

## **COMPLETE TERMS AND CONDITIONS OF SALE**

### **1. DEFINITIONS**

"Seller" means Preston Phipps Inc. "Buyer" means the legal entity purchasing Goods from Seller. "Goods" means the products offered by Seller and/or purchased by Buyer. "Offer" means any quote, proposal, or offer to sell Goods provided by Seller to Buyer. "Order" means any purchase order or similar instrument issued by Buyer to Seller to purchase Goods. Seller and Buyer are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

### **2. ACCEPTANCE**

The terms and conditions included in this "Terms and Conditions of Sale" document (hereinafter, this "Agreement") apply to all Offers made by Seller to Buyer and all Buyer's Orders accepted by Seller. Acceptance of Buyer's Orders, and any changes or amendments thereto, is expressly conditioned upon Buyer's assent to these terms and conditions. Unless specifically agreed to in writing by a duly authorized representative of Seller, Seller objects to, and is not bound by, any terms or conditions that differ from or add to the terms and conditions specified herein. Seller's failure to object to any terms and conditions or any other provisions contained in any communication from Buyer, including, but not limited to, Buyer's Orders, does not waive any of the terms and conditions specified herein. Seller's acceptance of any resulting Order or Buyer's receipt of Goods, whichever occurs first, will conclusively evidence Buyer's unconditional acceptance of these terms and conditions. A minimum order amount of \$50.00 Canadian applies

### **3. PRICES**

Unless stated otherwise in writing by Seller, all prices are stated in Canadian dollars and the prices offered are valid for a period of thirty (30) days from the date of Seller's Offer. The prices offered apply only to the specific quantities, specifications, and delivery schedules set forth in Seller's Offer. Any variation in quantity, specifications, or delivery schedules may necessitate a price and/or delivery schedule adjustment. Prices are based on exchange rates and cost of raw materials applicable at time of quotation. Preston Phipps Inc reserves the right to revise pricing upon receipt of a formal purchase order if exchange rate and/or cost of raw materials has fluctuated more than 10% from applicable rates at time of the quote.

### **4. CREDIT APPROVAL**

Unless stated otherwise, payment terms for first time orders are subject to credit approval of Buyer by Seller. Payment terms for first time orders may be cash in advance by wire transfer, credit card payments (subject to 2% surcharge) or an irrevocable letter of credit confirmed with Seller's bank. Credit terms, shipments, and performance of work are at all times subject to the approval of Seller's Credit Department. Each shipment is a separate and independent transaction and payment must be made by Buyer accordingly. If, prior to shipment of Buyer's Order, Buyer fails to fulfill the terms of payment of any prior invoice submitted by Seller or, if in the opinion of Seller, Buyer's financial condition becomes impaired or unsatisfactory, Seller reserves the right to change, without notice, the terms of payment and/or delay or discontinue further shipments, without prejudice to any other available legal remedies, until past due obligations have been paid and Seller has received acceptable assurance regarding Buyer's prompt payment of future obligations. All amounts due to Seller but not paid by Buyer on the due date bear interest payable by Buyer to Seller at a rate of two percent (2.0%) per month. Interest accrues on the balance of unpaid amounts as of the date on which portions of those amounts become due until the date payment is received by Seller. Buyer will also be liable to Seller for any expenses incidental to collection of past due amounts, including reasonable attorney's fees and court costs. In the event of Buyer's bankruptcy or insolvency, Seller is entitled to terminate any Order then outstanding and to receive reimbursement for termination costs and expenses as provided under Article 12, Termination for Default.

### **5. PAYMENT TERMS AND DELIVERY TERMS**

Please note that all orders are subject to a \$12.50 handling charge

Unless stated otherwise, payment terms for approved credit is 100% net 30 days. Holdbacks of any form are not accepted.

Any material ordered which is not a "stock item" will be subject to 50% payment at time of order and 50% prior to shipment.

All items must be shipped three (3) months following receipt of order or will be subject to revision due to escalation, currency fluctuation and/or variation of cost of raw materials.

Progressive billing on all orders over \$50,000.00 per following schedule:

25% upon receipt of approved drawings / 25% upon receipt of major materials / 25% payable at time of shipment / 25% net thirty (30) days.

Title to materials in this contract shall remain with the seller until the goods supplied are paid in full.

### **6. PLANS AND SPECIFICATIONS**

If the order received refers to supplying good as per plans and specifications, supplier will be responsible to provide quoted equipment in accordance with said plans and specifications, unless exceptions were taken at time of quote, but all general commercial terms, including payment, will be as per present terms and conditions. Holdbacks will not be accepted.

