

## **Red Deer Ironworks Inc. ("RDI" or the "Seller") - Terms & Conditions - Canada**

**General terms (apply to all sales of goods and services and are incorporated into and form part of all contracts of purchase of goods and services from the Seller). For purposes hereof, "goods" means the goods, products and materials manufactured, imported, supplied and/or delivered for or by Seller to Buyer**

1. **Acceptance** — ALL SALES ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THE TERMS AND CONDITIONS CONTAINED HEREIN, AND UPON BUYER'S ASSENT THERETO. NO VARIATION OF THESE TERMS AND CONDITIONS WILL BE BINDING UPON SELLER UNLESS AGREED TO IN WRITING AND SIGNED BY AN OFFICER OR OTHER AUTHORIZED REPRESENTATIVE OF SELLER. The agreements of purchase and sale, including any purchase orders, invoices, quotes forming part thereof and including these Terms and Conditions, together with any drawings and specifications, if any, attached to the agreements shall constitute the "Agreement". The Seller and the Buyer agree not to contest or assert any defense to the validity or enforceability of transactions entered into in accordance with this Agreement under laws relating to whether certain agreements are to be in writing or signed by the party to be thereby bound.
2. **Changes** — Orders arising hereunder may be changed or amended only by written agreement signed by both Buyer and Seller, setting forth the particular changes to be made and the effect, if any, of such changes on the price and time of delivery. Buyer may not cancel this order unless such cancellation is expressly agreed to in writing by Seller. In such event, Seller will advise Buyer of the total charge for such cancellation, and Buyer agrees to pay such charges, including, but not limited to, storage and shipment costs, costs of producing non-standard materials, costs of purchasing non-returnable materials, cancellation costs imposed on Seller by its suppliers, and any other cost resulting from cancellation of this order by Buyer which is permitted by Seller.
3. **Delivery, claims, delays** — All sales are F.O.B. Seller's shipping point, at Buyer's sole risk and expense, unless otherwise noted. If shipping and handling charges are quoted or invoiced, they will include charges in addition to actual freight costs. Delivery of the goods to the carrier chosen by Seller, in Seller's sole reasonable discretion, at Seller's shipping point, said delivery being completed when the goods have been loaded on the means of transport provided by the carrier chosen by Seller, shall constitute delivery to Buyer and Buyer shall bear all risk of loss or damage in transit. Buyer is responsible for payment of all costs relating to transportation, delivery and insurance. However, Seller reserves the right, in its discretion, to determine the exact method of shipment. Seller reserves the right to make delivery in installments, all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of Buyer's obligations to accept remaining deliveries.

Immediately upon Buyer's receipt of any goods shipped hereunder, Buyer shall inspect the same and shall notify Seller in writing of any claims for shortages, defects or damages and shall hold the goods for Seller's written instructions concerning disposition. If Buyer shall fail to so notify Seller within three (3) days after the goods have been received by Buyer, such goods shall conclusively be deemed to conform to the terms and conditions hereof and to have been irrevocably accepted by the Buyer and Buyer waives any and all claims for shortages, defects, or damages related to the ordered goods. Buyer shall pay all costs, at Buyer's sole cost and expense, of any pre-shipment inspections.

Seller shall not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver or otherwise perform hereunder due to any cause beyond Seller's reasonable control, including, without limitation, unsuccessful reactions, act of Buyer, embargo or other governmental act, regulation or request affecting the conduct of Seller's business, fire, explosion, accident, theft, vandalism, riot, acts of war, strikes or other labor difficulties, lightning, flood, windstorm or other acts of God, delay in transportation, or inability to obtain necessary labor, fuel, materials, supplies or power at current prices. No credit will be given for returns except upon prior written approval of Seller and no special or custom goods, materials, or equipment may be returned.

In the case of export sales, Buyer shall pay the costs arising from or related to customs formalities as well as all duties, taxes, and other charges payable upon export and agrees to obtain at Buyer's sole risk and expense any applicable import license or other official authorization, and to carry out all applicable customs formalities for the import of the goods and for their transit through any country.

