

## Terms and Conditions

### 1. ACCEPTANCE AND ACKNOWLEDGMENT

This quotation is made by the Vendor named herein (hereinafter called the Company), for acceptance within thirty (30) days of the date hereof only by the party to whom it is addressed (hereinafter called the Purchaser), in respect only of the apparatus described herein (hereinafter called the Apparatus). It shall not be binding upon the Company until first approved in writing by a duly authorized representative of the Company. Such approval may be endorsed upon the Company's official acknowledgment of the purchaser's acceptance hereof, and upon delivery of such acknowledgment, these presents shall constitute the entire contract between the Company and the Purchaser, all previous communications being annulled. Provided, if the Purchaser accepts by purchase order containing additional conditions, and such acceptance be officially acknowledged by the Company, these presents shall prevail wherever conflict or contradiction may arise. No agent, salesperson or other party shall have authority to bind the Company by any agreement, warranty, statement, promise or understanding not herein expressed, and no modification of the contract shall be binding on either party unless the same be in writing, accepted by the Purchaser and approved in writing by a duly authorized representative of the Company. Purchaser by accepting quotation authorizes the Company to perform a credit check.

### 2. TITLE

It is agreed that the title to, property in, and right to possession of the apparatus, whether attached to realty or otherwise, shall not pass from the Company to the Purchaser or its assigns until the Purchaser has fully performed its obligations hereunder, including the payment in full of the purchase price and the payment in fact of all promissory notes and bills of exchange, including renewals thereof, which may be given by the Purchaser in connection therewith. Should the Purchaser fail to perform any of its covenants herein, or to make any of the payments herein provided or to pay any note or bill of exchange given as aforesaid, the whole purchase money and any note or security given on account thereof shall forthwith become due and payable

### 3. DELIVERY

Shipping dates are approximate, and are based upon prompt receipt by the Company of all necessary information unless otherwise specified herein:

(a) delivery of the apparatus shall be EXW the Companies facilities unless otherwise stated in quotation. The Company will not be responsible for loss or damage to goods beyond the point of shipment.

(b) "DAP destinations" wherever given:

- I. are based on shipment by cheapest mode of transportation and are subject to variation in tariff rates. Provided that quantities involving one or more carloads shall be shipped at the carload rate, and any additional expense incurred in making less than carload shipments to meet the purchaser's order shall be assumed by the Purchaser. Arrangements for transportation made by the Company, if any, shall be on the Purchaser's behalf. Unless otherwise expressly stipulated herein, the apparatus shall be installed by and at the expense of the Purchaser. Purchaser is responsible for immediate inspection of all equipment and any damage must be noted on bill of lading at time of receipt. Purchaser shall be responsible for any and all demurrage or detention charges.
- II. Are conditional upon permit approval, equipment availability, clear and uninterrupted access to site, and season road restrictions available at the time of quotation. Should new restrictions arise from the date of quotation, then the Company reserves the right to adjust its quotation accordingly.
- III. Any utility clearances or approvals, police escorts, private escorts, bridge surveys, wire lifting, engineering studies, or traffic management plans that are required but not expressly stated in this quotation will be billed at cost plus 15%.
- IV. This quotation allows for a free time allowance of 2 hours unloading. Any time in excess will be billed at the applicable hourly rate.
- V. The Company will make all reasonable efforts to meet customer's delivery schedule on a best-efforts basis. The Company will not accept liability for any costs (including but not limited to: Crane fees, overtime, labour costs, downtime, rigging charges, demobilization/mobilization charges), damages including lost revenue, lost profit, and lost opportunity incurred by the customer as a result of delays in transport. Delays in transport include, but are not limited to equipment failure, weather, Acts of God, permit delays, road construction, and road restrictions.

#### 4. SPECIAL PACKAGING

In case the Company furnishes special carriers, (such as oil barrels, skids, shrink wrap, etc..) pursuant to the contract, it is the Purchaser's responsibility to dispose of such carriers at the Purchaser's expense.

Upon request of Purchaser, impact recorders may be provided with transport of equipment. Purchaser will make all necessary arrangements to return impact recorder within 14 days or receiving equipment in good working condition. Should impact recorders not be returned within 14 days or returned in poor condition, Company reserves the right to charge Purchaser replacement cost of impact recorder.

