

Beclawat Manufacturing Inc.

Terms and Conditions of Sale

The following terms and conditions of sale ("Terms and Conditions") shall control the sale of products and/or services (individually a "Product" and collectively "Products") from Beclawat Manufacturing Inc. ("**Beclawat**") to the buyer of such Products (the "**Buyer**")

GOVERNING TERMS AND CONDITIONS:

- a. These Terms & Conditions of Sale shall establish the rights, obligations and remedies of Beclawat and the Buyer which apply to any Purchase Order ("**Order**") issued by the Buyer for any products, including products, equipment and parts, manufactured or sold by Beclawat unless otherwise stated in a written purchase agreement signed by authorized representatives of each of Beclawat and the Buyer and covering the specific Products that are the subject of the Order. Beclawat's acceptance of any Order is made expressly conditional on assent by the Buyer to the Terms.
- b. These Terms supersede any prior written or oral agreement, understanding, representation or promise, and any pre-printed or standard terms and conditions contained in the Buyer's request for quote, purchase order, invoice, order acknowledgement or similar document. These Terms may not be amended, supplemented, changed or modified, except by concurrent or subsequent written agreement, signed by an authorized representative of Beclawat and of the Buyer. Beclawat's acknowledgement of the Buyer's Order shall not constitute acceptance of any terms and conditions contained therein, regardless of how such terms and conditions may be prefaced or described and Beclawat expressly objects to such terms and conditions which the parties agree shall be deemed ineffective and are rejected by Beclawat.

DELIVERY:

- a. All Products shall be shipped and priced FCA (Incoterms 2010) Beclawat's plant or specified shipping point. Except as set out in "Title; Risk of Loss; Security Interest" below, title to the Products and risk of loss pass to the Buyer when Beclawat places the Products at the disposal of the Buyer in accordance with Incoterms 2010.
- b. Beclawat reserves the right to invoice Buyer for Products on the valid specified shipping date. In the event the Buyer requests a delay or suspension in completion and/or shipment of the Products or any part thereof for any reason, the parties will agree upon any cost and/or scheduling impact of such delay and all such costs shall be assessed to the Buyer's account. Any delay period beyond 60 days after the original scheduled shipment date shall require Buyer to take title and risk of loss of Products and make arrangements for storage at the Buyer's expense.

TITLE; RISK OF LOSS; SECURITY INTEREST:

- a. Beclawat hereby retains and reserves title to, ownership of, property in, and, without limitation, a first fixed charge on and security interest (including a purchase-money security interest) in the Products, and all attachments and accessories now or hereafter affixed thereto or used in connection therewith, and all proceeds therefrom, until all amounts due to Beclawat from the Buyer are paid in full.
- b. For the purposes of Products delivered to or sold in Quebec and to which Quebec law applies, the sale of Products pursuant to these Terms constitutes an installment sale whereby Beclawat reserves ownership over all of the Products, and all attachments and accessories now or hereafter affixed thereto or used in connection therewith, and all proceeds therefrom, which shall secure all amounts due to Beclawat and shall persist and survive until all amounts due to Beclawat are paid in full.
- c. The Buyer shall obtain and deliver to Beclawat from time to time, on request by Beclawat, agreements in form and substance reasonably acceptable to Beclawat, for better effectuating the security interest and agreements herein contained, including, without limitation, subordination agreements executed by any landlord, owner, mortgagee or other encumbrances of the Buyer or of the premises where the Products will be situated. Upon demand by Beclawat, the Buyer shall indemnify and save harmless Beclawat from any liability arising out of Beclawat's removing the Products from any premises in which the Products are located.

- d. The Buyer agrees not to charge, encumber or dispose of any interest in the Products and to keep them free and clear of all charges, liens, security interests and encumbrances of any nature whatsoever until such time as all amounts to be paid to Beclawat under the Agreement have been fully paid and satisfied.

CANCELLATION; CHANGES OR RETURNS:

- a. Products manufactured and sold by Beclawat are considered custom and are built to order. The Buyer may only cancel this Order with the prior written consent of an authorized representative of Beclawat. Cancellation requests submitted by the Buyer 24 hours after receipt of order shall require payment of a reasonable cancellation charge. Determination of eligibility for order cancellations along with the amount of applicable cancellation charges, if any, will be made at Beclawat's sole discretion.
- b. The Buyer may request modifications as to the amount, scope and/or nature of Products in an Order by submitting a written change request to Beclawat. If, in the sole opinion of Beclawat, any modification will affect the agreed fixed price and/or time of delivery, Beclawat will notify the Buyer thereof in writing and shall not be obligated to perform any modification unless the new price and/or time of delivery is agreed to by the Buyer. The Buyer shall confirm that such change is authorized and accepted by issuing an Order revision.
- c. No returns of Products shall be accepted by Beclawat.

