

Excelitas Canada Inc.
STANDARD TERMS AND CONDITIONS OF SALE

The terms and conditions of sale contained herein apply to all quotations made and purchase orders entered into by Excelitas Canada Inc. ("Seller"). These terms and conditions supersede and replace any terms and conditions attached to Buyer's order, and Seller's acceptance is expressly conditioned upon Buyer's acceptance of the terms and conditions.

1. Delivery Dates and Prices.

- a) All delivery and shipment dates indicated on the face hereof are approximate. Seller will make reasonable efforts to meet the delivery date(s) quoted. However, Seller will not be liable for its failure to meet the quoted delivery dates or for any delay in performance hereunder due to unforeseen circumstances or shortages, due to causes beyond its control, or due to its voluntary or mandatory compliance with any governmental act, regulation, or request. If, by reason of such circumstances, Seller's supplies of the equipment or service (hereinafter the "Product(s)") covered hereby are limited, Seller shall have the right to allocate the available supply among its customers in such manner as it, in its sole discretion, determines appropriate.
- b) With respect to orders acknowledged and accepted by Seller, under no circumstances will Seller accept requests by Buyer to (i) cancel an order, or (ii) delay or re-schedule delivery of Products. Exceptions to this prohibition must be in writing and approved by a vice president or other senior executive of Seller. No other employee or agent of Seller is authorized to approve cancellation or permit a delay or rescheduling of delivery.

2. Packing and Loss or Damage in Transit.

Products will be packed for shipment in a manner suitable to the method of shipment specified by Buyer, or to the method selected by Seller in the absence of instructions. Should Buyer request any special packing, it will be done at Buyer's expense. Unless otherwise indicated on the face hereof, all sales hereunder are FCA Seller's plant (Incoterms 2000), and all risk of loss or damage to Product in transit is upon Buyer. Payment will be made in accordance with Paragraph 5 below.

3. Payment Due For Partial Deliveries.

Seller may, in its sole discretion, deliver any portion of the Products ordered and all such partial deliveries shall be accepted and paid for in accordance with the terms of Paragraphs 4 and 5 below. The making of a partial delivery that, to any extent, is not in accordance with the contract of sale shall not affect the Buyer's obligation hereunder to remit payment.

4. Inspection, Acceptance and Return of Products or Trade-Ins.

Buyer shall inspect the Products immediately upon receipt and shall, within five (5) business days after receipt, give written notice to Seller of any claim for shortage or that the Products do not conform with the terms of the contract of sale. If Buyer shall fail to give such notice, the Products shall be deemed accepted and to conform with the terms of the contract of sale, and Buyer shall be bound to pay for the Products in accordance with the terms of Paragraph 5 below. Return of Products, defective or otherwise, will not be accepted by Seller without (i) written notification from Buyer to Seller within 30 days of receipt of invoice and (ii) receipt of a return material authorization ("RMA") from Seller. Products authorized to be returned shall be shipped FOB destination, freight pre-paid. When return of nonconforming goods has been accepted by Seller, conforming shipment may be made in accordance with Paragraph 1 above and Paragraph 8 below without further liability on Seller's part. Buyer will be liable for restocking charges in the event Products are returned to the Seller which are not defective and are in accordance with these terms.

5. Payment and Credit Terms.

Unless otherwise indicated on the face hereof, Buyer agrees to remit payment in full to the address provided on the face of Seller's invoice for all shipments, including shipments of any portion of the Products ordered, upon receipt of invoice. Payment is due net thirty (30) days from the date of Seller's invoice. This obligation shall not be contingent upon the completion of any installation services included in the purchase price. No cash discounts will be granted. Account balances not paid in accordance with these terms are subject to interest at the rate of 12 percent per annum calculated from date of delinquency. In the event Seller finds it necessary to refer an account to an attorney or an agent for collection of delinquent accounts, Buyer shall pay all costs of collection including, without limitation, reasonable attorneys' fees. Buyer agrees to grant Seller a security interest in the Products sold hereunder to secure any portion of the price not paid on delivery and will, on request, execute a security agreement in such form as is required by Seller, which, at Seller's option, may be filed under appropriate provincial personal property security legislation. Should Buyer become delinquent in the payment of any sum due hereunder, or if Buyer becomes insolvent or acknowledges its insolvency, or if any proceedings are commenced under any bankruptcy or similar laws for Buyer's reorganization or other debt adjustment, Seller will not be obligated to continue performance. Seller reserves the right to change the credit terms provided herein when, in Seller's opinion, the financial condition or previous payment record of Buyer so warrants. If, within thirty (30) days of receipt of written notice of such change, Buyer fails to agree and comply with different terms of credit, and/or fails to give adequate assurance of due performance, Seller may (a) by notice to Buyer, treat such failure or refusal as a repudiation by Buyer of the portion of the purchase order not then fully performed, whereupon Seller may cancel all further deliveries and any amounts unpaid hereunder shall immediately become due and payable; or (b) make shipments under reservation of a demand for advance payment or payment against tender of documents of title. Buyer's acceptance of delivery of any Products shall constitute a representation that Buyer is solvent.

