



TERMS AND CONDITIONS FOR SALE OF GOODS AND SERVICES

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Unless expressly otherwise stated in writing, the following Terms and Conditions of Service apply to any sale of goods and services by Canal Marine and Industrial Inc. ("Canal"), and shall be incorporated into all quotations or contracts, whether written or oral, by or with Canal, to the exclusion of all other terms and conditions (including any conditions which the Customer purports to apply under any purchase order, confirmation of order, specification, or other document of any kind). The Customer shall be deemed to have full knowledge of, and to have assented to, the terms and conditions contained herein, and these Terms and Conditions shall be binding upon the Customer.

1. Definitions

"Canal" means Canal Marine and Industrial Inc;

"Contract" means the purchase order signed by the Customer and accepted by Canal in writing, for the sale of Goods or Services, together with these Terms and Conditions. In the event of any conflict, these Terms and Conditions shall prevail over any other documents included in the Contract.

"Contract Price" means the agreed price stated in the Contract for the sale of Goods and Services, including adjustments (if any) in accordance with the Contract;

"Customer" means the person to whom Canal is providing Goods or Services pursuant to the Contract; "Customer Order" has the meaning set out in Article 2 herein;

"Goods" means the equipment, parts, materials, supplies, software, and other goods Canal has agreed to supply to the Customer pursuant to the Contract.

"Hazardous Materials" means any toxic or hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, radioactive material, petroleum or petroleum-derived products or by-products, contaminant or any other chemical, substance, material or emission, that is regulated, listed or controlled pursuant to any national, state, provincial, or local law, statute, ordinance, directive, regulation or other legal requirement of Canada including the Canadian Hazardous Products Act and the Ontario Environmental Protection Act, or the country of the Site.

"Services" means the services Canal has agreed to perform for the Customer under the Contract.

"Site" means the premises or vessel where Goods are used or Services are performed, not including Canal's premises from which it performs Services. "Terms and Conditions" means these "Terms and Conditions for Sale of Goods and Services"

2. Formation of Contract.

Each Customer Order (Purchase Order) shall be deemed to be an offer by the Customer to purchase such Goods and/or Services subject to these Terms and Conditions. No Customer Order shall be deemed to be accepted by Canal until such time as Canal issues a written acknowledgment of order, or Canal delivers the Goods to the Customer or commences performance of the Services, whichever is earlier. The Customer acknowledges and agrees that, until such time as Canal issues a written acknowledgment of order or delivers the Goods or commences performance of the Services, no legally binding or enforceable contract exists between Canal and the Customer. An acceptance and acknowledgment of a Customer Order by Canal shall constitute the complete agreement, subject to the terms and conditions of sale herein set forth.

Unless otherwise stated, any quotation provided by Canal in respect of a Customer Order it receives shall remain valid and available for acceptance for a period of thirty (30) days after which it shall be deemed null and void.

3. Scope of Work

The Customer is responsible for specifying the scope of work that it requires Canal to perform or that Canal has proposed to perform in any Customer Order. Any material changes to the scope of the work requested by the Customer must be approved in writing in advance by Canal. Canal is not obligated to proceed with any change until both Parties agree upon such change in writing. The written change documentation will describe any changes in scope and schedule, and the resulting changes in price and other provisions, as agreed.

4. Payment Terms

Payment is due within thirty (30) days following the date of invoice. Interest on overdue accounts is eighteen percent (18%) per annum. Any service call less than 4 hours will be invoiced at our minimum service rate of 4 hours. The minimum billing on any Customer Order for parts shall be \$150.00.

6. Taxes

All fees for Canal's services shall be exclusive of all taxes and duties, however designated, including sales, use, property, customers, import, excise and value added taxes, except as such taxes as may be imposed solely on Canal's income ("Applicable Taxes"). Payment of Applicable Taxes shall be the sole responsibility of the Customer.

7. Delivery

Unless expressly stated delivery schedules are approximate and are based on prevailing market conditions applicable respectively at the time of Canal's acceptance of the applicable Customer Order. Delivery shall also depend on the prompt receipt by Canal of the necessary information to allow maintenance of the manufacturer's engineering and manufacturing schedules. Canal may extend delivery schedules or may, at its option, cancel any Customer Order in full or in part without liability other than to return any deposit or prepayment which is unearned by reason of the cancellation. Partial deliveries are permitted. Canal may deliver Goods in advance of the delivery schedule. If Goods delivered do not correspond in quantity, type or price to those itemized in the shipping invoice or documentation, the Customer shall notify Canal within ten (10) days after receipt.