### **7. TAXES**

Taxes applicable to the sale or lease of Goods will be added to the invoice and must be paid by Buyer, unless the Buyer provides Seller with a tax exemption certificate acceptable to the applicable taxing authority.

## **8. SHIPPING TERMS AND RISK OF LOSS**

Unless stated otherwise, all prices and shipment for domestic deliveries are F.O.B. Seller's place of shipment, and all prices and shipment for international deliveries are Ex-Works, as defined by INCOTERMS 2000. Risk of loss for Goods will transfer to Buyer upon Seller presenting Goods to carrier. If Seller prepays shipping, insurance, or other related costs, Buyer agrees to reimburse Seller promptly for the actual costs incurred by Seller.

## **9. TOOLING**

Unless otherwise provided by special written agreement signed by Seller and Buyer, all tooling, fixtures, equipment, tools, software, and designs produced, acquired, or used by Seller for the purposes of filling Buyer's Order remain the property of the Seller.

## **10. PACKING AND PACKAGING**

Any non-standard or special packing or packaging required by the nature of the order or requested by Buyer will be provided by Seller at additional cost to Buyer.

## **11. INSPECTION AND TESTS**

All Goods manufactured by Seller are subject to Seller's standard inspection processes and, if applicable, acceptance testing at Seller's facility. Any additional requirements, including, without limitation, Buyer's source inspection or additional testing, are at Buyer's sole expense. If Seller and Buyer agree that Buyer is to inspect or provide for inspection at the place of manufacture, such inspection may not interfere unreasonably with Seller's operations and the Buyer's approval or rejection of Goods based on such source inspection and/or testing must be made prior to shipment of the Goods.

## **12. DELIVERY SCHEDULES AND FORCE MAJEURE**

Shipping dates are approximate and require prompt receipt of all necessary Buyer-furnished information and material if applicable. Seller is not liable for any damages, re-procurement costs, or penalties related to late deliveries. Without limiting the generality of the foregoing, Seller is not liable for delays due to force majeure, including, but not limited to, weather conditions, acts of God, acts of civil or military authorities, fires, strikes, job actions, floods, earthquakes, epidemics, quarantine restriction, war, terrorism, riot, supplier or vendor delays, or any other causes beyond the reasonable control of Seller. In the event of such delay, Seller will promptly notify Buyer and the date(s) of delivery will be deferred for a period commensurate with the time lost due to the delay. If the excusable delay under force majeure continues for more than ninety (90) days, Seller and Buyer will each have the option of terminating the affected Order(s) under Article 11, Termination for Convenience. If Seller's production is curtailed for any of the above reasons so that Seller is unable to deliver the full quantity of Goods scheduled for delivery to Buyer, Seller may allocate deliveries of available Goods among its various customers then under order for similar Goods. The allocation will be made in a commercially fair and reasonable manner. When such allocation has been made, Buyer will be notified of the estimated quota made available.

## **13. TERMINATION FOR CONVENIENCE**

Buyer may request to terminate Buyer's Order for convenience in whole or in part and Seller agrees to cooperate with Buyer in attempting to make such arrangements conditioned on Buyer paying Seller for all deliveries made and for all work in process, including all applicable direct and indirect costs, settlements with suppliers, and related administrative, accounting, and legal costs, plus a normal profit. To the extent possible, Seller will use reasonable commercial efforts to divert materials and work in process from Buyer's Order to other customers' orders in order to minimize Buyer's termination costs

## **14. TERMINATION FOR DEFAULT**

Either Party may terminate the Order if the other Party breaches a material provision of this Agreement or of the Order. In the event that a Party (the "Defaulting Party") is in breach of a material provision of this Agreement or the Order, the other Party (the "Non-Defaulting Party") will submit a written cure notice to the Defaulting Party advising of such breach. The Defaulting Party will have fifteen (15) days to cure the breach. If the Defaulting Party does not cure the breach within the fifteen (15) day period, the Non-Defaulting Party may terminate the Order.

## **15. CHANGES ORDERS AND AMENDMENTS**

All change order requests must be submitted by the Buyer to the Seller in writing and will not be effective unless and until Seller consents in writing to the change(s). Seller will advise Buyer in writing of the price and/or delivery schedule impact, if any, of the change request. Seller's acceptance of changes will be subject to Buyer's agreement to any price and/or delivery schedule adjustments.