DELAY; FORCE MAJEURE:

- a. Each Purchase Order submitted by the Buyer is accepted by Beclawat on the basis that *time is of the essence*. Delivery dates are based upon all information received from the Buyer at the time of the order. Beclawat shall have no liability to the Buyer for Beclawat's delay or default in delivery due to Force Majeure.
- b. Force Majeure shall be defined as including, without limitation; acts of God, acts of government, changes in the product specifications, amount, delivery schedule or method of payment made by the Buyer, fires, labor disputes, boycotts, floods, shortages of labour, fuel, materials, or power, epidemics, quarantine restrictions, declared or undeclared war, insurrection, terrorism, riot, civil or military authority, freight embargos, transportation shortages or delays, unusually severe weather or inability to obtain necessary labor, materials or manufacturing facilities due to such causes.

INSPECTION AND ACCEPTANCE:

Upon arrival at the destination point or the Buyer's receipt of any order shipped hereunder, whichever first occurs, the Buyer shall immediately inspect said order and shall notify Beclawat in writing within ten (10) days of such date of any claims or shortages, defects, damages or any other respect in which the Buyer alleges the Product to be non-conforming and shall safely hold such order for Beclawat's written instructions concerning disposition. If the Buyer fails to notify Beclawat in writing within the said ten (10) day period, then such order shall be conclusively deemed to conform to these Terms and Conditions and to have been irrevocably accepted by the Buyer.

PRICE AND PAYMENT:

- a. If for any reason Beclawat's production or purchase costs for the Products (including without limitation costs of energy, equipment, labor, regulation, transportation, raw material, or Product) increases over Beclawat's production or purchase costs for the Products on the date of entering into an Order, then Beclawat may, by written notice to the Buyer of such increased costs, request a renegotiation of the price of the Products under the Order. In the event the Parties are not able to agree on a revised Product price within 10 days after a request for renegotiation is given, then Beclawat may terminate this Agreement on 10 days written notice to the Buyer.
- b. All Products shall be billed at those prices as set out in the Order or in a written purchase agreement signed by authorized representatives of each of Beclawat and the Buyer and covering the specific Products that are the subject of the Order unless Beclawat expressly agrees in writing.
- c. Payments shall be due from the Buyer to Beclawat 30 calendar days from the invoice date unless otherwise agreed by Beclawat and the Buyer in writing. Should Buyer fail to pay Beclawat as specified herein, the Buyer shall pay all collection costs, attorney fees and expenses incurred in collecting payment, including interest on the amount due at the maximum rate permitted by applicable law. All transportation, insurance and similar charges incident to delivery of Products shall be paid by the Buyer. Any taxes and excises levied by any governmental or

- municipal authority involving the sale or transportation of Products must be borne by the Buyer.
- d. Beclawat will issue its invoice upon shipment or upon notice to the Buyer that Beclawat is ready to ship, whichever is earlier. Depending on the value of the Order, Beclawat may at its sole discretion require progress payments. If the Buyer's financial condition is or becomes unsatisfactory to Beclawat in Beclawat's sole discretion, Beclawat reserves the right to: (a) require payment from the Buyer on a cash-in-advance basis; (b) require a letter of credit or other acceptable security before shipment; (c) cancel shipment at any time prior to delivery of Products without further obligation or liability; or (d) repossess the Products.
 - e. All amounts that the Buyer owes Beclawat under an Order shall be due and payable according to the terms of the Order. Buyer may not set-off such amounts or any portion thereof, whether or not liquidated, against sums that Buyer asserts are due it or any of its affiliates under other transactions with Beclawat or any of its affiliates.
 - f. Beclawat's prices for Products, unless otherwise agreed, shall be fixed and do not include, and Beclawat 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.

INTELLECTUAL PROPERTY:

Unless otherwise specifically agreed to in writing by an authorized officer of Beclawat, all drawings, techniques, processes, inventions, patents, patent applications and other intellectual property (i) now owned by Beclawat, (ii) created or owned hereafter by Beclawat outside the scope of the Purchase Order or the agreement under which a Purchase Order is submitted (the "Agreement") or (iii) created by Beclawat or jointly by Beclawat and the Buyer in connection with the Purchase Order or Agreement (collectively, "Beclawat's Intellectual Property") shall be and remain Beclawat's property. Beclawat grants no license or other right to the Buyer in Beclawat's Intellectual Property, whether now owned or hereafter created. Unless otherwise specifically agreed to in writing by the Buyer, all drawings, techniques, processes, inventions, patents, patent applications and other intellectual property owned by the Buyer on the effective date of the Purchase Order ("Buyer's Intellectual Property") shall be and remain property of the Buyer.

