

# MONMET LTD. TERMS AND CONDITIONS OF PURCHASE



## 1. COMPLETE AGREEMENT

This Order shall be binding on Seller and Monmet Ltd when Seller signs and returns the acknowledgement copy, or when Seller otherwise indicates acceptance or commences performance of this Order, whichever occurs first. This Order is conditioned upon Seller's assent to all terms and conditions and no additional, conflicting or inconsistent terms in any communication by Seller shall become or be construed as a part of this Order unless accepted in a separate writing by Monmet Ltd. This Order and the specifications, drawings and documents referred to herein, constitute the parties' entire agreement and supersede all prior negotiations or proposals relating to this Order or its subject matter. Reference to Seller's quotation, bid, or proposal shall not imply acceptance of any term or condition contained therein.

## 2. DELIVERY SCHEDULE

Upon receipt of this Order, Seller shall immediately notify Monmet Ltd if it cannot meet the delivery schedule and state the best schedule which can be met, which Monmet Ltd may accept or reject. Material commitments or production arrangements beyond those necessary to meet Monmet Ltd's delivery schedule or in excess of amounts ordered shall be made at Seller's sole risk. Advance shipments or early deliveries are subject to return at Seller's expense at Monmet Ltd's option. Partial shipment in conflict with the terms of this Order must be authorized in writing by Monmet Ltd.

## 3. DELAYS

TIME OF DELIVERY IS OF THE ESSENCE FOR THIS ORDER. Seller shall promptly notify Monmet Ltd of any actual or anticipated delay in delivery of all quantities ordered and take all reasonable steps to avoid delay without additional cost to Monmet Ltd. Where delay is caused by acts of God, acts of civil or military authority, war, strikes or other similar causes beyond Seller's control and not reasonably foreseeable, Monmet Ltd shall have the right to: (i) terminate by written notice to Seller all or part of this Order; or (ii) extend the date of delivery for a period equal to the duration of the delay, but Seller shall not be entitled to any extra compensation for such delay. Seller shall not be excused from performance where alternate sources of materials, goods or services are available.

## 4. INSPECTION

Acceptance of all materials and workmanship shall be subject to final inspection and testing by Monmet Ltd following delivery and/or incorporation into the final product produced by Monmet Ltd. Prior payment shall not constitute acceptance by Monmet Ltd.

## 5. PRICES AND PAYMENTS

Seller's prices shall not exceed those last quoted or charged to Monmet Ltd and shall include all applicable sales taxes. Discount periods shall be effective from the later of receipt of the invoice, receipt of the goods or Monmet Ltd's requested delivery date. Monmet Ltd may withhold payment under this Order or any other contractual arrangement with Seller to cover any costs, damages or liability which Monmet Ltd has incurred or may incur for which Seller is responsible.

## 6. WARRANTY

Seller warrants that all materials, goods or work furnished under this Order shall conform precisely to applicable specifications, technical

standards and drawings, be suitable for their intended use, merchantable and free from defects in workmanship or materials. All or any part of the materials, goods or work found to be defective shall be replaced at no charge upon request by Monmet Ltd, without waiver of any other right or remedy of Monmet Ltd. The Seller is responsible and accountable for ensuring the authenticity of the products delivered pursuant to this purchase order.

The delivery by supplier of any Counterfeit, Fraudulent and/or substandard products may result in penalties and/or criminal charges.

THE SELLER (i) shall immediately replace Counterfeit, Fraudulent and/or substandard products discovered during or after the warranty period with authentic products, and (ii) is responsible for any associated rework or repair costs.

## 7. LIABILITY

Should Seller fail to perform this Order in accordance with its terms, Seller shall be liable for all actual, consequential, liquidated and incidental damages, costs and expenses, including attorneys' fees, incurred by or assessed against Monmet Ltd as a result of such failure or required to enforce the terms of this Order. Such costs and expenses may specifically include administrative and rework charges where Seller fails to perform hereunder. Further, Seller shall indemnify, defend and hold harmless Monmet Ltd and its affiliates and their customers, and each of their employees and agents, from any cost liability or expense arising out of or relating to this agreement or Seller's goods or services.

