

## STANDARD OR GENERAL TERMS AND CONDITIONS OF SALE

### 1. ACCEPTANCE

- 1.1 The following Terms and Conditions of Sale (the “**Terms**”) set forth herein are applicable to the sale of products and provision of services (collectively “**Products**”) by E H Price, a Division of Price Industries Limited, and all its affiliated divisions and companies (collectively the “**Company**”) to the Purchaser.
- 1.2 For clarity, the Terms govern all the purchase and sale agreements between the parties including but not limited to purchase orders, sales documents, shipping requests and any other oral and written communication relating to the Products (collectively the “**Agreement**”).
- 1.3 The Purchaser shall be conclusively deemed to have accepted the Terms either any one or more of the following methods:
  - i) signing and returning the Company’s quotation;
  - ii) sending a purchase order in response to the quotation; or
  - iii) instructing the Company to ship the Products.
- 1.4 To the extent the Purchaser has or had a balance due to, credit application with, or account with the Company, these Terms shall supersede and control any other terms governing the Purchaser’s previous or other account, except that any personal guarantees shall continue in full force and effect unless specifically revoked in writing.
- 1.5 No waiver, alteration or modification of the foregoing Terms shall be valid unless:
  - i) made in writing and signed by an authorized official of the Company; or
  - ii) Posted on the Company website and thereby made available to the public for review.

### 2. PRICE

- 2.1 Prices of the Products may be increased depending on the date of release and/or shipment of the order, announced increases in the Company’s list prices, or increases in labour and material cost.
- 2.2 All stated prices are exclusive of any present or future taxes, fees, duties, tariffs, and levies, however designated or imposed, including but not limited to value-added and withholding taxes that are levied or based upon the amounts paid under the Agreement (collectively, “**Taxes**”). Whenever possible, the Company will bill Taxes as a separate item on the invoice presented to the Purchaser. For clarity, Taxes do not include any income taxes or taxes based on the value of the Company’s holdings or payroll.

- 2.3 Any Taxes related to the Products purchased pursuant to the Agreement are the responsibility of the Purchaser, unless Purchaser presents an exemption certificate acceptable to the Company and the applicable taxing authorities. In the event that such exemption certificate presented by the Purchaser is held to be invalid, the Purchaser will be held liable for the amount of the Tax and any penalties and interest related thereto.

### 3. TERMS OF PAYMENT

- 3.1 All payments are to be in Canadian currency unless otherwise specified.
- 3.2 Terms of payment are subject to prior approval of the Company's credit department. Unless previously otherwise agreed in writing, the terms of payment are net 30 days from date of shipment.
- 3.3 In the event that the Purchaser's Credit Application with the Company is not approved, the order will not be released unless:
- (i) The Purchaser deposits 100% of the purchase price with the Company; or
  - (ii) A payment plan agreeable to the Company is agreed to in writing.
- 3.4 The Company, at its sole discretion, may cancel the Purchaser's credit account at any time, without notice, and with or without cause. In such event, the Purchaser agrees to immediately pay the outstanding balance.
- 3.5 If at any time the financial conditions of the Purchaser or other circumstances affecting the credit decision, in the Company's opinion, does not justify continuance of production or shipment of Products on the terms of payment specified, the Company may require full or partial payment in advance, or may at its sole discretion stop or delay production or shipment of Products.
- 3.6 Unpaid amounts will accrue interest at a rate equal to the lesser of one and one-half percent (1.5%) per month and the maximum rate permitted by applicable law, from due date until paid in full.
- 3.7 The Company may apply the payments made by the Purchaser in any manner that the Company, in its sole discretion, deems appropriate, including application of payment to service charges first, and then principal. Purchaser may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with the Company.
- 3.8 Specifically, the Company does not accept any holdbacks from its billings. No waiver, alteration or modification of this term shall be valid unless made in writing and signed by an authorized official of the Company.
- 3.9 The Purchaser shall assign to the Company any and all mechanic's lien, builder's lien, bond claims or rights that Purchaser has or may have with respect to the project under the Mechanic's Lien, Builder's Lien and/or Bond Laws pertaining to public or private construction or against contract proceeds or retainages payable to Purchaser with respect to such project. In no event shall the assignment release Purchaser of the underlying obligation to pay the Company the entire debt owed to the Company.

