

Terms and conditions of Sale

TCS-08

EGS Electrical Group LLC and its affiliates, subsidiaries, and divisions (including but not limited to Appleton Electric LLC; McGill Manufacturing Company, Inc.; Easy Heat, Inc., O-Z Gedney Company LLC; and SolaHD) are herein referred to, as applicable, as the "Seller," and the customer or person or entity purchasing goods ("Goods") and/or licensing software and/or firm-ware which are pre loaded, or to be loaded into Goods ("Software") from Seller is referred to as the "Buyer". These Terms and Conditions, any price list or schedule, quotation, acknowledgment or invoice from Seller relevant to the sale and license of the Goods and all documents incorporated by specific reference herein or therein, including the Software License Agreement, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Goods and/or license of Software by Seller to Buyer. Seller's acceptance of Buyer's purchase order is expressly conditional on Buyer's assent to all of Seller's terms and conditions of sale, including terms and conditions that are different from or additional to the terms and conditions of Buyer's purchase order. Seller reserves the right in its sole discretion to refuse orders.

1. ORDER ACCEPTANCE: Purchaser agrees that all Purchase Orders and final contracts between the purchaser and EGS Electrical Group Canada Ltd. are Expressly Subject to all terms and conditions of this policy sheet. All quotations and bids for contract and order acceptance are subject to final written approval by EGS Electrical Group Canada Ltd.

2. CHANGES: Prices and Discounts are subject to change without notice.

3. PAYMENT TERMS: Customers are required to pay all invoices in full.

3A. CASH DISCOUNT TERMS:

To earn 1% discount:

i) Invoices dated the 1st to the 25th inclusive, are payable on the 10th of the following month, net immediately thereafter.

ii) Invoices date the 26th to the 31st inclusive, are payable on the 10th of the NEXT following month, net immediately thereafter.

3B. Cash discount does not apply to transportation charges, special packaging, or other special preparation or handling charges invoiced separately.

3C. Invoices bear the date of shipment.

3D. Cash discounts will not be allowed on late payments because of alleged billing discrepancies, lack of freight bill, shortage not discovered within 15 days, etc.

4. ORDER TERMS: All orders received by EGS Electrical Group Canada Ltd. from distributors may include products from all classes of material. However, the net value of Poles cannot be included in determining freight terms. **MINIMUM ACCEPTABLE ORDER - \$150.00** Distributor's net billing, plus transportation charges.

4A. ADDITION TO ORDERS: Additions cannot be made to orders already processed. They will be entered as new orders subject to new order freight terms and minimum order billing.

5. DELIVERY TERMS ON SHIPMENTS TO DISTRIBUTOR'S STOCK: All shipments routed by EGS Electrical Group Canada Ltd. are shipped F.O.B. shipping point, with transportation charges prepaid cheapest way, to any Distributor's city in Canada (except Yukon and Northwest Territories) on all orders having a net value of \$2500.00 or more. In computing the net value of an order to determine the freight terms, all Poles are to be EXCLUDED. No freight allowed for orders less than \$2500.00 net. Such orders will be shipped freight collect. Shipment to points outside Canada are F.O.B. shipping point, with domestic transportation charges prepaid cheapest way to point of export, on all orders having a net value of \$2500.00 or more, excluding Poles and Reelite items (except Portable Reelites).

5A. All poles are shipped F.O.B. from manufacturer, no freight allowed. Customers are responsible for off-loading of poles.

6. DELIVERY TERMS ON SHIPMENTS TO DISTRIBUTOR'S STOCK, ROUTED BY THE DISTRIBUTOR OTHER THAN VIA CHEAPEST WAY: Where the Distributor directs routings other than the cheapest way, delivery terms are F.O.B. shipping point with transportation charges collect, or upon request prepaid, with transportation charges added to the invoice.

7. DELIVERY TERMS ON SHIPMENTS DIRECT TO DISTRIBUTOR'S CUSTOMERS: Shipments of orders shipped direct to the Distributor's customer are shipped F.O.B. shipping point, with the transportation charges prepaid the cheapest way to any Distributor's city in Canada (except Yukon and Northwest Territories) on all orders having a net value of \$2500.00 or more, excluding Poles. No freight allowed for orders which are less than \$2500.00 net. No allowance will be made for cartage beyond the Distributor's city.