6. Taxes.

Buyer is responsible for the ultimate payment of all taxes which may be assessed or levied on or on account of Products sold hereunder to Buyer, whether termed a gross receipts tax, use tax, property tax, sales tax or otherwise. Where Buyer claims that a transaction is not subject to any such tax, that Buyer is exempt, or that Seller is not required to collect such tax, Buyer agrees to provide Seller with any documentation necessary to support such a claim, to allow Seller to document its decision not to collect such tax(es), and to indemnify and hold Seller harmless from and against any and all fines, penalties, interest, taxes, and other expenses, including, without limitation, reasonable attorney's fees, incurred by Seller as a result of reliance upon Buyer's position.

7. Tooling and Tools.

The terms "Tooling" and "Tools" shall include all items such as molds, dies, forms, jigs, mandrels, fixtures and other special equipment, except machinery, which are required to produce the Products. Tooling or setting up charges are quoted as a partial charge of the total tooling cost for tool usage and setup. All tools shall remain the property of Seller. Seller agrees to maintain such tools in good working order, normal wear and tear and damage by fire or other casualty excepted, for a period of one (1) year following last usage, and thereafter, Seller will have the right to dispose of them at Seller's sole discretion. Buyer will be responsible for (a) costs resulting from alterations of tools requested by Buyer or alterations necessary to complete the order and (b) costs for additional tools or tooling incurred when Buyer requires faster delivery and/or greater volume of units than that for which the original tools were designed.

8. Limited Warranty.

a) Warranty.

- i) Seller warrants to Buyer that the Products sold to Buyer are, at the time of shipment to Buyer from Seller, free from defects in materials and workmanship.
- ii) This warranty shall be valid for a period of twelve (12) months from the date of shipment to Buyer, unless a different period is specified in an addendum to these terms and conditions of sale, which is incorporated herein by reference and made a part hereof, in which case such specified period shall apply.
- iii) Except in the case of an authorized distributor of Seller, authorized in writing by Seller to extend this warranty to distributor's customers, the warranty herein applies only to Buyer as the original purchaser from Seller and may not be assigned, sold or otherwise transferred to any third part
- iv) As Buyer's sole and exclusive remedy under this warranty, Seller agrees either to repair or replace, at Seller's sole option, any part or parts of such Products which, under proper and normal conditions of use, prove(s) to be defective within the applicable warranty period. Alternatively, Seller may at any time, in its sole discretion, elect to discharge its warranty obligation hereunder by accepting the return of any defective Product pursuant to the terms set forth herein and refunding the purchase price paid by Buyer. In order to permit Seller to properly administer this warranty, Buyer shall (a) notify Seller promptly in writing of any claims; (b) provide Seller with an opportunity to inspect and test the Products claimed to be defective (such inspection may be on Buyer's premises or Seller may request Buyer to return the Products at Buyer's expense; such expense will be reimbursed if the Product is found to be defective); and (c) Buyer will not return product without an RMA from Seller.

b) Exclusions and Limitations.

- i) The warranty herein excludes any equipment or accessories which are identified on applicable price lists, quotations, special promotional materials, or on the face hereof, for which this limited warranty may be further limited. Included within this category are items produced by third party manufacturers (as to which Seller passes to Buyer the warranty it has been provided by the manufacturer).
- ii) This warranty does not cover loss, damage, or defects resulting from: transportation to the Buyer's facility, improper or inadequate maintenance by Buyer, Buyer-supplied software or interfacing, unauthorized modification or misuse, or operation outside of the environmental specifications for the Product.
- iii) No warranty is made with respect to used, reconstructed, refurbished or previously owned Products, which will be so marked on the face hereof and, unless otherwise indicated on the face hereof, shall be sold "As Is".

