



## TERMS & CONDITIONS OF SALE

These terms and conditions of sale apply to all quotations, orders and sales between Wainbee Limited ("Seller") and the buyer ("Buyer").

- A. Acceptance of Orders.** All orders are subject to final acceptance by Seller and are subject to Seller's terms and conditions of sale in effect at the time of delivery. Seller will not recognize conflicting Buyer's terms and conditions unless specifically agreed to in writing by Seller.
- B. Prices.** Orders will be accepted on the basis that the prices applying to them will be those in effect on receipt of order unless otherwise arranged. Federal, provincial, state or local indirect taxes, including without limitation sales, harmonized sales and/or use taxes, transfer taxes or any similar tax, and any customs, duties, taxes and associated costs (including storage charges and customs brokers' fees) of importing product from outside of Canada, are not included in the quoted price for the goods and are additional if applicable. Seller reserves the right to amend prices on any order for any alterations or changes authorized by Buyer subsequent to Seller's acceptance of the order.
- C. Warranty.** Each item of goods offered by Seller is exclusively and solely warranted under the policy of the respective manufacturer and no warranty is provided by Seller unless otherwise stated in writing. Any modification, mounting or assembly is at the request of and is the responsibility of Buyer. Seller does not assume responsibility for unauthorized repairs, or damage resulting from such repairs, to the goods or apparatus, even though defective, and in no case shall its responsibility extend to goods and/or apparatus, other than that supplied by Seller. Seller assumes no responsibility for damage to goods or apparatus through improper installation or through attempts to operate it, or its operation outside the range of its rated capacity, whether such operation is intentional or otherwise. Seller makes no other warranty of any kind whatsoever express or implied and all warranties of title, quality, merchantability or fitness for a particular purpose are hereby disclaimed by the Seller and excluded from these terms and conditions of sale.
- D. Limitation of Liability.** Seller will not be liable for any lost profits, indirect, special, incidental, or consequential damages of any kind (the "Damages"), whether arising under warranty, contract, negligence, extra-contractual liability, strict liability, indemnification, or any other cause or combination of causes whatsoever. This limitation will apply notwithstanding any failure of essential purpose of any limited remedy. Furthermore, the liability of Seller shall be limited in all circumstances to the price of the specific goods giving rise to such liability. In no event shall Seller be liable for any Damages arising out of delay in or failure to deliver, defects in design material or workmanship, or breach by Seller of any other obligation hereunder.
- E. Return of Goods.** Goods may be returned to Seller only after authorization in writing is obtained from Seller and only if such goods are in new re-sellable condition, otherwise shipment will not be accepted. Where a Buyer returns goods, a restocking charge may be levied in addition to any transportation charges. If return of the goods is made necessary by fault of Seller, full credit will be allowed. Notwithstanding the foregoing, Seller will not accept the return of any special order goods nor any chemical, lubricant or other liquid goods that have been opened or are past its expirations date.
- F. Delivery.** Shipping terms are F.O.B. Point of Shipment as indicated on the invoice. Title to goods shipped passes to Buyer at the time of shipment. In the absence of shipping instructions, goods will be shipped by whatever shipping method the Seller deems appropriate. Seller reserves the right to make shipments of goods as it becomes available, unless otherwise agreed upon. Shipments delayed to accommodate Buyer will be invoiced and additional charges for warehousing, plus other incidental expenses created by the delay will be at the expense of the Buyer. Unless otherwise indicated on the invoice, the shipping costs will be prepaid by Seller and added to the amount of the invoice.
- G. Delivery Liability.** Seller will not be liable for any delay or detention in the performance of orders or contracts or in the delivery or shipment of goods or for any losses or damages suffered by Buyer by reason of such delay or detention of goods when such delay or detention is, directly or indirectly, beyond Seller's reasonable control, including, without limitation, fire, explosion, flood, acts of God, being unable to obtain the materials, goods, equipment, service, utility or labour required to enable it to perform its obligations; not being able to obtain required permission or authority; strikes, walkouts, labour troubles, blockades or industrial disturbances, power failures, restrictions of

governments having jurisdiction, delays in transportation, riots, insurrections, war, warlike operations, sabotage, terrorism, or any other cause reasonably beyond Seller's control, whether similar or dissimilar to those listed. The delivery date(s) quoted are based on Seller's best estimate of a realistic time when delivery to the carrier will be made, and are subject to confirmation at time of acceptance of any resulting order. Seller reserves the right to make either early shipments or partial shipments and to invoice Buyer accordingly.