4. **Pricing** — Prices provided are in United States currency unless otherwise stated and are subject to change and Buyer shall be solely responsible for and shall pay any and all present or future Provincial and federal taxes applicable in said territory or jurisdiction. Current prices may be discussed via telephone with Seller where Buyer requires this information prior to placing an order. Seller only guarantees price quotations which have been made in writing; said price guarantee expires on the 30<sup>th</sup> calendar day after the date indicated on the written quotation unless otherwise noted to the quote. For guarantee information regarding quotations outside Canada, the Buyer should contact its local distributor. When placing the order, please reference the Seller's quoted prices or the Seller's pro forma number. If the Buyer places the order by phone, the Seller will confirm its current price at that time.
5. **Security Interest** - As general and continuing security for the payment of any sum due under the Agreement, the Buyer hereby grants to the Seller a security interest in the goods provided under the Agreement and all proceeds therefrom of whatever nature and kind, including without limiting the generality of the foregoing, all accounts, intangibles, indebtedness and claims for or rights to money, and all cash, notes, rental payments, insurance payments, goods, chattel paper, securities, instruments and documents of title and any other property or obligations received directly or indirectly from the sale, disposition, destruction or expropriation of the goods and the Buyer irrevocably authorizes the Seller to execute and file its interest at the Alberta Personal Property Registry or such other registry as the Seller may determine in its sole discretion. The Buyer shall execute and deliver any financing statements and other documents that Seller may reasonably require for the perfection of Seller's security interest and Buyer hereby authorizes Seller to do all other acts reasonably necessary for the establishment, perfection, preservation, and enforcement of its security interest. The Seller may from time to time, in its discretion as it sees fit, apply and reapply and notwithstanding any previous application, in any manner, any monies received by it from the Buyer and the Buyer shall have no right to make or require any appropriation inconsistent with any such application by the Seller.

This security is in addition to and not in substitution for any other agreement between the parties creating a security interest, mortgage or charge in all or part of the goods whether made before or after this agreement and this agreement shall not merge in any subsequent security agreement, mortgage or charge or judgment obtained by the Seller unless expressly provided to the contrary in writing by the Seller. The Buyer waives his right to receive a copy of any financing statement, financing change statement or verification statement relating to this Agreement.

6. **Late Payments or Default**- If the Buyer fails to make payment to the Seller of any sum due under the Agreement on the due date for payment or is otherwise in default under the Agreement, the Seller may at its sole discretion (in addition and without prejudice to all other claims, rights or remedies which the Seller may have against the Buyer at law or in equity):

6.1 charge interest on any outstanding balance owed by the Buyer compounded monthly and calculated from the due date for payment until the unpaid sum is fully paid at the rate of at 6% per annum (.5% per month) or if that amount is against the jurisdictional law, the maximum amount allowed under the applicable law, both before and after default and after judgment. If the Seller pursues collection or enforcement proceedings or legal action against the Buyer to collect any monies owed by the Buyer to the Seller, the Buyer agrees to pay any and all of the Seller's expenses, including all legal fees incurred (on a solicitor and its own client full indemnity basis) as a result of or in connection with any such collection or enforcement proceedings or legal action;

6.2 withhold performance of any of its obligations under the Agreement and any other orders or agreements without liability to the Seller pending such payment;

6.3 seek additional security from the Buyer on any amount due to the Seller for goods shipped (or to be shipped) or goods received by the Buyer; and/or

6.4 enforce payment and exercise any and all of the rights and remedies of the Seller provided in Part V of the Personal Property Security Act (Alberta), as well as any and all other rights and remedies possessed by the Seller under this agreement, or under any law or other agreement at such time or times and in such order as the Seller may decide, without being required to make any election or being deemed to have made any election between any such rights and remedies.

7. **Warranty** - The Seller's goods are guaranteed to be free from defects in material and/or workmanship and to perform as advertised when properly installed, used, and maintained in accordance with written instructions. Failure to adhere to and/or comply with operation manual instructions, if provided, or failure to operate in a manner that would be deemed reasonable and proper in the applicable industry will void all associated warranty obligations. Should any part(s) prove defective within one (1) year from date of purchase, conditioned upon Buyer's completion of Seller's warranty claim form providing all reasonable and applicable detail related to the defect and following Seller's warranty claim procedures in all material respects, it (they) will be either repaired or replaced, at the sole option of the Seller, F.O.B. our factory, or branch, without charge provided the defective part(s) is returned to our factory or branch transportation charges prepaid.

