

## General Terms and Conditions (Canada)

### Raedlinger Primus Line CA Inc.

Applicable to all Quotations, Purchase Orders, Invoices, Order Acknowledgments and Purchase Agreements

#### I. General

1. These Terms and Conditions are applicable to the person, firm, company or other purchasing entity (hereinafter referred to as "Buyer") and Raedlinger Primus Line CA Inc., a Toronto corporation ("Raedlinger" or "Seller") for items ordered by Buyer from Seller in whatever form or quantity (hereinafter referred to as "Goods"). Any other document(s) containing terms and/or conditions that are in addition to or inconsistent with the following Terms and Conditions listed herein, including but not limited to penalties or liquidated damages for Seller's failure to meet shipment dates or any other reason, shall not be binding upon Seller without the express written acceptance of liability by an authorized representative of Seller. Seller's failure to object to any additional, inconsistent, or other provisions contained in any other order or form of communication from Buyer shall not be construed as either a waiver or acceptance of such provisions. Seller reserves the right to correct any clerical or typographical errors at any time.

#### II. Acceptance

1. These terms and any other written stipulations to which these terms are stated to apply (collectively, the "Agreement") constitute the entire agreement between Seller and Buyer. No modification(s), waiver(s), alteration(s), or additional term(s) shall be valid as against Seller unless said modification(s), waiver(s), alteration(s), or additional term(s) have been acknowledged in writing by Seller's duly authorized representative.

#### III. Prices

1. All prices are in Canadian Dollars, unless otherwise provided for in the Quotation or Purchase Order Confirmation. In the event that there is an increase in taxes or customs or costs incurred by the Seller as a result of governmental actions, then the Seller hereby reserves the right to increase the prices accordingly.

#### IV. Taxes and Other Charges

1. In addition to Seller's invoice price or quote price, Buyer is also responsible for payment of any use-tax, sales tax, excise tax, duty, custom, inspection or testing fee, and/or any other fee, tax, or charge imposed by governmental or non-governmental authority arising from the goods provided by Seller. In the event Seller is required to pay any of the fees or charges listed in this paragraph, Buyer herewith agrees to immediately reimburse Seller for this cost, or in lieu of such payment by Seller, Buyer agrees to timely provide an exemption certificate or other comparable document to the entity or authority imposing said fee, tax and/or charge. Buyer further agrees to waive any and all claims regarding the reasonableness of such payment and will be liable to Seller for reasonable attorneys' fees and/or court costs incurred by Seller as a result of Buyer's failure to pay the charges listed in this paragraph.

#### V. Limited Warranty

1. Seller guarantees Goods meet applicable standards only when used as directed under normal operation or service. If, and upon the determination of Seller's inspection, any Goods are

deemed to be defective in material or workmanship within thirty (30) days from the receipt of shipment, Seller may, at its option, either replace any defective part(s) of the Goods to Buyer, or refund the purchase price of the defective part(s). Such replacement, however, shall not extend the warranty period provided in this paragraph. In the event that Buyer has an authorized Third Party install or make any changes or repairs to the Goods, this warranty is voided and Seller is in no way liable for actions that occur subsequent to such Third Party action.

2. This guarantee excludes: (i) the labor and costs of labor for the removal of any Seller's Goods and (ii) any incidental or consequential damages or loss, whether based on breach of express or implied warranty, negligence, strict liability or any other legal theory.
3. SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH REGARD TO THE DESIGN, SALE, MERCHANTABILITY OR FITNESS OF THE GOODS FOR A PARTICULAR PURPOSE OR USE EXCEPT AS EXPRESSLY SET FORTH HEREIN. SELLER IS NOT SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, TORT CLAIMS INCLUDING NEGLIGENCE AND STRICT LIABILITY, OR ANY OTHER THEORIES OF LAW. SELLER IS UNDER NO EVENT LIABLE FOR ANY SPECIFIC, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSS, DAMAGES, EXPENSE, INJURY, DISMEMBERMENT, OR DEATH OF ANY KIND WHATSOEVER.
4. This warranty shall be voided in the event of: any improper use of the Goods, whether intentional or unintentional; use beyond capacity; failure to report defects to Seller within warranty period; substitution of materials not approved by Seller; failure or damage due to misapplication; lack of proper maintenance; abuse; improper installation or repair; abnormal operating conditions as a result of temperature, moisture or corrosive matter; unauthorized alteration or repair by third parties which, according to Seller's judgment, materially and/or adversely affects the Goods.

