



## **BURRARD MECHANICAL LTD.**

### **TERMS AND CONDITIONS OF SALE**

The following terms and conditions of sale are applicable to all quotes and sales by Burrard Mechanical Ltd. (the "Vendor") to you (the "Purchaser"):

1. **Prices and payment.** Prices and charges are subject to change without notice and will reflect those of Vendor in effect at the time of shipment. Balances past due shall bear interest at 1½% per month (18% per annum).

2. **Title and Risk.** All goods shall remain the property of the Vendor until paid for in full. Risk of loss or damage to the goods shall pass to Purchaser immediately upon the goods leaving the premises of the Vendor. All sales are F.O.B. Vendor's warehouse unless otherwise stipulated.

3. **Orders.** Vendor's interpretation of a verbal order shall be final and binding where shipment is made prior to receipt of written confirmation. Unless brought to the attention of Vendor within 10 days, Vendor cannot be responsible for any errors or discrepancies contained in the order.

4. **Warranties.** Purchaser acknowledges that Vendor has not made and does not make any representations or warranties, whether express, implied, statutory or otherwise, except that the goods supplied conform to the noted specifications and descriptions, subject to tolerances and variations consistent with usual trade practices. Vendor shall not be liable in contract, tort or otherwise for any loss, damages, costs, claims, expenses or repairs resulting from any defect, failure to conform to specifications or breach of this agreement whether any such loss, damage, cost, claim, expense or repair is direct, indirect or consequential. Vendor's liability shall be limited in all circumstances to the invoice price paid by Purchaser for the goods purchased under this agreement. The foregoing limitation of liability is a condition of sale of the goods at the price or prices quoted and shall apply notwithstanding any defect in or failure of, including the total failure of, any product.

Should any of the goods received by Purchaser not conform, as determined by Vendor's inspection, to the above specifications and descriptions, subject to Vendor's regular practice concerning over and under shipment and normal industry tolerances, variations and limitations of dimension, weight, shape and composition, Purchaser acknowledges that Vendor's only liability will be to replace or repair such goods or to refund the purchase price, at the option of Vendor, provided the terms of payment have been met and Purchaser notified Vendor in writing within 10 days of receipt of the goods. Except for test samples, goods may not be returned which Purchaser has cut, processed or altered in any way.

Purchaser acknowledges that while it may consult with Vendor's staff for assistance, recommendations or instructions in selecting goods, Vendors does not warrant the suitability or merchantability of the goods or the fitness of any of the goods for any particular use, purpose or application.

Where Purchaser has directed Vendor to perform certain shaping, cutting or other processing on the goods in accordance with Purchaser's particular specifications, Vendor does not make any representations or warranties except that those goods shall conform to the specifications supplied by Purchaser and that all processing applied by Vendor is performed in a good workmanlike manner in accordance with applicable industry trade standards and practices subject to any tolerances and variations consistent with the usual trade practices or as specified by Purchaser. Purchaser assumes all responsibility, risk and liability and agrees to indemnify and save harmless Vendor from and against any liability, loss, cost, damages, claims or expenses in respect of any defect in the whole or any part or parts of any good or goods manufactured or fabricated, incorporated or otherwise using the goods sold under this agreement.

**5. Indemnification of Vendor.** Vendor will not be responsible for and Purchaser shall indemnify and hold harmless Vendor from and against any loss, damages, expenses, claims, repairs, suits or judgments whether direct, indirect or otherwise, arising in any way out of the use of the goods and that Vendor's sole liability shall be to replace or repair the goods, or refund the purchase price, at Vendor's option. Where Purchaser has supplied the design for all or any part of the goods, Purchaser hereby agrees to indemnify and hold harmless Vendor from and against all loss, damages, expenses, claims, suits and judgments arising, directly or indirectly, out of the design, installation, maintenance or operation of the goods or any allegation that the goods, or any part thereof, infringe any patent, industrial design or intellectual property right.

**6. Delivery.** Delivery of goods is subject to stock availability. Unavailability of the goods from Vendor's suppliers shall constitute a force majeure in this agreement. Vendor shall promptly notify Purchaser of the absence or shortage of supply of the goods. Vendor shall exercise its best efforts to deliver within the times quoted but does not guarantee delivery time and shall not be liable for any damages, loss, claim or expense of any kind or nature whatsoever or howsoever caused by the delay in delivery or unavailability of goods.

**7. Force Majeure.** Neither party shall be responsible to the other for non-performance or delay in performance occasioned by any causes beyond its control including without limitation any acts or omissions of the other party, such as: acts of civil or military authority, strikes, lockouts, trade actions, embargoes, insurrections or acts of God.

**8. Claims and Credits.** Vendor shall not be liable for any shortages or errors in or damage to the goods shipped to Purchaser unless written details of such shortages, errors or damages are given by Purchaser to Vendor within 10 days of receipt of the goods.

**9. Changes or Cancellation.** Vendor may accept Purchaser's request to change the specifications or processing of the goods, but shall reserve the right to charge Purchaser for all costs and services necessary for such changes. Orders for goods may not be cancelled and materials may not be returned by Purchaser except with the written consent of Vendor.

**10. Suspension of Orders.** Vendor reserves the right, without liability and without prejudice to any other remedies, to delay or stop shipment of all or any part of the goods if any time reasonable doubt exists as to Purchaser's financial situation.

**11. Governing Law.** This Agreement shall be in all respects interpreted and construed in accordance with and be governed by the laws of the Province of British Columbia, Canada. Each party hereby

consents to the exclusive jurisdiction of the federal and provincial courts located in British Columbia, Canada. Each party hereby waives its right to a trial by jury.

**12. Entire Agreement.** Vendor and Purchaser acknowledge that this agreement constitutes the entire agreement between them and that no other representation or agreement, whether oral, written or otherwise, has been made other than the ones expressly stated herein. This agreement is not transferable or assignable by the Purchaser.

Purchaser's order will be filled in accordance with the terms and conditions set out above.