8. Security Interest, Title Transfer and Risk of Loss

8.1 - Risk of loss shall pass to The Customer upon delivery. Unless otherwise specified, delivery shall take place at Canal's premises at 155 Cushman Road, St. Catharines, Ontario, Canada.

8.2 - The Customer hereby grants, and Canal retains, a purchase money security interest in any and all Goods supplied to the Customer by Canal pursuant to any Contract, and the title of all such Goods remains with Canal until the Contract Price is fully paid and all other obligations of the Customer are satisfied in full. Notwithstanding the foregoing, the Customer shall assume full risk of any loss of, or damage to, the Goods at the time and place where such Goods are delivered, in keeping with the shipping terms hereunder.

9. Storage upon Default by Customer

9.1 - If any Goods to be delivered under any Contract or if any Customer equipment repaired at Canal's facilities cannot be shipped to or received by the Customer when ready due to any cause attributable to the Customer, its agents, employees, contractors, subcontractors, or other persons for whom the Customer is at law responsible, Canal may ship the Goods and equipment to a storage facility, including storage at the place of manufacture or repair, or to an agreed freight forwarder. If Canal places Goods or equipment into storage, the following apply: (i) title and risk of loss immediately pass to the Customer, if they have not already passed, and delivery shall be deemed to have occurred; (ii) any amounts otherwise payable to Canal upon delivery or shipment shall be due; (iii) all expenses and charges incurred by Canal related to the storage shall be payable by the Customer upon submission of Canal's invoices; and (iv) when conditions permit and upon payment of all amounts due, Canal shall make such Goods and repaired equipment available to the Customer for delivery.

9.2 - If repair Services are to be performed on the Customer's equipment at Canal's facility, the Customer shall be responsible for, and shall retain risk of loss of, such equipment at all times, except that Canal shall be responsible for damage to the equipment while at Canal's facility to the extent such damage is caused by Canal's negligence.

10. Warranty

10.1 - Canal warrants that Goods shall be delivered free from defects in material, workmanship and title and that Services shall be performed in a professional and workmanlike manner in accordance with accepted industry standards and practices. Any testing, inspection or calibration services performed reflect the condition of the equipment inspected, tested or calibrated at the time of inspection, testing or calibration.

10.2 - The warranty for Goods shall expire twelve (12) months from first use or eighteen (18) months from delivery, whichever occurs first. The warranty for Services shall expire thirty (30) days after performance of the Service, or any other warranty period otherwise stipulated in writing by Canal. For components or parts not manufactured by Canal, the original manufacturer's warranty shall apply to the extent assignable by Canal.

10.3 - In the event that any Goods or Services do not meet the above warranties, the Customer shall promptly notify Canal in writing prior to expiration of the warranty period. Provided that prompt notice of any defect is given by the Customer to Canal in writing within the applicable warranty period, and provided further that Canal shall have determined, in its sole discretion acting reasonably, upon inspection of the Goods or Services, that the Customer's claim is valid under the terms of this warranty, Canal shall: (i) at its sole and exclusive option, repair or replace any defective Goods f.o.b. point of shipment; and (ii) re-perform defective Services. Warranty repair, replacement or re-performance by Canal shall not extend or renew the applicable warranty period.

10.4 - Notwithstanding anything contained in these Terms and Conditions or any other document included in the Contract, Canal's entire liability, and the Customer's sole and exclusive remedy, for any and all claims based on failure of or defect in Goods or Services (or any and all breaches of any of the warranties contained in this Article 10), regardless of when the failure, defect, or breach arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise, is as described in this Article 10. The warranties provided in this Article 10 are exclusive and are in lieu of all other warranties, conditions and guarantees, written oral, implied or statutory.

11. Disclaimer

Except as expressly set out in these Terms and Conditions: (i) the Goods and Services are provided "as is"; (ii) Canal makes no representation, warranty, condition, or guarantee, express, statutory or implied with respect to the Goods or Services and any part, component or aspect thereof.; and (iii) Canal expressly disclaims all other representations, warranties, conditions, or guarantees, including without limitation, any and all representations, conditions, or guarantees of description, quality, merchantability, operation, integration, adequacy, suitability, title, non-infringement, non-interference with use and/or enjoyment, or fitness for a particular purpose, and all other duties and obligations, whether express or implied by statute, common law, custom, usage of trade, course of dealing, or otherwise, however arising.

