

## **Red Deer Ironworks International SRL - Terms & Conditions**

### **General terms (applies to all orders)**

#### **1) DEFINITIONS**

- a) **"Agreement"** means, collectively, these standard terms and conditions, and the PO.
- b) **"Buyer"** means the person, firm, or company to which this PO is issued, as identified in and who accepts this PO.
- c) **"Goods"** means all materials, equipment (including any part thereof) software, and information to be supplied by Seller in accordance with this PO.
- d) **"PO"** means this purchase order and the face of this purchase order, terms and conditions, specifications, drawings and attachments, exhibits, and documents referenced therein.
- e) **"Parties"** means the Buyer and Seller, and **"Party"** means each individually.
- f) **"Seller"** means the person, firm or company to which this PO is issued, as identified in and who accepts this PO.
- g) **"Services"** means any services to be purchased by Buyer from Seller under the PO.

#### **2) ACCEPTANCE**

- a) Buyer agrees and accepts all terms and conditions of this PO;
- b) Seller's written acceptance or shipment of any article or commencement of performance hereunder, in whole or in part, shall constitute acceptance of PO; and
- c) 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.

#### **3) CHANGES, RETURNS, AND ORDER CANCELLATIONS**

- a) Order Changes. Buyer may change or amend an order only by submitting a request to the Seller and any changes are conditional on the approval of Seller at Seller's sole discretion. Upon Seller's approval of any requested changes, any changes submitted to the Buyer will be deemed to be completed by an authorized representative of Buyer and will be binding on Buyer.
- b) Goods Returns. Goods may be returned for credit with Seller's advance written consent, consent at 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 by Seller, within thirty (30) days of purchase. Buyer must obtain return material authorization identification prior to returning any purchased material back to the Seller. Buyer will bear all freight costs for returns back to Seller's factory or such other location indicated by Seller.
- c) Order Cancellation. The Buyer may not cancel any orders without written consent of the Seller. In such an event, 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, 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. After such cancellation, Buyer's materials and any completed Goods, 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.

#### **4) INCOTERMS, TITLE, DELIVERY, SHIPPING, DELAYS, CLAIMS**

- a) Incoterm. Unless otherwise agreed to in writing by the parties, all shipments are made EX WORKS to Seller's place of business.

Buyer accepts all risk and expense of shipping, and all risk of loss or damage in transit.

- b) Transfer of Title. Notwithstanding delivery and the passing of risk in the Goods under any PO, title and property in the Goods, including full legal and beneficial ownership, shall pass to the Buyer at the Seller's shipping point. If the Goods are sold for export from Canada, then title to Goods will pass to Buyer when the Goods enter international waters or airspace or cross international borders outside Canada.
- c) Delivery of Goods. Delivery of the Goods to the carrier at Seller's shipping point shall constitute delivery to Buyer. Delivery is complete when the Goods have been loaded on the means of transport provided by the carrier. Seller has sole reasonable discretion to choose a carrier on behalf of Buyer. Seller reserves the right, in its discretion, to determine the exact method of shipment, unless specified otherwise in the PO. 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.
- d) Pre-Shipment Inspections. Buyer shall pay all costs of any pre-shipment inspections
- e) Delays. Delay in delivery of any installment shall not relieve Buyer of Buyer's obligations to accept remaining deliveries.
- f) Claims. Buyer shall inspect Goods immediately upon receipt, and notify Seller in writing of any claims for shortages, defects, or damages. In the event of a claim, Buyer shall hold the Goods for Seller's written instructions concerning disposition. If Buyer fails to notify Seller of any shortages, defects, or damages within three (3) days of receipt, such Goods shall be deemed to conform to the terms and conditions and to have been irrevocably accepted by the Buyer, and Buyer waives any and all claims for shortages, defects, or damages relating to the Goods.

#### **5) PRICING AND TAXES**

- a) Prices. Prices are in USA currency, unless stated otherwise, and are subject to change without notice. Current prices may be discussed via telephone with Seller where Buyer requires this information prior to placing an order. Seller only guarantees price quotations that have been made in writing, said price guaranty expires on the 30th calendar day after the date indicated on the written quotation unless otherwise noted. When placing your order, please reference our quoted prices or our pro forma number. If you place your order by phone, we will confirm our current price at that time.
- b) Taxes. Buyer shall be solely responsible for and shall pay all present or future applicable local, provincial, or federal taxes.

#### **6) BUYER'S REPRESENTATIONS AND WARRANTIES**

- a) Buyers Use of Goods. Buyer represents and warrants that it shall use all Goods ordered herein in accordance with the section 6(a) (i) below, and that any such use of Goods will not violate any applicable laws or regulations.
  - i) 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. Buyer agrees to take and

require others to take all reasonable measures to avoid each such hazard. Buyer agrees to notify its customers or users of the Goods, as the case may be, of these warnings, and to deliver to its customers or users of the Goods all written warnings provided with each good by Seller.

- b) Notice. Buyer shall notify Seller in writing within fifteen (15) days of Buyer's receipt of knowledge of any accident, or incident involving 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.
- c) Limitation. 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.