#### 5. PAYMENT

All payments shall be made to the Company in Canadian funds at par, at point of manufacture of the apparatus unless otherwise specified in the invoice.

THE PURCHASER SHALL PAY INTEREST AT 18% PER ANNUM, COMPOUNDING MONTHLY ON ALL PAYMENTS IN ARREARS HEREUNDER UNTIL FULLY PAID IN CASH, SUCH PAYMENTS OF INTEREST IN NO WAY WAIVING ANY RIGHTS OF THE COMPANY HEREUNDER.

The Company will issue payment milestones based on the following:

- I. 10% upon purchase order
- II. 20% upon drawing submission
- III. 20% upon purchase of Core and Conductor
- IV. Balance upon delivery. All payments to be net 30 days from invoice date.

Should any or all payments hereunder not be made promptly at the time they respectively become due, and should all of the apparatus not have been delivered at the time of default by the purchaser, the Company may at its option and without prejudice to its rights then accrued hereunder, cancel the contract in respect of such undelivered portion of the apparatus, Should the purchaser postpone the time of delivery, or refuse to or be unable to accept the apparatus at the time herein named for delivery, the Company shall be entitled to payment for the same as if delivery had been made to the Purchaser at the time herein provided, and the Purchaser hereby agrees to make such payment, and in such case the Company shall, after fourteen days from the time herein provided for delivery, be entitled to charge and the Purchaser shall allow and pay to the Company storage fee inclusive of any logistics costs which at the Company's discretion may be stored off premise. Such charge to be continued until the date of shipment, which shall be ordered by the Purchaser in writing.

#### 6. DELAYS

If the costs to the Company of production, delivery, erection or installations of the apparatus is increased by reason of delays caused by the Purchaser, such additional expense incurred by the Company shall be paid by the Purchaser. Apparatus held for the Purchaser shall be at its entire risk.

#### 7. TAXES

Unless otherwise stated herein, the Company's prices do not include sales, use, excise or similar taxes, whether federal, provincial, state or municipal. Therefore, in addition to the prices specified herein, the amount of any present or future sales, use, excise or other taxes applicable to the sale of apparatus hereunder shall be paid by the Purchaser, or in lieu thereof the Purchaser shall provide the Company with a tax exemption certificate as may be authorized by existing legislation.

#### 8. PENALTY & LIQUIDATED DAMAGES

Unless otherwise approved in writing by a duly authorized representative, the Company will not accept any liquidated damages and/or penalties of any kind written or implied or any liability arising from such clauses.

#### 9. FORCE MAJEURE

The Company shall not be liable for delays in delivery or failure to manufacture or deliver reasonably attributable to any cause whatsoever beyond its reasonable control, including without limitation, acts of God, acts of the Purchaser, acts of governmental authority, fires, strikes, floods, epidemics, war, riot, delays in transportation or car shortages and shortages of labor, materials, fuel or energy, components, or manufacturing facilities. In event of any delay so occasioned, the date of delivery shall be extended for a period equal to the time lost by reason of the delay, In no event shall the Company be liable for special, Indirect or consequential damages. The Company' liability and any other claim for loss or liability arising out of or connected with the contract, or the manufacture, sole, delivery, resale or use of any apparatus thereunder, (including but not limited to loss or liability arising from breach of contract), shall in no case exceed the unit price of the apparatus or part thereof involved in such claim, except as otherwise provided in the paragraphs entitled "Warranty" and "Patents".

## 10. WARRANTY

The Company warrants to the Purchaser for a period of **twelve (12) months** from the date of Installation or, **eighteen (18)** months from the date of readiness to ship which so ever occurs first. The Company warrants that the apparatus will be free from defects in material, workmanship and title, and be of a kind and quality described herein. The foregoing warranty is exclusive and in lieu of all other warranties, whether written or implied. Should the goods fail to perform as outlined in this warranty and the Company is notified promptly in writing of the defect, and the defect occurs within the warranty period prescribed above or in an agreed to period other than the normal period. The Company will correct such defect or repair, at its option by replacement of the defective material EXW its factory or repair facility, provided:

- 1) no misuse or misapplication of the product has occurred
- 2) product has been stored, maintained, handled and operated as per the Company's operational manuals and industry standards
- 3) no external events beyond limitations of standards/specifications to which the equipment has been manufactured in compliance with have occurred

The Purchasers responsibility is to return the equipment / material to the factory for repair or replacement, in part or in whole to obtain the Warranty that is provided. Warranty is provided for defects in materials or workmanship only. Field assessment for damage will be provided if the Purchaser so requests or the Company deems it necessary. If an assessment has shown that the terms of the warranty have been breached by the Buyer through misuse, abuse, improper storage or handling, improper installation, then such assessment will be on the Purchasers account.