Further, Purchaser's assignment to the Company of the claims or rights as discussed in this paragraph is in addition to any other security given to the Company or that the Company may have received from the Purchaser. Purchaser shall hold all payments received in connection with materials furnished to it by the Company in trust for the Company.

- 3.10 In the event the Company incurs any legal costs and fees in connection with collecting monies due, including where payments are in default, the Company shall be entitled to recover its legal costs and fees, expert's fees and/or collection agency fees, all on a full-indemnity basis. If more than one person or entity signs this application it is understood and agreed that all entities and persons are jointly and severally liable for payment.

#### **4. DELIVERY AND SHIPPING TERMS**

- 4.1 The delivery date provided by the Company for the Products is only an estimate subject to availability of Product and is based upon prompt receipt of all necessary information from Purchaser. The Company will not be liable for any delays, loss, or damage in transit, and failure to deliver within the time estimated. Any such delay, loss or damage will not be a breach of contract on Company's part. If the Purchaser causes the Company to delay shipment or completion of the Products, the Company will be entitled to reimbursement, from Purchaser, to any additional expenses resulting from the delay.
- 4.2 Unless otherwise agreed in writing by both parties, the Company will deliver the Products, EXW – Ex Works at the location of the manufacture unless otherwise specified in the Purchase Order (the "**Delivery Location**"), using the Company's low-cost common carrier for packaging and shipping. Charges for special carrier services requested by the Purchaser shall be paid by the Purchaser with freight as quoted. Purchaser shall take delivery of the Products within three (3) days of the Company's notice that the Products have been delivered to the Delivery Location. If Purchaser fails to take delivery of the Products within this three (3) day period Purchaser will pay the Company for the Products and all storage expenses incurred by the Company. For greater clarity, notwithstanding that the Company arranges for the carrier or delivery service, the transfer of title and risk take place upon the release of the Product to the carrier.
- 4.3 The Company may, in its sole discretion, without liability or penalty, may ship the Products in one or more lots to Purchaser. Each shipment will constitute a separate sale, and Purchaser will pay for the units shipped whether the shipment is in whole or partial fulfillment of Purchaser's purchase order. Purchaser is responsible for obtaining any import licenses and other consents required for a Product shipment at its own expense, and will provide the licenses and consents to the Company before shipment.
- 4.4 The quantity of any installment of the Products, as recorded by Company on the dispatch from Company's place of business, is conclusive evidence of the quantity received by Purchaser upon delivery, unless Purchaser provides conclusive evidence to the contrary.
- 4.5 The Company will not be liable for any non-delivery of the Products to the Delivery Location, unless Purchaser gives written notice to Company of the non-delivery within five (5) days following the date that Purchaser would, in the ordinary course of business, have received the Products. Company's liability for any non-delivery of the Products will be limited to replacing the Products within a reasonable time or adjusting the invoice for the Products to reflect the actual quantity delivered.

## **5. INSURANCE**

- 5.1 Unless otherwise directed by the Purchaser, at the time of shipping, the Company will obtain insurance at the expense of the Purchaser for the full price of the Products that are being shipped against loss or damage by fire, theft and such other perils as are ordinarily included in a policy of insurance relating to the shipment of the Products by the applicable method of shipment.
- 5.2 Whenever possible, such insurance shall be obtained in the name of the Purchaser. In the event such insurance is obtained in the Company's name, the Company shall assign, transfer and deliver to the Purchaser the policy of such insurance and any receipts therefor.
- 5.3 Where the Purchaser refuses to obtain such insurance as set out in subsection 5.1 and the Products are lost or destroyed in whole or in part while in transit, the Company will not be liable for any loss or damages.

## **6. RISK OF LOSS AND TITLE**

- 6.1 Risk of loss or damage passes to Purchaser upon release of Products to the carrier.
- 6.2 If Purchaser fails to accept delivery of Products within two days of the carrier delivering the Products to the Delivery Location, or if carrier is unable to deliver the Products to the Delivery Location because Purchaser has failed to provide appropriate instructions, documents, licenses, or authorizations, then:
  - i) the Products will be deemed to have been delivered to Purchaser; and
  - ii) the Company, at its sole discretion, may store the Products until Purchaser takes possession of Products at which time Purchaser will be liable for all expenses resulting from the failure (including, but not limited to delivery, storage, insurance and any other reasonable expenses).
- 6.3 Purchaser must file any claim for damage or shortage in transit against the carrier. The Company may assist and cooperate in making such a claim and the Purchaser acknowledges that the provision of such assistance will not result in any acceptance of responsibility for same by the Company.
- 6.4 Claims for factory shortages will not be considered unless made in writing to the Company within ten (10) days after receipt of the Products and accompanied by reference to the Company's bill of lading and factory order numbers.
- 6.5 The title of products passes to Purchaser upon the receipt of payment in full for the Products by the Company.

