

General Terms and Conditions

Wolsley Industrial Canada Inc.

WOLSELEY

Industrial



1. ACCEPTANCE OF THE CONTRACT

The Buyer and Seller agree that these General Terms and Conditions of Sale ("Terms") apply and shall be incorporated by reference into all transactions between the parties for the purchase and sale of goods and services supplied by Seller ("Products"). The Buyer accepts, or will be deemed to accept, these Terms by expressly agreeing in writing, issuing a purchase order, signing any Transaction Documents, giving permission to proceed with an order, using the Product or allowing others to do so or making any payment for the Product, whichever occurs the earliest.

2. ENTIRE AGREEMENT; NO MODIFICATION

The parties acknowledge and agree that these Terms constitute the entire agreement between the parties with respect to the purchase and sale of Product and that all prior negotiations, dealings, communications, agreements or submissions with respect to the subject matter hereof (including any request for quotation issued by the Buyer), whether verbal or written, are superseded and replaced by these Terms and do not apply. The parties further acknowledge and agree that other business forms and documents may be used or exchanged by the Buyer and/or the Seller pursuant to a transaction to which these Terms apply ("Transaction Documents"), but that any such Transaction Documents only facilitate transactions by defining such details as Product descriptions, quantities, price, and destination. These Terms may not be altered or modified or deemed to be altered or modified, in any way by any Transaction Documents or otherwise (including Seller's delivery of any Product) unless expressly agreed to in writing signed by an authorized representative of both the Buyer and the Seller. No contrary or conflicting terms in any Transaction Documents will be deemed material and will instead be rejected by both parties as void with these Terms taking precedence at all times and in all respects.

3. INTENDED PURPOSE

Product will be quoted and supplied according to information provided by the Buyer. It is the sole responsibility of the Buyer to correctly identify the application or process and conditions in which the Product is intended to operate and to verify that the Product is fit and suitable for the intended purpose.

4. RESTRICTIONS

It is the sole responsibility of the Buyer to identify any restrictions that may prevent the entry or usage of the Products at the specified destination.

5. DOCUMENTATION

Seller will provide, free of charge, one (1) copy of the relevant manufacturer's mill test report (unless otherwise agreed to in writing), one (1) copy of the relevant manufacturer's generic dimensional drawing(s) and one (1) catalogue when requested and if available (in English). Requests for additional copies (or other languages, if available) of such documentation may be subject to additional charge.

6. TERMS OF SALE

All prices for products shipped or sold internationally are in [US] dollars unless otherwise stated. All quotes are based on pre-payment unless otherwise stated. Seller reserves the right to request that payment be made by irrevocable letter of credit or any other form of documentary credit. Buyer agrees to pay for the Products in accordance with Seller's payment terms as set forth in Seller's invoice.

7. OPEN ACCOUNTS

Open accounts are subject to credit approval by the Seller's credit department and will require completion and submission of a credit application by the Buyer. Unless agreed to in writing by the Seller's credit department, all open accounts are net 30 days from invoice date. Invoices which are overdue in excess of 60 days from invoice date will result in suspension of the Buyer's account and Seller reserves the right to charge a service fee on any such amounts outstanding greater than 60 days from invoice date at a rate of 2% per month, calculated daily and compounded monthly (26.82% per year) or the highest rate permitted by law, whichever is lower. Seller reserves the right to request that Buyer arrange for a "payment bond" to be issued to Seller to be held in trust to secure payment on any open accounts.

8. SECURITY INTEREST

Buyer hereby grants to Seller and acknowledges that Seller reserves a purchase money security interest in the Product and all proceeds thereof until such time as they are paid for in full by Buyer and that, in order to perfect such interest, Seller may register such security pursuant to applicable personal property security legislation. Buyer acknowledges and agrees that no Products will become fixtures by reason of becoming attached to real property.

9. TAXES

Prices are exclusive of any federal, provincial, local sales, value added or other taxes applicable to the sale, manufacture, or delivery of Product ("Taxes"). If any Taxes are applicable, they will be calculated at the rate in effect at the time of shipment and payment thereof will be the responsibility of the Buyer unless the Buyer provides Seller with an exemption certificate acceptable to the applicable taxing authority.

