



## STANDARD TERMS AND CONDITIONS OF SALE

### 1. Applicability.

(a) These Terms and Conditions of Sale (the "**Terms**"), Seller's order confirmation (the "**Order Confirmation**") and Seller's invoice (the "**Invoice**", and collectively with the Order Confirmation and Terms, the "**Agreement**") together comprise the entire agreement between the Parties regarding the sale of the goods ("**Goods**") by the Barrday affiliated corporation selling the Goods described in the Agreement ("**Seller**") to the individual, partnership, corporation or other entity purchasing the Goods described in the Agreement ("**Buyer**"). Buyer and Seller are individually a "**Party**" and collectively, the "**Parties**". The Agreement supersedes all prior or contemporaneous understandings, terms, agreements, negotiations, representations and warranties, and communications, whether electronic, written or oral. These Terms prevail over any of Buyer's general terms and conditions of purchase, confirmation or acceptance (whether electronic, written or oral) regardless whether or when Buyer has submitted its purchase order or release, accepted these Terms or whether or not Seller has acknowledged such order, acceptance or terms. These Terms apply to estimates, quotes and sales by Seller. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms or the Agreement.

(b) Notwithstanding anything herein to the contrary, if a written agreement signed by authorized representatives of both Parties is in existence covering the sale of the Goods covered hereby, or covering confidential or proprietary information, the terms and conditions of such agreement shall prevail to the extent they are inconsistent with or in addition to the Agreement.

### 2. Delivery and Shipment.

(a) Goods will be delivered as specified in the Order Confirmation, subject to availability of Goods.

(b) The quantity of any installment of Goods as recorded by Seller at shipment is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order. If Seller delivers to Buyer a quantity of Goods of up to 10% more or less than the quantity specified in the Order Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price specified in the Order Confirmation adjusted pro rata.

(d) If for any reason Seller is unable to supply the total demand for the Goods, Seller may, in its sole discretion, and without penalty or liability, distribute its available supply of Goods among its customers and Seller shall have no obligation to purchase supplies of Goods from third parties to enable it to perform its obligations to Buyer.

3. Title and Risk of Loss. Title and risk of loss passes to Buyer as specified in the Order Confirmation. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest or the equivalent under the laws of the jurisdiction(s) where Buyer is organized and/or located.

4. Cancellation, Amendment and Modification. The Agreement, or any portion thereof may only be cancelled, amended or modified as specified in the Order Confirmation, or by a writing dated after the date of the Order Confirmation which specifically states that it amends, modifies or cancels the Agreement and is signed by an authorized representative of Buyer and Seller.

5. Inspection and Rejection of Nonconforming Goods. Buyer shall inspect the Goods upon receipt to confirm that the goods delivered are the same Goods identified in the Agreement, that they are labeled and packaged as such Goods and that the quantity of Goods is as identified in the Agreement. Buyer shall promptly notify Seller if the inspection reveals any variance with the Agreement

### 6. Price and Payment Terms.

(a) Buyer shall purchase the Goods from Seller at the price(s) (the "**Price(s)**") specified in the Order Confirmation. Seller shall have the right to add to the Price(s), and Buyer shall be solely responsible to pay, all taxes, excise or other charges imposed by law on or incident to the production, sale, transportation, or use of the Goods sold under the Agreement that Seller may be required to pay to or collect on behalf of any governmental agency; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets. Buyer must provide tax exempt use certificate prior to purchase of all goods to Seller if applicable.

(b) All invoiced amounts are due and payable to Seller as specified in the Order Confirmation. Unless otherwise specified in writing, Seller has the right to change its prices, freight allowances or terms of payment or other terms of sale, provided Seller has given Buyer at least 30 days prior written notice of any such change.

(c) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late

payments, including, without limitation, attorneys' fees. Seller has the right at all times to set-off any amounts receivable from Buyer against any amounts owed by Seller to Buyer.

(d) Buyer hereby represents and warrants to Seller that Buyer is solvent (on a balance sheet basis) and has the unrestricted ability to pay its debts in the ordinary course of business as and when they are due and payable. Buyer acknowledges and agrees that, contemporaneously with the receipt by Seller from Buyer of any purchase order or request for the purchase of products, goods, or services, (i) Buyer shall be deemed to have remade and reaffirmed in writing Buyer's solvency representation and warranty set forth above and (ii) such written solvency representation and warranty, in addition to being remade as set forth herein, shall be deemed for all purposes to be incorporated in said purchase order or request as if it was fully set forth in writing therein, it being the express intention of the Parties to grant to Seller the maximum right of reclamation available at law or in equity either under applicable law or in any bankruptcy or solvency proceeding.

