

## TERMS AND CONDITIONS OF SALE

These terms and conditions of sale ("Terms and Conditions") apply to each sale of goods ("Goods") and/or services ("Services" and together with Goods, the "Deliverables") by PROCOR LIMITED, a Canadian corporation ("Seller"), to its customer ("Buyer") in addition to the product and/or service descriptions, quantities, specifications, and prices as agreed by the parties and described or accepted in Seller's sales confirmation or acknowledgement.

1. **ENTIRETY.** Seller's acceptance of Buyer's purchase order is expressly conditioned on Buyer's acceptance of these Terms and Conditions. This document and any warranty provided by Seller in connection therewith contain all of the terms and conditions of the agreement between Seller and Buyer with respect to the Deliverables to be sold or provided to Buyer and supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms. Seller objects to and will not be bound by any terms or conditions not set forth herein, including but not limited to any additional or inconsistent terms in Buyer's purchase order. These Terms represent the final and complete understanding of the parties and may be amended or cancelled only by mutual written agreement
2. **TERMS OF PAYMENT.** Prices are stated and payable in either Canadian Dollars or U.S. dollars. Unless Seller specifically agrees to hold prices open for a length of time on Seller's price quotation, all prices are subject to change without notice to Buyer and all Deliverables will be invoiced to and paid by Buyer at Seller's prices in effect at the time of delivery or performance. Without limiting the foregoing, Seller may increase or decrease prices from time to time based upon increases or decreases to freight charges and surcharges, raw material cost changes, changes in cost of labor, and force majeure events. All payments are due within 15 days from date of invoice. All payments shall be made without abatement, deduction, discount or setoff. Late payments are subject to a service charge of the lesser of 1.5% per month or the highest rate permitted under applicable Law. Buyer agrees to pay Seller's attorney's fees and costs incurred by Seller in collecting any amounts due hereunder or in otherwise exercising Seller's rights and remedies hereunder. If, in Seller's judgment, the financial condition of Buyer
3. **TAXES.** Prices do not include any sales, use, excise, privilege, ad valorem, or other taxes, duties, tariffs, assessments, fees or other costs ("Taxes") now or hereafter imposed or levied by or under the authority of any foreign, federal, state, provincial, or local law, rule, or regulation (collectively, "Law") arising from the sale, purchase, manufacture, transportation, delivery, storage, use, performance or consumption of the Deliverables (other than taxes on Seller's net income). If Seller pays any such Taxes, Buyer shall, upon demand, immediately reimburse Seller for such amounts. Seller will be under no obligation to contest the validity of any such Taxes or to prosecute any claims for refunds or returns.
4. **DELIVERY.** Delivery of any Goods shall be made EXW (Incoterms 2010) Seller's facility. If shipping arrangements are not specified by Buyer, Buyer authorizes Seller to make arrangements for shipment. Risk of loss or damage will pass to Buyer when the Goods are made available to Buyer's carrier. Title to any Goods will pass upon payment in full by Buyer. Seller will use reasonable commercial efforts to fill orders within the time stated, but stated delivery/performance dates are estimates only, and Seller reserves the right to re-adjust delivery/performance schedules without liability. Acceptance by Buyer of the Deliverables waives any claim for loss or damage resulting from delay, regardless of the cause of delay. Except as otherwise expressly agreed by Seller in writing, Seller will not be responsible for freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order. If Buyer fails to take due delivery within 30 days from date of invoice, the Goods will continue to be at Buyer's sole risk in all respects, and Seller will be entitled to charge Buyer any fees associated with the failure to take delivery, including, but not limited to, any inventory or storage fees. Seller will have no obligations to mitigate, and Buyer is entitled to, in its

sole and absolute discretion, dispose of the Goods not taken by Buyer within 60 days of the date of invoice in any manner and at any price Seller deems appropriate, and Buyer will be liable for any shortfall. Seller may, however, in its sole discretion and at Buyer's expense, transport, store, insure and otherwise protect the Goods for Buyer.

