

These Terms and Conditions of Sale and, where applicable, the quotation, sales order confirmation, invoice and all documents incorporated expressly by reference therein shall constitute the entire agreement governing the sale of the Seller's products (the "Contract").

PRICE-PAYMENT

The prices stated are those in effect on the date hereof and are subject to change based on prices in effect on the date of shipment. Interest at the rate of the lesser of (i) 18% per annum, or (ii) the maximum rate allowable by applicable law, shall be charged on overdue payments. Prices are for Seller's standard packaging only, and F.O.B. Seller's plant or warehouse. All orders are subject to credit approval. Terms of payment are net, 30 days. In the event of non-payment by Buyer, Buyer shall pay all of Seller's costs of collection, including reasonable legal fees.

PERFORMANCE-CHANGES-DELAYS

- (a) Any time for delivery stated herein is approximate. Delivery shall be deemed complete by tender of the products to a common carrier. Partial shipments are permitted.
- (b) Orders are not subject to cancellation or revision, in whole or in part, without written approval of Seller and the payment of the applicable cancellation charges and expenses, if any, levied by the Seller.
- (c) Should Buyer cause changes to be made in the design or construction of any products, or otherwise delay or interrupt the progress of the work hereunder, Buyer will reimburse Seller for any additional costs arising therefrom.
- (d) Seller shall not be liable for any delay caused by acts of God, riot or civil commotion, government orders, rules, regulations, suspensions or requisitions of any kind, strikes or other stoppages of labor or shortage in the supply of labor or material, fire casualties or accidents, or any cause, whether of the same or a different character, beyond Seller's control. Any such delay shall extend the time for delivery of the products. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries.
- (e) If delays due to Buyer's fault exceed 60 days in the aggregate, the entire purchase price shall be due and payable to Seller on demand.
- (f) Any claim relating to quantity or type of products ordered or shipped to Buyer shall be made to Seller in writing within 7 days after Buyer's receipt of the products and any such claim made thereafter shall be barred.

RISK OF LOSS

After delivery to the carrier, Buyer assumes the risk of all loss or damage to the products resulting from any cause whatever.

LIMITED WARRANTY

Seller makes the following limited warranty:

Seller warrants all products manufactured and sold by it (excluding all items not manufactured by Seller, such as trade accessories, that may be sold with, attached to, or operated with Seller's products), to (i) for products manufactured to the specifications of Buyer, conform to the agreed written specifications, if any, for such products, and/or (ii) be free from material defects in material and workmanship under normal use and service for twelve (12) months from the date of shipment from the Seller's factory to the original purchaser. Any claim under this Limited Warranty shall be made to Seller in writing within three (3) months after the date of shipment of the products and any such claim made thereafter shall be barred. SELLER'S ENTIRE OBLIGATION AND LIABILITY, AND BUYER'S EXCLUSIVE REMEDY, UNDER THIS WARRANTY IS LIMITED TO THE REPLACEMENT OR REPAIR, IN SELLER'S SOLE DISCRETION, AT THE FACTORY OF SELLER OR AT A POINT DESIGNATED BY IT, OF SUCH PRODUCTS AS SHALL APPEAR TO SELLER UPON INSPECTION AT SUCH POINT TO HAVE BEEN DEFECTIVE IN MATERIAL OR WORKMANSHIP AT THE TIME SOLD, PROVIDED THAT THE PRODUCT OR PRODUCTS CLAIMED DEFECTIVE ARE RETURNED TO THE SELLER DESIGNATED INSPECTION POINT, TRANSPORTATION CHARGES PREPAID BY THE BUYER, WITHIN THE ABOVE-NOTED WARRANTY PERIOD.

This Contract will not be deemed to have failed of its essential purpose and there shall be no fundamental breach of this Contract so long as Seller is willing and able to replace or repair any defective product in the manner prescribed above.

This limited warranty applies only to new and unused products which after shipment from the Seller's factory have not been altered, changed or replaced in any manner.

If, after inspection of the returned products, Seller determines that the defect is a result of misuse, mishandling, installation, abnormal conditions of operation, unauthorized repair or modification, or due to the Buyer's failure to install, maintain or operate the product in compliance with the written instructions, then the Buyer shall reimburse Seller for all expenses incurred by Seller in connection with the replacement or repair of the product. Any product returned to Seller for replacement shall become the property of Seller.

The Buyer shall be responsible for all costs of shipping, customs clearance and other related charges in connection with Seller's replacement or repair of products located outside of Canada pursuant to this limited warranty.

DISCLAIMER OF WARRANTIES

THE WARRANTIES, GUARANTEES, REPRESENTATIONS AND CONDITIONS SET OUT SPECIFICALLY ABOVE UNDER THE HEADING "LIMITED WARRANTY" ARE IN LIEU OF ALL OTHER WARRANTIES, GUARANTEES, REPRESENTATIONS AND CONDITIONS, WHETHER BY SELLER OR THIRD PARTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE

IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. NO WARRANTY, GUARANTEE, REPRESENTATION OR CONDITION, EXPRESS OR IMPLIED, MADE BY ANY DISTRIBUTOR, SALES REPRESENTATIVE, FIELD AGENT OR EMPLOYEE OF SELLER WHICH IS NOT SPECIFICALLY SET FORTH HEREIN SHALL BE BINDING ON SELLER.