#### VI. Additional Warranty

1. An additional Five (5) year extended warranty is available from Raedlinger based on the terms and conditions presented in its Warranty Certificate available upon request by the Buyer.

#### VII. Design Improvements

1. Goods sold by Seller are changed from time to time with changes that are intended to improve the design and construction of the Goods. As such, any illustrations, specifications or other descriptive material submitted to the Buyer may not depict an exact replica of the Goods at the time of delivery, and are merely intended as a general description of the Goods, and are not deemed to constitute a part of this proposal or a warranty as to the particular specifications of the Goods.

#### VIII. Delay

1. Seller is not responsible for delay(s) in delivery for reasons beyond Seller's reasonable control, including but not limited to, Force Majeure. In the event of delay under this paragraph, the delivery schedule shall be extended by amount of time originally lost due to the delay.

#### **IX. Force Majeure**

1. "Force Majeure" means any cause not within the reasonable control of the party affected. Events of Force Majeure include, without limitation, acts of God, lockouts or other labor disturbances, wars, blockades, quarantine embargoes, riots, fires, explosions, failures of production facilities, shortages of fuel transportation, utilities, or raw materials, and governmental laws and regulations.

#### **X. Payments**

1. Unless otherwise agreed to by the parties in writing, Fifty percent (50%) of the total amount is due upon the acceptance of the Purchase Order by Raedlinger. The remaining balance must be paid in full prior to the products leaving Seller's warehouse. Any other payment terms (e.g. Letter of Credit, third party Guaranty) must be agreed upon by the Seller in writing upon Seller's acceptance of the Purchase Order.

#### **XI. Buyer Default**

1. In the event Buyer does not comply with any part of the payment terms of this Agreement, Seller shall have the right to elect to accelerate and declare immediately due and payable all debts and obligations of Buyer of any nature due to Seller under this Agreement, and, in addition, Seller may refrain from making any further shipments, whether under a particular purchase order or another contract, until such default or noncompliance is remedied. If at any time there is a substantial change in the financial condition of Buyer arising from a change in business or market conditions or otherwise, or in the event of Buyer's merger, reorganization, change in corporate or legal status, or other change in Buyer's business form, or if Buyer is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, or if a petition is filed under any applicable chapter of the relevant bankruptcy law respecting Buyer, or if any lien, arising from judicial process or otherwise, is placed on any material asset of Buyer, or if any tax lien is filed against Buyer, Seller, at its option, shall have the right to declare all amounts accrued under this purchase order or any other contract immediately due and to change the payment terms hereunder, or any other contract between Buyer and Seller, for any future deliveries, including, but not limited to, requiring cash in advance of delivery or delivery of an acceptable Letter of Credit. Any failure of performance of this purchase order by Buyer shall at the option of Seller be grounds for Seller, in addition to any remedies of Seller provided by law, to cancel or terminate this purchase order and all other contracts of sale between Buyer and Seller, and to recover all damages provided by law, including reasonable attorneys' fees and disbursements and court costs.

#### **XII. Delivery; Assumption of Risk**

1. Unless otherwise expressly agreed in writing by the Parties, delivery of Seller's Goods is deemed to be complete once the products have left the Seller's warehouse via Buyer's carrier or via a common carrier. Buyer has the option to select the method of transportation and routing of shipment. Seller is not responsible for any damage(s) occurring during transit or loss of shipment, and Buyer must make all claims directly to carrier. Buyer must submit claims for shortages and/or incorrect Goods to Seller in writing within ten (10) business days after receipt of shipment. Except as agreed upon in writing and signed by both Buyer and Seller, the passage of risk for shipment of all Goods is DDP Seller's Warehouse. Seller reserves the right to ship partial orders of the Goods.