## **7. INSPECTION REJECTION AND RETURN OF PRODUCTS.**

- 7.1 Purchaser shall inspect the Products following delivery. Unless the Purchaser notifies the Company that the Products are damaged or unsuitable ("defect") within twenty-four hours of delivery of the defect and in writing, the Products will be deemed accepted.

- 7.2 The Company, upon satisfaction that there is a defect, may credit or refund the purchase price for the defect or provide replacement Product.
- 7.3 The Company will reimburse the Purchaser in the event that the Purchaser incurs any reasonable shipping and handling expenses arising from the defect.
- 7.4 At the Company's request, Purchaser will dispose of the defective Product or return same to Company.
- 7.5 Other than Products agreed to be defective, no Products may be returned except by permission of an authorized Company official. When so returned, the Products will be subject to handling and transportation charges. Any and all standard cataloged returned Products, as agreed to by Company, are subject to a minimum 25% restocking charge. Authorized return of Products must be shipped prepaid to the location designated by the authorization. A copy of the invoice must accompany returned Products. All returned Products must be in as new condition.
- 7.6 For greater clarity, the Company will not accept any return of non-standard products or orders.

## **8. CHANGES AND SPECIFICATIONS**

- 8.1 In the interest of continuous product improvements, the Company reserves the right to change, alter, modify or redesign its Product specifications or design without incurring obligation to the Purchaser with respect to same.
- 8.2 The Company does not accept any order subject to project design and specifications.
- 8.3 Purchaser agrees to accept full and sole responsibility to determine whether the Products ordered by the Purchaser meets the design and specification requirements of any project.
- 8.4 All specifications, drawings and data submitted to the company by the purchaser in conjunction with the purchase order are incorporated and made part of these terms and conditions.

## **9. CANCELLATION**

- 9.1 Cancellation or modifications of all or part of any order by the Purchaser are subject to the Company's prior written consent in each instance.
- 9.2 If cancellation or modification is allowed, Purchaser agrees to pay to the Company any and all expenses incurred, and damage sustained, by the Company on account of the cancellation or modification, plus a reasonable profit and further indemnifies the Company against any and all loss.

## **10. TERMINATION**

- 10.1 In addition to any other remedies the Company may have, Company may terminate this Agreement with immediate effect upon written notice to Purchaser, if Purchaser:

- i) fails to pay any amount when due under this Agreement and the failure continues for five (5) days after Company provides written notice of nonpayment;
- ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or
- iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

## **11. LIMITED WARRANTY**

- 11.1 For Standard Cataloged products, replacement parts will be provided by the manufacturer the Company represents in the event any product supplied by the Company and used in Canada proves defective in material or workmanship within a period of twelve (12) months.
- 11.2 For non-standard products commissioned by the Company or its sub-contractor, the warranty will be for a period of twelve (12) months from the initial start-up or eighteen (18) months from date of delivery, whichever is earlier.
- 11.3 Any third-party Products sold by the Company are warranted only to the extent that the manufacturer warranted them to the Company or directly to the Purchaser and in no case will the warranty extend beyond the warranty provided by the manufacturer.
- 11.4 The Company's liability to the Purchaser shall not exceed the lesser of the cost of correcting Product defects or the original purchase price of the Product and the Company shall not in any event be liable to Purchaser or third parties for any delays of special, indirect or consequential damages.
- 11.5 The Company's warranty does not apply to any Products which have been opened, disassembled, repaired or altered by anyone other than the Company or its authorized service representative or which have been subjected to misuse, misapplication or abuse.
- 11.6 The Company is not obligated to pay any labour or service costs for removing or replacing parts, or any shipping charges. Refrigerants, fluids, oils, and expendable items such as filters are not covered by this warranty. Any repair or replacement pursuant to this limited warranty will not extend the Warranty Period.
- 11.7 The Company does not warrant the Products, or any repaired or replacement parts, against normal wear and tear or corrosion.
- 11.8 This limited warranty and any optional extended warranties are granted only to the Purchaser.
- 11.9 The Company's duty to perform under any warranty may be delayed, at Company's sole option, until the Company has been paid in full for all Products purchased by Purchaser. No such delay shall extend the warranty period.