The Company will bear the cost to repair or replace such materials or equipment in part or as a whole as deemed necessary to put the equipment back to original working order, as it was first supplied as per the terms of the order or contract. Work performed on the equipment supplied by the Company and not authorized by the Company shall be considered a breach of the warranty and shall void all warranty from that point. Any expense incurred by the Purchaser from the breach of the warranty shall be on the Buyer's account.

## 11. PATENTS

The Company agrees that it shall, at its own expense, defend any and all suits or proceedings that may be instituted by any party against the Purchaser, for the infringement or alleged infringement of any patent or patents of Canada relating to the apparatus, provided such infringement or alleged infringement shall consist in the use of the apparatus or parts thereof in the regular course of the Purchaser's business, and provided the Purchaser shall have made all payments then due therefore and given to the Company immediate notice in writing of the institution of such suits and proceedings and permits the Company through its counsel to defend the same and gives all needed information, assistance and authority to enable the Company so to do and thereupon in case of a final award of damages in said suit, the Company will pay such award, but it shall not be responsible for any compromise made without its written consent, nor shall it be bound to defend any suit or to pay any damages therein when the same shall arise by reason of the use of any parts not furnished by the Company hereunder. Under no circumstances, shall the Company be liable for any damages except such as shall be awarded in such proceedings. The Company shall, at its own expense and at its option, either procure for the Purchaser the right to continue using the apparatus or part thereof, or replace same with non-infringing apparatus, or modify it so it becomes non-infringing, or remove said apparatus and refund the purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of the Company for patent infringement by the apparatus or any part thereof. Provided however that this paragraph shall not apply to any apparatus or any part thereof manufactured to the Purchaser's designs. As to such apparatus or any part thereof, the Company assumes for no liability whatsoever patent infringement

## 12. CANCELLATION CHARGES

Upon cancellation of order, the Company shall be entitled to receive Cancellation Charges, for any of the following reasons:

- a) Purchaser requests to cancel for convenience
- b) Purchaser experiences financial hardship, insolvency or bankruptcy
- c) Purchaser delays project for more the 90 days.

In the event of an order cancellation, the Company is entitled to collect Cancellation Charges as follows as a percentage of the equipment price:

- I. 10% upon order entry
- II. 25% upon drawing submission
- III. 50% upon receipt of major material
- IV. 100% upon start of fabrication

### 13. GENERAL

The Company may, in its discretion, sub-let all or any part of the performance of the contract to any contractor it shall deem competent for the purpose. The Company reserves the right to manufacture the apparatus to CSA specifications, notwithstanding any provision of the purchaser's specifications, if any, to the contrary, but the Company shall be under no liability for any failure to do so, nor for any damages or expenses resulting from the Purchaser's specifications not conforming to the requirements of the law, nor for the costs of any alterations or repairs made by or on behalf of the Purchaser, unless the Company's consent thereto in writing be first obtained, over signature of its duly authorized representative. To the extent not prohibited by law, Purchaser agrees that the provisions of the Limitation of Civil Rights Act, Revised Statutes of Ontario, as amended, shall have no application to this contract or any agreement or instrument renewing or extending or collateral to this contract, or the rights, powers or remedies of the Company, its assignee or any other person under this contract or under any agreement or instrument renewing or extending or collateral to this contract., The contract shall be binding upon the heirs, executors, administrators, successors and assigns of the parties respectively, provided that the Purchaser shall not assign any of its rights and/or liabilities hereunder without the Company's consent thereto in writing first obtained, over the signature of its duly authorized representative, It is agreed that any provision of this Agreement which is illegal, is null and void and of no effect, and this does not affect in any way the validity of the other provisions of the present Agreement.