**H. Loss or Damage in Transit.** Seller does not accept any responsibility for loss, damage or pilferage sustained in transit. Claims of such character should be made by Buyer promptly against the carrier. Risk transfers to Buyer at the time Seller transfers goods to the carrier.

**I. Payment Terms and Overdue Accounts.** All payments are to be made in accordance with the payment terms specified by Seller in writing. If no payment terms are specified by Seller in writing, the payment terms shall be net 30 days from the date of the invoice. Seller reserves the right to amend the payment terms applicable to a Buyer at any time (and may require payment in full prior to delivery of goods) upon providing Buyer with written notice of its decision to do so, and in such event the revised payment terms will apply to all orders accepted by Seller after the date of such written notice. Buyer's failure to make payment when due will be a material breach of these terms and conditions of sale. All invoices not paid when due will bear interest at the rate of 1½ % per month (18% per annum) until paid in full. Payments for all special orders or export shipments will be prepaid by electronic wire transmission or credit card, unless otherwise agreed to in writing by Seller. No holdback of payments by Buyer will be allowed unless specifically agreed to in writing by Seller. Any payment amounts owing become immediately due and payable in the case of change of ownership, attachment or execution against Buyer or its representative unless otherwise agreed.

**J. Suspension of Performance and Collection.** Seller shall have the right of credit approval or credit refusal for its Buyers in all cases. If in Seller's sole judgement, Buyer's financial position does not justify the terms of payment specified, Seller may require full or partial payment prior to shipment of goods. If Buyer refuses such full or partial payment prior to shipment of goods, Seller shall have the right to terminate the order and any other orders of Buyer. Buyer agrees to furnish Seller with the requested credit information within 2 business days of such request. Buyer agrees to pay all reasonable legal fees of Seller in the event the Seller has to begin legal

proceedings to collect on account of non-payment of an invoice.

**K. Cancellations.** Any order placed with Seller may be cancelled by Buyer only upon receipt of written consent from Seller and then only upon terms that will compensate Seller for engineering or fabrication charges and all other expenses and commitments made by Seller. Buyer shall not cancel any orders of special order goods.

**L. Termination.** Seller may terminate an order in whole from time to time, in the event that of Buyer's suspension of business, insolvency, bankruptcy, reorganization or arrangement or liquidation proceedings, assignment for the benefit of creditors, or actual or constructive rejection by a bankruptcy trustee, or appointment of a receiver for Buyer's property.

**M. Penalty Clause.** Seller will not accept any liability for penalty clauses of any kind, written or implied, unless specifically approved in writing by an officer of Seller.

**N. Effect of Other Terms.** These terms and conditions of sale are intended to be a complete expression of the terms applicable to any sale of goods or services by Seller. Therefore, no terms or conditions set forth in any purchase order or any confirmation form will be effective to modify these terms and conditions of sale.

**O. Governing Law.** These Terms of Sale shall be construed and enforced in accordance with the laws of the Province of Ontario (excluding its conflict of laws rules) and the laws of Canada applicable therein. All disputes arising out of or in connection with or in relation to an order shall be submitted to the jurisdiction of the courts of Ontario which shall have the exclusive jurisdiction over any dispute. Buyer irrevocably attorns to the jurisdiction of the courts of Ontario. Seller and Buyer agree that the application of the United Nations Convention on Contracts for the International Sale of Goods to these terms and conditions of sale and every offer does not apply and is hereby expressly excluded.

**P. Miscellaneous.** The headings used throughout are for convenience only and will be disregarded for the purpose of construing and enforcing these terms and conditions of sale. The parties hereto expressly request that these terms and conditions of sale and any ancillary documents be drafted in English. Les parties aux présentes exigent expressément que les présentes modalités et conditions et les documents y afférant soient rédigés en langue anglaise.