12. Limitation of Liability

12.1 - No Liability - Despite any provision hereof, in no event shall Canal be liable for any: (i) indirect, consequential or special damages of any kind; (ii) punitive, exemplary or aggravated damages; (iii) loss or damages to the business or property of the Customer, including without limitation, damages for loss of profits or revenue, failure to realize expected savings, interruption of business, loss of business opportunity, loss of use of equipment or systems, cost of replacement power, cost of capital, downtime costs, increased operating costs, or re-procurement amounts; or (iv) if the Customer is supplying any Goods or Services to a third party, or using any Goods or Services at a facility owned by a third party, any claims by any such third party for any of the foregoing types of damages, whether based in contract, tort, equity, at law, or upon any other theory of liability, and notwithstanding the failure of essential purpose of any remedy contained in the Contract.

12.2 - Limitation on Time - Notwithstanding anything contained in these Terms and Conditions or any other document included in the Contract: (i) all liability of Canal shall terminate upon expiration or earlier termination of the applicable warranty period; and (ii) no action arising out of or in relation to the Contract, Canal's obligations thereunder, or any Goods or Services, regardless of form, may be brought by the Customer after expiration or earlier termination of the applicable warranty period, provided that the Customer may continue to enforce a claim for which it has given notice prior to expiry or termination of the applicable warranty period by commencing an action or arbitration, as applicable under the Contract, before expiration of any applicable limitation period, but in no event no later than twelve (12) months after expiration or earlier termination of the applicable warranty period, regardless of whether the facts giving rise to the cause of action by that time are known to, or reasonably out to have been discovered by, the Customer.

13. Termination

13.1 - Termination by Customer for Cause - The Customer may terminate the Contract (or any affected portion thereof) for cause if Canal: (i) commits a material breach of the Contract which does not otherwise have a specified contractual remedy, and such breach continues uncured for thirty (30) days following the provision of written notice of such breach by the Customer, provided however, that if the nature of the breach is such that it cannot be cured within a thirty (30) day period, Canal shall have such additional time as may be reasonably necessary, provided that Canal shall have commenced and shall thereafter diligently pursue cure of the breach; (ii) voluntarily enters into proceedings in bankruptcy, makes an assignment for the benefit of its creditors, is adjudged to be bankrupt or insolvent, a petition is filed against Canal under any applicable bankruptcy, insolvency, reorganization, or similar laws from time to time in effect affecting the rights of creditors generally in any relevant jurisdiction and such petition is not discharged within sixty (60) days after its filing, or a liquidator, receiver, trustee or similar person is appointed with respect to Canal's assets; or (iii) is dissolved or wound-up, voluntarily or otherwise, or ceases to carry on business.

13.2 - No Cancellation by Customer - Subject to Section 13.1, Customer Orders accepted by Canal are not subject to cancellation by the Customer, except with the express prior written consent of Canal. In such cases where Canal authorizes cancellation by the Customer, the Customer shall pay Canal for all Goods delivered, Services performed, and reasonable expenses incurred by Canal up to and including the effective date of termination, including without limitation, all labour and materials costs, together with all losses, damages and expenses suffered or incurred by Canal in connection with the termination, including without limitation, Canal's usual overhead and reasonable profit and cancellation charges from Canal's suppliers.

13.3 - Termination by Canal for Cause - Without prejudice to any other rights or remedies available to Canal under the Contract, at law or in equity, Canal may terminate the Contract (or any affected portion thereof) for cause, immediately and without notice, and without any further obligation or liability to the Customer if the Customer: (i) commits a material breach of the Contract, other than with respect to payment, which does not otherwise have a specified contractual remedy, and such breach continues uncured for thirty (30) days following the provision of written notice of such breach by Canal, provided however, that if the nature of the breach is such that it cannot be cured within a thirty (30) day period, the

Customer shall have such additional time as may be reasonably necessary, provided that the Customer shall have commenced and shall thereafter diligently pursue cure of the breach; (ii) voluntarily enters into proceedings in bankruptcy, makes an assignment for the benefit of its creditors, is adjudged to be bankrupt or insolvent, a petition is filed against Canal under any applicable bankruptcy, insolvency, reorganization, or similar laws from time to time in effect affecting the rights of creditors generally in any relevant jurisdiction and such petition is not discharged within sixty (60) days after its filing, or a liquidator, receiver, trustee or similar person is appointed with respect to Canal's assets; (iii) is dissolved or wound-up, voluntarily or otherwise, or ceases to carry on business; or (iv) Canal has not received any payment when due under the Contract.

