

MONMET LTÉE/LTD. TERMS AND CONDITIONS OF SALE



1. DEFINITIONS

“Buyer” as used herein means the individual, firm, partnership, corporation or entity to whom these Terms and Conditions is addressed. The term “Seller” as used herein means Monmet Ltée/Ltd. “Terms and Conditions” as used herein means this written document. “Products” as used herein means any and all goods and services subject to these Terms and Conditions and described on the quotation included with this document.

2. WHOLE AGREEMENT

Acceptance of the offer represented by the attached quotation is expressly limited to the terms hereof. Any additional or different terms which may be contained in any document furnished by the buyer are hereby objected to and rejected. All acceptances are subject to acknowledgment in writing by Seller. The quotation, Buyer's written acceptance (which may or may not be in the form of a purchase order), and these Terms and Conditions of Sale constitute the entire agreement between the parties (the “Agreement”) concerning each purchase, and there are no other oral or written understandings or agreements modifying this Agreement. No changes herein shall be binding on Seller unless made in writing and signed by an authorized representative of Seller.

3. WARRANTIES

Seller warrants that the Products conform substantially to the specifications. Additionally, for a period of one hundred and eighty (180) days from original delivery FCA (Incoterms 2010), Seller warrants that the Products will be free from material defects in materials and workmanship.

THE FOREGOING WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ORAL OR WRITTEN, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SELLER. SELLER MAKES NO WARRANTY WHATSOEVER IN RESPECT TO PRODUCTS, ACCESSORIES OR PARTS NOT SUPPLIED BY SELLER.

4. LIMITATION OF REMEDIES

Buyer's remedy for breach of any of the Seller's warranties shall be limited to (a) the replacement or repair by Seller of defects in the Products or (b) the reimbursement of the price paid by Buyer for the Products. The determination of which remedy shall be applicable shall be determined by Seller, in its sole discretion. THE ABOVE STATED REMEDIES ARE SELLER'S ENTIRE AND EXCLUSIVE LIABILITIES AND BUYER'S EXCLUSIVE REMEDIES FOR ANY CLAIM FOR DAMAGES IN CONNECTION HEREWITH. By way of illustration and not limitation, in no event (i) may Buyer revoke or reject acceptance of the Products or claim any equitable adjustment to the purchase price or (ii) shall Seller be liable for any direct, indirect, special, or consequential damages or delay whatsoever or loss of use, and Seller's liability will in no circumstances whatsoever exceed the contract price for the Products for which liability is claimed. All claims

for breach of any of Sellers warranties shall be barred unless Buyer notifies Seller in writing within 30 days of discovery of the breach. Additionally, any claim arising out of or related to this Agreement must be brought no later than one (1) year after the same has accrued or it shall be deemed waived. Seller shall not be responsible for any repairs performed by third parties unless such repairs are authorized by Seller in writing and in advance. Notwithstanding any of the above, all claims for errors in weight or quantity shall be made by Buyer within 10 days after delivery of the Products to Buyer. Failure to bring such claim shall be a waiver thereof.

5. PRICE

5.1 The prices set forth in Seller's quotation shall be valid for a period of thirty (30) days provided however if a specific date or period is provided in the quotation, the prices shall be valid through such date or period. In all other circumstances including where purchase orders are provided without specific price quotations provided by Seller, prices shall be those in effect at the time of the receipt by Seller of the purchase order from Buyer (as established by Seller). Seller reserves the right to add surcharges to the quoted price if the quotation so provides.

5.2 Buyer shall indemnify defend and hold Seller and its affiliates, officers, directors, owners, members, employees and agents harmless from any loss, claim or damage suffered by Seller as a result of Buyer's failure to pay sums due to Seller.

6. TAXES

In addition to any price specified, Buyer shall be responsible for and pay, (a) all customs duties and taxes on the sale, delivery, storage, consumption or transportation of the Products, including sales, use, excise, retailer's occupation or similar taxes, (b) all costs and fees for shipping and transportation of the Products, including all freight charges and packing and crating costs. Buyer shall indemnify defend and hold Seller and its affiliates, officers, directors, owners, members, employees and agents harmless from any loss, claim or damage suffered by Seller as a result of Buyer's failure to pay such sums.

