

## PMC CANADA LTD. – TERMS AND CONDITIONS OF SALE

The following terms and conditions of sale (the “Terms and Conditions of Sale”) apply to the sale of products (“Products”) by PMC Canada Ltd. (herein referred to as “PMC CANADA”) to the customer (herein referred to as the “Buyer/Customer”) and, more generally, govern the relationship between Buyer/Customer and PMC CANADA.

### 1. ENTIRE AGREEMENT

1.1. The Terms and Conditions of Sale, together with Buyer/Customer’s Credit Application Form (if applicable), which are incorporated herein by reference, are between PMC CANADA and Buyer/Customer, and form the entire agreement between PMC CANADA and Buyer/Customer and apply to any transaction between them unless otherwise agreed to in writing.

1.2. The parties acknowledge and agree that all other oral or written agreements, including but not limited to purchase orders, which are different from or purport to be in addition to these Terms and Conditions of Sale are not applicable and are not binding on PMC CANADA. Buyer/Customer will be deemed to have accepted these Terms and Conditions of Sale if any Products are sold, supplied or delivered by PMC CANADA to Buyer/Customer.

1.3. Upon providing Buyer/Customer with a five (5) day prior written notice to that effect, PMC CANADA shall be entitled to amend these Terms and Conditions of Sale, and the Credit Application Form (if applicable), and the same shall remain binding on the Buyer/Customer.

### 2. QUOTATION, PRICES AND TAXES

2.1. Unless otherwise agreed in writing, all prices are stated in Canadian currency (CAD) and are exclusive of shipping, brokerage, packaging and insurance costs, duties, and all taxes including federal, provincial, state and local sales, excise and value added, goods and services taxes and any other taxes, all of which, present or future, shall be assumed and paid by Buyer/Customer.

2.2. Subject to Section 2.3, price quotations provided to Buyer/Customer shall remain unchanged for a period of thirty (30) days following their issuance and shall automatically expire after such period, or as otherwise expressly stated in writing.

2.3. PMC CANADA reserves the right to modify any price quotation, provided that it shall inform the Buyer/Customer at the earliest opportunity of such change.

2.4. Notwithstanding the foregoing, prices which are stated in general price lists, manufacture and/or distributor price lists, offers, brochures or similar documents may be modified at PMC CANADA’s sole discretion, without the obligation of giving a written notice to that effect.

### 3. PAYMENT

3.1. Unless otherwise agreed in writing, the purchase price shall be due in full by Buyer/Customer as of the invoice date, subject to the Terms and Conditions of Credit (if applicable), and shall not be subject to any discount, suspension, retention, charge back or reduction of any nature.

3.2. In the event Buyer/Customer fails to make any payment to PMC CANADA when due, Buyer/Customer’s entire accounts with PMC CANADA will become immediately due and payable without notice or demand and all past due amounts will be subject to an interest charge accruing at a rate of 2% per month, calculated and compounded monthly (26.82% per annum), or such lower rate as may be the maximum permissible rate of interest under applicable law.

### 4. CREDIT FACILITY

4.1. Buyer/Customer may apply for credit by filling out the Credit Approval Form incorporated herein by reference.

4.2. Credit is granted at the entire discretion of PMC CANADA and may be reviewed, modified or withdrawn at any time.

### 5. PURCHASE ORDERS

5.1. All purchase orders are subject to acceptance by PMC CANADA and, if applicable, credit approval of Buyer/Customer.

5.2. Purchase orders will be deemed accepted by PMC CANADA upon the first of the following events to occur: (i) Delivery by PMC CANADA to Buyer/Customer of a written acknowledgment and acceptance of the purchase order; (ii) performance of any of PMC CANADA’s obligations under the purchase order, or (iii) issuance of an invoice by PMC CANADA to Buyer/Customer in respect of the purchase order.

5.3. Purchase orders shall specify: (i) quantities of Products being purchased; (ii) Delivery date; and (iii) shipping instructions.

5.4. Buyer/Customer’s orders are irrevocable until acceptance or rejection and Buyer/Customer may not cancel, change or modify an order without the written consent of PMC CANADA and full payment by Buyer/Customer of all applicable fees which are arising from such cancellation, change or modification.

5.5. If a change order is (i) requested by Buyer/Customer and authorized by PMC CANADA after the relevant Products have been shipped, or (ii) in any way affects the shipping schedule, manpower or time and efforts involved with such shipment, then PMC CANADA shall be entitled to revise the pricing of such Products. Unless otherwise agreed in writing, Buyer/Customer shall pay all costs involved with a change order, including but not limited to, a minimal restocking fee, emergency freight costs and additional local delivery fees.

5.6. If an order cancellation is requested by Buyer/Customer and authorized by PMC CANADA, Buyer/Customer shall pay all costs involved with an order cancellation, including but not limited to, a cancellation fee, emergency freight costs and additional local delivery fees. If Buyer/Customer requires an order cancellation for Products that have already been shipped, Buyer/Customer shall refer to the return policy provided hereinafter in Section 8.

