

## Terms and Conditions

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1. **SCM'S ACCEPTANCE.** If SCM accepts Customer's offer, it will do so only pursuant to the terms and conditions of this MAA. If Customer submits a purchase order or other document, it shall in no way amend or supersede any provision in this MAA, and the terms and conditions of this MAA govern. SCM may deposit any monies received from Customer, pending a determination of whether SCM will accept Customer's offer, and such act shall not constitute acceptance. If SCM rejects Customer's offer, then SCM shall remit, without interest, all such monies.

2. **CUSTOMER'S ACCEPTANCE OF MACHINERY.** Unless Customer sooner notifies SCM in writing, Customer shall be deemed to have effected final acceptance of the Machinery upon the earliest of: (i) Customer's use of the Machinery for any purpose other than conducting acceptance testing, (ii) ten (10) days following installation of the Machinery, or (iii) thirty (30) days following delivery of the Machinery if installation was delayed at Customer's request or was necessary because the installation site was not prepared for installation. Any rejection of the Machinery must be in writing and must include a detailed description of the alleged nonconformity with the Price Quotation.

3. **TECHNICAL SERVICE AND INSTALLATION.** Before SCM's technicians depart for Customer's site, SCM must receive Customer's written confirmation that the site preparations specified in the Price Quotation have been completed. If installation is delayed because the installation site is not ready, then SCM will be entitled to delay the installation until its technicians are available.

4. **TAXES.** The Purchase Price does not include any federal, state, provincial, or local property tax, license, privilege, sales, use, excise, gross receipts, value added, or other taxes that may now or hereafter be applicable to, measured by, or imposed upon, or with respect to, any transaction, any property, (including without limitation its sale, its value, or its use), or any services related to this MAA (the "Taxes"). Customer agrees to reimburse SCM for any Taxes that SCM is required to pay. If the parties agree that any person or entity other than SCM will remit any of the Taxes to the proper authority, then Customer shall indemnify and hold SCM harmless from any liability arising out of such Taxes, as well as any interest or penalties related thereto. Any applicable State, Provincial or Local Sales or Use Tax, including, without limitation, GST, HST, or any provincial retail sales tax (the "Sales Tax") will be added to a final invoice that includes the Final Payment. SCM will collect and remit the Sales Tax when required to do so, unless either the Customer or Leasing Company furnishes a valid resale/exemption certificate to SCM relieving SCM of the requirement to collect and remit the Sales Tax. If the certificate furnished to SCM is held invalid, then the party that furnished such certificate to SCM shall pay the Sales Tax (plus all applicable penalties and interest at the rate of the lesser of 1½ percent per month compounded monthly (19.56% yearly) (the « Contractual Rate ») or the maximum rate permitted by law) not collected as a result of relying on such invalid certificate. The sum of the Purchase Price and all other amounts due and payable to SCM pursuant to this MAA, including but not limited to Taxes and Sales Taxes, shall be referred to as the "Full Purchase Price".

## 5. MODIFICATIONS AND SPECIAL ORDERS.

(a) Modifications to the Machinery that are requested by Customer after Customer executes this MAA shall be deemed to be accepted by SCM only upon SCM's issuance of a written confirmation of its acceptance. Customer shall pay all additional charges and expenses of SCM in connection with such modifications before SCM begins to implement such modifications. Modifications may affect the Shipping Date.

(b) If requested by SCM, Customer will send a sample of the material used by Customer at the time of the order. Failure to do so relieves SCM of liability for proper functioning of the Machinery in connection with such material.

(c) At any time prior to delivery, SCM may modify the Machinery, provided such modification does not materially adversely affect the Machinery's compliance with the specifications set forth in the Price Quotation and does not materially adversely affect the form, fitness, functions, safety, reliability, performance, and/or maintainability of the Machinery. If SCM intends to modify the Machinery, then SCM shall notify Customer in writing, explaining the changes, the reasons therefor, and the consequences thereof.