## **16. LIMITED WARRANTY**

### **Resale products:**

Resale products are subject to the individual manufacturers' warranties.

### **Preston Phipps Inc's systems:**

Preston Phipps Inc's warrants systems designed and build by Preston Phipps Inc to be free from defects. The system components are subject to the individual manufacturers' warranties.

This warranty applies from 12 months from date of shipment or acceptance, whichever is the sooner. This warranty covers Preston Phipps Inc factory repairs, labour costs and replacement parts. It does not cover travel and accommodation costs of Preston Phipps Inc's personnel or their representatives or other charges which are set out below.

Preston Phipps Inc's system warranty is subject to full disclosure of application details, relevant information and all other circumstances that come to light in the execution of the project and the proper execution of the specified maintenance procedures at agreed intervals.

#### **Exclusions and Termination**

- This limited warranty is provided in lieu of all other warranties, whether statutory, expressed, or implied, including implied warranties of merchantability and fitness for a particular purpose.
- This warranty is limited to original products supplied by Preston Phipps Inc, and shall not be construed to apply to the simultaneous and/or interdependent operation of this equipment with devices (hardware and/or software) supplied by others.
- This warranty does not apply to damage caused by ordinary wear and tear or corrosion, nor does it apply to damage caused by misuse, abuse, vandalism, acts of God, or improper handling, storage, operation, or maintenance of the product.
- Warranties for products repaired in a non-factory-approved manner or altered by the user may be voided at Preston Phipps Inc's sole option.
- Upon the expiration of the applicable warranty period, Preston Phipps Inc's warranty liability shall cease and terminate.

For all warranty claims against field services, a customer purchase order is required to initiate a warranty determination visit. Expenses associated with travel to the site are not normally covered under warranty but may be negotiated if the warranty determination visit indicated that the original Field Service was not successful.

The provisions of the foregoing warranty are in lieu of any other warranty, whether expressed or implied, written or oral (including any warranty of merchantability, performance, or fitness for a particular purpose or of title or non-infringement). Except for bodily injury of a person, Preston Phipps Inc's liability arising out of the sale, or supplying of the products or their use or disposition, whether based upon warranty, contract, tort, or otherwise, shall not exceed the actual purchase price paid to Preston Phipps Inc for the individual product in question. In no event shall either Preston Phipps Inc or customer be liable to each other or any person or entity for special, incidental, consequential, multiple, administrative, or punitive damages (including, but not limited to, loss of profits, loss of data, or loss of use damages) arising out of the manufacture, sale, or supplying of the products, even if Preston Phipps Inc has been advised of the possibility of such damages or losses.

#### **17. RETURN AUTHORIZATIONS**

Customer shall process all warranty returns in accordance with the following procedure:

- Customer shall notify Preston Phipps Inc of any defective product(s) within the warranty period and request a return authorization number
- Customer shall return the defective product(s) to the designated Preston Phipps Inc Customer Service Facility as set forth below, freight prepaid by the customer. Preston Phipps Inc will prepay the return freight.
- Preston Phipps Inc will notify the customer of the decision to repair or replace the defective part and the expected shipment date.
- At the customer's request, Preston Phipps Inc may elect to repair defective product(s) on site, in which case travel expenses, travel time, and related expenses incurred by Preston Phipps Inc personnel (excluding repair time) shall be paid by the customer.

#### **Preston Phipps Inc Service Centers**

Montreal  
6400 Vanden Abeele  
St-Laurent, Qc.  
H4S 1R9  
514-333-5340

#### **18. CANCELLATION & RESTOCKING POLICY**

For standard goods that have already been shipped and invoiced, a 35% restocking fee will apply upon receipt at our facility of goods within one (1) year of shipment and in new condition.

Any order that is cancelled by Buyer, once drawings have been issued, will be subject to 10% cancellation fee: 100% of the order will be charged to the Buyer if order is cancelled once goods have been released for fabrication

#### **19. INDEMNIFICATION**

Each Party (the "Indemnifying Party") will hold harmless and indemnify the other Party (the "Indemnitee") against all claims, judgments, costs, and fees, including attorney fees, relating to infringement of patents, designs, copyrights, or trademarks to the extent that the infringing Goods are manufactured, sold, or used in whole or in part to the Indemnifying Party's specifications, designs, drawings, or other technical data.

