



TERMS AND CONDITIONS OF SALE

1. Applicability.

(a) These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of the goods (“**Goods**”) by Maxam Metal Products Limited (“**Seller**”) to the buyer. (“**Buyer**”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The accompanying purchase orders (the “**Sales Confirmation**” and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfilment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

2. Quotations and Purchase Orders.

(a) Buyer is responsible for the accuracy of any and all information provided to Seller. All quotations are valid for a maximum of thirty (30) days from the date of issue, unless otherwise note on the quotation. Please include the quotation number when placing an order.

(b) To place an order, Buyer’s account with Seller must be current and in good standing. All orders are subject to credit approval. Any freight or shipping estimate is not guaranteed. Handling and crating charges may apply. A minimum order amount of \$50.00 applies.

(c) Any changes or cancellations must be communicated to Seller in writing. Special fabrication and orders entered into production are not subject to cancellation. Seller reserves the right to make changes in designs, or to make additions to, or improvements in or on Goods previously manufactured or sold.

3. Castings and Tooling.

(a) All castings quotations are based on Buyer accepting up to 10% nominal overruns or underruns on each individual item, such variations in yield being incidental to the process. Casting samples from new dies will be submitted for approval to Buyer by Seller before proceeding with production. When conflicting models and prints are submitted by



Buyer in connection with any quotation, prints will be followed. Castings made in accordance with approved samples will be considered as complying with Buyer's specifications. If Buyer requests production prior to sample approval, Buyer will be responsible for any costs of such prior production. Castings will be furnished subject to commercial variations incidental to the investment casting process but without machining, testing or heat treatment unless otherwise agreed to in writing. The alloys specified in a quotation will be used and are approved by Buyer unless otherwise instructed in writing.

(b) Tooling will be charged to Buyer and becomes Buyer's property, but will remain in Seller's possession and control for exclusive use for manufacture of Buyer's Goods. Should it become necessary or desirable for Buyer to remove any tooling, such tooling will be forwarded to a location designated by Buyer at Buyer's expense. In addition, at any time, Seller may forward tooling to Buyer at Buyer's expense. Buyer is responsible to carry those forms of insurance that will adequately cover the cost of tooling in Seller's possession. Seller will manufacture to Buyer's drawings, prints and specifications. If Buyer's performance requirements cannot be met using the provided sample drawings, prints and specifications, Seller reserves the right to charge for engineering changes and testing to meet Buyer's performance requirements. Seller does not warrant that any documentation or test information that it may provide regarding its Goods will be in a form that is useable or sufficient for Buyer's compliance with any particular government regulation, permit requirement, or code or ordinance provision. Seller assumes no responsibility for particular uses to which such documentation or test information may be put by Buyer, unless such documentation and test information are clearly specified, reviewed, and approved by Buyer in advance of placing an order.

4. Delivery.

(a) The goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to Seller's designated shipping point (the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods immediately upon Seller's written notice that the Goods have been delivered to a common carrier at such Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labour reasonably suited for receipt of the Goods at the Delivery Point.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer



shall pay for the units shipped whether such shipment is in whole or partial fulfilment of Buyer's purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses including, without limitation, storage and insurance.

5. Non-Delivery.

(a) The quantity of any instalment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(b) The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within two (2) days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

(d) Buyer acknowledges and agrees that the remedies set forth in this Section 5 are Buyer's exclusive remedies for the delivery of Non-Conforming Goods. Except as provided under Section 5(c), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

6. Shipping Terms. Delivery shall be made FOB Delivery Point. Bills-of-lading will be enclosed with Goods shipped or will be mailed to the "ship to" address specified in the purchase order. Packing lists will be enclosed in with the Goods being shipped.

7. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.



The security interest granted under this provision constitutes a purchase money security interest under the British Columbia *Personal Property Security Act*.

8. Amendments and Modifications. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

9. Returns. No Goods may be returned for credit without a returned goods authorization in writing by Seller. Authorization may be granted or withheld in Seller's sole discretion. Any credit issued by Seller must be used with one hundred and eighty (180) days of the date the credit was issued to Buyer, otherwise the credit amount will be forfeited to the Seller. Certain custom Goods are not subject to return. A 50% handling and restocking fee will be assessed for material returned in usable condition. Buyer is responsible for freight costs incurred to return the merchandise.