INDEMNITY AND LIMITATION OF LIABILITY:

- a. The Buyer agrees to indemnify, hold harmless and defend Beclawat, including its officers, employees, agents, subcontractors, suppliers and representatives, against any and all judgments, losses, damages, expenses, costs and liabilities, including defense costs and legal fees, arising from any and all lawsuits, demands, actions or claims for personal injury, death, property damage, or other liability arising or claimed to arise from any act or omission of the Buyer or Beclawat in any way related to this Order or Products, whether such claims are based upon contract, warranty, tort (including but not limited to active or passive negligence), strict liability, failure to comply with any applicable law, or other allegation of fault. To the extent the aforesaid obligation of the Buyer to so indemnify Beclawat is prohibited by applicable laws where these Terms are in effect, then the obligation created under this provision shall, but only to the extent of such prohibition, be null and void. The remainder of the Buyer's indemnity obligations shall remain in effect and be binding upon the parties.
- b. The remedies set forth herein are exclusive, and the total liability of Beclawat, including its affiliates, officers, employees, agents, subcontractors, suppliers and representatives with respect to this Order or any breach thereof, whether based on contract warranty, tort, indemnity, strict liability or otherwise, will not exceed the Order price of the specific Products which gives rise to the claim. In all cases where Buyer claims damages allegedly arising out of defective or nonconforming Products, Buyer's exclusive remedies and Beclawat's sole liability shall be those specifically provided for under the Warranty Section. IN NO EVENT, WHETHER ARISING BEFORE OR AFTER COMPLETION OF ITS OBLIGATIONS UNDER THE CONTRACT, SHALL BECLAWAT BE LIABLE FOR SPECIAL INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE 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. HOWEVER, NOTHING HEREIN IS INTENDED TO DISCLAIM BECLAWAT'S LIABILITY FOR PERSONAL INJURY OR DEATH CAUSED BY DEFECTIVE PRODUCTS TO THE EXTENT, AND ONLY TO THE EXTENT, SUCH LIABILITY IS MANDATED BY APPLICABLE LAW.

WARRANTY:

- a. Beclawat warrants that the Products will comply with the drawings and specifications expressly set out in the Order and that the Products shall be free of material defects in workmanship and material under normal use and

- service, for a period of 1 year from the date of invoice to the Buyer.
- b. If Beclawat determines (in its sole discretion) during the warranty period that a Product is non-conforming, then, at its option, Beclawat will repair or replace (in either case, FCA point of manufacture) or refund the unit purchase price of the Product.
 - c. This warranty is conditioned on the Buyer's agreement to provide written notice of the alleged defect prior to commencing any remedial work and in no event will the warranty include the cost of removal or reinstallation.
 - d. This limited warranty specifically excludes any liability for consequential or incidental damages or loss of profits. This limited warranty does not cover labour, shipping expenses or other costs associated with the installation or removal of products for repair or replacement. There are no warranties granted other than expressly provided.
 - e. **This warranty is in lieu of all other warranties or conditions express or implied, including, but not limited to, warranties of merchantability and fitness for particular purpose. No other warranties, express or implied are given.**
 - f. In respect of any claim concerning the performance or non-performance of the manufactured products, or arising out of the use of the manufactured products, including injuries to persons or damage to property, Beclawat's liability hereunder shall be limited to and shall not exceed the cost of the manufactured product to the customer, whether such action be in contract or tort, including negligence and specifically including gross negligence on the part of Beclawat.

SPECIAL TOOLING:

"Special Tooling" includes, but is not limited to, jigs, dies, fixtures, molds, patterns, special taps, special gages, special test equipment, other special equipment and manufacturing aids and replacements items, now existing or hereafter created, together with all specifications, drawings, engineering instructions, data, material, equipment, software, processes, and facilities related thereto, created or used by Beclawat in the performance of its obligations under this Agreement. Beclawat owns all Special Tooling, except to the extent an authorized representative of Beclawat procurement department specifically transfers title thereto in a formal, written bill of sale to the Buyer. Any transfer of title to Special Tooling does not include transfer of Beclawat's intellectual property used to create or that may be embodied in the Special Tooling, other than a license to use the Special Tooling. This license to use does not include the right to reproduce the Special Tooling unless specifically authorized in writing by Beclawat.

CONFIDENTIALITY:

The Parties agree to keep confidential and, except as required by law, not disclose to any other third person and proprietary information (including, without limitation, all data, drawings, descriptions, design sheets, computer prints, computer codes, scientific and technological information, process specifications and procedures, including quality control instructions, production costs, production procedures, supplier information and any other technical and commercial information relevant to the Products (collectively, the "Confidential Information")) received from the other party in connection with these Terms and Conditions. Each party further agrees to use such Confidential Information only for the proper purposes necessary for performance of its Obligations under any Contract and/or these Terms and Conditions. To the extent disclosure is required by law, the disclosing party shall provide prior notice of such impending disclosure to the other party and the disclosing party shall use reasonable efforts at its own cost and expense to limit such disclosure and to maintain the confidentiality of such Confidential Information to the extent permitted by law. In the event the Parties have entered into a separate Confidentiality or Non-Disclosure Agreement governing the transactions to which these Terms and Conditions apply, the terms of such Agreement shall take precedence over this Section.

