which it has reason to believe is obtaining any such Regulated Goods from the Customer with the intent to export.
- 14.3. Company agrees that it will not export, directly or indirectly, any technical data acquired from the Customer under this Agreement or any products using such technical data to a location or in a manner that at the time of export requires an export license or other governmental approval, without first obtaining the written consent to do so from the appropriate agency or other governmental entity in accordance with applicable law.

15. Miscellaneous Terms

- 15.1. This Agreement, the sale and manufacture of any Products or Services, and all claims arising out of or related to this Agreement, including tort claims, shall be governed by and construed in accordance with the laws of the province of British Columbia, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than British Columbia. All other laws, including the application of the *United Nations Convention on Contracts for the International Sale of Goods* (CISG) are hereby excluded.
- 15.2. In the event of any controversy or claim arising out of or relating to this Agreement, or the breach thereof, the parties hereto agree first to try and settle the dispute by mediation, administered by the International Centre for Dispute Resolution under its Mediation Rules. If settlement is not reached within 60 days after service of a written demand for mediation, any unresolved controversy or claim arising out of or relating to this contract shall be settled by arbitration in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution. If the International Centre for Dispute Resolution is no longer in business, then the parties will mutually agree upon an alternative agency to administer the arbitration. The arbitration shall be held in Mississauga, British Columbia, shall be conducted in the English language, and shall be conducted (i) if the amount in dispute is less than two hundred fifty thousand dollars (\$250,000), before a single arbitrator mutually agreeable to Company and Customer, or if no agreement can be reached, then selected by the ICDR, or (ii) if the amount in dispute is two hundred fifty thousand dollars (\$250,000) or more, before three (3) arbitrators. The arbitrator(s) shall make detailed findings of fact and law in writing in support of his, her or their decision, and shall award reimbursement of attorney's fees and other costs of arbitration to the prevailing party, in such manner as the arbitrator shall deem appropriate. Either party may initiate arbitration by notifying the other in writing. The ruling and award from such arbitration shall be final and binding. The parties' consent to judgment on the award and the judgment and award may be entered in any court of competent jurisdiction.
- 15.3. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 15.4. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms and Conditions. Customer may not assign any of its rights or delegate any of its obligations under this Agreement or any Order without obtaining the prior written consent of the Company. The Company may assign any of its rights or delegate any of its obligations under this Agreement without obtaining the consent of the Customer. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement.
- 15.5. Notwithstanding section 15.2, in the event of a violation or threatened violation of Company's proprietary rights, Company shall have the right, in addition to such other remedies as may be available pursuant to law or this Agreement, to immediately commence an action or proceeding in a court of competent jurisdiction, subject to the terms of this Agreement, to seek temporary or permanent injunctive relief enjoining such act or threatened act. The parties acknowledge and agree that legal remedies for such violations or threatened violations are inadequate and that Company would suffer irreparable harm.
- 15.6. No amendment to or modification of or rescission, termination, or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of this Agreement and signed by an authorized representative of each Party.

- 15.7. The parties hereto are independent contractors and nothing in this Agreement will be construed as creating a joint venture, employment, partnership, agency or other form of joint enterprise or fiduciary relationship between the parties. Customer shall not be entitled to assign the rights and delegate the obligations of Customer set forth in this Agreement without the prior written consent of Company. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.
- 15.8. The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement. No waiver under this Agreement is effective unless in writing and signed by the Party waiving the right. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated and does not operate as a waiver for any future occasion.
- 15.9. This Agreement, including any Order confirmation and Schedules attached hereto, contains the entire, fully integrated agreement of the parties with respect to the subject matter of this Agreement, and supersedes all prior agreements between them, whether oral or written, of any nature whatsoever with respect to the subject matter hereof. This Agreement is binding upon the parties hereto, their successors, and permitted assigns. It can only be amended in writing which (i) specifically refers to the provision of this Agreement to be amended and (ii) is signed by both parties.
- 15.10. Each party will comply with all applicable laws, regulations, and ordinances applicable to this Agreement.
- 15.11. Customer acknowledges that the Products, including any software, documentation, and any related technical data included with, or contained in, such Products, and any products utilizing any such Products, software, documentation, or technical data (collectively, "Regulated Goods") may be subject to Canadian export control Laws and regulations, including the EIPA and its associated regulations, including the Export Control List. Without limiting the generality of this Section, Customer shall not, and shall not permit any third parties to, directly or indirectly, export, re-export, or release any Regulated Goods to any jurisdiction or country to which, or any party to whom, the export, re-export or release of any Regulated Goods is prohibited by applicable law. Customer shall be responsible for any breach of this Section by its, and its successors' and permitted assigns', affiliates, employees, officers, directors, customers, agents, distributors, resellers, or vendors that are not Customer or Customer's representatives. Without limiting the generality of Section, Customer shall comply with all applicable Laws, and complete all required undertakings (including obtaining any necessary export licence or other governmental approval), prior to exporting, re-exporting, or releasing any Regulated Goods.
- 15.12. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Order to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by (a) personal delivery, (b) nationally recognized overnight courier (with all fees pre-paid) and with confirmation of transmission, (c) certified or registered mail (in each case, return receipt requested, postage prepaid) or (d) email (with confirmation of receipt or transmission). Except as otherwise provided in this Agreement, a Notice is effective only:
- (a) If send by personal delivery or by courier, upon receipt of the receiving party,
 - (b) if sent by email, upon the sender's receipt of an acknowledgement from the intended recipient (such as a read receipt function)
 - (c) if sent by certified or registered mail, on 5th day after the mailing thereof.
- 15.13. Subject to the limitations and other provisions of this Agreement, Sections 5, 6, 7, 8, 9, 11, 14 and 15 of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement.
- 15.14. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- 15.15. The parties hereto have expressly requested that these general terms and conditions of sale and all related documents be drafted in English. *Les parties aux présentes ont expressément requis que les présentes modalités et conditions générales de vente ainsi que tous les documents qui s'y rattachent soient rédigés en anglais.*