5. **INSPECTION.** Buyer shall inspect the Goods upon receipt and Services upon performance, and Buyer shall immediately notify Seller in writing of any claims that the Deliverables are different than identified in Buyer's purchase order. Seller shall then determine the remedy pursuant to Section 12. Failure by Buyer to give such written notice will constitute irrevocable acceptance by Buyer of all Deliverables.
6. **CHANGES OR CANCELLATION.** Changes in specifications or designs to any Deliverables, changes in delivery or performance schedules or reschedules or cancellations of orders are not permitted unless Seller has accepted same in writing, has determined the additional charge to be made, if any, and Buyer has agreed in writing to pay such additional charge. Once ordered, deliverables that are made to order, discontinued or custom products ("Special Order Goods") may not be cancelled by Buyer. Seller reserves the right to cancel any purchase orders or releases thereunder, or terminate any agreement relating to purchase of Deliverables, upon 10 days' notice to Buyer.
7. **RETURNS.** Goods may not be returned without prior written authorization of Seller and compliance with Seller's return policies and procedures then in effect.
8. **SERVICE TERMS.** (a) Services will be provided at Seller's then current service rates; (b) If the site or equipment where the Services are to be performed is not cleaned or otherwise prepared for the Services upon Seller's arrival, Seller may charge a service fee and for any delay and/or travel time; (c) Buyer shall provide Seller with advance notice of any rules, requirements and Laws applicable to the performance such Services; (d) Seller may refuse, without liability, to provide Services and to allow Seller service personnel to suspend Services or vacate any site where, in Seller's opinion, provision of Services would pose a risk to safety. In such event, Buyer is responsible for payment of any delay and/or travel time at Seller's regular service rates; and (e) Buyer is solely liable for all damages or injuries caused or contributed to by Buyer that may occur.
9. **INSURANCE.** Buyer shall, at its own expense, maintain and carry insurance in full force and effect

in amounts and types customary in Buyer's industry and satisfactory to Seller with insurance carriers having an AM Best rating of "A- VII" or better. Certificates evidencing the required coverages must be furnished to Seller prior to the commencement of any Deliverables and on an annual basis thereafter, and at any additional times upon Seller's request. Buyer shall provide Seller with 30 days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by Law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller. If Buyer fails to maintain the insurance required herein, Seller may, in its sole discretion, purchase such insurance on Buyer's behalf and charge back the cost thereof to Buyer, with a reasonable markup.

10. **LIMITED WARRANTIES.** Unless otherwise provided by Seller in writing, Seller warrants to Buyer that (i) Goods designed and manufactured by Seller will be free from defects in material and workmanship for a period of one (1) year after the date of invoice under normal use and service for the purpose for which they were sold; and (ii) the Services will be performed in a competent manner in accordance with generally accepted industry standards. This warranty shall be void if the Goods are in any way subjected to: (a) improper installation, storage, or use; (b) lack of proper preventative maintenance or service; (c) abnormal operating conditions or applications; (d) repair by the Buyer or Buyer's agent without the prior written consent of Seller; or (e) modification by the Buyer or Buyer's agent without prior written consent of Seller. This warranty shall not cover: (x) normal wear and tear or (y) external causes such as accidents, damage, abuse, misuse, or other actions or events beyond Seller's reasonable control. THESE ARE SELLER'S ONLY WARRANTIES WITH RESPECT TO THE DELIVERABLES. SELLER DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. If during the warranty period, Buyer notifies Seller in writing, within thirty (30) days of discovery, that the Deliverables are not in conformity with the warranty and Seller agrees, after Seller's inspection (at its option), then: (a) for Goods, Seller will repair, replace or refund the total amount received by Seller therefor, at its sole option, provided

Buyer returns such Goods to Seller's facility for inspection; and (b) for Services, Buyer's sole remedy is for Seller, at its sole option, to re-perform the Services or credit Buyer's account therefor. These shall be Buyer's exclusive remedies for Seller's failure to provide Deliverables in conformity with the warranty. Any claims not made during the warranty period are deemed waived. Seller's warranty does not attach to Deliverables or parts not manufactured by Seller. Any contract created between Seller and Buyer is subject to the specific conditions that (a) Seller is not obligated to provide insurance or indemnify Buyer, and (b) there are no flow-downs from any person or entity including the federal government that become part of the contract.