## 8. PROPRIETARY MATERIAL AND CONFIDENTIAL INFORMATION

All patterns, specifications, drawings, technical data, tools and dies or other information that relates to Monmet Ltd or its business, that is furnished to Seller by Monmet Ltd or otherwise learned by Seller in connection with its performance hereunder, shall be considered proprietary and/or confidential to Monmet Ltd, and shall not be used by Seller for any purpose other than completing this Order and shall not be disclosed by Seller to others and shall remain the property of Monmet Ltd. Monmet Ltd proprietary and/or confidential information does not include information that (i) is now in the public domain or subsequently enters the public domain other than as a result of an unauthorized disclosure by Seller or any of its representatives; (ii) was known by Seller prior to receipt from Monmet Ltd and was lawfully in Seller's possession, without any existing obligation to keep such information confidential; (iii) Seller lawfully obtains from any third party having the right to disclose such information and which Seller is not under any obligation (to Monmet Ltd or otherwise) to keep confidential; or (iv) Seller can prove was independently acquired or developed without the use of any Monmet Ltd proprietary and/or confidential information.

## 9. PATENTS

Seller shall at its sole expense defend, indemnify, hold harmless from and defend Monmet Ltd and its customers against, any suit or proceeding brought against Monmet Ltd and/or its customers based on a claim that the manufacture, use or sale of any goods or services, or any part thereof, supplied under this Order constitutes infringement of any patent, copyright, trademark, or proprietary right of others, and Seller



shall pay all damages and costs awarded against Monmet Ltd and/or its customers. Seller shall be notified promptly in writing of the suit or proceeding and be given adequate authority, information and assistance (at Seller's expense) for the defense, subject to the right of Monmet Ltd and its customer to participate at their expense and to be fully advised by Seller in advance of all actions taken. If the goods or any part thereof are held to constitute infringement or the sale or use of the goods or parts is enjoined, regardless of whether the determination constitutes a final judgment, Seller shall, at its expense, either procure for Monmet Ltd and its customers the right to sell and use said goods or parts, or replace them with substantially equal but non infringing goods, or, if approved by Monmet Ltd, remove the goods and refund the purchase price plus transportation and installation costs. The preceding paragraph shall not apply to goods, or any part thereof, manufactured to the extent of designs furnished and required by Monmet Ltd, nor shall it apply to claims that the sale or use of a process or use of a combination of the goods supplied by Seller with other goods infringes a patent, if such process or other goods were not supplied by Seller and Seller's supply of the goods does not constitute contributory.

## 10. CANCELLATION

In addition to all other remedies available, Monmet Ltd reserves the right to cancel all or any part of this Order if Seller cannot provide assurance of its financial ability to perform or satisfy its liabilities or Seller is or will be in default on any term or condition of this Order or any other contractual arrangement with Monmet Ltd. Monmet Ltd may also cancel this Order when required by acts of God, acts of civil or military authority, war, strikes, accidents at its plant or other causes beyond Monmet Ltd's control, in which case, Monmet Ltd shall negotiate an amount to be paid to Seller in settlement for reasonable and necessary expenses incurred directly incident to this Order as of the cancellation date, but Monmet Ltd shall not be liable for lost profit. If cancellation is caused by termination of a government contract, Seller shall be reimbursed in accordance with the applicable government subcontract provisions.

## 11. INDEPENDENT CONTRACTOR

Seller shall act as an independent contractor, not as an agent or employee of Monmet Ltd, and shall defend, hold harmless and indemnify Monmet Ltd against any and all claims for injury or death of Seller's employees from any cause whatsoever while on or about the premises of Monmet Ltd or its customer. Seller shall maintain all insurance required by and expressly waives immunity from suit, under any workers' compensation law.

## 12. ASSIGNMENT

Neither this Order nor any right or obligation hereunder shall be assigned or transferred without Monmet Ltd's prior written consent and any such assignment or transfer shall be void. In the event of any permitted assignment, Seller shall remain principally liable.

