



TERMS AND CONDITIONS OF SALE CANADA SERVICE CENTER

1. **GENERAL:** Any written or oral order received from a customer (“**Customer**”) by Samuel, Son & Co., Limited or its affiliates (“**Samuel**”) for the supply of products (the “**Products**”) is governed by the standard terms and conditions of sale outlined below (the “**Terms**”), as such may be amended by Samuel from time to time. Samuel rejects any terms and conditions inconsistent with these Terms and rejects any other terms proposed by Customer in accepting Samuel’s proposal or quotation. No agreement, oral or written, in any way claiming to modify these Terms will be binding on Samuel unless agreed to in writing by an authorized representative of Samuel.
2. **QUOTATION:** Any quotation given by Samuel to Customer shall not constitute an offer.
3. **ACCEPTANCE OF ORDERS:** Any order from Customer to Samuel for the supply of Products shall not be binding on Samuel until either accepted by Samuel in an order confirmation or fulfilled by delivery of the Product(s) identified in the order (an “**Accepted Order**”). Any sample provided by Samuel is not part of an Accepted Order.
4. **DELIVERY:** Any quoted delivery dates are estimate only. Samuel is not obliged to meet such dates and will not be liable to Customer by reason of delays caused by any reason whatsoever. Samuel shall be under no liability for direct or consequential loss or damage to Customer arising from delay or postponement of delivery.
5. **INCOMPLETE ACCEPTED ORDER.** Any portion of an Accepted Order which is not filled and shipped as a result of a lack of inventory or due to force majeure as described below, will nevertheless be retained as an Accepted Order and delivered as soon as possible; however, if Samuel notifies Customer that such portion cannot be delivered at a later date, the Accepted Order for that portion will be cancelled and Samuel will not incur any liability whatsoever to Customer as a result thereof.
6. **SHIPPING.** Customer’s Accepted Order must contain complete shipping instructions. All fees, costs, duties and other charges connected with shipment, transportation, insurance and importation of the Products are the responsibility of Customer and if paid by Samuel, shall be reimbursed by Customer to Samuel.
7. **NO CANCELLATION:** Accepted Orders cannot be cancelled or modified, in whole or in part, without Samuel’s prior written consent. If Samuel agrees to alter or cancel an Accepted Order, Customer shall indemnify Samuel against any loss, damage and expense incurred by Samuel in relation to the cancellation or alteration of such order, including the cost of return freight, return shipping, items purchased from third parties for inclusion in the Products and all labor costs incurred by Samuel in the execution or part execution of the Products.
8. **PRICE INCREASES:** All prices are subject to change without prior notice at any time between our acceptance of an Accepted Order and the date delivery is completed by Samuel for any Product Samuel allocates to fulfill an Accepted Order.
9. **TAXES:** All prices are subject to all applicable sales and use taxes, excise taxes, customs, duties and tariffs and any other taxes, customs, duties and tariffs now or hereafter imposed and/or levied by any governmental authority with respect to the sale of the Product(s) (“**Applicable Taxes**”). Applicable Taxes will be added to the price Customer pays for the Products. Samuel’s failure to charge or collect Applicable Taxes when due shall not relieve Customer of its obligation for payment.
10. **PAYMENT TERMS & CREDIT POLICY:** Payment terms are set forth in the invoices issued by Samuel to Customer. If payment in full on any invoice is not received when due, or if Customer’s credit worthiness is deemed unsatisfactory by Samuel at any time, Samuel may take, without incurring any liability, one or more of the following actions: (a) impose a service charge at the rate that is the lesser of (i) 1.5% per month (18% on an annual basis) or (ii) the maximum rate allowed by applicable law, on any amount past due commencing from the date of such invoice, (b) modify or accelerate payment terms, and/or (c), withhold delivery of Product(s) under any Accepted Order not yet shipped and/or delay, recall or reclaim shipments of Product(s) on route to you or delivered until arrangements satisfactory to Samuel are made to secure payment for any outstanding invoice and for all open Accepted Orders. Samuel will set and review Customer’s credit limit and terms and its discretion from time to time.
11. **ACCEPTANCE OF PRODUCT(S):** Customer is responsible for promptly inspecting Product(s) delivered and

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notifying Samuel within five (5) calendar days following receipt of the Product(s) for which a claim is filed, of any non-conformance of the Product(s). If Customer fails to notify Samuel within five (5) calendar days following receipt of the Product(s), Customer shall be deemed to have accepted the Products. Customer acknowledges and agrees that any shipment of Products varying by up to 10% from the quantity and/or weight specified in the Accepted Order shall be deemed to have fulfilled the quantity and/or weight in the Accepted Order.

12. TITLE AND RISK. Unless expressly agreed to in writing by Samuel, all sales are made on an F.O.B. destination basis and the risk of loss of, or damage to, the Product is assumed by Customer upon arrival of the Product at the point of delivery. Notwithstanding the foregoing, any Product described in an invoice or in an Accepted Order is and will remain the property of Samuel they are paid for in full. The reference to F.O.B. shall have the same meaning as that ascribed to it by the International Chamber of Commerce in its current edition of Incoterms.

13. RETURNS: Product(s) may not be returned for credit without Samuel's prior written approval. Samuel's approval can be withheld in its sole discretion or Samuel can impose terms and conditions for such approval, including but not limited to the imposition of restocking charges.