13.4 - Returned Goods - No Goods may be returned to Canal without Canal's prior written permission. Canal reserves the right to decline all returns or to accept them subject to a handling/restocking charge. Notwithstanding that Canal may have accepted the return of Goods for credit, Canal reserves the right to adjust the amount of any credit given to the Customer on return of the Goods based on the conditions of the Goods upon arrival at Canal's facilities. Credit for returned Goods will be issued to the Customer only where such goods are returned by the Customer and not by any subsequent owner of the Goods.

14. Environmental, Health and Safety Matters

14.1 - The Customer shall maintain safe working conditions at the Site, including, without limitation, implementing appropriate procedures regarding Hazardous Materials, confined space entry, and energization and de-energization of power systems (electrical, mechanical and hydraulic) using safe and effective lock-out/tag-out ("LOTO") procedures including physical LOTO or a mutually agreed upon alternative method.

14.2 - The Customer shall promptly advise Canal in writing of all applicable Site-specific health, safety, security and environmental requirements and procedures. Without limiting the Customer's responsibilities under this Article 17, Canal has the right but not the obligation to, from time to time, review and inspect applicable health, safety, security and environmental documentation, procedures and conditions at the Site.

14.3 - If, in Canal's reasonable opinion, the health, safety, or security of personnel or the Site is, or is apt to be, imperiled by security risks, the presence of or threat of exposure to Hazardous Materials, or unsafe working conditions, Canal may, in addition to other rights or remedies available to it, evacuate some or all of its personnel from Site, suspend performance of all or any part of the Contract, and/or remotely perform or supervise work. Any such occurrence shall be considered an event of force majeure. The Customer shall reasonably assist in any such evacuation.

14.4 - Operation of The Customer's equipment is the responsibility of The Customer. The Customer shall not require or permit Canal's personnel to operate the Customer's equipment at Site.

14.5 - Canal has no responsibility or liability for the pre-existing condition of the Customer's equipment or the Site, including any pre-existing contamination. Prior to Canal starting any work at Site, the Customer will provide documentation that identifies the presence and condition of any Hazardous Materials existing in or about The Customer's equipment or the Site that Canal may encounter while performing under this Contract. The Customer shall disclose to Canal industrial hygiene and environmental monitoring data regarding conditions that may affect Canal's work or personnel at the Site. The Customer shall keep Canal informed of changes in any such conditions.

14.6 - If Canal encounters Hazardous Materials in the Customer's equipment or at the Site that require special handling or disposal, Canal is not obligated to continue work affected by the hazardous conditions. In such an event, the Customer shall eliminate the hazardous conditions in accordance with applicable laws and regulations so that Canal's work under the Contract may safely proceed, and Canal shall be entitled to an equitable adjustment of the price and schedule to compensate for any increase in Canal's cost of, or time required for, performance of any part of the work. The Customer shall properly store, transport and dispose of all Hazardous Materials introduced, produced or generated in the course of Canal's work at the Site.

14.7 - The Customer shall indemnify Canal for any and all claims, damages, losses, and expenses arising out of or relating to any Hazardous Materials which are or were (i) present in or about the Customer's equipment or the Site prior to the commencement of Canal's work, (ii) improperly handled or disposed of by the Customer or the Customer's employees, agents, contractors or subcontractors, or (iii) brought, generated, produced or released on Site by parties other than Canal.

15. Governing Law

15.1 - Governing Law - The Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without giving effect to: (i) the conflict of law provisions thereof; and (ii) the United Nations Convention on Contracts for the International Sale of Goods. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario.



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16. General Provisions

16.1 – *Assignment* - The Contract may not be assigned by the Customer without the prior written consent of Canal, which Canal may refuse in its sole and absolute discretion, and for any reason whatsoever. Canal may assign or transfer the Contract at any time, and for any reason. The Customer acknowledges and agrees that Canal may subcontract all or any portion of any Services to be provided by Canal.

16.2 - *Modification and Waiver* - The Contract may not be modified unless agreed to in writing by both Parties.

16.3 - *Entire Agreement* - The Contract constitutes the entire agreement between the Parties pertaining to the subject matter of the Contract.

16.4 – *Enurement* - The Contract shall enure to the benefit of, and be binding upon, the Parties and their respective successors, affiliates and permitted assigns.

16.5 – *Survival* - The expiry or termination of the Contract will not affect the survival and enforceability of any provision of the Contract which is expressly or impliedly intended to remain in force after such termination. Without limiting the generality of the foregoing, the provisions of Articles 1, 3, and 4-20, inclusive, shall survive expiry or termination of the Contract.