



APEX DISTRIBUTION INC.
#550, 407 – 2ND STREET S.W. CALGARY, AB T2P 2Y3
PHONE:(403)268-7333 FAX:(403) 269-2669

Date: _____

Legal Company Name: _____

Operating As: _____

Billing Address: _____

Postal Code: _____

Telephone: _____ Fax: _____ Email: _____

Incorporated _____ Date _____ Sole Proprietor _____ Partnership _____ Public _____ Private _____

Officers:

Parent Company (if any): _____

Bank Reference:

Name _____ Address _____

Account Number: _____

Bank Contact: _____ Phone: _____ Fax: _____

Type of Company: _____

Trade References:

Name City/Province Phone Fax

1) _____

2) _____

3) _____

Name/Number of A/P Contact: _____ Ph: _____ Email: _____

Name of Controller/Supervisor: _____ Ph: _____ Email: _____

Tax Exempt? _____ Yes _____ No If yes please give certificate No. _____

GST Business Number _____

PO's required _____ Yes _____ No Statements required _____ Yes _____ No

TERMS

All invoices are due net 30 days from invoice date.

1. Apex Distribution Inc. is hereby authorized to contact the above references and to conduct such credit investigations, as deems necessary at any time to approve opening of and changes to an account. Payment shall be made at par in legal tender of Canada. Buyer shall make payment within Apex Distribution Inc.'s terms of 30 days from date of invoice.

- 1) All orders are subject to the continued review of the Seller and if, in its opinion, the financial position of the Buyer has changed prior to delivery, the Seller may Suspend production and I or refuse to make delivery pending satisfactory modification of the terms of payment.
- 2) If in the event it becomes necessary to commence legal action for collection, the Buyer agrees to pay reasonable costs of collection on a solicitor and his own client basis.
- 3) Buyer shall pay interest of 1.5% per month or 19.56% per annum for all accounts after the due date provided; however, in no event shall Buyer be required to pay any amount beyond the maximum allowed by law.
- 4) In consideration of any credit which may be granted by Apex Distribution Inc., the undersigned purchaser does hereby agree that all sales will be made and any sums due will be paid as set forth in Apex Distribution's "Terms and Conditions" printed on the attached sheet hereof.