#### **XIII. Indemnification**

1. Seller shall not be liable whatsoever to Buyer for any claim or action by any third party arising out of, or alleged to rise out of, the delivery of Goods covered hereby or out of the use, by Buyer, or third parties, of the Goods covered hereby. Buyer

agrees to indemnify Seller and its parent entities, its present and future subsidiaries, any and all subsidiaries of a subsidiary or parents of a parent, all affiliated corporations, and successors and assigns or any company or companies which either directly or indirectly controls or has the power to control a party, or any company or companies which is controlled by a part of which a party has the right to control (hereinafter referred to as the "Affiliated Companies") the aforementioned entities as to any all such claims. Third Parties shall be deemed to include, without limitation, employees of Buyer as well as all third parties not connected with Buyer or Seller.

#### **XIV. Acceptance of Goods**

1. All Goods shall be accepted subject to the Buyer's rights of inspection, rejection, and revocation of acceptance pursuant to Part 3 of the Sales of Goods Act (Ontario).

#### **XV. Copyright**

1. Unless otherwise agreed to in writing by the Parties, all drawings, developments, designs, natural, scale and CAD models, auxiliary tools and devices shall remain the property of Raedlinger and not the Buyer. All Intellectual Property and Copyrights shall remain with Raedlinger and may not be transferred.

#### **XVI. Governing Law and Venue**

1. This Agreement shall be exclusively governed by the laws of the Province of Ontario giving effect to the conflict of law provisions thereto. The parties further consent to the exclusive personal jurisdiction of any applicable court in the city of Toronto, in the province of Ontario, Canada for any legal action or proceeding brought to enforce, construe or interpret these Terms and Conditions. Each party hereto irrevocably submits to the jurisdiction of each court in each such action or proceeding. The United Nations Convention on Contracts for the International Sale of Goods ("CISG") shall not apply.

#### **XVII. Arbitration**

1. Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The number of arbitrators shall be one. The place of arbitration shall take place in Toronto, ON, Canada.

#### **XVIII. Assignment**

1. This Agreement may not be assigned by Buyer without prior written consent of Seller.

#### **XIX. Security Interest**

1. Seller reserves a purchase money security interest in the Goods, all additions and accessories thereto, and all replacements, products, and proceeds thereof to secure payment of the purchase price. Said security interest shall be retained until the purchase price is paid in full. Buyer agrees Seller has the right to file the Agreement or financing statements pursuant to the Uniform Commercial Code; or other applicable law to evidence or perfect Seller's security interest in the Goods. Upon Seller's request, Buyer will join with Seller in the execution of such financing statements. Buyer further agrees Seller has the right to invoice Buyer and Buyer will pay all fees, taxes, and assessments associated with the filing of the Agreement or financing statements.

#### **XX. Severability**

1. If a court of competent jurisdiction holds any term or provision of this Agreement to be invalid or unenforceable, such

provision or portion thereof shall be considered separate and apart from the remainder of the Agreement and the other provisions shall remain fully valid and enforceable.

**XXI. Modification**

1. The terms of this Agreement may not be amended, modified, waived, superseded, or rescinded except by a writing signed by Seller's duly authorized representative.

**XXII. Entire Agreement**

1. The Agreement, together with these Terms and Conditions and any attachments, manuals, guidelines, requirements, exhibits and supplements specifically referenced therein, constitutes the entire agreement between the Parties and supersedes any and all other prior contracts and undertakings, both written and oral, among the parties or any of them, with respect to the subject matter herein and, except as otherwise expressly provided herein, is not intended to confer upon any other person any rights or remedies hereunder.