



## CONDITIONS OF SALE AND TERMS OF PAYMENT SAMUEL, SON & CO., LIMITED ("Samuel")

1. **TAXES:** All prices are subject to all applicable sales taxes, goods and services/harmonized sales taxes, excise taxes, customs, duties and tariffs and any other present and/or future taxes, customs, duties and tariffs imposed or levied by any governmental authority with respect to the product(s) (the "**Product**") and the sale thereof. Unless otherwise expressly agreed to in writing by Samuel, the amount of all such taxes will be added to the price payable by Customer (the "**Customer**") to Samuel and will form part thereof.
2. **INCOMPLETE ACCEPTED ORDER:** Any portion of an order (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 the 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.
3. **DATES OF DELIVERY:** The dates of delivery indicated in the Accepted Order are only estimated, based upon the existing prevailing conditions, and are subject to change without prior notice. Samuel will attempt to deliver the Product within the stipulated dates but does not undertake or warrant to do so. Except as indicated below or otherwise expressly agreed to in writing by Samuel, delay in delivery or shipment shall not give Customer the right to cancel any Accepted Order. Samuel shall not be liable to pay any compensation or penalty for delay or failure to ship.
4. **SHIPPING:** Customer's Accepted Order must contain complete shipping instructions and notwithstanding the foregoing, Samuel reserves the right to select and choose a different means of transportation which Samuel considers adequate. All fees, costs, duties and other charges connected with shipment, transportation, insurance, and importation of the Product are the responsibility of Customer, and if paid by Samuel, such expenses may be recovered by Samuel from Customer.
5. **WARRANTY:** Samuel only warrants that the Product sold comply with the specifications in an Accepted Order. ALL OTHER GUARANTEES, WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS OR IMPLIED, WHETHER ARISING UNDER STATUTE, COMMON LAW, COMMERCIAL USAGE OR OTHERWISE, PERTAINING TO THE PRODUCT WHICH ARE NOT EXPRESSLY SET FORTH HEREIN IN WRITING, ARE EXPRESSLY EXCLUDED. UNDER NO CIRCUMSTANCES WHATSOEVER (WHETHER AS A RESULT OF ANY DEFECT OR NON-COMPLIANCE WITH ANY ACCEPTED ORDER OR OTHERWISE) SHALL SAMUEL BE LIABLE TO CUSTOMER OR ANY OTHER PERSON, FIRM OR CORPORATION FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE, MISREPRESENTATION, OR OTHERWISE AND WHETHER RESULTING IN LOST PROFITS, INTEREST ON MONEY BORROWED OR INVESTED, IMPAIRMENT OF GOODS, WORK STOPPAGE, OR OTHERWISE, IN ANY WAY ARISING OUT OF ANY TRANSACTION TO WHICH THESE CONDITIONS OF SALE AND TERMS OF PAYMENT APPLY.
6. **CUSTOMER'S RECOURSE:** If any Product supplied to Customer are not in compliance with an Accepted Order, Customer must give written notice thereof to Samuel, and the claim will be dealt with, as outlined in Samuel's Claim Policy (as amended from time to time and published on Samuel's website or provided to Customer upon written request to Samuel). Non-complying Product will be kept by Customer so as to allow their inspection by Samuel. Samuel's liability with respect to such non-compliance will be limited to the replacement of the Product subject to the return of the non-complying Product or if Samuel so chooses, to the reimbursement of the sale price of the non-complying Product and freight costs. Under no circumstances will Samuel be liable for the cost of any added value to non-complying Product.
7. **CANCELLATION:** Unless otherwise expressly provided herein, Accepted Orders cannot be cancelled or modified in whole or in part, and no Product shall be returned for credit or refund, under any circumstances, without Samuel's prior written approval, which approval Samuel can withhold in its sole and absolute discretion. Customer expressly waives and renounces to any unilateral right of cancellation which

may be granted to it by law or otherwise. If any Accepted Order is properly cancelled, Samuel's obligation shall be limited to the refund of any advance payment received from Customer.

**8. TITLE AND RISK:** Unless otherwise 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. If sales are made on an F.O.B. basis at Samuel's place of business, the risk of loss or damage shall be assumed by Customer at the time of the delivery of the Product by Samuel to a public carrier for purposes of delivery to Customer. Notwithstanding the foregoing and in addition thereto, any Product described in an invoice or in an Accepted Order is and will remain the sole and absolute property of Samuel until such time as the sale price thereof will have been entirely paid to Samuel by Customer. The reference to F.O.B. shall, unless otherwise provided herein, have the same meaning as that ascribed to it by the International Chamber of Commerce in its current edition of Incoterms.