Authorizing Persons Signature: _____ Title: _____

OFFICE USE ONLY

Account Number: _____

Date: _____ Approved By: _____

APEX PURCHASER TERMS AND CONDITIONS

- 1. Scope:** The terms and conditions (“**Terms**”) contained herein shall apply to any quote, purchase order, order acknowledgment, or invoice (the “**Order**”) (the Terms and the Order together referred to herein as the “**Contract**”) issued by or accepted by Apex Distribution Inc. and its affiliates or subsidiaries and their respective successors or assigns (collectively, “**Apex**”) for the sale of any and all goods (“**Goods**”) to the purchaser (“**Purchaser**”) and for any work performed on Goods for Purchaser. These Terms apply in lieu of any course of dealing between the parties or usage of trade in the industry. In the event of any conflict or inconsistency between these Terms and any terms and conditions in Purchaser’s order or in any other form or procurement document issued by Purchaser, these Terms shall prevail, irrespective of whether Purchaser accepts these Terms by a written acknowledgement. Apex’s failure to object to provisions contained in any communication from Purchaser shall not be deemed an acceptance of such provisions or a waiver of the provisions herein. Any changes in the Contract must specifically be agreed to in writing and signed by Apex.
- 2. Price and Terms of Payment:** The purchase price (“**Price**”) for the Goods or work on Goods shall be specified on the Order and is F.O.B. Apex’s • [distribution centre] unless otherwise stated on the Order. The Price is payable without offset, back charge, retention, holdback or withholding of any kind. Subject to Section 6, the Price excludes the cost of packing and crating, carrier costs or insurance charges, unless stated otherwise on the Order. The Price is subject to adjustment to reflect Apex’s prices in effect at the Shipping Time (as defined below) and is subject to increase in the event Apex is not able to provide the Goods specified on the Order but is able to and does provide higher priced Goods which are substantially similar. All quotations are subject to change without notice and prior to delivery of Goods. All invoices are due 30 days after the date of Apex’s invoice, with a service and interest charge of nineteen point fifty six (19.56%) *per cent per annum* on past due invoices applying. If Purchaser defaults on any payment when due or refuses to accept delivery or becomes insolvent, Apex at its option, without prejudice to other lawful remedies, may defer deliveries or cancel the remainder of the Order under the Contract. Goods held for Purchaser shall be at the risk and expense of Purchaser. If Purchaser’s financial condition is or becomes unsatisfactory to Apex, Apex reserves the right to cancel or delay the Contract or shipment at any time prior to delivery of the Goods without further obligation or liability on Apex’s part. Unless otherwise specified in the Order, all payments are to be in Canadian dollars. In the event that Apex, in its sole discretion, acting reasonably, retains a solicitor or commences legal action to secure or collect delinquent accounts, Purchaser agrees to pay Apex’s legal fees, including solicitor’s fees, on a solicitor and its own client basis, including for the registration and enforcement of security including builders’ liens.
- 3. Taxes:** The Price and fees for any Goods does not include any customs duties, import duties, excise taxes, value added taxes (including Goods and Services Tax) or other taxes, charges or levies levied by any governmental agency or body, as applicable, having jurisdiction over this Contract (“**Taxes**”). Apex shall not in any way be responsible in whole or in part for payment of such Taxes. Purchaser shall be responsible for payment of all Taxes and shall be liable for customs clearance for the Goods.
- 4. Termination by Purchaser and Changes:** Purchaser expressly acknowledges that no Order may be cancelled or altered, in whole or in part, by Purchaser unless Apex agrees in writing. For any Apex-approved change, Apex shall receive payment in full from Purchaser of all costs committed or incurred to the time of the change, plus a reasonable amount for Apex’s overhead and profit. Any changes to an Order requested by Purchaser may affect or delay the delivery and the Price of the Goods and must be agreed to by the parties in writing and signed by Apex.
- 5. Title and Delivery:** Unless otherwise specified in the Order, the Goods shall be delivered F.O.B. Apex’s • [distribution centre]. The Goods shall be and remain at the risk of Apex until delivery to: a) Purchaser; b) Purchaser’s agent; or c) the carrier for transportation to Purchaser, whichever occurs first (the “**Shipping Time**”). The Goods shall be at the risk of Purchaser after the Shipping Time. Title to the Goods shall vest in Purchaser upon the Goods being delivered to or pick-up by: a) Purchaser; b) Purchaser’s agent; or c) the carrier for transportation to Purchaser, as applicable. Purchaser shall notify Apex of any visible defects, quantity shortages or incorrect product shipments within seven (7) days of the earliest of receipt of: an order acknowledgment or invoice relating to the Goods by Purchaser, Purchaser’s agent or the carrier transporting the Goods to Purchaser. Failure to notify Apex in writing of any visible defects in the Goods or of quantity shortages or incorrect shipments within such period shall be deemed a waiver of any rights to return Goods or to not pay for the Goods on the basis of visible defects, shortages or incorrect shipments. Without limiting the generality of the foregoing, unless the Purchaser notifies Apex, within (7) days of delivery by Apex to Purchaser of an invoice relating to Goods, that Goods have not been received or that the Price therefore is incorrect, the invoice shall, as against Purchaser, be deemed to be correct as to Goods delivered and the Price. The estimated shipping date is based on availability of the Goods at the date of the Order. Apex shall use reasonable commercial efforts to deliver the Goods within the time agreed but shall in no circumstance be liable for any loss or damage, consequential or otherwise, caused directly or indirectly, by any delay in delivery.
