

TERMS AND CONDITIONS OF SALE
ICE Western Sales Ltd.

1. Applicability

- (a) These terms and conditions of sale (these “**Terms**”) and the Quotation (as defined below) are the only terms which govern the sale of the goods (“**Goods**”) by Seller to Buyer. The attached quotation (the “**Quotation**”) sets out certain specific terms, in addition to these general terms and conditions. When accepted by Buyer as evidenced by the issuance of a purchase order or other evidence of acceptance, including after the provision by Seller of an acknowledgment, as described below, these Terms and the Quotation constitute a binding contract of purchase and sale, on the terms provided herein and in the Quotation. The Quotation may only be amended by a written acknowledgement by Seller, which acknowledgement and amendment shall in no event be taken to amend these Terms.
- (b) The Quotation and these Terms (together, the “**Agreement**”) comprise the entire agreement between Seller and Buyer (each, a “**Party**” and together, the “**Parties**”) as it relates to the purchase and sale of the Goods, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s terms and conditions of purchase, including any inconsistent terms and conditions purportedly imposed under any purchase order or other evidence of acceptance issued by Buyer, regardless of whether or when Buyer has signed the Quotation, whether the Quotation has been amended and when Buyer submits its terms and conditions. Fulfilment 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.

2. Purchase Price

Buyer shall purchase the Goods from Seller at the aggregate purchase price (the “**Purchase Price**”) set forth in the Quotation. The Purchase Price is exclusive of all harmonized sales tax, goods and services tax and sales tax on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes.

3. Payment Terms and Cancellation Fees

- (a) Unless otherwise stipulated in the Quotation, if Buyer has an existing account with Seller, Buyer shall pay the Purchase Price to Seller within 30 calendar days of the earlier of: (i) the date that the Goods are ready to ship or (ii) the date that Seller sends an invoice for the Goods.
- (b) Unless otherwise stipulated in the Quotation, if Buyer does not have an existing account with Seller, 50% of the Purchase Price is due upon the Buyer’s acceptance of the Quotation and 50% of the Purchase Price is due prior to Seller shipping the Goods.
- (c) Credit Card payments are subject to a 2.85% transaction fee.
- (d) Buyer shall make all payments hereunder by wire transfer, cheque or such other payment method agreed to in writing by Seller and in Canadian dollars.
- (e) Buyer shall pay interest on all late payments at a rate of 1.5% per month, calculated daily and compounded monthly. Buyer shall reimburse Seller for costs incurred in collecting any late payments, including legal fees on a full indemnity basis and collection fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for 30 calendar days.
- (f) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller’s breach, bankruptcy or otherwise.
- (g) If the order for the Goods is cancelled by Buyer, Seller shall charge a cancellation fee based upon the time of the cancellation and the progress the Seller has made in preparing the Goods, Cancellation terms will be as follows:

%	Definition
15	Upon submittal of approval drawings
30	Upon placement of material orders
100	Upon receipt of material orders or start of fabrication

4. Storage Fees

In the event that the Goods need to be stored before they can be shipped to Buyer, Buyer shall pay to Seller One Hundred Fifty (\$150) Dollars per day of storage for each one (1) unit included in the Goods being stored for Buyer.

5. Delivery

- (a) The Goods will be delivered within a reasonable time as stated in the order acknowledgement which will be sent to Buyer after release of the project to production. Seller shall not be liable for any delays (including any lost profits or revenue of Buyer), loss or damage in transit.

- (b) Delivery of the Goods shall be made FOB Seller's Location or as otherwise set out in the Quotation (the "**Delivery Point**").
- (c) Seller may, acting reasonably in consultation with Buyer, 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 fulfilment of the order for the Goods.

6. Non-Delivery

- (a) The quantity of any instalment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.
- (b) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.
- (c) Except as provided under Section 9(a), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

7. Title and Risk of Loss

Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point.

8. Security

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 under the *Personal Property Security Act* or comparable legislation of the jurisdiction of the Buyer.