All goods are produced subject to (i) mill tolerances and variations in respect of dimension, weight, straightness, section, surface conditions, composition, mechanical properties, internal conditions, and quality; (ii) deviations from such tolerances and variations consistent with practical testing and inspection methods and (iii) regular mill practices with respect to over and under shipments. Any representations or certifications by Seller shall be limited by the foregoing.

The Seller will not be responsible for, and Buyer hereby waives, any and all claims for labor charges, loss, or consequential damage of any kind or character caused by defective parts or for charges incurred in the replacement or repair of defective parts by Buyer. This warranty does not apply when damage is caused by improper use or installation including and not limited to careless handling, including that by freight companies, and improper installation or use may void all warranties.

The foregoing states the Seller's entire liability for any claim to damages whatsoever, and is made by Seller and accepted by Buyer in lieu of all other warranties, obligations, or liabilities expressed or implied, the same being expressly waived by Buyer and disclaimed by Seller hereby. UNDER NO CIRCUMSTANCE CAN THE TOTAL LIABILITY OF THE SELLER EXCEED 1% OF THE CONTRACT PRICE AS DEFINED BY THE RELEVANT PURCHASE ORDER.

The aforementioned warranties shall not apply to (a) any product which has been altered or changed after receipt by Buyer without Seller's authorization; (b) any failure of the product to conform to such warranties as a result of improper maintenance, installation or service, operation, or use contrary to furnished instructions; (c) the transportation or improper storage of such items; or (d) any abuse, misuse, neglect or negligence of Buyer or its end users. It is understood and agreed that the product shall be used in connection with and as components of a larger system, and that such inclusion into the larger system does not and shall not constitute an unauthorized alteration or change in the product, provided that the design and implementation of such inclusion into the larger system is in conformity with specifications.

The express warranties set forth in this Section 7 are the only warranties made by Seller to Buyer with respect to the goods purchased hereunder. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO GOODS SOLD PURSUANT TO THIS AGREEMENT AND ATTACHMENTS, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SALE, USE, OR PERFORMANCE OF PRODUCT.

8. **Buyer's Representations and Indemnity** — Buyer represents and warrants that it shall use all goods ordered herein in accordance with Paragraph No. 10 "Buyer's Use of Goods", and that any such use of goods will not violate any applicable law or regulation. Buyer agrees to indemnify and hold harmless Seller, its employees, agents, successors, officers, and assigns, from and against any suits, losses, claims, demands, liabilities, costs and expenses (including attorney and accounting fees) that Seller may sustain or incur as a result of any claim against Seller based upon negligence, breach of warranty, strict liability in tort, contract, or any other theory of law brought by Buyer, its officers, agents, employees, successors or assigns, by Buyer's customers, by end users, by auxiliary personnel (such as freight handlers, etc.) or by other third parties, arising out of, directly or indirectly, the use of Seller's goods, or by reason of Buyer's failure to perform its obligations contained herein. Buyer shall notify Seller in writing within fifteen (15) days of Buyer's receipt of knowledge of any accident, or incident involving Seller's goods which results in personal injury or damage to property, and Buyer shall fully cooperate with Seller in the investigation and determination of the cause of such accident and shall make available to Seller all statements, reports

and tests made by Buyer or made available to Buyer by others. The furnishing of such information to Seller and any investigation by Seller of such information or incident report shall not in any way constitute any assumption of any liability for such accident or incident by Seller. Buyer further agrees that in the event of any loss, injury or damage, Buyer shall not itself, nor permit others to, dismantle, test or examine any of the goods sold or provided by Seller without giving Seller sufficient advance written notice, in no event less than fifteen (15) days, to be present and allowing such presence of Seller or its agents.

9. **Patent disclaimer** — Seller does not warrant that the use or sale of the goods delivered by Seller hereunder will not infringe the claims of any Canadian or United States or other patents covering the goods itself or the use thereof in combination with other goods or in the operation of any process.

10. **Buyer's Use of Goods** - The improper installation or application of the goods; their use with improper wiring, piping, or ventilation; improper system design or engineering; inadequate inspection or testing; the lack of regular careful maintenance of both the goods and any equipment in connection with which the goods are used; the employment of insufficient or unqualified personnel; the lack of careful supervision, proper warnings, operating instructions, and safety precautions: the exposure of the goods to excessive heat, moisture, dust, dirt, corrosion, or any other deleterious condition, each constitutes a hazard which can result in loss of life, serious personal injury, heavy property or business damage, and buyer agrees with seller to itself take and require others to take all reasonable measures to avoid each such hazard. Buyer agrees to notify its customers or users of the product(s), as the case may be, of these warnings, and to deliver to its customers or users of the product(s) all written warnings provided with each product by Seller.