**11. LIMITATION OF LIABILITY.** SELLER SHALL NOT BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OR ANY OTHER LOSSES, DAMAGES OR EXPENSES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE PRICE RECEIVED BY SELLER FOR THE DELIVERABLES WITH RESPECT TO WHICH SUCH LIABILITY IS CLAIMED.

**12. INDEMNIFICATION.** Buyer shall defend, indemnify and hold Seller, its affiliates and their respective officers, directors, shareholders, members, managers, representatives, agents and employees harmless from and against all claims, suits, demands, losses, liabilities, damages (including injury and death) and expenses (including reasonable attorneys' fees) (collectively, "Losses"), arising out of or relating to: (a) Buyer's or its agents provided specifications, design, structure, operation, material or method of making Deliverables ("Buyer's Specifications"), including without limitation, any resulting violation of intellectual property or proprietary rights; (b) Buyer's use, misuse or disposal of Deliverables or materials; (c) Buyer's non-compliance with any Law; (d) breach of these Terms and Conditions by Buyer; (e) any

claim of product liability, personal injury, property damage, and product defect that arises out of or is related to Buyer's receipt or use of the Deliverables or presence on Seller's property; (f) Buyer's negligence or willful misconduct; and (g) Deliverables subjected to: (i) improper installation or storage; (ii) accident, damage, abuse or misuse; (iii) abnormal operating conditions or applications; (iv) operating conditions or applications above the rated capacity of the Deliverables; (v) repairs or modifications made to all or part of the Deliverables without the prior written consent of Seller; or (vi) a use or application other than or varying in any degree from the specifications and Seller's instructions.

**13. PATENTS.** Provided Buyer has made all payments due Seller, Seller shall defend any suit brought against Buyer based upon a claim that the Deliverables infringe any United States patent issued as of the date of Seller's quotation and shall pay any damages and costs finally awarded therein against Buyer, provided that Seller is notified promptly in writing of such suit and is given full authority, information and assistance by Buyer to defend or settle the suit. Notwithstanding anything to the contrary, Seller will have no liability to the extent that the suit is based upon: (i) modifications to any item made by or on behalf of Buyer in a manner that causes the infringement; (ii) use of any item in combination with the Deliverables that causes the infringement; (iii) failure of Buyer to use corrections or enhancements to the Deliverables that are made available by Seller; (iv) Buyer's specifications; (v) Buyer's distribution, marketing or use for the benefit of third parties of the Deliverables; or (vi) any use not authorized under these Terms and Conditions. If the Deliverables or any part thereof are deemed to infringe any such patent, Seller shall, at its expense and sole option either: (a) procure for Buyer the right to continue using said Deliverables; (b) replace them with non-infringing Deliverables; (c) modify them so they become non-infringing; or (d) remove them and refund the purchase price for them depreciated over no more than 3 years.

**14. TOOLING.** In no event shall Buyer have or obtain any interest in any tools, jigs, dies, patterns, etc. (collectively, "Tooling") made or obtained for the production of the Deliverables. Such Tooling shall remain the exclusive property of Seller.

**15. CONFIDENTIALITY.** All non-public or proprietary information supplied by Seller to Buyer, including IP (as defined below), quotations, and pricing information, is confidential, solely for the use

in performing hereunder. Buyer will not disclose such information, in whole or in part, to any person, other than such of Buyer's employees and agents who need to know such information for the purpose of performing hereunder, unless prior written consent is obtained from Seller. Buyer will require such employees and agents to keep confidential such information, and will indemnify Seller in the event of a breach of this provision by its employees or agents.

**16. INTELLECTUAL PROPERTY.** All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights, trademarks, patents and applications therefor, and other information or intellectual property disclosed or otherwise provided to Buyer by Seller and all rights therein (collectively, "IP") are and will remain the exclusive property of Seller. Buyer shall have no claim to, nor ownership interest in, any IP, in whatever form and any copies thereof, shall be promptly returned to Seller upon request. Buyer acknowledges that no license or rights of any sort are granted to Buyer hereunder in respect of any IP.