7A. Express, Air Express and Air Freight etc., shipments shipped direct to the Distributor's customer, are F.O.B. shipping point, freight collect. Upon request, such shipments will be made prepaid with the transportation charges added to the invoice.

7B. Shipments of orders shipped direct to the Distributor's customer, when the total net value of the order is less than \$2500.00 net, excluding Poles are subject to a Direct Shipment Charge of 5% on the total value of the invoice.

7C. BUYER PICK-UPS FROM SELLER FACILITIES: For Buyer pick-ups (will call), Seller assumes no liability in the transportation, vehicle involved in the transportation, or the method of loading Goods involved in such a delivery.

7D. ATX ORDERS FOR DESTINATIONS OTHER THAN THE UNITED STATES: Sales of ATX Goods through the EGS sales channel are governed by the Terms and Conditions, with the following exceptions: All shipments routed by Seller to destinations outside of the United States are shipped Ex-Works our facility in Amiens, France with transportation charges prepaid on orders over \$5,000 in value, cheapest way to point of debarkation in either France or Belgium.

8. DELIVERY: While every effort is made to ship as scheduled, any delay or failure to ship due to strikes, lockouts, fires, breakdowns, suppliers delays, lack of

shipping space, lack of customer approvals, correction or clarification of an order, government acts or regulations, acts of God, or any circumstances beyond the control of EGS Electrical Group Canada Ltd., shall not be breach of contract.

9. CARTAGE: EGS Electrical Group Canada Ltd. will not assume, allow or pay any special notification charges assessed by the carrier or any charges for cartage, detention, or store door delivery at destination.

10. PAYMENTS OF FREIGHT CHARGES: On all prepaid or collect shipments, EGS Electrical Group Canada Ltd. will not allow, assume or refund to the Distributor or his customer any freight charges erroneously paid by the Distributor or his customer.

11. CLAIM FOR DAMAGES OR LOSS IN TRANSPORTATION: All shipments are made F.O.B. shipping point. Titles to the goods pass to the purchaser on delivery to the common carrier at shipping point. The consignee should file with the transportation company for any claim for loss or damage in transit.

12. PRICING:

12A. Orders are accepted for immediate shipment with the understanding that the material will be billed at price in effect at time of order acceptance.

12B. All written quotations made by EGS Electrical Group Canada Ltd., Elmira, Ontario are valid for a period of 30 days. All quotations and bids, and the acceptance of all contracts and orders are subject to the final approval by the head office of EGS Electrical Group Canada Ltd., Elmira, Ontario.

12C. Hold For Release Orders will be billed at the price in effect on the date of release. Deferred Orders will be billed at the price in effect on date of shipment.

12D. Prices are subject to adjustments made in compliance with any act of government and are stated in Canadian dollars.

13. RETURN GOODS POLICY: Return permission must be obtained from the head office in writing. The request to return must show invoice and purchase order number and date quantity and catalogue numbers.

13A. All material returns must be shipped freight prepaid of the destination stipulated on the return goods authorization. Material returned without authorized "Return Goods Memo" will not be accepted.

13B. Credit will be issued for only the quantities received by EGS Electrical Group Canada Ltd.

13C. Items which are discontinued, items not normally stocked by EGS Electrical Group Canada Ltd., special items, catalogue items which are modified to customers specifications or unusual quantities of any catalogue item made especially to fill an order for which the distributor has received notice and acknowledged, will not be accepted for return.

13D. Material purchased more than 18 months prior to the request to return will not be allowed.

13E. Reelite products, because they are designed and constructed to handle specific cable requirements, cannot be accepted.

13F. We cannot accept the return of material shipped by us directly to the distributor's customer nor will we accept the return of any material directly from distributor's customer's stock.

13G. All Material Returned must be of currently catalogued items, and only in standard packaged quantities.

13H. Returns for Die cast or steel fittings is not permitted.