11. **Product Returns** - Goods may be returned for credit with Seller's advance written consent, said consent to be in Seller's sole reasonable discretion. Any returned items may be subject to a twenty percent (20%) restocking & processing fee and must be returned at Buyer's sole cost and expense to Seller at Seller's location indicated on Seller's written consent, within thirty (30) days of purchase.

Buyer must obtain RMA (Return Material Authorization) identification prior to returning any purchased material back to the Seller. Buyer will bare all freight costs to return material back to the Seller's factory or such other location indicated by Seller.

12. **Order cancellation** — The orders are non-cancellable by the Buyer unless agreed to in writing by the Seller. The Buyer will be responsible for all costs incurred by Seller arising from pre-manufacturing or manufacturing of any material, prior to receipt of notice of cancellation. After such cancellation, Buyer's materials and any completed product, if any, may be delivered to Buyer, at Buyer's sole cost and expense, only after all sums owed to Seller, including but not limited to the costs described herein, have been paid in full.

13. **Insolvency** - Seller may immediately terminate this Agreement without liability to Buyer in any of the following or comparable events: (a) insolvency of Buyer; (b) filing of a voluntary or involuntary petition in bankruptcy of Buyer; (c) appointment of a receiver or trustee for Buyer; (d) assignment for the benefit of creditors of Buyer or (e) any plan or proposal for a compromise or arrangement between Buyer and any creditors. Buyer shall reimburse Seller for all costs incurred by Seller in connection with any of the foregoing, including but not limited to attorneys and other professional fees. Seller reserves all rights to reclaim goods upon Buyer's insolvency.

14. **Termination:** Seller may, without any liability of Seller to Buyer, terminate all or any part of this Agreement, suspend shipment of product, and seek all remedies to which Seller is entitled, if Buyer: (a) repudiates or breaches any part of this Agreement, or (b) fails to make timely payment per terms specified by Seller, or (c) sells or offers to sell or exchange (i) a material portion of its assets or (ii) an amount of stock sufficient to effect a change in control of Buyer. Without limiting the foregoing, Seller also may, without any liability of Seller to Buyer, terminate this Agreement for convenience, as to product not yet shipped or orders not yet accepted, upon notice of such termination to Buyer.

15. **Confidentiality and Non-Circumvention:** Seller reserves all rights in all information that Seller has provided or may provide to Buyer (including, but not limited to, information related to costs, pricing, drawings, engineering instructions, manufacturing specifications, testing processes), which information Buyer agrees will be kept confidential and shall not, without prior written consent of Seller, be disclosed by Buyer, in whole or

in part, other than to its employees who "need to know" such information and are instructed to keep such information confidential. Buyer agrees that product and component material sourcing information is confidential to Seller and, for a period of three years after expiration or any termination of this Agreement, Buyer shall not directly or indirectly purchase product or component materials from Seller's established suppliers or otherwise circumvent Seller's established relationships and purchase arrangements. Buyer acknowledges that a breach of its obligations under this section would cause irreparable harm to Seller for which monetary damages alone would not be an adequate remedy. In the event of any breach or threatened breach, Seller shall be entitled to appropriate equitable relief, including injunction and specific performance, in addition to any other rights and remedies available to Seller at law or equity.

**16. Miscellaneous** — Seller's failure to strictly enforce any term or condition of this order or to exercise any right arising hereunder shall not constitute a waiver of Seller's right to strictly enforce such terms or conditions or exercise such right thereafter. All rights and remedies under this order are cumulative and are in addition to any other rights and remedies Seller may have at law or in equity. Any waiver of a default by Buyer hereunder shall be in writing and shall not operate as a waiver of any other default or of the same default thereafter. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. The paragraph headings herein are for convenience only; they form no part of the terms and conditions and shall not affect their interpretation. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto, and their respective heirs, personal representatives, successors and assigns.