5.7. Fabricated or non-standard products sales are final, non-returnable and non-refundable.

### 6. SHIPMENT AND DELIVERY

6.1. Unless otherwise agreed by the parties, all purchase orders shall be delivered at PMC CANADA’s shipping point. Risk of loss will transfer to Buyer/Customer upon tender of Products to Buyer/Customer, Buyer/Customer’s representative or common carrier. If Buyer/Customer causes or

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requests a delay of shipment, or if PMC CANADA ships or delivers an order erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer/Customer or its agents or employees, all storage and other additional costs and risk will be borne by Buyer/Customer.

6.2. Delivery of the Products at PMC CANADA's premises, at a job site or at another location, as it will be decided between the parties, shall constitute formal delivery to Buyer/Customer, regardless of whether Buyer/Customer or Buyer/Customer's representative is at such location at the time of delivery and signs a delivery receipt (the "Delivery"). PMC CANADA will make a good faith effort to complete Delivery of all Products purchased by Buyer/Customer, provided that PMC CANADA shall assume no responsibility or liability and will not accept any back charge for any loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to PMC CANADA, including but not limited to as a result of PMC CANADA's non-performance caused by Force Majeure, labour disputes, civil unrest, accidents, the inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind which is beyond the control of PMC CANADA.

6.3. If Buyer/Customer delays shipment of Products when ready due to any cause not attributable to PMC CANADA, Buyer/Customer will be deemed to have accepted the Products on an as is basis and PMC CANADA shall be entitled to issue an invoice to Buyer/Customer in that respect. Storage and handling costs, if any, will accrue to Buyer/Customer accounts until shipment is effectively made.

6.4. PMC CANADA will retain title to all Products sold, supplied or delivered by PMC CANADA until such time as the Applicant has paid for such Products in full.

## **7. INSPECTION AND ACCEPTANCE**

7.1. Buyer/Customer shall examine and inspect the Products immediately upon Delivery and prior to installation. All claims for defects, shortages or discrepancies must be made to PMC CANADA in writing within three (3) business days of Delivery, after which date Buyer/Customer will be deemed to have fully accepted the Products.

7.2. If it is demonstrated with relevant substantiating evidence and at PMC CANADA's satisfaction that there is such a defect, shortage or discrepancy, PMC CANADA shall then remedy the situation at the earliest possibility by delivering additional or substitute Products, as the case may be.

## **8. RETURN POLICY**

8.1. All returns are subject to acceptance by PMC CANADA and are subject to a restocking fee, in addition to any freight and restoration fees.

8.2. To be admissible for a return, the Products must (i) have been purchased no more than three (3) months prior to their date of return, (ii) be unused, unmodified or otherwise unaltered, and (iii) in new condition, suitable for resale in its original undamaged packaging.

## **9. WARRANTY**

9.1. Unless otherwise agreed in writing, PMC CANADA warrants that all Products are sold free from material defects and meet the applicable written specifications provided to Buyer/Customer. In case of a breach of warranty, Buyer/Customer's remedy shall be limited to (at PMC CANADA's sole discretion): (i) refund of Buyer/Customer's purchase price for the defective Products, without interest; or (ii) replacement of the defective Products, provided that all such defective Products be returned to PMC CANADA, along with acceptable evidence of purchase, within three (3) months of Delivery. No warranty will apply if the Products have been subject to modifications, misuse, improper storage, repackaging, neglect, accidents or if they have been combined with other products.

9.2. THE FOREGOING IS THE EXCLUSIVE REMEDY OF BUYER/CUSTOMER, AND IS IN LIEU OF ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY MAY BE MODIFIED ONLY IN WRITING BY AN OFFICER OF PMC CANADA. NO OTHER REPRESENTATIVE OR ANY OTHER PERSON IS AUTHORIZED TO REPRESENT OR ASSUME FOR PMC CANADA ANY WARRANTY EXCEPT AS SET FORTH HEREIN.

## **10. LIMITED LIABILITY**

10.1. PMC CANADA'S TOTAL LIABILITY TO BUYER/CUSTOMER FOR ALL CLAIMS OF ANY KIND WHATSOEVER, WHETHER BASED UPON CONTRACT, TORT (REGARDLESS OF THE DEGREE OF FAULT OR NEGLIGENCE) OR OTHERWISE, FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE PERFORMANCE OR BREACH OF A PURCHASE ORDER SHALL IN NO EVENT EXCEED 100% OF THE NET AMOUNT OF THE ORDER PRICE.