7. DELIVERY, RISK OF LOSS

7.1 All Products shall be delivered Ex-Works (Incoterms 2010) Seller's facility. All delivered Products shall be made freight collect. Unless a specific carrier is agreed to in writing by Seller, Seller shall use its reasonable judgment in making such selection, provided that, in no event shall Seller be responsible for any delays or excess transportation charges resulting from its selection. The Buyer shall bear all risk of loss to the Products after delivery thereof, due to any cause whatsoever. Buyer acknowledges that it shall be Buyer's responsibility if Buyer desires to insure against this risk.

7.2 Prices quoted are for Products shipped loose by truck or rail. Special packing is available for an additional charge at Buyer's request.

7.3 Delivery schedules acknowledged by the Seller shall be conditioned upon receipt by the Seller of all materials, tools, dies, patterns and



fixtures furnished by the Buyer or by any other outside source in reasonable time to meet such delivery schedules.

8. PAYMENT

In the event Buyer has obtained written credit approval from Seller, payment for the Products shall be due 30 calendar days net (without discount) upon invoicing unless otherwise agreed to by Seller in writing. In the event no written credit approval has been granted by Seller, payment of all fees and costs described herein shall be due immediately upon shipment of Products. Payment shall not be conditioned on anything other than delivery of the Products. Payment shall not be subject to any offset by Buyer. If payment is not made when due, Buyer shall pay Seller a finance charge equal to the lesser of (i) 1.5% per month or (ii) the maximum interest rate allowable under law.

9. FORCE MAJEURE, DELAYS

Seller shall not be liable for delay in or prevention of its performance due to causes beyond its reasonable control, including but not limited to acts of God or the public enemy, fires, floods, strikes or other labor disputes, labor or material or transportation shortages, acts of sovereign governments, terrorism, war or other similar occurrences. Seller shall notify Buyer in writing within ten (10) days of the beginning of any such cause.

10. CANCELLATION OR CHANGES BY BUYER

After acknowledgment by Seller, Buyer's order or orders ("Orders") may not be changed or cancelled without Seller's written consent. Changes to Orders require the written agreement of Buyer and Seller as to any required equitable adjustments in the Price and delivery schedule. Orders that are cancelled by Buyer prior to the scheduled delivery date shall require Buyer to pay for all work performed (including overhead and margin) up to the point of cancellation. In addition, if such cancellation is within two (2) months of the scheduled delivery date, Buyer shall pay a reasonable cancellation fee.

11. SHIPMENTS, CANCELLATION BY SELLER

Partial shipments shall be permitted, and Seller may invoice each shipment separately. Shipments and deliveries shall at all times be subject to the approval of Seller's Credit Department and offered credit payment terms. Where Seller reasonably refuses to ship to Buyer on open credit, Seller may decline to make deliveries except on receipt of cash in advance or other security satisfactory to Seller. If Buyer fails to fulfill the payment terms, Seller may cancel the order, and Buyer shall immediately pay Seller's reasonable cancellation charges.

12. DEFAULT

It shall be deemed a default hereunder and Seller may terminate any previously accepted purchase order upon the occurrence of any of the following events: (a) if Buyer shall fail to comply with any of the covenants or conditions contained in this Agreement, (b) if a petition in bankruptcy is filed by or against the Buyer, or a receiver or trustee of the Buyer is appointed, or if Buyer files a petition for reorganization, voluntarily appoints an administrator under any of the provisions of the bankruptcy laws, or any other laws, state or federal, or makes an assignment for the benefit of creditors, or is adjudged insolvent by any

province or federal court of competent jurisdiction; or (c) if a material change occurs in Buyer's financial condition, or Seller believes the prospect of payment or performance of the Buyer's obligations hereunder are impaired, Seller shall provide written notice of such termination in the event of items (a) and (c) above and the termination shall be immediate in the event of item (b) above. Buyer shall pay the entire amount of the agreed price for the Products immediately upon such termination, less any direct costs and fees saved by Seller as a result of such termination. Such rights of Seller shall be in addition to any other rights and remedies of Seller as set forth herein or as allowed by law or in equity.

13. RISK OF LOSS

The Products shall be entirely at the risk (including loss or damage) of Buyer from the time of shipment from Seller's facility (the carrier of the Goods shall be taken to be the agent of the Buyer even if engaged or paid by Seller).

14. PATTERNS AND TOOLING

14.1 All patterns, core boxes and tooling ("Patterns and Tooling") required to manufacture the Products shall be furnished by the Buyer or paid for by the Buyer as set forth in this Article 14.

14.2 Seller shall have no responsibility and will not be liable for any non-conformity of the Patterns and Tooling, drawings or specifications for the Products furnished by the Buyer.