- 6. Transportation Services:** Unless otherwise agreed in the Order, Purchaser shall be responsible for all transportation services required for the Goods on Orders of less than \$500.00. Purchaser shall also be responsible to pay any Hot Shot or other premium transportation charges where such transportation services are requested by Purchaser. Transportation charges will be shown separately on all Apex invoices. As compensation for arranging such transportation services, Purchaser agrees to pay Apex a ten (10%) percent markup on all transportation charges, unless otherwise agreed in writing by both parties.
- 7. Security Interest:** In the event title to the Goods vests in the Purchaser before Purchaser has paid the Price, Apex shall retain a security interest in the Goods to secure Purchaser’s obligation to pay Apex the Price. Purchaser hereby grants to Apex a Purchase Money Security Interest (“**PMSI**”), as that term is defined in applicable statutes, in all Goods subject to this Contract and all proceeds thereof. The PMSI granted shall attach to, and be perfected in, all Goods sold to Apex hereunder and all proceeds thereof. Apex shall have a security interest, possessory lien and general right of detention upon any Goods which are the subject of this Contract, including Purchaser’s property in the possession of Apex, to secure performance of the obligation to pay any and all money due hereunder. Purchaser hereby makes, constitutes, and appoints Apex, with full power of substitution, its true and lawful attorney-in-fact for it and in its name, place, and stead and for its use and benefit, to sign, authenticate, execute, certify, acknowledge, swear to, file and/or record all financing statements, certificates, agreements and other documents which Apex deems necessary in the exercise of its sole discretion to perfect, maintain, continue, terminate or release the security interest(s) granted hereby. The power of attorney granted hereby is a special, irrevocable power of attorney coupled with an interest. The Purchaser shall remain liable for the balance owing to Apex after application of the proceeds of sale of any collateral. For the purpose of builders’ lien legislation, “immediate vicinity” shall be an area within 10 miles of any well, facility or other site where Goods are to be incorporated.
- 8. Warranty:** There are no warranties that extend beyond the description of the Goods on the face of the Order or as contained herein. Goods manufactured by others are sold “as is” except to the extent the manufacturer honors any applicable warranty made by the manufacturer. Second-hand Goods are sold “as is”. Leased Goods, new or used, are leased “as is”. In the event any Goods manufactured by Apex and furnished hereunder are found to be defective or otherwise fail to conform to the conditions of the Contract, Apex will, at its option, either replace the Goods at the delivery point specified herein or repair the Goods. Purchaser’s remedies with respect to Goods manufactured by Apex and furnished hereunder that are found to be defective or otherwise not in conformity with the Contract shall be limited exclusively to the right to have said Goods replaced or repaired. Purchaser’s remedies with respect to Goods manufactured by others and furnished hereunder that are found to be defective or otherwise not in conformity with the Contract are limited to any warranties extended and honored by the manufacturer. With respect to any work performed on Goods furnished by the Purchaser (including, but not limited to, repairing, welding, machining, fabricating, heat treating and forging) Apex agrees to perform such work in reasonable accordance with the Purchaser’s specifications. Apex shall be responsible for damages to such Goods caused only by Apex’s negligence, in which case Purchaser’s remedy shall be limited exclusively to the price of work to be performed by Apex on the Goods damaged. Purchaser’s remedies are limited as aforesaid regardless of whether Purchaser’s claim is based on contract, including fundamental breach, tort, including negligence, statute or otherwise. All claims must be made promptly following delivery to: a) Purchaser; b) Purchaser’s agent; or c) the carrier for transportation to Purchaser, and in any event must be made within one (1) year from tender of delivery. Goods shall not be modified without Apex’s written consent. Apex must be given a reasonable opportunity to investigate. Apex is not responsible for normal wear and tear or damages caused by improper installation, maintenance, handling, transportation, storage, or operation or by overloading, accident, neglect or harmful alterations or repairs made by others or any other cause whatsoever, subject only the express limited warranties herein; nor shall Apex be liable for costs of any kind associated with gaining access to the Goods for repair or removal and replacement by any person. EXCEPT TO THE EXTENT EXPRESSLY SET FORTH HEREIN, APEX MAKES NO, AND EXPRESSLY DISCLAIMS ANY AND ALL, REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS, GUARANTEES AND/OR ASSURANCES, WHETHER EXPRESS OR IMPLIED, RELATING TO OR ARISING OUT OF THE GOODS AND/OR THIS CONTRACT, INCLUDING WITHOUT LIMITATION, ANY IMPLIED REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS AND/OR GUARANTEES AS TO MERCHANTABILITY, MERCHANTABILITY, QUALITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE, OR FROM A COURSE OF DEALING OR USAGE OR TRADE. PURCHASER’S SOLE REMEDY FOR A BREACH OF THIS LIMITED WARRANTY, FOR ANY OTHER LIABILITY UNDER THIS AGREEMENT, OR FOR ANY WARRANTY THAT CANNOT BE EXCLUDED OR DISCLAIMED AS PROVIDED IN ANY APPLICABLE LAW, SHALL BE LIMITED TO THAT EXPRESSLY PROVIDED IN THIS CONTRACT.