9. Limited Warranty

- (a) Seller warrants to Buyer that for a period of 15 months after completion of goods (the "**Warranty Period**"), such Goods will be free from defects in material. Subject to Section 9(d) and Section 9(e) below, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part), provided that Buyer shall pay Seller's labour costs for such replacement at the standard service rate as charged by Seller; or (ii) credit or refund the price of such Goods (specifically excluding Seller's labour costs with respect to such Goods, which shall be retained by Seller) at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller. Third Party Products (as defined below) are not covered by the warranty in this Section 9(a). Seller will contact and liaise with the supplier of any Third Party Products on behalf of Buyer to facilitate Buyer's ability to rely on any warranty of such supplier with respect to defective Third Party Products.
- (b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 9(a), SELLER MAKES NO CONDITION OR WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS (including, or with respect to, products manufactured by a third party ("**Third Party Product**") which may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods INCLUDING ANY (a) CONDITION OR WARRANTY OF MERCHANTABILITY; OR (b) CONDITION OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (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.
- (d) Seller shall not be liable for a breach of the warranty set forth in Section 9(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller as soon as possible after the time when Buyer discovers or ought to have discovered the defect and, in any event, within 30 days of such time; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.
- (e) The Seller shall not be liable for a breach of the warranty set forth in Section 9(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.
- (f) THE REMEDIES SET FORTH IN SECTION 9(a) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 9(a).

10. Limitation of Liability

- (a) IN NO EVENT SHALL SELLER 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 THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, 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) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING

NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

11. Insurance

During the term of the project, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$2,000,000 with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Seller as an additional insured.

12. Compliance with Law

Buyer shall comply with all applicable laws, regulations and ordinances involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Seller may terminate this Agreement if any governmental authority imposes any penalties on Goods.

13. Termination

In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for five (5) business days after Buyer's receipt of written notice of non-payment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) 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.

14. Indemnification

Buyer shall indemnify, defend and hold harmless Seller and its officers, directors, employees, agents, parent company, affiliates, subsidiaries, successors and permitted assigns (collectively, the "**Indemnified Party**") against any and all losses, damages, liabilities, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including legal fees, (on a full indemnity, solicitor-client basis), fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by Indemnified Party, arising out of or resulting from (i) breach of the Agreement by the Buyer; or (ii) any claim of a third party arising out of or occurring in connection with the products purchased from Seller or Buyer's negligence or wilful misconduct. Buyer shall not enter into any settlement without Seller's or Indemnified Party's prior written consent.

15. Intellectual Property

Buyer acknowledges and agrees that:

- (a) Intellectual Property means all intellectual property and industrial property rights and assets including any and all trademarks, service marks, trade names, brand names and logos, internet domain names, copyrights and moral rights, industrial designs, design patents, inventions, discoveries, trade secrets, patents and software.
- (b) Any and all of Seller's Intellectual Property rights are the sole and exclusive property of Seller or its licensors.
- (c) Buyer shall not acquire any ownership interest in any of Seller's Intellectual Property rights under this Agreement.
- (d) Any goodwill derived from the use by Buyer of Seller's Intellectual Property rights enures to the benefit of Seller or its licensors, as the case may be.
- (e) If Buyer acquires any Intellectual Property rights, rights in or relating to any Goods (including any rights in any trademarks, derivative works, or patent improvements relating thereto) by operation of law, or otherwise, such rights are deemed and are hereby irrevocably assigned to Seller or its licensors, as the case may be, without further action by either of the Parties.

16. Waiver

No waiver by Seller of any of the provisions of this 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 this 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.

17. Confidential Information

All non-public, confidential or proprietary information of Seller, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

18. Force Majeure

Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or

results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labour disputes (whether or not relating to either Party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

19. Assignment

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Seller specifically acknowledges that it has consented to Buyer's delegation of final inspection of the Goods. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

20. Relationship of the Parties

The relationship between the Parties is that of independent contractors. Nothing contained in this 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.

21. No Third-Party Beneficiaries

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

22. Governing Law

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

23. Severability

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.

24. Survival

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to Sections 9, 10, 12, 14, 15 and 17.

25. Amendment and Modification

This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each Party.

26. Independent Advice

Each Party agrees and acknowledges that it has read this Agreement and understand its provisions, has obtained advice by legal counsel of their own choosing regarding all aspects of this Agreement and is satisfied on these matters and is entering into this Agreement in full knowledge and acceptance of the provisions hereof.

BUYER ACCEPTS AND AGREES (1) TO PAY THE PURCHASE PRICE FOR THE GOODS AS PER THE QUOTATION AND (2) TO BE BOUND BY THE TERMS AND CONDITIONS OF SALE OF ICE WESTERN SALES LTD. ("SELLER"). THESE TERMS AND CONDITIONS OF SALE AND THE QUOTATION ARE THE ONLY TERMS WHICH GOVERN THE SALE OF GOODS BY THE SELLER TO THE PURCHASER.