



Terms & Conditions of Sale

1. Applicability:

The contract (the "Contract") between the Buyer and Power & Mine Supply Co. Ltd. ("Power & Mine" or the "Seller") for the purchase of the Equipment and provision of Services, as those terms are described in the Buyer's order if accepted in writing by Seller (the "Order"), consists of the Order, these Terms and Conditions of Sale and other written provisions mutually agreed upon and signed by the Seller and the Buyer. All other previous and/or collateral agreements (including letters of intent or purchase orders issued by Buyer), representations, warranties, promises and conditions relating to the purchase or Equipment or provision of Services are superseded by this Contract. Any understanding, promise, representation, warranty or condition not incorporated in the Contract shall not be binding on either party. Seller agrees to sell the Equipment and/or provide the Services, if any, described in the Order to the Buyer and Buyer agrees to purchase such Equipment and Services for the price specified in the Order.

2. Delivery:

Shipping dates are approximate and are based on prompt receipt of all necessary information at Seller's office. Delivery will be deemed to have occurred upon the earlier of receipt by the Buyer or 15 days of being shipped by Seller.

Shipments to the Buyer will be EX-Works, Power & Mine's warehouse. At the option of Power & Mine and on an order-by-order basis, different freight terms may be required. Title and risk of loss for all Products shall pass to Buyer at the Ex-Works shipping point. Power & Mine shall provide reasonable assistance to Buyer in tendering any claims to any carrier.

Seller shall not be liable for delay in delivery due to causes beyond its reasonable control including, but not limited to, acts of God, acts of government, acts of Buyer, fires, labor disputes, boycotts, floods, epidemics, quarantine restrictions, war, insurrection, terrorism, riot, civil or military authority, freight embargoes, transportation shortages or delays, unusually severe weather or inability to obtain necessary labor, materials or manufacturing facilities due to such causes. In the event of any such delay, the date of delivery shall be extended for a length of time equal to the period of the delay.

3. Warranty:

Seller warrants at time of shipment to Buyer, the Equipment will comply with applicable Seller drawings and will be free from defects in workmanship and material. Buyer agrees to operate the Equipment in compliance with the applicable manufacturer's instructions. Seller's obligations under this warranty shall expire one (1) year from initial startup or use of the Equipment or eighteen (18) months after shipment, whichever occurs first. Seller warrants that the Services shall be performed in accordance with industry practices. Seller's warranty obligation for the Services shall expire ninety (90) days from the date of the initial start-up or use or six (6) months after completion of the Services, whichever occurs first.

For the Seller to consider the application of the Warranty herein described, Buyer must notify Seller in writing during the applicable Warranty period described herein and, within 30 calendar days of discovery of the nonconformance.

Seller's obligation and Buyer's sole remedy under this Warranty is repair or replacement, at Seller's sole discretion, of any Equipment. All Equipment repaired or replaced will be warranted only for the unexpired portion of the remaining Warranty period. Seller's obligation and Buyer's sole remedy under this Warranty for the performance of the Services is, at the sole option of the Seller, for the Seller to re-perform the Services and address any deficient work, or a refund to the Buyer for the cost of the Services or part thereof which are claimed to be deficient and subject to Warranty.

Seller agrees to repair or replace Ex-works Seller's plant any Equipment or part thereof manufactured by Seller which does not conform to the warranty for Equipment. Equipment claimed to be defective must be returned, freight prepaid and allowed by Buyer and in accordance with Seller's instructions to the point of manufacture, unless Seller directs otherwise. Title to and risk of loss of any Equipment being repaired shall remain with Buyer at all times.

In connection with the performance of any corrective work, all removal and reinstallation of the Equipment shall be performed by Buyer at its expense. Buyer shall, at its expense, be responsible for removing, reinstalling, replacing or supplying any equipment, materials or structures which are necessary to provide reasonable access to the Equipment to be repaired or replaced. Any decontamination or radiation protection necessary in connection with the removal/reinstallation or on-site repair of the Equipment shall be performed by Buyer without cost to Seller.