10.2. IN NO EVENT SHALL PMC CANADA BE LIABLE TO THE BUYER/CUSTOMER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGE, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF GOODWILL OR OTHER SIMILAR LOSSES OR DAMAGES EVEN IF PMC CANADA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

## **11. INDEMNIFICATION**

11.1. Buyer/Customer shall indemnify, hold harmless and defend PMC CANADA and its employees, officers, directors and agents from and against any actions, cause of action, judgment or claim for damages to property or bodily injury, loss of life, liability of any nature (including violation of any applicable laws or regulations in connection with the sale, transportation, installation, use or repair by Buyer/Customer of the Products), costs, or expenses including reasonable legal fees to the extent caused by the negligent act or omission or willful misconduct of or breach of these Terms and Conditions of Sale by Buyer/Customer.

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## **12. FORCE MAJEURE**

12.1. A Party will be excused from delays in the performance of a purchase order which arise from force majeure. "Force Majeure" means any unforeseen circumstances beyond the control and without the fault or negligence of the delaying party, causing a delay or failure in performance, and includes an act of God, war, civil insurrection, riot, acts of government, whether promulgated in the form of law or otherwise, labor disputes, shortages in Products, delays caused by Carrier, epidemics, serious floods, fires, explosions, earthquakes, tidal waves, typhoons, storms and/or accidents which affect vital equipment or facilities used in the performance of this order. In a case of Force Majeure duly notified to the other party, the period for performance by both parties shall be automatically extended for the duration of the event of force majeure. If the Force Majeure condition lasts more than one (1) month, and the parties are unable to reach agreement on the conditions for going forward with their contract, the order shall be terminated, at the request of either Party.

## **13. PROPRIETARY INFORMATION**

13.1. Buyer/Customer acknowledges that it is not the owner of the proprietary information related to the Products, including but not limited to, trademarks, trade-names, service marks, serial numbers, labels, tags, identifying marks, copyrights, patents, trade secrets, logotypes, brochures, designs, technical documents, advertising and other symbols and goodwill (hereinafter, collectively referred to as "Product Information").

13.2. Buyer/Customer shall only use the Product Information identified and approved by PMC CANADA from time to time to the extent reasonably necessary in carrying out its business activities related to the Products. More specifically, Buyer/Customer undertakes not to copy, reproduce or otherwise use or modify the Product Information without PMC CANADA's prior written authorization, nor file any patent or patent application for any product or substance similar to the Products or any component thereof or used for similar applications.

13.3. Buyer/Customer is liable for ensuring that the use of Product Information is legally permitted in the given territory and that the Product Information does not infringe third parties' rights. PMC CANADA does not give any warranty with regards to the valid use of the Product Information in a given territory and will assume no liability whatsoever with this regard.

## **14. OBLIGATIONS AND RESTRICTIONS**

14.1. Buyer/Customer may not assign its rights or obligations hereunder without the prior written consent of PMC CANADA.

14.2. Buyer/Customer shall inform PMC CANADA in writing of any significant change to its business structure or that of its affiliated corporations within five (5) business days of such change, whether legal or otherwise, such as a change affecting the composition of its shareholders, directors or officers.

14.3. Buyer/Customer shall at all times, at its sole expense, ensure that the commercialization of the Products is carried out in accordance with all applicable laws, regulations and requirements established by any competent authority, as well as in accordance with the Product Information communicated by PMC CANADA, such as the brochures and technical documents. With this regard, however, Buyer/Customer agrees and acknowledges that any such brochures and technical documents may not be used to commercialize the Products. Moreover, Buyer/Customer agrees not to remove or alter any Product Information affixed to any of the Products, containers or packages.

## **15. DEFAULT**

15.1. If Buyer/Customer is in default of these Terms and Conditions of Sale, PMC CANADA may, at its option, cancel any unexecuted portion of any order to which these Terms and Conditions of Sale apply and/or exercise any right or remedy which may be available to it at law. Buyer/Customer will be in default under these Terms and Conditions if (i) Buyer/Customer fails to perform any covenant, obligation, undertaking or condition contained herein; (ii) Buyer/Customer is insolvent or Buyer/Customer fails to pay debts as they come due or if Buyer/Customer makes an assignment for the benefit of its creditors, or receiving and a manager is appointed for Buyer/Customer or for any of the Products ordered pursuant to these Terms and Conditions of Sale, or if any petition is filed to adjudicate Buyer/Customer bankrupt.

## **16. GOVERNING LAW AND NOTICES**

16.1. These Terms and Conditions of Sale are exclusively governed by and interpreted in accordance with the laws of the Province where PMC Canada conducts business at the option of PMC Canada and the laws of Canada applicable therein, and the parties hereby attorn to the exclusive jurisdiction of the Courts of such Province. All actions, regardless of form, arising out of or related to a transaction governed by these Terms and Conditions of Sale must be brought against PMC CANADA within the applicable statutory period, but in no event more than six (6) months after the date of the relevant invoice.

16.2. Any notice required under these Terms and Conditions of Sale shall be in writing and shall be sent by messenger service with acknowledgement of receipt or by facsimile.

16.3. It is the express wish of the parties that the Terms and Conditions of Sale, and any document relating thereto be drawn up in the English language.

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