6. INDEMNITY. Customer shall indemnify, defend, and hold SCM harmless for any claim or cause of action for physical damage to property or personal injury, including death, arising out of, or resulting in any way from, the negligence or willful misconduct of the employees or agents of Customer, including but not limited to damages that are caused, in whole or in part, by: (i) any misuse or modification of the Machinery by Customer, its employees, or its agents, (ii) any act (or failure to act) by Customer, its employees, or its agents, in contravention of any safety procedures or instructions provided to Customer, its employees, or its agents, by SCM, or (iii) the improper storage, installation, operation, or maintenance of the Machinery by Customer, its employees, or its agents.

## 7. DELIVERIES AND SHIPPING.

(a) The Shipping Date is approximate and is contingent upon prompt receipt of all necessary information, the Down Payment, and the Second Payment. SCM may ship early. SCM is not obligated to ship the Machinery until SCM has received the Down Payment and the Second Payment.

(b) If Customer requests a delay in the Shipping Date or fails to take delivery, the risk and/or responsibility for the care of the Machinery shall remain with SCM, and Customer shall pay SCM for costs incurred by SCM because of such delay or failure, including but not limited to warehousing, storage, and insurance.

(c) If Customer requests that the Shipping Date be delayed by more than thirty (30) days, then SCM may: (i) cancel this MAA, (ii) retain any amounts previously received pursuant to this MAA or the Price Quotation up to the maximum of the Down Payment, which Customer agrees is reasonable and just compensation for SCM's damage and not a penalty, (iii) sell the Machinery to another party, and (iv) charge Customer for further damages, if applicable.

(d) SCM shall deliver the Machinery to the first carrier. SCM does not promise a delivery date. Customer, at Customer's sole expense, shall make all necessary arrangements, subject to SCM's approval, to unload the Machinery and any component part thereof pursuant to SCM's instructions and using professional riggers, the performance of which shall be the responsibility of Customer.

#### 8. FORCE MAJEURE.

(a) SCM shall not be liable or otherwise responsible for any default or delay in performance attributable to Force Majeure. "Force Majeure" shall mean acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, quarantine restrictions, factory conditions, strikes, labor disputes, delays in transportation, shortage of transport vehicles, labor or materials, or any other circumstance or cause beyond SCM's reasonable control.

(b) If SCM's performance is delayed by any such cause, the Shipping Date or time of completion will be extended by a period reasonably necessary to overcome the effect of such delay.

#### 9. TERMS OF PAYMENT.

(a) Customer shall pay all amounts payable to SCM when due pursuant to the schedule on the front page of this MAA, time being the essence thereof. Customer's payment of the Full Purchase Price shall be secured by a first-priority security interest that Customer hereby conveys and grants to SCM in the Machinery. SCM shall have all rights of a secured party under Ontario law, with respect to the Machinery. Customer will execute and file any documents necessary to perfect and preserve SCM's security interest in the Machinery. Customer acknowledges that statements under the various provincial personal property security acts and the Civil Code of Quebec may be registered with respect to this MMA and the Machinery, and hereby waives the right to receive a copy of any such registered

statement or verification statement with respect thereto. If the acquisition is a Lease, then the term "Leasing Company" shall replace all references to "Customer" in this Section 9(a) only, except that regardless of whether the acquisition is a Purchase or a Lease, neither the Customer nor the Leasing Company shall move the Machinery from its initial installation site until either the Customer or the Leasing Company pays all amounts payable to SCM pursuant to this MAA and SCM fully releases the security interest created pursuant to this Section 9(a).

(b) If full payment is not received when due, then (without prejudice to the right of SCM to immediate payment) Customer shall pay interest at the Contractual Rate or the maximum rate permitted by law. If the acquisition is a Lease, then the term "Leasing Company" shall replace all references to "Customer" in this Section 9(b) only.

(c) SCM shall have the right to require full or partial payment in advance at any time if, in its opinion, the financial condition of Customer does not justify the terms of payment specified. Without limiting the foregoing, should Customer (i) commence voluntary bankruptcy or similar proceedings, (ii) consent to, or fail to contest in a timely and appropriate manner, any involuntary bankruptcy or similar proceedings, (iii) become insolvent, or (iv) admit its inability to pay its debts, then SCM shall have the right to cancel any order and recover damages from Customer. This Section 9(c) shall not apply if the acquisition is a Lease.