(e) Notwithstanding Section 6(d), shipments, deliveries and performance of work shall at all times be subject to the approval of Seller's credit department. Seller, in its sole discretion, may, at any time, decline to make any shipment or delivery or decline to perform any work except under receipt of partial or full payment or security or upon other terms and conditions satisfactory to Seller's credit department in its sole discretion.

#### **7. Buyer's Warranties.**

(a) All additional product specifications requested by Buyer beyond Seller's standard specifications for Goods in effect at the date of purchase order, including, but not limited to, quality standards, packaging requirements and military specifications, must be provided by Buyer to Seller upon issuance of the purchase order. Upon receipt of any new purchase order, Seller reserves the right to conduct a contract review prior to acceptance of the purchase order. Any such additional product specifications agreed to by Seller shall be acknowledged and specified in the Order Confirmation. Any testing that, at the sole discretion of Seller, is deemed to be outside the range of normal quality assurance testing, shall not be performed unless agreed upon in writing by both Parties with Buyer incurring any and all associated costs.

(b) Buyer warrants and acknowledges that it (i) has expertise with respect to the Goods, any articles made from the Goods, and their properties, (ii) is familiar with the nature and use of the Goods and Seller's standard specifications for Goods, (iii) has received, read and understood Seller's labelling, Certificate of Analysis and other literature concerning the Goods, including without limitation technical information provided by the manufacturer of the material(s) used by Seller in making the Goods, and (iv) is aware of and understands the methods and requirements for proper storage and handling of the Goods and appreciates the significant potential for product degradation and/or failure that may result from improper storage and handling. Buyer agrees and warrants that it will advise all customers and users of the Goods or articles made from the Goods of the risk of degradation and/or failure resulting from improper storage and handling of the Goods.

(c) Buyer acknowledges and agrees Seller will retain all patent, know-how, technical information and other proprietary rights used to create, embodied in, used in and otherwise relating to the Goods and any of their component parts.

(d) Buyer indemnifies and saves Seller harmless from all claims, losses, damages, expenses (including legal fees) and liability resulting from or in any way connected, directly or indirectly, with a breach of Buyer's warranties hereunder or with the possession, handling, sale or use of the Goods delivered hereunder.

#### **8. Limited Warranty.**

(a) Seller warrants that the Goods delivered to Buyer in connection with the Order Confirmation meet Seller's standard specifications for the Goods in effect at the date of delivery and any additional specifications specified in the Order Confirmation. This limited warranty is valid for the shorter of, a period of 60 days from the date of shipment or the period stated in the Order Confirmation.

**(b) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), SELLER MAKES NO EXPRESS OR IMPLIED WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) 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.**

(c) Buyer assumes all responsibility for Buyer furnished raw materials. Buyer furnished materials will not be accepted by Sellers without a purchase order from Buyer, a detailed packing list and a minimum of 2 business days' notice of delivery of raw materials to Seller. Seller assumes no liability for damage to Buyer furnished materials, transportation, storage, quality, and finished product when using Buyer furnished materials. All Buyer furnished materials will be manufactured/coated on a commercially reasonable effort basis. In the event that Buyer furnished material is determined, at Seller's sole discretion, to be non-conforming, Buyer shall be solely responsible for all costs incurred related to such nonconformance and Seller shall have no liability for any such costs. In addition, Seller shall not be responsible for any delays in manufacturing that may occur as a result of non-conforming Buyer furnished materials. All Buyer furnished materials, including finished goods, unused and/or non-conforming material will be returned to Buyer upon completion.

(d) Seller shall not be liable for a breach of its limited warranty set forth in Section 8(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within 10 days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods, and Buyer (if Seller requests and provides return authorization number) returns such Goods to Seller as directed for examination at Seller's cost; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective due to a breach of Seller's limited warranty.

(e) Seller shall not be liable for a breach of the limited warranty set forth in Section 8(a) if Buyer makes any further use of such Goods after giving notice of a defect, or if the defect arises because Buyer failed to follow Seller's oral or written instructions as to the Goods' storage, installation, commissioning, use or maintenance; or the Goods are altered or repaired without Seller's prior written consent. Additionally, the limited warranty is void and of no effect if the Goods or any articles made from the Goods are not stored or handled in accordance with the product specifications and/or the Certificate of Analysis.