- 11.10 For Products containing motor-compressors and /or furnaces, the Company must receive a start-up information report of said Products in order to assess if such Products are covered under the limited warranty.
- 11.11 This limited warranty is conditional upon the Purchaser having paid the purchase price in full, giving written notice to the Company of the defect within ten (10) days of the Purchaser having discovered or ought to have discovered the defect, ensuring proper storage, installation, operation, use, and maintenance of the Product during the Warranty Period, providing Company with the opportunity to examine the Products, and the absence of any unauthorized modification or repair of the Products.
- 11.12 THE COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT THE EXPRESS WARRANTY CONTAINED HEREIN AND COMPANY DISCLAIMS ALL OTHER WARRANTIES WHATSOEVER.
- 11.13 Purchaser's delivery of notice revoking these Terms shall in no way relieve Purchaser from any liability or any indebtedness incurred prior to Company's receipt of such notice.
- 11.14 The Purchaser shall fully and promptly furnish to the Company any and all information necessary for the Company to perfect any actual or potential mechanic's liens, builder's liens or bond rights.

## 12. LIMITATIONS OF LIABILITY

- 12.1 The Company's sole obligation under the Agreement is to sell Products to the Purchaser on the Terms provided for and/or referenced herein. In no event will the Company be liable for any indirect, special, incidental, exemplary, or consequential damages including but not limited to any loss of use or under-utilization of labour or facilities, loss of revenue or anticipated profits, and costs of procurement of substitute Products, however caused and regardless of the form of action.
- 12.2 Company's total liability for all claims arising out of, or relating to, the Products will be limited to an amount not to exceed the total purchase price for the Products giving rise to the claim.
- 12.3 The Parties Acknowledge and agree that the foregoing is an express, negotiated agreement limiting liability to the Company.

## 13. INDEMNIFICATION

- 13.1 Purchaser will defend, indemnify, and hold harmless Company and its parent company, subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, fees (including import and export customs fees), or expense (including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) ("**Claims**") arising out of or in connection with any of the Products provided by the Company, the negligence or willful misconduct of Purchaser or its employees or agents, including but not limited to:
- i) any misuse or modification of the Products by Purchaser or its employees or agents;

- ii) any act (or failure to act) by Purchaser or its employees or agents in contravention of any safety procedures or instructions that Company provides to Purchaser or its employees or agents; or
- iii) the failure to properly store, install, operate, or maintain the Products.

#### **14. NO LICENSE**

- 14.1 The sale of the Products will not confer upon Purchaser any license, express or implied, under any patents, trademarks, trade names, or other proprietary rights owned or controlled by Company, its subsidiaries, affiliates, or suppliers; it being specifically understood and agreed that all the rights are reserved to Company, its subsidiaries, affiliates, or suppliers.
- 14.2 Without limiting the foregoing, Purchaser will not, without Company's prior written consent, use any trademark or trade name of Company in connection with any the Products, other than with respect to the resale of the Products by or on behalf of Company.

#### **15. MANNER OF GIVING NOTICE**

- 15.1 Any notice, instruction or document required or permitted to be given or served by this Agreement or by law may be delivered to the other party by way of personal service or by any electronic means (including but not limited to facsimile and e-mail) or by prepaid courier or registered mail. Any other method of delivery other than personal service should be at the party's last known address, fax number or email address, and either party may by notice given in accordance with this subsection change its address, fax number or email address for the purpose of this subsection.
- 15.2 Any notice shall be deemed (in the absence of evidence of prior receipt) to have been received by the intended recipient the same day if personally served or delivered electronically, the fifth business day following where sent by courier or by registered mail.

#### **16. CONFIDENTIALITY.**

- 16.1 All non-public, confidential, or proprietary information of Company, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, that Company discloses to Purchaser, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as "confidential," in connection with the Agreement is confidential, solely for the use of performing the Agreement, and may not be disclosed or copied unless authorized in advance by Company in writing.
- 16.2 Upon Company's request, Purchaser will promptly return all documents and other materials received from Company.