#### 10. RISK OF LOSS AND INSURANCE.

(a) Risk of loss of the Machinery shall pass from SCM to Customer when SCM puts and holds the Machinery or any component part thereof at Customer's disposition and gives Customer notice thereof. SCM shall bear all risk of loss or damage in transit and shall be responsible to file claims with any carrier for damage occurring during shipment.

(b) Customer shall specifically insure the Machinery against "all risks," subject to normal exclusions, from the time the risk of loss passes to Customer, which includes, but is not limited to unloading and installation of the Machinery. If all amounts payable by Customer to SCM are not paid in full to SCM after installation, Customer shall continue to insure the Machinery pursuant to this Section until all amounts payable to SCM are paid in full. The amount of such insurance shall be no less than the Full Purchase Price, with loss first payable to SCM, as SCM's interest may appear. Evidence of such insurance, satisfactory to SCM, shall be submitted by Customer prior to shipment, or SCM may, at SCM's option, procure such insurance at Customer's expense plus interest in the amount of the Contractual Rate.

#### 11. WARRANTY AND LIMITATION OF LIABILITY.

(a) SCM warrants, for a period of one (1) year beginning on the date the Machinery is accepted pursuant to the provisions of Section 2 of this MAA (the "Warranty Period"), that the Machinery will be free of defects in workmanship and materials, excluding belts, bearings, and common electrical parts, which carry a six-month warranty. This warranty does not include parts consumed during normal operation (wearable items), working units, or maintenance required in the ordinary course of operation. SCM shall warrant any replacement spare parts and accessories installed pursuant to this warranty for the period of ninety (90) days. Notwithstanding any other provision of this MAA, Customer has no right to assert a warranty claim, and SCM has no obligation to honor a warranty claim: (i) until the Full Purchase Price has been paid to SCM, or (ii) if Customer is in breach of the Leasing Agreement if the acquisition is a Lease. If the acquisition is a Lease and Customer is in breach of the Leasing Agreement, then such breach shall not toll the running of the Warranty Period. If any failure to conform to this warranty occurs within the Warranty Period and the Full Purchase Price has been paid to SCM, then upon prompt written notification and written substantiation by Customer that the Machinery has been stored, installed, operated, and maintained in accordance with all reasonable instructions of SCM (including but not limited to the use of recommended tooling) and with standard industry practice, and provided SCM is given reasonable access to the Machinery during normal business hours, then SCM shall take the action described in this Section 11. If, upon receiving the aforementioned notification, SCM concludes that the nonconformity is a valid warranty claim and can be remedied by replacing one or more parts of the Machinery and said replacement requires neither specialized training nor a significant time commitment, then SCM shall, at its expense, ship said part or parts to Customer and provide Customer the telephonic consultation necessary to assist Customer in replacing said part or parts. If such replacement fails to correct the nonconformity, or if, upon receipt of the aforementioned notification, SCM concludes that the nonconformity is a valid warranty claim and cannot be remedied as described above, then SCM shall, at its expense, perform, or direct subcontractors to perform, all work necessary to correct such nonconformity by either repairing or, at SCM's option, replacing any defective work. This warranty shall not obligate SCM to perform any work required to provide working access to a defect, including but not limited to the removal, disassembly, replacement, or reinstallation of the Machinery, or any materials, or structures that are not part of the Machinery, if such activities must be undertaken solely to provide such access to the defect. If Customer alters or attempts to repair the Machinery, or causes same to be effected, other than as specifically set forth in this Section 11, then the warranty set forth in this Section 11 shall be void.

(b) SCM warrants that the Machinery shall be free of the rightful claim of any person arising from patent or trademark infringement. SCM shall indemnify Customer against any liability arising from successful claims of patent or trademark infringement in connection with the Machinery or on account of any composition, process, invention, article, or appliance used or furnished by SCM in the performance of this MAA. SCM shall defend any actions brought against Customer for any such claim and shall pay any judgment that may be awarded against Customer for such claim. SCM shall have the right to participate in, or assume exclusively, the defense of any such claim or action.