13I. The above return goods policy supersedes any previous published statements on return goods policies.

14. ORDERS FOR SPECIAL ITEMS: Any order for special items not appearing in the Appleton catalogue or price sheets will be subject to the following:

14A. On request, a quotation for such orders will be sent to you which must be accepted in writing.

14B. We reserve the right to ship and charge within 10% above or below the quantity ordered.

14C. Items listed in the catalogue but which are specifically made for an order such as: with optional modification of special hub arrangements, breakers, starters, panelboards, marine products, and Reelites are not subject to cancellation after order is accepted by EGS Electrical Group Canada Ltd.

15. QUALIFICATION: The mere possession of the Distributor Net Cost Index does not entitle the holder to the prices stated therein unless he has been appointed a franchised distributor for the products of EGS Electrical Group Canada Ltd.

16. SPECIAL PACKING: EGS Electrical Group Canada Ltd. reserves the right to charge for special packing made at the request of the customer.

16A. SPECIAL MARKING: On orders requiring special marking, EGS Electrical Group Canada Ltd. reserves the right to assess a service charge. The amount of the labour charge depends upon the time required to perform the task.

17. SPECIAL CHARGE FOR MOUNTING CABLE ON REELITE: EGS Electrical Group Canada Ltd. will place cable supplied by the distributor on any Reelite if the distributor desires. The labour charge for this service will depend upon the gauge and number of conductors of the cable. Price for this service will be given upon application. We cannot guarantee the operation of any Reelite provided with a cable other than that supplied by EGS Electrical Group Canada Ltd.

18. STANDING INSTRUCTIONS: EGS Electrical Group Canada Ltd. can not accept standing general or blanket instructions. Each transaction must be accompanied by full instructions on the order itself.

19. CLAIM FOR SHORTAGES: No claim for shortages will be recognized by EGS Electrical Group Canada Ltd. unless such alleged shortage is reported to the Head office of EGS Electrical Group Canada Ltd., Elmira, Ontario, within fifteen days after receipt of shipment at destination.

20. TAXES: EGS Electrical Group Canada Ltd. reserves the right to add to the sales price of its products an amount equivalent to any sales taxes, duties, imports, revenues, excise or other taxes which may be imposed and made applicable to their products.

21. PRICING ERRORS: For their own convenience, some Distributors follow the practice of placing prices, discounts and terms on their purchase orders, with the expectation that EGS Electrical Group Canada Ltd. will verify such prices, discounts, and terms before accepting and entering the order. Such verification would cause unnecessary clerical work and delay. Correct prices, discounts and terms on EGS products are a matter of record with its Distributors; therefore, in accepting orders, EGS Electrical Group Canada Ltd. does so with the understanding and agreement that material will be billed at the correct prices, discounts and terms even though incorrect prices, discounts or terms may appear on the Distributor's purchase order.

EGS Electrical Group Canada Ltd. will correct its own errors, but cannot assume responsibility for errors of others.

22. WARRANTY – DISCLAIMER OF WARRANTIES: Products of EGS Electrical Group Canada Ltd. are warranted against defects of material and workmanship under normal and proper use and service for a period of one year from date of shipment from factory.

THERE ARE NO EXPRESS WARRANTIES OR WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTIES OTHER THAN THOSE MADE EXPRESSLY HEREIN.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND EXPRESSED AND IMPLIED WARRANTIES. THE PARTIES AGREE THAT THE IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED FROM THIS TRANSACTION AND SHALL NOT APPLY TO THE GOODS SOLD. EGS Electrical Group Canada Ltd. assumes no responsibility for the application, proper selection or installation of its products. The remedies provided for in this warranty are limited to the furnishings of new parts free of charge in exchange for parts which have proven defective. Expenses incurred in repairing or replacing any defective part, or any expenses resulting from consequential damages, will not be allowed. Reelite warranty is void where cable is installed by others. Normal wear of Reelite parts, which includes springs, collector rings and bushes, are excluded from warranty.