#### **17. ENTIRE AGREEMENT**

- 17.1 These Terms govern the entire agreement between the parties including purchase orders, sales documents, shipping requests and any other oral and written communication relating to the Products. These Terms supersede all existing terms including oral or written communications between the Parties.



- 17.2 The Company hereby expressly rejects any terms in any other purchase, sale or delivery documents and communications that are inconsistent with the Terms set forth herein. Terms in any subsequent document or communication that are inconsistent with the Terms set forth herein shall apply if and only if the Company's authorized representative has consented the specific inconsistent terms in writing, signed by such authorized representative.
- 17.3 For clarity, in the event of a conflict between any terms and conditions contained in the order(s) placed to the Company and these Terms, these Terms set herein shall prevail. Neither the Company's subsequent lack of objection to any terms, nor the delivery of Products, shall constitute an agreement by the Company to any other terms.
- 17.4 The Purchaser expressly acknowledges that it has not been induced to purchase any of the Products from the Company by any representation or warranty not expressly set forth in the Agreement. No waiver by the Company of any of the provisions of these Terms is effective unless explicitly set forth in writing that specifically references these Terms and is signed by the Company. The Company's obligations, if any, to supply Products on credit are expressly made conditional on the Purchaser's consent to the Terms herein.

## **18. NO ASSIGNMENT**

The Purchaser will not assign any quotation or accepted order for the Products, in whole or in part, without Company's prior written consent.

## **19. FORCE MAJEURE**

Company will not be liable for non-performance or any failures or delays due to acts of God; acts of Purchaser; strikes, states of emergency, differences with workers, or any causes beyond the reasonable control of Company, including but not limited to fires, floods, weather, accidents, health pandemic as declared by the World Health Organization or any governmental authority, action of any governmental authority, embargo, regulation, order, or governmental request, war (declared or undeclared), terrorism, sabotage, or other criminal conduct, insurrection or riots, or shortages of labor, energy, raw materials, production facilities, or transportation or default of suppliers, or any other events or causes beyond Company's reasonable control (each a "Force Majeure" event). Where delays or failures are caused by labor difficulties, Company will not be obligated to seek or obtain any settlement that, in Company's sole judgment, is not in Company's best interest.

## **20. COMPLIANCE**

Purchaser will comply with all applicable laws, regulations, ordinances, export and import laws and regulations in effect as of the date of shipment of the Products of any country involved in the transactions contemplated by the Agreement.

## **21. GOVERNING LAW; VENUE; DISPUTE RESOLUTION**

All matters arising out of or relating to this Agreement is governed by and construed in accordance with the laws of the Province of Manitoba and the laws of Canada applicable therein.

Company will have the sole and exclusive right to determine whether any dispute, controversy or claim arising out of or relating to the Agreement, or the breach thereof, will be submitted to a court of law or arbitrated. The venue for any the arbitration or litigation will be in the jurisdiction chosen by the Company and the Purchaser hereby irrevocably attorns to the jurisdiction so chosen by the Company.

The arbitrator's award may be confirmed and reduced to judgment in any court of competent jurisdiction. In the event the matter is submitted to a court, Company and Purchaser hereby agree to waive their right to trial by jury and covenant that neither of them will request trial by jury.

## **22. CHOICE OF LANGUAGE**

It is by the express intention of the parties hereto that the present Agreement and all its related documents be drafted in English. Il est de l'intention expresse des parties à la présente Convention (connaissance, bon de commande, bon de conditionnement ou facture) et tout document s'y rattachant soient écrit en langue anglaise.

## **23. SEVERABILITY**

If any provision of this Agreement is held to be prohibited or unenforceable, the provision will be changed and interpreted to accomplish the objectives of the provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

In the event any portion of these terms are declared by a court or arbitrator of competent jurisdiction to be invalid, illegal or unenforceable as written, Purchaser agrees that the Court or arbitrator shall modify and reform such provision to permit enforcement to the greatest extent permitted by law, and that the enforceability of the remaining provisions of this Agreement shall in no way be affected or impaired.

## **24. MISCELLANEOUS**

The Section headings contained in these Terms are for convenience only and will not affect the interpretation of any provision.

REV: EHP.9.24.20