**17. FORCE MAJEURE.** Seller shall not be liable for delay or failure to fulfill any of its obligations to Buyer due to causes beyond Seller's reasonable control, whether foreseeable or unforeseeable, including but not limited to strikes or labor difficulties, lockouts, acts or omissions of any governmental authority or Buyer, fires, floods, storms, earthquakes, acts of God, explosions, accidents, electrical surges or failures, theft, virus outbreaks, pandemics, quarantine restrictions, war, riot, embargoes, delays in transportation, raw material shortages, inability to obtain labor, parts, fuel, or material from usual sources or to access use of Seller's facilities, or any other events or circumstances not within the reasonable control of Seller, whether similar or dissimilar to any of the foregoing. In the event of any such delay or failure, Seller may, at its sole discretion and option, either extend the time of performance for a period equal to the time lost by reason of the delay or terminate the arrangement with Buyer without liability.

**18. TERMINATION.** Seller shall have the right to cease work or terminate its arrangement with Buyer, in whole or in part, at any time, without liability, if: (i) Buyer breaches or defaults under these Terms and Conditions; (ii) a petition under any applicable Law relating to bankruptcy, insolvency, or reorganization is filed by or against Buyer; (iii) Buyer executes an assignment for benefit or creditors; or (iv) a receiver

is appointed for Buyer or any substantial part of its assets. In all cases, Seller's rights are cumulative, are not exclusive and are in addition to all other rights and remedies it may have at law or in equity. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination.

**19. CERTAIN BUYER OBLIGATIONS.** Buyer shall (a) cooperate with Seller in all matters relating to the Deliverables; (b) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that Seller deems necessary in order to complete and provide the Deliverables in accordance with these Terms and Conditions; and (c) provide in a timely manner such materials or information that Seller requests in order to complete and provide the Deliverables, and Buyer shall ensure that such materials and information are complete and accurate in all respects.

**20. COMPLIANCE.** Buyer shall comply with all applicable Laws. Buyer will comply and will cause each of its employees and agents to comply with Seller's policies, procedures, rules and regulations, including, but not limited to, Seller safety procedures and site sign-in requirements. Without limiting the foregoing, Buyer shall ensure that all personnel while on Seller's site abide by the current procedures and regulations for personnel performing services on a Seller site and all other reasonable safety, security, and other instructions and directions issued by Seller, as well as all applicable Laws. Seller has the right, in its sole discretion, to require any personnel of Buyer to leave and not return to any Seller site.

**21. SECURITY INTEREST.** As collateral security for the payment of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all right, title and interest of Buyer in the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds). This security interest constitutes a purchase money security interest under the UCC. Upon demand, Buyer shall pay all costs and expenses with respect to the administration and enforcement of the foregoing security interest.

**22. WAIVER.** No modification or waiver of this agreement or any of its provisions is valid unless expressly agreed to by Seller in writing. Failure of Seller at any time to require Buyer's performance of any obligation hereunder shall not affect Seller's right

to require performance of that obligation. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein.

**23. GOVERNING LAW.** Any dispute arising out of or related to these Terms and Conditions will be governed by and construed in accordance with the laws of the State of Illinois without giving effect to its conflict of laws principles. Exclusive jurisdiction and venue for any lawsuit relating to these Terms and Conditions will lie in the state courts in Cook County, Illinois.

**24. SEVERABILITY.** The unenforceability or invalidity of any clause in these Terms and Conditions shall not have an impact on the enforceability or validity any other clause in these Terms and Conditions. Any unenforceable or invalid clause shall be regarded as removed from these Terms to the extent of its unenforceability and invalidity.

**25. MISCELLANEOUS.** Buyer may not assign any of its rights, duties or obligations without Seller's prior written consent and any attempted assignment without such consent, even if by operation of law, will be void. There are no third-party beneficiaries. Provisions which by their nature should survive will remain in force after any termination or expiration of any sale of Deliverables. Section headings are included solely for the convenience of the parties. Any rule of construction that requires any ambiguities to be interpreted against the drafter shall not be employed in the interpretation of this Agreement, or any document drafted or delivered in connection with the transactions contemplated by this Agreement. Seller will at all times be an independent contractor and Buyer will make no express or implied representations to the contrary.