To the extent that one Party's employees or agents enter on the property owned or controlled by the other Party, the first Party will indemnify and hold harmless the other Party, its officers, directors, and employees for any property damage or bodily injury or death caused by the first Party's employees or agents.

Seller is not liable for injury to persons and damage to property not caused solely by its own negligent acts or omissions. Buyer agrees to the fullest extent permitted by law to indemnify Seller and to hold it harmless from any such claims against Seller caused in whole or in part by Buyer or a third party's negligence.

#### **20. LIMITATION OF LIABILITY**

Notwithstanding any other provisions of this agreement, under no circumstances is either party liable for any consequential, special, incidental, indirect, multiple, administrative, or punitive damages, or any damage of an indirect or consequential nature arising out of or related to its

performance under this agreement, whether based upon breach of this agreement, warranty, or negligence and whether grounded in tort, contract, civil law, or other theories of liability, including strict liability, even if advised in advance of the possibility of such damages. Seller's total liability including, but not limited to, liability for indemnity, defense, and hold harmless obligations is limited to no more than the amount paid to seller under buyer's order, for the specific value of the product in question, and buyer agrees to indemnify seller for any excess amounts. To the extent that this limitation of liability conflicts with any other provision(s) of this agreement, such provision(s) will be regarded as amended to whatever extent required to make such provision(s) consistent with this provision.

## **21. CONFIDENTIALITY**

- All emails are private and contain non-public PRIVILEGED AND CONFIDENTIAL INFORMATION intended only for the use of the designated recipient. The publication, the unauthorized use, distribution or copy of messages and/or the attachments which it contains are strictly forbidden.
- CONTRACTOR will not disclose or permit a disclosure to a third party of COMPANY's CONFIDENTIAL (a) INFORMATION without the prior written consent of COMPANY and will use CONFIDENTIAL INFORMATION only in connection with performance of the CONTRACT.
- On COMPANY's request, CONTRACTOR will return promptly any CONFIDENTIAL INFORMATION and delete it (b) from electronic storage, and delete or destroy all extracts or analyses that reflect any CONFIDENTIAL INFORMATION.
- Except where the obligation is elsewhere expressly stated in the CONTRACT or through a separate agreement, (c) COMPANY GROUP will not have an obligation of non-disclosure or non-use regarding information provided by CONTRACTOR or any other member of CONTRACTOR GROUP.
- CONTRACTOR must obtain written approval from COMPANY before proceeding with any external (d) communications in connection with the CONTRACT, disclosure of business relationships, or use of COMPANY's trademarks.

## **22. NON-SOLICITATION:**

Neither party may hire or solicit the services or employment of any personnel of the other party directly involved in the services or deliverable during the term of the agreement and one (1) year thereafter.

## **23. ARBITRATION AND LAW**

Disputes that arise under this Agreement or Buyer's Order that cannot be settled amicably by the Parties will be settled by arbitration in Montreal, Quebec, Canada under the prevailing rules of the Civil Code of Quebec. Judgment upon the arbitration award or decision may be entered in any court of competent jurisdiction. Arbitration awards and decisions are subject to Article 17, Limitation of Liability. The laws of The Civil Code of Quebec govern the interpretation and enforcement of this Agreement and Buyer's Order.

## **24. ASSIGNMENT**

Buyer may not assign or transfer this Agreement or any Order, in whole or in part, without the prior written approval of Seller.

## **23. UNENFORCEABLE PROVISIONS**

In the event that one or more provisions of this Agreement document is held to be unenforceable, the remaining provisions apply in full and the invalid or unenforceable provision will be replaced by a provision that lawfully enforces the Parties' intention underlying the invalid or unenforceable provision.

## **25. SURVIVAL**

The following Articles will survive the termination or expiration of this Agreement or any Order: 1: Definitions; 4: Credit Approval; 5: Payment Terms & Delivery Terms; 7: Taxes; 8: Shipping Terms and Risk of Loss; 9: Tooling; 11: Inspection and Tests; 12: Delivery Schedules and Force Majeure; 13: Termination for Convenience; 14: Termination for Default; 16: Limited Warranty; 19: Indemnification; 20: Limitation of Liability; 21: Arbitration and Law; 22: Assignment; 23: Unenforceable Provisions; and 24: Survival.

## **26. WHOLE AGREEMENT; AMENDMENT**

This document is the entire understanding between the Parties, and it supersedes all previous or additional agreements, arrangements, and drafts. This document may be amended or modified only by written agreement of duly authorized representatives of both Parties.