23. CANCELLATION OR SUSPENSION: Orders are not subject to cancellation or suspension except by our consent and upon terms that will indemnify EGS Electrical Group Canada Ltd. against loss. Order cancellations are subject to cancellation charges.

Order for special items not appearing in our catalogue or price sheets will be subject to the terms described under #14 (Orders for Special Items). Order cancellations must be placed in writing to the head office of EGS Electrical Group Canada Ltd., Elmira, Ontario.

24. PRICE CHANGES: Prices in this Price List are correct and up-to-date. If prices change, an Addendum to the current Price List or an entire new Price List will be issued. Prices and additional information are compiled with care but obviously cannot be guaranteed and are subject to change without notice. Clerical errors are subject to correction.

25. DOCUMENTATION: Seller shall provide Buyer with that data/documentation which is specifically identified in Seller's quotation. If additional copies of data/documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect.

26. INSPECTION/TESTING: Buyer, at its option and expense, may inspect and observe the testing by Seller of the Goods for compliance with Seller's standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller's plant at such reasonable time as is specified by Seller. Any rejection of the Goods must be made promptly by Buyer before shipment. Tests shall be deemed to be satisfactorily completed and the test fully met when the Goods meet Seller's criteria for such procedures.

27. DRAWINGS: Seller's prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefor.

28. EXPORT/IMPORT: Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods and Services may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods in violation of such applicable laws, regulations, orders or requirements.

29. SOFTWARE: Notwithstanding any other provision herein to the contrary, Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a non exclusive, non-transferable royalty free license to use the Software incorporated into the Goods solely for purposes of Buyer property utilizing such Goods purchased from Seller. All other Software shall be furnished to, and used by, buyer only after execution of Seller's (or the licensor's) applicable standard license agreement, the terms of which are incorporated herein by reference.

30. NUCLEAR/MEDICAL: GOODS AND SERVICES SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS. Buyer accepts goods and services with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

31. ASSIGNMENT: Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

32. GENERAL PROVISIONS: These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. No waiver by either party with respect to any breach or default or of 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 be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

33. EXCUSE OF PERFORMANCE: Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war, fire; flood; weather; sabotage; strikes or labour disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability or delays in transportation; default of suppliers; or unforeseen circumstances or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of the agreement shall otherwise remain unaffected as a result of the foregoing.

Easy Heat Ltd.

TERMS AND CONDITIONS OF SALE

Easy Heat Ltd. is herein referred to as the "Seller" and the customer or person or entity purchasing goods ("Goods") from Seller is referred to as the "Buyer". These Terms and Conditions, any price list or schedule, quotation, acknowledgment or invoice from Seller relevant to the sale of the Goods and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Goods by Seller to Buyer. Buyer's acceptance of the Goods will manifest Buyer's assent to these Terms and Conditions. Seller reserves the right in its sole discretion to refuse orders.

1. **PRICES:** Prices for Goods, whether specified in Seller's price list or schedule, acknowledgment or written quotation, are subject to change without notice. Such prices shall be adjusted to reflect Seller's prices for Goods as in effect at the time of requested shipment date, and each shipment will be invoiced at such prices. Unless otherwise specified in writing by Seller, all prices are exclusive of taxes, transportation and insurance, which are to be borne by Buyer.

2. **TAXES:** Any current or future tax or governmental charge (or increase in same) affecting Seller's costs of production, sale or delivery or shipment, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods, shall be for Buyer's account and shall be added to the price.

3. **TERMS OF PAYMENT:** Unless otherwise specified by Seller, terms are net thirty (30) days from date of Seller's invoice in Canadian currency. Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries and for the Goods theretofore delivered. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries.

4. **SHIPMENT AND DELIVERY:** Unless otherwise specified in writing by Seller, shipments are made F.O.B. Seller's shipping point. Risk of loss or damage and responsibility shall pass from Seller to Buyer upon delivery to and receipt by carrier. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be acknowledged and signed for at the time of delivery. While Seller will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods for which Buyer has not provided shipping instructions. If the shipment of the Goods is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom.