(c) The Machinery shall be subjected to no test procedures other than those agreed to by SCM. Payment of the Full Purchase Price shall not be contingent upon the results of any unauthorized testing procedures. Before any test may be used to evaluate the Machinery, Customer shall: (i) provide SCM with reasonable written notification of such test, (ii) allow SCM to be present during such test, and (iii) receive SCM's consent to the conditions of such test, which consent will not be unreasonably withheld. If a test is performed on the Machinery, and SCM has not consented to the conditions of such test, then the warranty set forth in this Section 11 shall be void.

(d) If Customer makes a warranty claim that proves to be invalid, then Customer shall pay SCM all of SCM's expenses incurred in connection with the investigation of said invalid claim and any work performed by SCM.

(e) THE REMEDIES SET FORTH IN THIS SECTION 11 ARE THE SOLE REMEDIES OF CUSTOMER FOR ANY FAILURE OF SCM TO COMPLY WITH ITS OBLIGATIONS PURSUANT TO THIS MAA, INCLUDING ANY BREACH OF WARRANTY. Correcting any defect in the manner and during the Warranty Period, and, if necessary, defending Customer in the manner set forth in Section 11(b), shall constitute complete fulfillment of all the obligations and liabilities of SCM with respect to, or arising out of, this MAA, regardless of whether a claim is based in contract law, tort law (including negligence, strict liability or otherwise), or other legal theory.

(f) THE WARRANTIES SET FORTH IN THIS SECTION 11 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED. EXCEPT AS SET FORTH IN THIS SECTION 11, SCM MAKES NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. Any other oral or written statements, whether contained in general advertising or other printed material, do not constitute warranties, and Customer agrees that it is not entering into this MAA in reliance upon any such statements.

(g) SCM shall not be liable for any special, indirect, incidental, or consequential damages of Customer, including but not limited to any loss of use or underutilization of labor or facilities or any loss of revenue or anticipated profits, regardless of whether such purported liability is based in contract law, tort law (including negligence, strict liability, or otherwise), or other legal theory.

(h) Customer's failure to comply with the provisions of this MAA (including but not limited to payment of the Full Purchase Price if the acquisition is a Purchase) shall, inter alia, render the warranty set forth in this Section 11 voidable at SCM's discretion; provided, however, the exclusion in Section 11(f) of this MAA still applies.

## 12. DEFAULT.

(a) Customer shall be deemed in default of this MAA if any one or more of the following occur: (i) Customer refuses or communicates an intent to refuse acceptance of delivery of the Machinery; (ii) Customer fails to make any payment in cash when due if the acquisition is a Purchase; (iii) Customer breaches the Leasing Agreement if the acquisition is a Lease; (iv) Customer breaches any other agreement with either SCM or, if the acquisition is a Lease, with the Leasing Company; (v) SCM, at SCM's option, deems itself insecure; or (vi) Customer breaches any provision of this MAA.

(b) If Customer is deemed in default pursuant to Section 12(a)(i) above, Customer acknowledges that the Machinery is built pursuant to custom and unique specifications based upon Customer's specific needs, which are established in the Price Quotation, and the Machinery cannot easily be resold in the market to a third party if Customer breaches this MAA. Accordingly, due to the custom nature of the Machinery, Customer acknowledges that if Customer breaches Section 12(a)(i) above, SCM's damages would be difficult to prove and agrees that the amount of forty percent (40%) of the Purchase Price ("Damages") shall constitute liquidated damages as a fair and reasonable estimate of SCM's partial loss and not a penalty, payable immediately upon demand to SCM. SCM may retain any amounts received from Customer pursuant to this MAA, including but not limited to the Down Payment and Second Payment, as payment for the Damages, and shall refund to Customer any amounts received from Customer pursuant to this MAA in excess of the Damages, if any.