- iv) The warranty herein applies only to Products within the country of original delivery. Products transferred outside the country of original delivery, either by Seller at the direction of Buyer or by Buyer's actions subsequent to delivery, may be subject to additional charges prior to warranty repair or replacement of such Products based on the actual location of such Products and Seller's warranty and/or service surcharges for such location(s).
- c) Software and Firmware Products. The sole and exclusive warranty applicable to software and firmware products provided by Seller for use with a processor is as follows: Seller warrants that such software and firmware will conform to Seller's program manuals current at the time of shipment to Buyer when properly installed on the processor, provided, however, that Seller does not warrant that the operation of the processor or software or firmware will be uninterrupted or error-free. Seller shall not be responsible for data loss or file corruption.

SELLER MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. Exclusive Remedies.

THE REMEDIES PROVIDED HEREIN ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES. SELLER SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, ARISING OUT OF THE DESIGN, MANUFACTURE, SALE, DELIVERY, INSTALLATION, SERVICE OR USE OF THE PRODUCTS. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, DELIVERY, INSTALLATION, SERVICE OR USE OF THE PRODUCTS. SELLER'S LIABILITY ON ANY CLAIM OF ANY KIND, INCLUDING NEGLIGENCE, FOR LOSS OR DAMAGES ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR OR USE OF ANY PRODUCT OR SERVICES COVERED BY OR FURNISHED UNDER THIS AGREEMENT SHALL IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE ITEM OR SERVICE OR PART FURNISHED BY SELLER THEREOF WHICH GIVES RISE TO THE CLAIM.

10. Patent Indemnity.

Seller agrees to defend, at its own expense, any suit or legal proceeding which may be brought against Buyer alleging infringement by Buyer of any patent of the United States, as a result of Buyer's use of the Product sold hereunder for its intended purposes, provided that Buyer shall give Seller prompt written notice of any claim, threat, or institution of any such suit or legal proceeding, and provided further that Seller shall then have the sole right to control and conduct the defense and/or settlement of such claim, threat, suit or legal proceeding, either in the name of Seller or Buyer or both, and Buyer shall, at Seller's request and expense, provide relevant information and reasonable cooperation. Seller shall pay all final judgments and all costs and attorney's fees assessed against Buyer in any such suit or legal proceeding, provided Buyer has complied with the conditions hereof with respect to prompt notice and cooperation in connection with such suit or legal proceeding and given exclusive control thereof to Seller. Notwithstanding the foregoing, Seller shall not be liable for any attorney's fees or other legal expenses incurred by Buyer without the knowledge and prior written consent of Seller. Seller shall have the right, at its own expense, to procure for Buyer the right to continue using the Product claimed to infringe, replace said Product with an equally satisfactory non-infringing Product, modify said Product so that it becomes non-infringing, or remove such Product and refund the purchase price thereof less a reasonable amount for use, damage or obsolescence.

The foregoing indemnity fully defines Seller's obligation for patent infringement. Such obligations shall specifically not apply to:

- a) an infringement claim resulting from additions or changes in or to the Product made by Buyer or any third party or from use in combination with other equipment; or
- b) an infringement claim which is settled without the prior written consent of Seller; or
- c) an infringement claim which results from compliance by Seller with specifications furnished by Buyer.

The total amount of Seller's obligation and liability under this Section shall not exceed the price paid by Buyer to Seller for the Product held to infringe, and in no event will Seller be held accountable for consequential damages under this indemnity, such as loss of business profits or goodwill. With respect to any infringement claim arising from Product manufactured in whole or in part to Buyer's specifications or from use of such Product in conjunction with any other goods, Buyer will indemnify and hold harmless Seller from and against all such claims for damages or profits arising from infringement of patents, designs, copyrights or trademarks.