14.3 Buyer warrants that any Buyer-supplied Patterns and Tooling will comply with Seller's requirements relating to the Buyer's Patterns and Tooling.

14.4 Buyer acknowledges that the Seller will not insure the Buyer's Patterns and Tooling that are in Seller's possession, and that the Seller shall have no liability (whether in contract, tort (including negligence) or otherwise) to the Buyer for or in connection with any loss of or damage to the Buyer's Patterns and Tooling or other materials in the Seller's possession.

14.5 In addition to the price payable for the Products and Patterns and Tooling, the Buyer agrees to pay the Seller any costs incurred by the Seller in connection with altering, maintaining, shipping, crating and storing the Buyer's Patterns and Tooling.

14.6 Seller may, upon sixty (60) days written notice to Buyer, scrap Patterns and Tooling in its possession and retain any proceeds, if such Patterns and Tooling have not been used for two (2) years or longer, unless Buyer objects in writing within such sixty (60) day period.

15. INDEMNIFICATION FOR PRODUCT MISUSE

Buyer shall indemnify, defend and hold Seller and its affiliates, officers, directors, owners, members, employees and agents harmless from any loss, claim or damage suffered by Seller as a result of Buyer's negligence or intentional misconduct with respect to the Products, Patterns or Tooling.



16. TECHNOLOGY

16.1 In all cases where Products are made to designs, plans, processes, or specifications furnished by Buyer or a third party at the direction of Buyer, the Buyer shall indemnify the Seller and save Seller harmless from and against all claims and damages for infringement of any patents, intellectual property or unauthorized use of any third party's proprietary information in the design or process of such products

16.2 If the performance of this Agreement by Seller includes experimental design, development, or research work, whether or not such work is paid for in whole or in part by Buyer, Seller shall retain exclusive title to all discoveries, development, technical data and computer software (collectively, without limitation, 'Seller's Intellectual Property') resulting, in whole or in part, including but not limited to all confidential designs, processes, know-how, trade secrets and inventions, whether or not patentable, developed, arising or resulting from such work.

17. INFORMATION

Any drawings, data, designs, or other technical information which Buyer may disclose to Seller in regard to the design, manufacture or sale of articles to be sold hereunder shall be deemed to have been disclosed on a voluntary basis by Buyer, and Buyer shall not assert any claim against Seller by reason of Seller's use thereof.

18. ASSIGNMENT

Buyer agrees it will not assign this Agreement in whole or in part without Seller's prior written consent, which may be withheld for any reason. Upon prior written notice to Buyer, Seller may assign its rights and responsibilities hereunder to any qualified third party (as determined by Seller).

19. ATTORNEY FEES

In the event an arbitration, suit or action is brought by any party under this Agreement to enforce or interpret any of these Terms and Conditions of Sale or in any appeal there from or in any bankruptcy action, it is agreed that the non-prevailing party shall pay the reasonable attorney's fees and/or collection costs of the prevailing party.

20. JURISDICTION, VENUE

This Agreement shall be binding upon the successors and assigns of Seller and Buyer and shall be governed by and construed in accordance with the laws of the State in which the Seller issued the quotation or accepted the purchase order. In the event of litigation or arbitration between the parties to enforce this Agreement, the Seller and Buyer agree that the venue shall be the District Court of that State,

21. SURVIVAL

These Terms and Conditions of Sale shall survive the cancellation, termination and satisfaction of this Agreement.

22. CONFIDENTIALITY

Except as otherwise waived in writing by Seller, Buyer shall keep confidential all of the terms and conditions set forth in this Agreement

and all of Seller's Intellectual Property provided to Buyer in connection with the manufacture, sale or delivery of the Products.

23. SECURITY INTEREST

Buyer hereby grants to Seller a first ranking purchase-money security interest in all materials and equipment held by Seller, including the products, Work and all pattern equipment and patterns. This security is given to secure the payment and performance of all indebtedness and obligations of Buyer to Seller currently existing or hereinafter arising. Upon any default by Buyer in making any such payment or performing any such obligations, Seller shall be entitled to exercise any and all rights and remedies of a secured party provided herein and under the governing law. Buyer agrees to execute such security agreements and other documents as may be deemed necessary by Seller in order to allow Seller to take and perfect its security interest in the subject property. Buyer authorizes Seller to file any financing statements and other documents necessary to perfect its interest in its collateral without further approval.