TERMINATION:

A party may terminate any or all unperformed Orders by giving written notice to the other party upon the occurrence of any of the following events:

- a. the other party materially breaches this Agreement and fails to remedy the breach within 60 calendar days after receipt of written notice that specifies the grounds for the material breach;
- b. the other party fails to make any payment required to be made under this Agreement when due, and fails to remedy the breach within 7 calendar days after receipt of written notice of non-payment; or
- c. any insolvency or suspension of the other Party's operations or any petition filed or proceeding made by or against the other Party under any federal, provincial or other applicable law relating to bankruptcy, arrangement,

reorganization, receivership or assignment for the benefit of creditors or other similar proceedings.

Termination does not affect any debt, claim or cause of action accruing to any Party against the other before the termination. The rights of termination provided in this clause are not exclusive of other remedies that either Party may be entitled to under this Agreement or in law or equity.

WAIVER:

Failure by Beclawat to assert all or any of its rights upon any breach of an Order shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach, nor will any waiver be implied from the acceptance of any payment of service. No waiver of any right shall extend to or affect any other right Beclawat may possess, nor will such waiver extend to any subsequent similar or dissimilar breach.

SEVERABILITY:

If any portion of these Terms is determined to be illegal, invalid or unenforceable for any reason, then such provision shall be deemed stricken for purposes of the dispute in question and all other provisions shall remain in full force and effect.

TIME LIMITATION TO BRING ACTION:

It is agreed that no suit or cause of action or other proceeding shall be brought against either party more than 1 year after accrual of the cause of action or 1 year after the claim arises, whichever is shorter, whether known or unknown when the claim arises or whether based on tort, contract or any other legal theory.

GOVERNING LAW:

These Terms and Conditions shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in such Province. The parties irrevocably attorn to the jurisdiction of the courts of the Province of Ontario.

COMPLIANCE WITH LAWS/ETHICAL PRACTICES:

Beclawat and the Buyer agree to comply with all applicable laws, regulations, and rules, including, but not limited to, those of Canada and other jurisdictions where the parties conduct business. Additionally, Buyer has not and will not offer, promise authorize or make, directly or indirectly, any payments (in money or any other item of value), contributions or gifts to any government agency, department official or government owned or controlled entity in order to obtain or retain business, or secure any other Improper business advantage, which would violate the U.S. *Foreign Corrupt Practices Act*, the *Corruption of Foreign Public Officials Act* and/or any other applicable anti-bribery laws. In the event Beclawat has reason to believe that a breach of any of the covenants listed above has occurred or will occur, Beclawat (a) may withhold further delivery of Products to Buyer until such time as it has received confirmation to its satisfaction that no breach has occurred or will occur, and Beclawat shall not be liable to the undersigned for any claim, losses or damages whatsoever related to its decision to withhold delivery under this provision and (b) will have the right to audit Buyer in order to satisfy itself that no breach has occurred, and Buyer shall cooperate in such audit.

MISCELLANEOUS:

- a. **INSURANCE:** The Buyer agrees to look exclusively to the Buyer's insurer to recover for injuries or damage in the event of any loss or injury and the Buyer releases and waives all right of recovery against Beclawat arising by way of subrogation.
- b. **DISPUTE RESOLUTION:** All rights and remedies of Beclawat set forth in these Terms shall be cumulative and in addition to any other or further rights and remedies provided at law or in equity.
- c. **TIME IS OF THE ESSENCE:** Time shall be of the Essence in these Terms.
- d. **EXPORT/IMPORT:** The Buyer agrees that it shall comply with all applicable import and export control laws and/or regulations, including without limitation those of the United States and/or other jurisdictions from which

Products may be supplied or to which Products may be shipped. In no event shall Buyer use, transfer, release, import, export or re-export Products in violation of such applicable laws and/or regulations.

- e. ASSIGNMENT: The Buyer shall not assign an Order or any portion thereof or any obligations relating thereto without the advance, written consent of Beclawat.
- f. RIGHTS AND REMEDIES: All rights and remedies of Beclawat set forth in these Terms shall be cumulative and in addition to any other further rights and remedies provided at law or in equity.

LANGUAGE:

The parties acknowledge that they have requested that these Terms and all documents related hereto be drafted in the English language. Les parties reconnaissent qu'elles ont requis que ce contrat et tous les avis ou autres documents qui s'y rapportent soient rediges en langue anglaise.