(c) If Customer is in default pursuant to this Section 12, then upon written demand by SCM to Customer, SCM shall have the right to immediate possession of the Machinery, which Customer agrees to peacefully tender to SCM, or, in the sole discretion of SCM, the entire unpaid balance shall become immediately due and payable. SCM shall have all the rights and remedies of a purchaser or secured party, as established or permitted upon agreement by the Uniform Commercial Code, and all other rights as established in this MAA, which rights and remedies shall be cumulative. The standard by which fulfillment of rights and duties is to be measured shall be in the reasonable commercial judgment of SCM.

(d) A waiver by SCM of any breach or default shall not constitute a waiver of any subsequent breach or default.

(e) If SCM prevails in any legal action, arbitration or other proceeding related to this MAA, then Customer shall reimburse SCM for SCM's reasonable attorneys' fees, court costs, litigation expenses, and any other costs that SCM incurs in connection with such proceeding, including but not limited to costs of collection. This relief is in addition to any other relief to which SCM is entitled.

### 13. RESPONSIBILITES

(a) SCM does not accept responsibility for physical factors beyond the scope of our machine(s). These factors include, but are not limited to, local electrical codes, local building codes, local installation codes such as earthquake or hurricane codes. SCM does not accept responsibility for concrete or foundation preparations. SCM does not provide buck/boost transformers to accommodate improper voltage supply.

(b) SCM machines generally conform to EC standards and CSA or Electrical Safety Authority approvals. Any site inspection required by the customer or local authorities is at the cost of the customer as well as any remedy identified.

(c) Buyer agrees to abide by ANSI specification 01.1-2004, section 7.1 for guidelines on selection and management of machinery operating personnel and only allowed trained personnel to operate the machine

14. ASSIGNMENT. The rights and liabilities of the parties to this MAA shall inure to the benefit of, and be binding upon, their respective successors and assigns, although neither this MAA nor the rights or obligations of Customer under this MAA shall be assignable or transferable, either in whole or in part, without the prior written consent of SCM (which consent can be granted or withheld at the sole discretion of SCM).

15. WAIVER. No waiver by either party of any breach or obligation of the other party shall constitute a waiver of any other prior or subsequent breach of obligation.

16. GOVERNING LAW. This MAA shall be governed, construed, and enforced in accordance with the Ontario law.

17. CONSENT TO JURISDICTION. If a suit is brought to enforce any requirements of this MAA, Customer hereby consents to the jurisdiction of Toronto Ontario, with respect to any dispute arising out of, in connection with, or relating to this MAA and waives all objections to such jurisdiction, including but not limited to any based on forum non conveniens or improper venue.

18. ARBITRATION. If a dispute arises between the parties, and the parties are unable to resolve it between themselves, then the matter may only be resolved by arbitration before a single arbitrator.



Such arbitration shall be conducted in Toronto Ontario by the Canadian Arbitration Association (“CAA”) and in accordance with the commercial rules of the CAA, as from time to time amended. The decision of the arbitrator shall be in writing, shall be signed by the arbitrator, and shall include findings of fact and a statement regarding the reasons for the arbitrator’s decision.

19. ENTIRE AGREEMENT AND MODIFICATION. This MAA is not a valid or binding obligation unless a Price Quotation that specifically identifies the Machinery is issued to Customer. This MAA, the Price Quotation and the Leasing Agreement (if the acquisition is a Lease) sets forth the entire agreement and understanding between the parties on the subject matter hereof and supersede all prior discussions, negotiations, and/or written or verbal agreements between them. Customer acknowledges that neither SCM nor anyone on SCM’s behalf has made any representation, inducements, promises, or agreements, orally or otherwise, relating to the subject matter of this MAA or the Price Quotation that are not embodied herein. Neither of the parties shall be bound by any conditions or definitions with respect to the subject matter hereof, other than as provided herein. No change or modification of this MAA shall be valid unless the modification is in writing and signed by both parties.

20. SEVERABILITY. A judicial or administrative declaration in any jurisdiction of the invalidity of any one or more of the provisions of this MAA shall not invalidate the remaining provisions of this MAA in any jurisdiction, nor shall such declaration have any effect on the validity or interpretation of this MAA outside that jurisdiction.