(f) In case of a breach attributable solely to Seller's breach of its limited warranty, at Seller's option, the Goods will be repaired or replaced or a credit in the amount of the sale price will be issued for the Goods that Seller determines after inspection fail to meet its limited warranty. The remedies set forth in this Section 8(f) shall be Buyer's sole and exclusive remedy and Seller's entire liability for any breach of Seller's limited warranty set forth in Section 8(a).

**9. Limitation of Liability; Damages.**

(a) **IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THE AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY A PARTY OR COULD HAVE BEEN REASONABLY FORESEEN BY A PARTY, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(b) Seller's responsibility for any claims, damages, expenses, losses or liabilities arising out of or related to the Goods delivered hereunder or for non-delivery of Goods (whether arising out of or related to breach of contract, tort (including negligence) or otherwise) shall not exceed the purchase price paid by Buyer for such Goods.

**10. Insurance.** Buyer shall, at its own expense, maintain and carry reasonable and adequate insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing such insurance coverage. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

**11. Compliance with Law.** A Party shall comply with all laws, regulations and ordinances applicable to it and its business. A Party shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Agreement. Buyer (i) shall comply with all export and import laws of all countries where the Goods may be shipped, used or resold by Buyer; and (ii) assumes all responsibility for shipments of Goods requiring export or import clearance. Seller may terminate the Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

**12. Termination.** In addition to any remedies that may be specified under these Terms, Seller may terminate the Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) has not otherwise performed or complied with any of these Terms, in whole or in part and such failure continues for 30 days after Seller's written notice thereof; or (b) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

**13. Governing Law; Governing Forum.** Depending on where Seller is located, this Agreement will be governed by and construed in accordance with the following law ("**Governing Law**"), and all disputes arising under or relating to this Agreement will be heard and resolved in the following forum ("**Governing Forum**"):

(a) If Seller is located in Canada, the Governing Law will be the laws of the Province of Ontario, Canada and the laws of Canada applicable therein, and the Governing Forum will be Toronto, Canada.

(b) If Seller is located in the United States, the Governing Law will be the laws of New York, USA, and the Governing Forum will be New York City, New York, USA.

(c) If Seller is located in the Netherlands, the Governing Law will be the laws of the Netherlands, and the Governing Forum will be Amsterdam, Netherlands.

The Parties agree that the Sale of Goods Act (Ontario) and the United Nations Convention on Contracts for the International Sales of Goods, or any amendment thereto, shall not apply to the Agreement or any dispute arising out of the Agreement.

**14. Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to the Agreement shall be instituted in the courts of the Governing Forum, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

**15. Force Majeure.** Should any cause beyond the reasonable control of a Party hereto including, without limiting the generality of the foregoing, any war, threat of war, acts of terrorism, embargo, fire, flood, strike, lockout or accident, interfere with the product, sale, transportation, delivery or consumption, or with the supply to Seller from its regular source of supply, of the Goods sold hereunder or any materials necessary for the manufacture thereof, then any such cause shall be deemed to be a case of force majeure ("**Force Majeure**") and, provided that the subject Party gives to the other Party prompt notice of it, written or oral (but if

oral, promptly confirmed in writing), orders or deliveries hereunder may be suspended or reduced during the period of such interference without liability for any resulting incomplete performance of the Agreement. The Party invoking Force Majeure shall make every commercially reasonable effort to remedy the situation and remove, so far as possible and with reasonable dispatch, the cause of its inability to perform or comply, provided, however, that settlement of strikes, lockouts and other industrial disturbances shall be wholly within the discretion of the Party involved. The Party invoking Force Majeure shall give prompt notice of the cessation thereof.

**16. Notices.** All notices and other communications hereunder shall be effective if in writing and addressed to the party specified in the Order Confirmation. All Notices shall be effective (a) upon delivery, if delivered by personal delivery or (b) 2 business days after deposit with an internationally recognized express courier (with all fees pre-paid).

**17. General Provisions.** Buyer shall not assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of Seller, and any such purported assignment or delegation in violation of this Section is null and void. No waiver by Seller of any of the provisions of the Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from the Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The relationship between the Parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever. The 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. If any term or provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Buyer acknowledges and warrants that the signatory on Seller's credit application and all other documents relevant to the transaction covered by the Agreement is specifically authorized and legally permitted to execute such documentation on behalf of Buyer. Provisions of the Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of the transaction covered by the Agreement.