**17. Force Majeure** - In the event that either party is prevented from performing or is unable to perform any of its obligations under this Agreement due to any Act of God, fire, casualty, flood, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection, or any other cause beyond the reasonable control of the party invoking this section, such party's performance shall be excused, and the time for the performance shall be extended for the period of delay or inability to perform due to such occurrences, provided that such party shall use its best efforts to mitigate the effects of such occurrences, and such party shall give prompt written notice to the other party thereof. However, if such inability to perform continues for thirty (30) days, the other party may terminate this Agreement without penalty and without further notice.

**18. Unresolved Dispute** - Subject to Section 21 (Injunctive Relief) below, no court action or arbitration with respect to any disputes may be commenced until the matter has been discussed, and, if possible, resolved between the President or his designate (on behalf of the Seller) and an officer of the Buyer. If they are unable to resolve the matter within *forty five (45) business days*, then the parties agree to submit the dispute to arbitration pursuant to Section 19 (Binding Arbitration).

**19. Binding Arbitration** - Subject to Section 18 (Unresolved Dispute) and Section 21 (Injunctive Relief), any dispute arising out of or related to this Agreement, which cannot be resolved between the officers of the parties, must be settled by binding arbitration. If not resolved between the officers, the dispute must be referred to a sole arbitrator selected by the parties within fifteen (15) days of the notice of arbitration. If the parties are unable to agree upon an arbitrator, either party shall be entitled to apply to a Justice of the Court of Queen's Bench of Alberta to have him or her appoint an arbitrator. Except as herein modified, the provisions of the Arbitration Act of Alberta for the time being in force shall apply to all arbitration proceedings and such arbitration shall take place in Edmonton, Alberta. The costs of arbitration, including the fees and expenses of the arbitrator, will be shared equally by the parties unless the arbitration award provides otherwise. The arbitrator may determine issue of arbitrability, but may not award punitive damages or limit, expand, or otherwise modify the terms of this Agreement. The arbitrator's decision must follow the plain meaning of the relevant documents, and is binding. The arbitrator must render a written and reasoned opinion setting forth both findings of fact and conclusions of law. The parties, their representatives, other participants, and the arbitrator must hold the existence, content and result of arbitration in confidence, except as such disclosure may be necessary for the purpose of recording or otherwise acting upon the arbitrator's award. ARBITRATION MUST BE COMPLETED AND AN AWARD RENDERED BY THE ARBITRATOR NO LATER THAN 120 DAYS FROM THE APPOINTMENT OF AN ARBITRATOR.

**20. WAIVER OF JURY TRIAL-BOTH PARTIES WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF, CONNECTED WITH, RELATED TO OR INCIDENTAL**

**TO THIS AGREEMENT OR THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT. ANY SUCH DISPUTES SHALL BE RESOLVED IN A BENCH TRIAL WITHOUT A JURY.**

**21. Injunctive Relief** - Either party may, at its sole discretion and at any time during the dispute resolution process, seek injunctive relief in any court of competent jurisdiction including, but not limited to, preliminary injunctive relief.

**22. Applicable Law** - This Agreement will be governed and construed in accordance with the law of the Province of Alberta, excluding its conflict of laws rules, and subject to section 19, each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the Province of Alberta and all courts competent to hear appeals therefrom.

**23. Export Compliance** - Seller's goods are subject to Canadian export laws, rules, treaties, regulations, and international agreements. All individuals who access Seller's website assume the responsibility of abiding by the Canadian export laws, rules, treaties, regulations, and international agreements along with applicable foreign laws when transferring, selling, importing, exporting, re-exporting, deemed exporting, diverting, or otherwise disposing of such goods. By reviewing Seller's terms and conditions, the Buyer represents and warrants that it is not in a sanctioned country nor is it an individual or an entity whose access to this website is restricted by Canadian export laws, rules, treaties, regulations, and international agreements, and agree to indemnify, defend, and hold Seller harmless from any and all claims, losses, and damages arising from or related to the Buyer's breach of the forgoing representation.

**24. Assignment** - This Agreement and Buyer's duties hereunder may not be delegated or assigned by Buyer without Seller's written consent, and any assignment attempted without such consent shall be null and void and shall effect, at Seller's option a cancellation of Seller's obligations hereunder. Seller may assign this order and its interest therein to any affiliated corporation, or to any corporation succeeding to Seller's business without the consent of Buyer.