## 13. HEALTH AND SAFETY / HAZARDOUS MATERIALS

Seller warrants that all goods, material and equipment supplied to Monmet Ltd or its designee and all work performed by Seller at the premises of Monmet Ltd or its customer shall conform to the requirements of the Occupational Health and Safety Act, as amended, all regulations promulgated thereunder, and all federal, provincial and local laws, rules and regulations relating to occupational health and safety in the jurisdiction where such items are shipped or work is

performed. If applicable, Seller will provide Monmet Ltd with all appropriate Material Safety Data Sheets in English (or such other language as Monmet Ltd may request) at the time of delivery of each shipment of goods or services that require such compliance, and updates of the same. If Seller uses chemicals, PCBs or any potentially hazardous materials, Seller assumes responsibility for and will indemnify, defend and hold Monmet Ltd and its successors, assigns, customers, directors, officers, employees, shareholders, advisors and agents harmless from and against any and all claims, damages, losses, liability and expenses (including legal fees and litigation expenses) arising out of Seller's use thereof (including the unloading, discharge, storage, handling or disposal of any chemical or container therefore) and for Seller's noncompliance with any related laws, rules, regulations, policies, orders or directives.

## 14. DISPUTES AND LIMITATIONS OF LIABILITY

Any claim or dispute relating to this Order shall be resolved by arbitration or litigation at the sole and exclusive option of Monmet Ltd. Arbitration proceedings shall be held in Montreal, Quebec. This Order and any claim or dispute hereunder shall be governed by laws of the Province of Quebec.

## LIMITATION OF LIABILITY

MONMET LTD SHALL NOT BE LIABLE TO SELLER FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, CONTINGENT OR INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUE, LOSS OF USE OF GOODS OR EQUIPMENT, DAMAGE TO ASSOCIATED GOODS, DATA OR EQUIPMENT, COST OF CAPITAL, OR OTHER TYPES OF ECONOMIC LOSSES WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE. IN NO EVENT SHALL MONMET LTD'S AGGREGATE LIABILITY TO SELLER EXCEED THE PURCHASE PRICE STATED ON THE PURCHASE ORDER.

## INSURANCE

If Seller works on or at Monmet Ltd facilities, prior to commencing work or services Seller will obtain and maintain for the entire duration of the contract insurance coverage that fully meets and is in compliance with Monmet Ltd's requirements Seller will provide Monmet Ltd with a Certificate of Insurance and endorsements or policy forms in compliance with Monmet Ltd's requirements. Seller will require its insurance carrier(s) to give Monmet Ltd at least 30 days' written notice prior to cancellation of coverage and waive rights of subrogation against Monmet Ltd and its affiliates.

## 15. ELECTRONIC TERMS

The parties agree that purchase orders may be issued in electronic form and hereby consent to transacting business electronically. Monmet Ltd may transmit purchase orders in portable document format ("PDF") as an attachment to an e-mail. In order to accept an electronic purchase order, Seller will: (i) commence performance under the order, (ii) respond with an e-mail to the Monmet Ltd e-mail address listed on the purchase order stating that Seller acknowledges and accepts the Monmet Ltd purchase order, or (iii) print out the purchase order, sign it in space provided for acknowledgement and fax a copy to the fax number indicated on the purchase order addressed to the buyer who signed the purchase order. By commencing performance under a purchase order, Seller consents and agrees: (i) to transact business with



Monmet Ltd electronically as provided for herein; (ii) that the acknowledgement and acceptance of a purchase order by e-mail or by facsimile shall constitute a valid and binding obligation of Seller; (iii) that an e-mail acknowledgement and acceptance of a purchase order addressed to Monmet Ltd as provided for herein shall be deemed to have been validly signed by Seller; (iv) that if Seller deliver goods or renders service to Monmet Ltd in response to a purchase order issued by Monmet Ltd (including, without limitation a purchase order issued electronically as provided for herein) without acknowledging and accepting the purchase order as provided for herein, Seller shall be deemed to have accepted the purchase order; and (v) that acceptance by Seller of a purchase order issued by Monmet Ltd (including, without limitation, a purchase order issued electronically as provided for herein) shall constitute acceptance, without modification, of each and every term included within such purchase order, sign it in space provided for acknowledgement and fax a copy to the fax number indicated on the purchase order addressed to the buyer who signed the purchase order.

## 16. DOCUMENTATION REQUIREMENTS

The Seller shall provide to Monmet Ltd invoicing and packing slips relating to one order only in a form suitable to Monmet Ltd for timely processing. All documentation must reference the line item of the order, description and part number as noted on the order, including any quantities on back order. If the order has directed products or services to be delivered or completed at a non Monmet Ltd facility, the Seller must obtain a signed packing slip acknowledging receipt of goods / services and the party receiving must "print" their name in addition to providing their signature. It is critical and the responsibility of the Seller, to email and or fax Monmet Ltd a copy of the signed packing slip no later than 24 hrs. after delivery to the attention of Purchasing and Accounts Payable. Invoices and packing slips can be emailed to [info@monmet.com](mailto:info@monmet.com) in addition to regular mail or via fax.