14. LIMITED WARRANTY: Samuel warrants that the Product(s) sold are in conformance with the specifications set out in the order confirmation of the Accepted Order ("**Limited Warranty**"), subject to the permitted defects set out in Section 15 below. **THIS LIMITED WARRANTY IS IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED. WE MAKE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR USE, OR OF CONFORMANCE OF ANY PRODUCT(S) WITH ANY SAMPLE. PRODUCT(S) SOLD BUT NOT MANUFACTURED BY SAMUEL ARE NOT WARRANTED BY SAMUEL, BUT ARE SOLD ONLY WITH THOSE WARRANTIES PROVIDED BY THE MANUFACTURER. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.**

15. WARRANTY CLAIMS. If Customer seeks to file a claim in respect of the Products, Customer must provide written notice to Samuel and such claim shall comply with the procedures and timelines set out in **Samuel's Claim Policy** (<https://www.samuel.com/globalassets/pdfs/samuel-claims-policy-english.pdf>), as may be amended from time to time, and which is incorporated by reference into and shall form part of these Terms. In the event of any inconsistency or conflict between these Terms and the Claim Policy, these Terms shall take precedence. Customer's failure to comply with the Claim Policy shall be sufficient grounds for Samuel to deny any claim.

16. FORCE MAJEURE: If Samuel's performance of any obligation is delayed due to unavailability of Product(s) or any other cause beyond Samuel's reasonable control by reason of fire, strike, lock-out, labour trouble, war, epidemic, embargo, flood, delay in transportation, lack of critical materials, lack or unavailability of trailers and/or railway cars, failure of carriers or sub-trades, shortage of manpower, restrictive governmental laws or regulations (including any trade actions, export controls, tariffs, customs or duties) or to any other cause or reason beyond Samuel's commercially reasonable control (a "**Force Majeure**"), notwithstanding that such Force Majeure may have existed at the time of submission or acceptance of an Accepted Order, Samuel shall not be liable and any portion of an Accepted Order not filled or shipped will be retained as an Accepted Order and delivered as soon as possible. However, Samuel may elect to cancel the Accepted Order, without liability, if we believe that the Product(s) will not become available within a reasonable period of time as Samuel so determines. Samuel also reserves the right to apportion Product(s) among its customers in such manner as Samuel considers equitable, and such determination shall be conclusive and binding on Customer without liability to Samuel.

17. LIMITATION OF LIABILITY: Customer acknowledges and agrees that Samuel has no liability in contract, tort (including negligence or breach of statutory duty) by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill or for any liquidated, indirect, special or consequential loss or damage whatsoever. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, SAMUEL'S LIABILITY UNDER ANY CIRCUMSTANCE AND FOR ANY REASON (SHALL, AT SAMUEL'S OPTION, BE TO REPLACE NON-CONFORMING PRODUCT(S) OR REFUND THE PURCHASE PRICE PAID BY CUSTOMER FOR SUCH NON-CONFORMING PRODUCTS AND UNDER NO CIRCUMSTANCE SHALL SAMUEL'S LIABILITY UNDER ANY CONTRACT AND THESE TERMS EXCEED THE TOTAL DOLLAR AMOUNT OF THE PRODUCTS PURCHASED BY CUSTOMER UNDER THE CONTRACT.**

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18. **COLLECTION CHARGES:** Customer shall pay all costs and expenses, including without limitation reasonable attorney's fees and administrative charges, Samuel incurs protect its rights arising out of Customer's failure to perform its obligations to Samuel, including without limitation any attempt to collect any amount Customer owes Samuel.

19. **GOVERNING LAW:** The transactions between Customer and Samuel are made in Ontario, shall be governed by the laws of the Province of Ontario, and Customer agrees to submit exclusively to the jurisdiction and venue of the courts of Ontario with respect to any dispute arising out of any transaction between Customer and Samuel; provided, that Samuel may, at its option, commence proceedings in any jurisdiction where Customer carries on business or owns any assets. **CUSTOMER AND SAMUEL KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF ANY SUCH DISPUTE.**

20. **NO RIGHT OF SET-OFF:** Each Accepted Order constitutes a separate and distinct contract when accepted by Samuel and Customer may not withhold payment of an invoice or offset same, in whole or in part, against sums Customer claims are due it by Samuel with respect to another Accepted Order, invoice or for any other cause or reason whatsoever.

21. **RIGHTS ARE NOT EXCLUSIVE:** Samuel's rights hereunder are in addition to and not in lieu of any other rights and remedies available to Samuel at law or in equity.

22. **NOTICES:** All notices of claims or disputes given by either Customer or Samuel with respect to any communications, Accepted Order or these Terms shall be in writing and sent by (a) first class mail with a copy by certified mail, return receipt requested, postage pre-paid, or (b) overnight delivery service, charges prepaid, and addressed as follows: (i) if intended for Samuel, to its address at the location to which a an Accepted Order was placed, and (ii) if to Customer, the address last known to Samuel. Notice will be effective the first business day after notice is sent.

23. **MISCELLANEOUS:** No waiver of any rights or remedies shall be binding on Samuel unless set forth in a written waiver signed by Samuel. Samuel does not give up any of its rights or remedies if it fails or delays in seeking a remedy or if Samuel accepts a payment while there is breach by Customer. Any such waiver, delay or failure by Samuel on one occasion shall not be deemed a waiver by Samuel of any future default by Customer or of any future right or remedy available to Customer. The Section, Paragraph and other headings in these Terms are for convenience of reference only, and shall not limit or otherwise affect the meaning of any provision contained in these Terms. The invalidity or enforceability of any provision in these Terms shall in no way affect the validity or enforceability of any other provision.