## 7) SELLER'S REPRESENTATIONS AND WARRANTIES

- a) Warranty. The Seller warrants that Goods are guaranteed to be free from defects in material or workmanship. This warranty is subject to the following provisions:
- i) Failure to adhere to or comply with operation manual instructions or improper installation or use may void all warranties and associated warranty obligations.
- ii) Should any Goods prove defective within six (6) months from date of purchase, it may be returned to Seller's factory or branch, transportation charges prepaid, and the part will be replaced F.O.B. Seller's factory or branch without charge. This warranty is conditioned upon Buyer's completion of Seller's warranty claim form providing all reasonable and applicable details related to the defect and following Seller's warranty claim procedures in all material respects.
- iii) The aforementioned warranties shall not apply to:
- (1) Any failure of the Goods caused by the design of the Buyer, manufactured to Buyer's specification by the Seller;
  - (2) any Goods which have been altered or changed after receipt by Buyer without Seller's authorization;
  - (3) damage caused by improper use or installation including and not limited to careless handling, including that by freight companies.
  - (4) any failure of the Goods to conform to such warranties as a result of improper maintenance, installation or service, operation, or use contrary to furnished instructions;
  - (5) the transportation or improper storage of such items; or
  - (6) any abuse, misuse, neglect or negligence of Buyer or its end users.

It is understood and agreed that the Goods 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 Goods, provided that the design and implementation of such inclusion into the larger system is in conformity with specifications.

- b) 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 patents covering the Goods itself or the use thereof

in combination with other Goods or in the operation of any process.

## 8) LIABILITY AND INDEMNITY

- a) Liability. The warranties set forth in this PO is the Seller's entire liability for any claim to damages whatsoever and Buyer waives all other warranties, expressed or implied, statutory or otherwise, the same being expressly waived by Buyer.
- b) Limitation of Liability. Seller's liability under this PO shall be limited to the amount equal to the Seller's total charges for any Goods or Service.
- c) Waiver of Special or Punitive Damages. Buyer hereby waives all claims against Seller for consequential, special or punitive damages, including lost profits and business interruption.
- d) Indemnity. Buyer agrees to indemnify and hold harmless Seller, its employees, agents, successors or assigns, 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 Goods, or by reason of Buyer's failure to perform its obligations contained herein.

## 9) FORCE MAJEURE

- a) Either party shall be excused from performance of this PO when and to the extent that performance is delayed or prevented by any cause, except lack of finances, beyond its reasonable control ("force majeure"). The party wishing to invoke this Article shall promptly notify the other in writing of the cause upon which it relies, including reasonably full particulars in respect thereof and likely duration of such circumstances.

## 10) DISPUTE RESOLUTION

- a) Act Reasonably. The Parties agree to use their best efforts to resolve any disputes arising between them as reasonably, efficiently and cost effectively as possible.
- b) No Court Action. No court action or arbitration with respect to any disputes may be commenced unless the Parties first attempt negotiation and have submitted to mediation. Neither Party may commence arbitration or litigation with respect to the matters submitted to mediation until the completion of the initial mediation session, or forty-five (45) days after the date of filing the written request for mediation, whichever occurs first.
- c) Negotiation. To first attempt to resolve all disputes by negotiations, in good faith and acting reasonably.
- d) Mediation.
- i) If the Parties do not resolve some or all of the dispute through negotiation, then the Parties agree to refer the issue(s) in dispute to mediation with a mutually acceptable single mediator.
  - ii) The Parties shall share the costs of the mediator.
  - iii) If the Parties cannot agree on a mediator, each Party shall be entitled to appoint a mediator and to pay its own costs associated therewith.
- e) Arbitration.
- i) If the Parties do not resolve all of the issues in dispute through mediation, then within 30 days from the date of the mediator's report, the Parties shall submit those issues to binding arbitration pursuant to the *International Commercial Arbitration Act* (Barbados) 2007-45, as amended.

- ii) Arbitration must be completed and an award rendered by the arbitrator no later than 120 days from the appointment of an arbitrator.
- f) 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 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.
- g) 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.
- h) Attorney's Fees and Interest. Parties agree to pay all reasonably incurred legal expenses, including attorney's fees incurred by the prevailing party in the prosecution or defense of any claim arising out of or related to this Agreement. The Parties also agree to pay all reasonably incurred legal expenses, including attorney's fees incurred in collecting on a final judgment. The Parties also agree that interest will accrue at 6% per annum (.5% per month), beginning 30 days after the invoice becomes due or, if that amount is against the jurisdictional law, the maximum amount allowed under the applicable law.

#### 11) GENERAL PROVISIONS

- a) Entire Agreement. This PO constitutes the entire agreement between the Parties respecting the subject matter and constitutes and supersedes all other prior agreements, representations and understandings of the Parties, written or oral.
- b) Applicable Law. This Agreement will be governed, construed, and enforced in accordance with the laws of Barbados, without regard to its conflict of law rules. The application of the U.N. Convention on Contracts for the International Sale of Goods is specifically excluded from this order.
- c) Severability. The invalidity or unenforceability of any provisions of this PO shall not affect the validity or enforceability of any other provision of this PO which shall remain in full force and effect.
- d) Waiver. 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.
- e) Binding Agreement. 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.