10. Inspection and Rejection of Non-Conforming Goods.

(a) Buyer shall inspect the Goods within two (2) days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Non-Conforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "**Non-Conforming Goods**" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Non-Conforming Goods, Seller shall, in its sole discretion, (i) replace such Non-Conforming Goods with conforming Goods, or (ii) credit or refund the Price for such Non-Conforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Non-Conforming Goods to Seller's facility. If Seller exercises its option to replace Non-Conforming Goods, Seller shall, after receiving Buyer's shipment of Non-Conforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 10(b) are Buyer's exclusive remedies for the delivery of Non-Conforming Goods. Except as provided under Section 10(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

11. Price.

(a) Unless otherwise agreed in writing by the Seller, Buyer shall purchase the Goods from Seller at the prices (the "**Prices**") set forth in Seller's published price list in force as



of the date that Seller accepts Buyer's purchase order. If the Buyer's purchase order calls for delivery of the Goods ninety (90) days from the date of the purchase order, Buyer shall purchase the Goods from the Seller at the price set forth in the Seller's published price list in force at the time of shipment. If the Prices should be increased by Seller before delivery of the Goods to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased prices were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased prices.

(b) All Prices are exclusive of all harmonized sales tax, goods and services tax, provincial sales tax, value added tax, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; *provided that*, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

12. Payment Terms.

(a) Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder by wire transfer or cheque.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of **18%** per annum or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, legal fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for seven (7) days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

13. Limited Warranty.

(a) Seller warrants to Buyer for a period of one year from the date of shipment of the Goods (the "**Warranty Period**") that such Goods will be free from material defects in material and workmanship.

(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 13(a) SELLER MAKES NO CONDITION OR WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) CONDITION OR



WARRANTY OF MERCHANTABILITY; (b) CONDITION OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) CONDITION OR WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(c) Products manufactured by a third party (“**Third Party Products**”) may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 13(a). For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS, CONDITIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) CONDITION OR WARRANTY OF MERCHANTABILITY; (b) CONDITION OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(d) The Seller shall not be liable for a breach of the warranty set forth in Section 13(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within thirty (30) days of the alleged defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller’s place of business at Seller’s cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer’s claim that the Goods are defective.

(e) The Seller shall not be liable for a breach of the warranty set forth in Section 13(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller’s oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(f) Subject to Section 13(d) and Section 13(e) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate *provided that*, if Seller so requests, Buyer shall, at Seller’s expense, return such Goods to Seller.

(g) THE REMEDIES SET FORTH IN SECTION 13(f) SHALL BE THE BUYER’S SOLE AND EXCLUSIVE REMEDY AND SELLER’S ENTIRE



LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 13(a).

14. Limitation of Liability.

(a) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE VALUE OF THE DEFECTIVE GOODS, PARTS OR COMPONENTS SUCH VALUE TO BE DETERMINED ON THE DATE THAT SUCH GOODS, PARTS OR COMPONENTS ARE AGREED IN WRITING BY SELLER TO BE DEFECTIVE.

(c) The limitation of liability set forth in Section 14(b) shall not apply to (i) liability resulting from Seller's gross negligence or wilful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

15. Compliance with Law. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

16. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy,



receivership, reorganization or assignment for the benefit of creditors. Buyer may cancel its order only with the prior written consent of Seller and upon terms that will indemnify Seller from any loss, damage and expense arising from such cancellation.

17. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller’s request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

19. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party’s (“**Impacted Party**”) control, including, without limitation, the following force majeure events (“**Force Majeure Event(s)**”): (a) acts of God; (b) flood, tsunami, fire, earthquake, explosion; (c) epidemics, pandemics, including the 2019 novel coronavirus pandemic (COVID-19); (d) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (e) government order, law or actions; (f) embargoes or blockades in effect on or after the date of this Agreement; (g) national or regional emergency; (h) strikes, lockouts, labour stoppages or slowdowns, labour disputes, or other industrial disturbances; (i) shortage of adequate power or telecommunications or transportation facilities; (j) failure of any governmental or public authority to grant a necessary licence or consent; and (k) other events beyond the control of the Impacted Party. The Impacted Party shall give notice within ten (10) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the



removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of ten (10) consecutive days following written notice given by it under this Section 19, the other party may thereafter terminate this Agreement upon ten (10) days' written notice.

20. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

21. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

22. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

23. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein without giving effect to any choice or conflict of law provision or rule (whether of the Province of British Columbia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Province of British Columbia.

24. Choice of Forum. Any legal suit, action, litigation or proceeding of any kind whatsoever in any way arising out of, from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, shall be instituted in the courts of the Province of British Columbia, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, litigation or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, litigation or other proceeding brought in any such court. Each party agrees that a final judgment in any such suit, action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

25. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of



receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email (in each case, with confirmation of transmission) if sent during the addressee's normal business hours, and on the next business day if sent after the addressee's normal business hours; and (d) on the third day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid.

26. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

27. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Section 15 (Compliance with Laws), Section 18(Confidential Information) Section 23 (Governing Law), Section 24 (Choice of Forum) and this Section 27 (Survival).