- 9. LIMITED LIABILITY:** UNDER NO CIRCUMSTANCE SHALL APEX BE LIABLE TO PURCHASER OR ANY OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, THE COST OF LABOUR, REQUALIFICATION, REWORK, DELAY, LOST PROFITS, OR LOSS OF GOODWILL ARISING OUT OF THE SALE, INSTALLATION OR USE OF THE GOODS. IF APEX HAS ANY LIABILITY FOR BREACH OF CONTRACT, BREACH OF ANY IMPLIED CONDITION, WARRANTY OR REPRESENTATION, TORT OR UNDER ANY OTHER THEORY OF LAW, THE AGGREGATE LIABILITY OF APEX TO PURCHASER SHALL BE LIMITED IN RESPECT OF ANY OCCURRENCE OR SERIES OF OCCURRENCES TO THE PRICE OF THE GOODS AND SERVICES PAID BY THE BUYER THAT ARE THE SUBJECT OF THE SPECIFIC ORDER TO WHICH SUCH LIABILITY IS ATTRIBUTABLE. ALL GOODS PURCHASED HEREUNDER ARE AT PURCHASER’S RISK. WELL CONDITIONS WHICH PREVENT SATISFACTORY OPERATION OF GOODS SHALL NOT RELIEVE PURCHASER OF ITS RESPONSIBILITY FOR PAYMENT IN ACCORDANCE WITH THIS CONTRACT. PURCHASER SHALL BE RESPONSIBLE FOR ANY SURFACE OR SUBSURFACE DAMAGE TO ANY WELL OR FACILITY, IRRESPECTIVE OF THE CAUSE, THAT MAY RESULT FROM THE USE OF SUCH GOODS AND APEX SHALL HAVE NO LIABILITY IN RELATION THERETO. PURCHASER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS APEX FROM ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, AND CAUSES OF ACTION FOR INJURY OR DEATH OF ANY PERSON, FOR DAMAGE TO OR DESTRUCTION OF PROPERTY OR FOR ANY OTHER DAMAGE CAUSED BY GOODS PURCHASED OR SERVICES PERFORMED HEREUNDER OR IN ANY WAY ARISING OUT OF THIS CONTRACT. SUBJECT ONLY TO THE LIMITED WARRANTIES PROVIDED HEREIN.
- 10. Confidentiality and Intellectual Property:** Apex’s Goods and related documentation contain technology and information protected by patents and applications for patents, copyright and intellectual property law, and utilize proprietary information, trade secrets, concepts, know-how, manufacturing techniques and confidential information (collectively “**Proprietary Information**”). In connection with the sale of the Goods to Purchaser, Apex may provide Proprietary Information about the Goods to Purchaser. Purchaser is strictly prohibited from, and agrees that it will not, nor cause a third party, to take any action that is intended to discover the Proprietary Information, including, but not limited to, reverse engineering, taking detailed photographs and/or disassembling the Goods, or using the Proprietary Information in any other manner detrimental to Apex or its licensors including, but not limited to, manufacturing similar goods and/or parts. Except as required by law, Purchaser shall not use (except for purposes connected with the performance of its obligations hereunder), divulge or communicate to any third party any Proprietary Information.
- 11. Force Majeure:** Apex shall not be liable for any damage or penalty for delay in delivery or for the failure to give notice of delay when such delay is due to: unusually severe conditions; an act of god; an act of civil or military authority; war; riot; labour action; fire; explosion; shortage of a utility, facility, material or labor; delay in transportation; breakdown; accident; compliance with any other action taken to carry out the intent or purpose of any law or regulation; or any other causes which could not have been anticipated and are beyond the reasonable control of Apex. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.
- 12. Choice of Law:** This Contract is governed by the laws of the Province of Alberta and the parties irrevocably submit to the exclusive jurisdiction of the courts of the Province of Alberta, Judicial District of Calgary or such other Judicial District in Alberta as Apex may reasonably select. The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods. This Contract shall be construed as being in accordance with Canadian law.
- 13. General Provisions:** Apex and Purchaser are independent contractors. This Contract constitutes the final written expression of all of the agreements between the parties with respect to the subject matter, and supersedes all understandings and negotiations concerning the matters specified herein. Each of the parties shall at the request of the other without cost or expense execute and deliver any further documents and do all acts and things as reasonably required to carry out the intent of this Contract. No failure or delay by a party in exercising any right, power or privilege shall operate as a waiver thereof. If any provision or part of a provision of this Contract shall be found to be invalid or illegal by reason of any determination made by a court of competent jurisdiction or any governmental authority having jurisdiction in the circumstances, such provision or part of such provision shall be severed from this contract to the extent of such invalidity or illegality and the validity, legality or enforceability of the remaining provisions of this Contract shall not in any way be affected or impaired thereby. The subsequent execution by Apex of any Purchaser field tickets, forms, receipts, invoices, terms of services, etc. shall not amend or modify the terms of this Contract. Any amendment or modification to this Contract must be in writing and signed by both of the parties. This Contract shall be assignable by Apex to any of its subsidiaries, affiliates or successors without the consent of Purchaser. Purchaser shall not assign this Contract without Apex’s prior written consent. This Contract shall ensure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. The terms of this Contract are confidential and shall not be disclosed to any third party. Purchaser shall not use Apex’s name in connection with any publicity, release or advertisement without Apex’s prior written authorization. Apex will not provide any certification or other documentation nor agree to any contract provision or otherwise act in any manner which may cause Apex to be in violation of Canadian law. All orders shall be conditional upon granting of export licenses or import permits which may be required. Purchaser shall obtain at its own risk and expense any required export license and import permits and Purchaser shall remain liable to accept and pay for material if licenses are not granted or are revoked. All sales shall be in accordance with Incoterms, 1990 edition, as modified by these Terms. The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.