10. DELIVERY/INCOTERMS

Seller will make a good faith effort to complete delivery of the Products as indicated by the Seller in writing; however, Seller assumes no responsibility or liability and will accept no backcharge for loss or damage due to reasonable delay or inability to deliver, whether or not such loss or damage was made known to Seller, including, but not limited to, liability for Seller's non-performance pursuant to Section 15. Any reference made to trade terms (such as EXW, FCA, FOB, etc.) will be deemed to be made to the relevant term of INCOTERMS published by the most recent publication by the International Chamber of Commerce. Freight, duty, insurance and risk of loss will be determined in accordance with the INCOTERMS listed on the invoice.

11. CANCELLATION/RE STOCKING

Buyer has no right to cancel or modify any order to which these Terms apply without (i) Seller's written consent and (ii) payment to Seller of all applicable cancellation or restocking fees, including return freight charges. Special order Product may not be cancelled or returned, and no refund will be given in respect of such special order Product. Returns accepted by Seller must have a Return Authorization (RGA) number issued to the Buyer by the Seller.

12. SET-OFF

Buyer may not set-off any amounts due to Buyer against any amount due to Seller in connection with any transaction.

13. INDEMNIFICATION

Each party ("Indemnitor") shall indemnify, hold harmless and defend the other and the respective employees, officers, directors and agents of the other (each an "Indemnitee") arising out of or in connection with any claim, suit, cause of action or judgment (each a "Claim") for damage to or loss of any property or for any bodily injury or loss of life, or for any loss, cost, expense or liability of any nature, including reasonable legal fees (collectively "Damages"), to the extent caused directly by the negligent act or omission of the Indemnitor. The foregoing indemnification will not apply to the extent Damages are proximately caused by the negligence of the Indemnitee.

14. SELLER RECOMMENDATIONS

Buyer should compare Product with all plans and specifications, as they are not guaranteed to agree. Buyer acknowledges that Seller does not make or manufacture and specifically negates, renounces and disclaims any representations, warranties and/or guarantees of any kind or character, express or implied, with respect to (i) the Products and their use, design, application or operation, their merchantability, physical condition or fitness for a particular purpose; (ii) the maintenance or other expenses to be incurred in connection with the Products; and (iii) the accuracy or reliability of any information, designs or documents furnished to Buyer. Seller neither assumes, nor authorizes any person to assume for it, any other obligation in connection with the sale of the Products. Any recommendations made by Seller concerning the use, design, application or operation of the Products should not be construed as representations or warranties and any failure by Seller to make any recommendations or give advice to Buyer will not impose any liability upon Seller.

15. WARRANTIES

The Seller warrants only title to the goods. All other warranties are those of the relevant manufacturer and Seller hereby assigns to the Buyer any and all warranties provided to it by its suppliers and/or by the relevant manufacturer(s); provided, however, that any warranty so assigned is void if there is any misuse, modifications, improper maintenance, storage or installation of the affected Product or if the affected Product are used in an unsuitable physical or operating environment. If any such warranty is not assignable by the Seller to the Buyer, then Seller shall: (i) hold such warranty for the benefit of the Buyer; and (ii) at the request, expense and under the direction of the Buyer, take such reasonable action and do such reasonable things so that the warranty may be enforced or performed in a manner such that the value of the warranty will be preserved and will enure to the benefit of the Buyer and that all such monies (or other benefits) receivable under such warranty may be received by the Buyer. The Buyer waives any right to legal action against the Seller for damages caused by the Products whether based upon warranty, contract, strict liability, negligence or otherwise or which result from or arise in connection with the design, manufacture, installation, use or repair of the Products, including but not limited to environmental damages. Buyer further acknowledges and agrees that its sole and exclusive remedy from Seller will be the repair, replacement or refund of the applicable purchase price of the affected Product during the relevant manufacturer's warranty period. SELLER DISCLAIMS ALL OTHER EXPRESSED OR IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER'S LIABILITY, IF ANY, TO THE BUYER IS LIMITED TO DIRECT DAMAGES UP TO THE AMOUNT OF THE PURCHASE PRICE OF THE AFFECTED PRODUCT. SELLER WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, LIQUIDATED OR CONSEQUENTIAL DAMAGES.