5. **LIMITED WARRANTY:** Subject to the limitations of Section 6, Seller warrants that the Goods manufactured by Seller will be free from defects in material and workmanship under normal use and regular service and maintenance for a period of one year from the date of shipment of Goods by Seller, unless otherwise specified by Seller in writing. **THIS IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY SELLER WITH RESPECT TO THE GOODS AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.**

This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rate capacity, or improper installation, maintenance or application. To the extent that Buyer or its agents has supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, and warranties or other provisions contained herein which are affected by such conditions shall be null and void.

If within thirty (30) days after Buyer's discovery of any warranty defects within the warranty period, Buyer notifies Seller thereof in writing, Seller shall, at its option, repair, correct or replace F.O.B. point of manufacture, or refund the purchase price for that portion of the Goods found by Seller to be defective. Failure by Buyer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects. Goods repaired or replaced during the warranty period shall be covered by the foregoing warranty for the remainder of the original warranty period or ninety (90) days from the date of shipment, whichever is longer.

Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, either alone or in combination with other products/components.

Section 5 applies to any entity or person who may buy, acquire or use the Goods, including any entity or person who obtains the Goods from Buyer, and shall be bound by the limitations therein, including Section 6. Buyer agrees to provide such subsequent transferee conspicuous, written notice of the provisions of Sections 5 and 6.

6. **LIMITATION OF REMEDY AND LIABILITY:** THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 7) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE UNDER SECTION 5.

SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION, BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use or revenue, cost of capital or loss or damage to property or equipment.

It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice given and accepted at Buyer's risk.

7. **PATENTS AND COPYRIGHTS:** Subject to the limitations of the second paragraph of Section 6, Seller warrants that the Goods sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suite involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defence, settlement or compromise of any such allegation of infringement. Seller's warranty as to use patents only applies to infringement arising solely out of the inherent operation according to Seller's specifications and instructions of any combination of goods acquired from Seller in a system designed by Seller. In the event such Goods are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods is enjoined, or in the case of a compromise or settlement by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods, or replace them with non-infringing Goods, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods, without liability.

8. **EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of god; acts of Buyer; war; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of the agreement shall otherwise remain unaffected as a result of the foregoing.

If Seller determines that its ability to supply the total demand for the Goods, or to obtain material used directly or indirectly in the manufacture of the Goods, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may allocate its available supply of the Goods or such material (without obligation to acquire other supplies of any such Goods or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

9. **CANCELLATION:** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and, to cover commitments made, by the Seller and a reasonable profit thereon. Seller's determination of such termination charges shall be conclusive.

10. **CHANGES:** Buyer may request changes or additions to the Goods consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price and dates of delivery.

Seller reserves the right to change designs and specifications for the Goods without prior notice to Buyer, except with respect to Goods being made-to-order for Buyer.

11. **NUCLEAR:** GOODS AND SERVICES SOLD HEREUNDER ARE NOT FOR USE IN ANY NUCLEAR AND RELATED APPLICATIONS. Buyer accepts goods and services with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

12. **ASSIGNMENT:** Buyer shall not assign its right or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

13. **GENERAL PROVISIONS:** These terms and conditions supersede all other communications, negotiations, and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. No waiver by either party with respect to any breach or default or of 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 be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this agreement shall be governed by the law of the Province of Ontario. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in the Province of Ontario and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has occurred. The Convention for the International Sale of Goods shall not apply to this Agreement.

14. **EXPORT CONTROL REGULATIONS:** All Goods sold to Buyer are subject to the export and/or import control laws and regulations of various countries, including without limitation the United States, and Buyer agrees not to re-sell or divert any Goods contrary to such laws.

15. **RETURNED GOODS:** Except as otherwise provided with respect to warranty defects in Section 5 advance written permission to return Goods must be obtained from Seller. Such Goods must be current, unused, catalogued Goods and must be shipped, transportation prepaid, to the location specified by Seller. Returns made without proper written permission will not be accepted by Seller. Credit for such returned Goods will be at the billing price or current price, whichever is lower, from which will be deducted an inspection and repacking charge and the cost of any reconditioning. Seller reserves the right to inspect Goods prior to authorization return.