## CERTIFICATE OF ORIGIN

If requested by Monmet Ltd, Seller shall promptly provide Monmet Ltd with a completed NAFTA Certificate of Origin and such other documentation as Monmet Ltd may request certifying the origin of the goods covered by this Agreement.

## 17. SUBCONTRACTING

Seller shall not sublet, subcontract or sub-supply any portion of Monmet Ltd 's order unless Seller has notified Monmet Ltd in writing of the names of the sub-Sellers proposed for any substantial or principal portion of the order and Monmet Ltd has provided its prior written consent. Seller shall remain fully responsible and liable for the acts and omissions of any of its sub-Sellers and of any persons employed by any of them, and Seller shall not be relieved from any responsibility for the portion of the order is sublet, subcontracted or sub-supplied is not performed to the satisfaction of Monmet Ltd. Nothing contained in this Agreement shall create any contractual relationship between Monmet Ltd and the sub-Sellers. Seller shall provide an unpriced copy of all Purchase Orders and contracts for work or articles that are sublet, subcontracted or sub-supplied. Monmet Ltd shall have the right to expedite and inspect all such work and the production of such goods and articles as though they were being performed by Seller. Seller's subcontractors and suppliers of all tiers must obtain written permission from an authorized representative of Monmet Ltd prior to mobilization to or demobilization from all Monmet Ltd project sites, if applicable.

## 18. EXPEDITING

This Agreement is subject to expediting by Monmet Ltd and/or its authorized representative, and expeditors shall be allowed free access to all phases of manufacture and supply, including, without limitation, shipping details. Upon notice, Seller shall promptly provide Monmet Ltd 's expeditor with the name of a plant contact, plant reference number, scheduled holidays and shut-down periods, plant capacities and current workload, numbers of Seller's personnel qualified in various disciplines having to do with execution of this Agreement and any other pertinent information. Monmet Ltd 's expeditor will monitor the timely preparation of and Seller's actual adherence to the schedule covering activities in engineering, issuance of drawings and data, material acquisition, fabrication, assembly, inspection, testing and shipping. Notification of readiness for inspection and/or testing shall be given in writing to Monmet Ltd. If requested by Monmet Ltd, Seller shall make available at its cost working facilities for a resident expeditor from Monmet Ltd, including, but not limited to, office space, telephone, computer, etc.

## 19. SELLER'S INSOLVENCY OR FAILURE TO DELIVER

If (1) Seller becomes insolvent, (2) Seller files a voluntary petition under any bankruptcy or insolvency law, (3) a petition is filed against Seller under any bankruptcy or insolvency law, (4) Seller makes an assignment for the benefit of creditors or (5) Seller fails to deliver in accordance with this Agreement goods Monmet Ltd has paid for, Monmet Ltd shall have the right to terminate this Agreement without any obligation to Seller or require satisfactory assurances of performance. If any of the foregoing circumstances occurs, Monmet Ltd shall retain title to all of Monmet Ltd 's property and goods Monmet Ltd has paid for and shall have the right to enter and access Seller's facilities to remove such property and paid-for goods.

## 20. LIENS ON THIRD-PARTY PROPERTY

This Agreement may involve goods and services that Monmet Ltd will resell to one or more third-party customer of Monmet Ltd. Seller is not a third-party beneficiary of any agreements between Monmet Ltd and its customers. Seller waives its rights, if any, to file a mechanics' lien or similar liens against the real or personal property of any and all such third-party customers of Monmet Ltd.

## 21. GOVERNING LAW

This order and all matters arising hereunder shall be governed by the laws of the Province of Quebec, without regard to conflict of laws provisions. The United Nations Convention on Contracts for the international Sale of Goods shall not apply to this Agreement and the sale goods made hereunder.

## 22. INVALIDATION AND NON-WAIVER

In the event that any portion of this Agreement or its terms and conditions are rendered invalid by a court of law, the remainder of the Agreement shall be and remain valid, binding, and fully enforceable. Failure by Monmet Ltd to insist upon strict performance of any term of this Agreement shall not constitute a waiver of any of the terms of this Agreement or of any default.