LIMITATION OF LIABILITY

IN NO EVENT SHALL SELLER, ITS AFFILIATES OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS OR SUPPLIERS BE LIABLE TO BUYER OR ANY THIRD PARTY (INCLUDING ANY SUBSEQUENT ACQUIRER) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES RESULTING FROM PERSONAL INJURY OR DEATH, DAMAGE TO OR LOSS OF PROPERTY OR EQUIPMENT, BUSINESS INTERRUPTION, LOSS OF REVENUE OR PROFIT AND HARM TO GOODWILL OR BUSINESS REPUTATION) WHETHER BASED IN BREACH OF CONTRACT (INCLUDING FUNDAMENTAL BREACH OR BREACH OF A FUNDAMENTAL TERM), TORT (INCLUDING NEGLIGENCE) OR OTHERWISE IN LAW OR EQUITY, ARISING OUT OF OR IN CONNECTION WITH ANY MATTER RELATING TO THIS CONTRACT OR ANY OTHER CONTRACT OF SALE BETWEEN THE SELLER AND THE BUYER OR TO THE PRODUCTS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL THE MAXIMUM LIABILITY OF SELLER, ITS AFFILIATES OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS OR SUPPLIERS, IN THE AGGREGATE, EXCEED THE AMOUNT PAID BY BUYER TO SELLER TO PURCHASE THE SPECIFIC PRODUCTS PROVIDED BY THE SELLER THAT GIVE RISE TO THE CLAIM OR CAUSE OF ACTION.

NON-RELIANCE

Buyer is not relying upon any advice, representations or warranties (except the warranties expressly set forth above) of Seller, or upon Seller's skill or judgment regarding the Seller's products. Buyer is solely responsible for the design and specifications of the products, including without limitation, the determination of suitability for Buyer's application of the products.

INDEMNIFICATION

Buyer will indemnify, defend and hold Seller harmless from all loss, liability, damage and expense, including legal fees, arising out of any claim (a) for infringement of any intellectual property right of any third party, including without limitation, patent, trademark, copyright, misappropriation of trade secrets, unfair competition or similar charge, by any products supplied to Seller by Buyer or supplied by Seller to Buyer in accordance with the designs or specifications, or other instructions, of Buyer, or (b) arising out of or connected with: (i) the use of the products, or (ii) any items into which the products are incorporated, including, but not limited to, any claim for product liability (whether or not based on negligence or strict liability of Seller), breach of warranty, breach of contract or otherwise.

DUTIES AND TAXES

In addition to the specified purchase price, Buyer will pay any and all federal, provincial or local taxes, duties, excises, license fees and other charges levied, assessed or imposed upon Seller due to the manufacture, sale, purchase or delivery of the products. Buyer shall also pay the cost by which such manufacture is increased by reason of any law, ordinance or regulation adopted or promulgated by any government or governmental subdivision, department or agency, or other source, after the date hereof, but prior to the completion and delivery hereunder.

SPECIFICATIONS, DRAWINGS, PATTERNS AND TOOLS

Seller's specifications, drawings, patterns and tooling shall be the sole and exclusive property of Seller unless otherwise agreed in writing.

ENTIRE AGREEMENT

This Contract constitutes the entire agreement between Buyer and Seller with respect to the subject matter of this Contract, and supercedes any other, whether made heretofore or hereafter, (i) agreement or discussion, oral or written, express or implied, and (ii) any, inconsistent terms and conditions whether contained in Buyer's purchase order or otherwise. Other than with respect to alternate "Price-Payment" terms agreed to in writing by Seller, no (i) change, modification, or waiver of these Terms and Conditions of Sale, or (ii) conditions, usage or trade, course of dealing or performance, understanding or agreement purporting to change, modify, supplement, vary, explain or waive any of these Terms and Conditions of Sale, shall be binding upon the Seller unless made in writing, where such writing makes specific reference to these Terms and Conditions of Sale and has been signed by an authorized representative of the party against which enforcement thereof is sought. Seller reserves the right to change these Terms and Conditions of Sale without prior notice.

RETURNED GOODS

No goods will be accepted for return without prior written authorization by Seller. Freight must be prepaid on all such returns, and each return is subject to inspection and acceptance by Seller to assure the goods are in a "resalable" condition. A minimum 15% handling and restocking charge will be applied to all authorized returns. Special or made-to-order goods are NOT returnable. Attachment chains returned are at the manufacturer's discretion.

GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws applicable therein (excluding any conflict of laws rule or principle which might refer such construction to the laws of another jurisdiction) and Buyer and Seller expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

MISCELLANEOUS

If any provision of this Contract is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from this Contract and the other provisions shall remain in full force and effect, unless such invalid provisions are held to be a material part of this Contract such that it may be reasonably assumed that the parties would not have entered into this Contract without such provisions in place. No waiver by Seller with respect to any breach or default or any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver is specifically expressed in writing and is signed by the party to be bound thereof. Buyer shall not assign this contract, or any of its rights or obligations hereunder, without the prior written consent of the Seller. The parties hereto have requested that this Contract and all correspondence and all documentation respecting this Contract be written in the English language. Les parties aux présentes ont exigé que la présente entente, de même que toute la correspondance et la documentation relative à cette entente, soient rédigées en langue anglaise.

Tsubaki of Canada Limited ©All rights reserved. (April 21, 2005)

INDEMNITY STATEMENT

All sales are subject to Tsubaki of Canada Limited Standard Terms and Conditions . Modifications and welding of product supplied by Tsubaki of Canada Limited may compromise their overall safety, performance and durability. Tsubaki accepts no responsibility for any alterations to its products or the welding of any attachments to its products not carried out directly by Tsubaki.