**9. FORCE MAJEURE:** If Samuel is delayed in the performance of any act required hereunder by reason of fire, strike, lock-out, labour trouble, war, epidemic, embargo, flood, delay in transportation, 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, whether or not such cause or reason may have existed at the time of the Accepted Order, and the delay exceeds the aggregate amount of thirty (30) days, each party may, by written notice to the other before fulfillment of any unfulfilled obligations, elect to be relieved of its unfulfilled obligations. Notwithstanding the foregoing, for Product which have already been manufactured or are in the process of being manufactured on the date on which the election may otherwise be made, Customer may only elect to be relieved of its obligation to purchase those Product with Samuel's prior written approval, which approval Samuel can withhold in its sole and absolute discretion.

**10. COLLECTION CHARGES:** All collection and administrative charges are for the account of Customer.

**11. GOVERNING LAW:** The validity, construction, and interpretation of all documents relating to this sale, and rights and duties of the parties hereto, shall be governed by the laws of the Province of Ontario, and the laws of Canada applicable therein. The parties hereby attorn to the exclusive jurisdiction of the Courts of the Province of Ontario, provided that Samuel may, at its option, commence proceedings in any jurisdiction where Customer carries on business or owns any assets.

**12. PRICES:** All prices are subject to change by Samuel without prior notice. Without limiting the generality of the foregoing, and notwithstanding the price(s) appearing on an Accepted Order, such price(s) will be automatically increased by an amount equal to the price increase(s) and/or surcharge(s) that may be claimed from or charged to Samuel by its own supplier(s) at any time between the date on which the Accepted Order is accepted and the date of delivery of the Product.

**13. CREDIT:** Payment shall be made in accordance with the terms indicated on Samuel's invoice. The failure by Customer to pay in accordance with those terms constitutes a waiver of Customer's right to demand Samuel's performance under the contract. If a payment is not made on its due date or if Customer's credit worthiness is deemed unsatisfactory by Samuel, Samuel may modify and accelerate the terms of payment as concerns Product not yet delivered. Each payment that is outstanding for more than forty-five (45) days past its due date bears interest at the rate of twenty-four percent (24%) per year until paid. If delivery of Product in installments is quoted by Samuel or required by Customer's Accepted Order, failure of Customer to make any payment when due shall give Samuel the right to suspend delivery until that payment is made. If any such default by Customer continues for more than fifteen (15) days after the due date, Samuel may, in addition to all other remedies that Samuel may have at law or in equity, at any time thereafter cancel the contract by written notice to Customer and recover the delivered Product which have not been paid for in full.

**14. NO RIGHT OF SET-OFF:** Customer shall not be entitled to set-off, in whole or in part, against sums of money due by it to Samuel, claims which Customer has or may claim to have against Samuel for any cause or reason whatsoever. Each Accepted Order placed by Customer with Samuel constitutes a separate and

distinct contract of sale such that Customer may not, under any circumstances, withhold the payment of an invoice in whole or in part, or set-off against same sums which Customer claims are due to it by Samuel in respect of another Accepted Order or invoice.

**15. NO OTHER TERMS ACCEPTED:** ANY SALE OF PRODUCT BY SAMUEL IS GOVERNED EXCLUSIVELY BY THESE CONDITIONS OF SALE AND TERMS OF PAYMENT WHICH SHALL BE A PART OF THE SALES AGREEMENT; NO OTHER TERMS OR CONDITIONS SHALL APPLY TO ANY ACCEPTED ORDER AND NO AGREEMENT OR UNDERSTANDING IN ANY WAY ADDING TO OR OTHERWISE MODIFYING THESE CONDITIONS OF SALE AND TERMS OF PAYMENT, WHETHER OR NOT ON CUSTOMER'S PURCHASE ORDER OR ANY SUBSEQUENT DOCUMENT, SHALL BE BINDING ON SAMUEL UNLESS AGREED TO IN WRITING BY SAMUEL. No failure on the part of Samuel to enforce any of the rights derived from this agreement shall be construed as a waiver of any of its rights. The declaration of the nullity of one or more of the clauses of this agreement by any competent authority shall not affect the validity of the other clauses, which for this purpose are considered severable. If there is any conflict between the terms of these Conditions of Sale and Terms of Payment and Samuel's Claim Policy, Samuel may choose which terms apply.

**16. NOTICE:** Any notice to be given by either party to the other may be given by delivery, facsimile transmission or electronic mail to the intended recipient at its address as shown on either Customer's Accepted Order or Samuel's invoice, and shall be deemed to have been received by the intended recipient on the first day after the notice is so given.

**17. LANGUAGE:** The parties hereto declare that they have requested that these presents and all related document be drafted in the English language. Les parties ont exigé que les presents ainsi que les documents s'y rapportant soient rédigés dans la langue anglaise.