16. FORCE MAJEURE

Seller will not be liable for any delay or failure of performance due to any cause beyond its reasonable control including but not limited to act of God, war, labour difficulties, the inability of its manufacturers or suppliers to obtain materials, or delays of carriers.

17. PERFORMANCE BONDS/LIQUIDATED DAMAGES

Any reference to performance bonds or liquidated damages must be approved by the sellers authorized representative in writing. Performance bonds or stand by letters of credit et cetera will be issued (if agreed by the seller) by a bank of the seller's choice in Sellers format only and pursuant to the laws of the country, province or state of the issuing bank and subject to ISP98 rules. Seller reserves the right to charge buyer for the cost of issuing said bonds or letters of credit for performance, warranty or delivery purposes.

18. DECLARATIONS/LIEN RELEASE

Seller does not provide statutory declarations to its customers regarding payments made to its vendors. Seller shall release lien rights only upon receipt of payment in full.

19. REMEDIES ON DEFAULT

Upon default by Buyer, Buyer shall reimburse Seller for all costs incurred by Seller in connection with such default, including reasonable legal fees. For the purposes of this section, each of the following will constitute an event of default and will enable the Seller, at its option, to cancel any incomplete portion of the Buyer's order or to exercise any other right or remedy available to it at law: (a) the failure of Buyer to perform any term or condition contained herein; (b) the insolvency of the Buyer or its failure to pay its debts as they come due or an assignment by Buyer for the benefit of its creditors or the appointment of a receiver for the Buyer or its assets or the filing of any petition to adjudicate the Buyer bankrupt; (c) the dissolution or other termination of the Buyer's existence; (d) a failure of Buyer to rectify any failure to perform its obligations within ten (10) days of receiving notice of such failure from Seller; (e) if Seller, in good faith, believes that Buyer's prospect of performance under this Agreement is impaired. All rights and remedies of Seller herein are in addition to, and shall not exclude, any rights or remedies that Seller may have

in law. In the event that Seller incurs any expense for the collection of any overdue account in accordance with section 7, reasonable collection charges, including reasonable legal fees attributable thereto, will be added to the balance owing by Buyer and Buyer shall pay all such additional charges.

20. DISPUTE RESOLUTION

In the event of a dispute, the parties shall endeavor to resolve such dispute through good faith negotiations for a period not to exceed fifteen (15) calendar days following notice by one party to the other party that a dispute exists. In the event the parties fail to resolve such dispute within such period, the alleged breach or dispute must be submitted to binding arbitration under the applicable arbitration rules of either (i) the ADR Institute of Canada Inc., for matters between parties domiciled in Canada, or (ii) the International Chamber of Commerce, for matters where at least one party is not domiciled in Canada. Any such arbitration will be private and confidential and will be conducted in the English language and will be the sole and exclusive remedy with respect to any such dispute or alleged breach. The findings of the arbitrator will be binding on both parties; provided, however, that the arbitrator will have no power to add to, detract from, or alter these Terms. The ruling resulting from such arbitration will be enforceable in any court of competent jurisdiction. The cost of such arbitration will be borne equally; provided, however, that each party shall pay its respective legal fees without contribution from the other.

21. GOVERNING LAW

This agreement is governed by the laws of Ontario and the federal laws of Canada applicable therein. The parties specifically exclude the application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

22. SEVERABILITY & WAIVER

If any provision of these Terms is found to be invalid or unenforceable by a court of competent jurisdiction, such provision will be given effect in such reduced form or struct, as may be determined, and the balance of these Terms will remain valid and enforceable as if the severed provision had not formed part of these Terms. The Seller's failure to insist upon strict compliance with any provision of these Terms will not be deemed to be a waiver of any of its rights or remedies or of its right to insist upon strict performance of such term or any other term in the future. No waiver of any of these Terms will be valid unless made in writing signed by the Seller's authorized representative, and such waiver will not constitute a waiver of any other provision.

23. ASSIGNMENT

Neither party shall assign its rights or obligations under any order without the written consent of the other unless to a parent, subsidiary or affiliate with similar creditworthiness characteristics.

24. CONFIDENTIAL INFORMATION

Without prior written consent of the seller, buyer shall neither disclose to any third party, nor use for the purpose other than those contemplated by the order, any information pertaining to the existence of Terms including, but not limited to, the quantity, description or price of the products.