11. Modification of Terms.

BUYER'S ACCEPTANCE OF ANY QUOTATION IS EXPRESSLY SUBJECT TO BUYER'S ASSENT TO EACH AND ALL OF THE TERMS AND CONDITIONS SET FORTH IN SELLER'S QUOTATION, AND BUYER'S ASSENT TO THESE TERMS AND CONDITIONS OF SALE SHALL BE CONCLUSIVELY PRESUMED FROM BUYER'S SUBMISSION OF ITS PURCHASE ORDER. NO ADDITION TO OR MODIFICATION OF SAID TERMS AND CONDITIONS SHALL BE BINDING UPON SELLER UNLESS SPECIFICALLY AGREED TO BY SELLER IN WRITING. IF BUYER'S PURCHASE ORDER OR OTHER CORRESPONDENCE CONTAINS TERMS OR CONDITIONS CONTRARY TO OR IN ADDITION TO THE TERMS AND CONDITIONS CONTAINED HEREIN OR IN SELLER'S QUOTATION, ACCEPTANCE OF ANY ORDER BY SELLER SHALL NOT BE CONSTRUED AS ASSENT TO SUCH CONTRARY OR ADDITIONAL TERMS AND CONDITIONS OR CONSTITUTE A WAIVER BY SELLER OF ANY OF THE TERMS AND CONDITIONS CONTAINED HEREIN OR IN SELLER'S QUOTATION. SELLER'S ACCEPTANCE OF BUYER'S PURCHASE ORDER IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THESE TERMS AND CONDITIONS. NO MODIFICATION OR WAIVER OF THESE TERMS AND CONDITIONS IS VALID, UNLESS CONFIRMED IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF SELLER.

12. Authority to Export.

ALL ORDERS ACCEPTED FOR EXPORT (AND/OR RE-EXPORT) ARE SUBJECT TO: 1) CANADIAN AND/OR UNITED STATES GOVERNMENT EXPORT REGULATIONS; AND 2) UPON REQUEST, BUYER PROVIDING SELLER WITH ALL DOCUMENTATION NECESSARY FOR EXPORT CLASSIFICATION AND/OR SHIPMENT TO THE DESTINATION COUNTRY.

13. Software Licenses and Copyrighted Material.

- a) Seller provides software products by license only. The terms of the license are available from Seller and are deemed accepted by Buyer on delivery of licensed software.
- b) Unless otherwise specified, Seller's copyrighted material (software, firmware, and printed documentation) may not be copied except for archive purposes, to replace a defective copy, or for program error verification by Buyer.

14. **Miscellaneous.**

- a) **Excusable Delays.** Seller shall not be liable for delays in delivery or failure to manufacture or deliver goods due to acts of God, acts or failures to act of Buyer, acts of civil military authority, fires, strikes, floods, epidemics, attack, war, acts of terrorism, delays in transportation or other causes beyond Seller's reasonable control, including, without limitation, delays in obtaining or inability to obtain necessary labor, materials, components, or manufacturing facilities.
- b) **Governing Law.** The contract of sale shall be governed by and construed in accordance with the laws of the laws of the Province of Ontario and the laws of Canada applicable therein.
- c) **French Language Clause.** It is the expressed wish of the parties hereto that this Agreement and all related documents be prepared in English. C'est la volonte expresse des parties aux presentes que cette convention et tous documents y afferent soient rediges en anglais.
- d) **Exclusion of United Nations Convention.** The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods, and further exclude the application of the International Sale of Goods Contracts Convention Act, S.C. 1990-1, C-13 and the International Sale of Goods Act, R.S.O. 1990, cI-10.
- e) **Confidential Data and Information.** If, in connection with the sale, purchase, use, or maintenance of the Products, Seller is requested, required, or deems it advisable to furnish data or information which it, in its sole discretion, deems proprietary, confidential, or both, Seller shall not, in any event, submit or be required to furnish such data or information unless Buyer enters into an agreement concerning the handling, use, copying, retention and return of such information, the form of which agreement is available to Buyer on request. Seller does not agree to accept any proprietary or confidential information of Buyer in the absence of such a written agreement signed by an authorized representative of Seller.
- f) **Assignment.** Buyer may not assign, transfer or delegate any of its rights or obligations herein without the prior written consent of Seller, and any purported assignment of such rights or obligations without such consent shall be null and void.
- g) **Severability.** If any provision herein is deemed unenforceable by a court of competent jurisdiction, the other provisions shall remain in full force and effect as if the unenforceable provision had not been included.
- h) **Entire Contract.** This document and any addenda incorporated by reference are intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof. Seller shall not be bound by any agent's or employee's representation, promise or inducement unless set forth in this agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain or vary any of these terms