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Seller will not be liable under this warranty if the Equipment has been exposed or subjected to any (1) maintenance, repair, installation, handling, packaging, transportation, storage, operation or use which is improper or otherwise not in compliance with Seller's instructions; (2) alteration, modification or repair by anyone other than Seller or those specifically authorized by Seller, (3) accident, contamination, foreign object damage, abuse, neglect or negligence after shipment to Buyer; (4) damage caused by failure of a Seller supplied Equipment not under warranty or by any hardware or software not supplied by Seller; (5) use of counterfeit or replacement parts that are neither manufactured nor approved by Seller for use in the Equipment; (6) Equipment which is normally consumed in operation or which have normal life inherently shorter than the warranty period including, but not limited to, consumables (e.g. flashtubes, lamps, batteries, storage capacitors); or (7) any failure of the Buyer to maintain the Equipment in accordance with the manufactures instructions.

THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR PARTICULAR PURPOSE.

4. Payment:

All prices are net cash 30 days from date of invoice. All overdue invoices will be assessed interest at a rate of 2% per month (24% per year) for late payment and will be applied to overdue amount. Until payment in full is made, title to the Equipment shall reside with the Seller. Buyer shall not be entitled to set off the amounts owing against Seller and nothing herein, including any claim for Warranty shall relieve the Buyer's obligation to make the payment herein required. Buyer shall indemnify Seller in connection with any costs or expenses incurred by Seller to enforce its rights under this Contract.

5. Taxes:

Seller's price does not include, and Seller is not responsible for, payment of any tax levied for sales, use, excise, value-added, goods and services, business (franchise or privilege) or any duties, charges or other such taxes, unless otherwise stated in Seller's proposal. Seller is only responsible for any tax imposed on Seller, by taxing authorities in Seller's jurisdiction, which are based on Seller's revenue, income, net income, net assets, net worth, or capital or any taxes imposed in lieu thereof. Seller accepts sole responsibility and liability for the payment of any and all contributions or taxes for unemployment insurance, social security payments, or other assessments for those persons performing work for Seller hereunder. If Seller is required to pay any taxes of other charges that are the responsibility of the Buyer, then Buyer shall promptly reimburse Seller those amounts.

6. Limitation of Liability:

The remedies set forth herein are exclusive, and the total liability of the Seller with respect to the supply of the Equipment, provision of any Service this Contract or breach thereof, whether based on contract, warranty, tort (including negligence), indemnity, strict liability or otherwise, shall not exceed the Contract Price of the specific equipment or service. **IN NO EVENT, WHETHER ARISING BEFORE OR AFTER COMPLETION OF ITS OBLIGATIONS UNDER THE CONTRACT, SHALL SELLER BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PENAL DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO LOSS OF USE, REVENUE OR PROFITS, INVENTORY OR USE CHARGES, COST OF CAPITAL, OR CLAIMS OF CUSTOMERS) INCURRED BY BUYER OR ANY THIRD PARTY.**

7. General:

If there are any changes to global import, duties, tariffs, steel prices etc. that are outside of Power and Mine's control pricing will be updated accordingly.

Prices have been calculated using the Canadian dollar vs. the US dollar exchange rate on business close on the date of quote. If average exchange rate between CAD and USD exceeds 5% of the based rate, Power and Mine Supply will adjust prices accordingly at time of order and /or Invoicing.

Time shall be of the essence herein. Any notices to be provided herein shall be provided to the addresses listed on the Order and shall be deemed to be provided on any business day where personal or courier delivery is made. This Contract shall be binding upon, and shall ensure to the benefit of, the parties and their respective successors and permitted assigns. The failure of either party to enforce its rights under this Contract at any time for any period shall not be construed as a waiver of such rights. No changes or modifications to or waivers of any provisions of this Contract shall be effective unless evidenced in writing and



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signed by both parties. In the event any provision of this Contract shall be determined to be illegal or unenforceable, such provision will be limited or eliminated to the minimum extent necessary so that this Contract shall otherwise remain in full force and effect and enforceable. This Contract shall be governed by and construed in accordance with the laws of the Province of Manitoba without regard to conflicts of law provisions thereof. The sole jurisdiction and venue for actions related to the subject matter of this Contract shall be the courts of Manitoba. Both parties hereby consent to the jurisdiction of such courts and agree that process may be served in the manner provided herein for giving notices or otherwise as allowed by Manitoba law.