

TAG Hardware – Terms of Sale

1. Terms and Conditions

All purchase orders between TAG Hardware Systems Ltd. (“TAG”) and the Buyer of the goods (the “Buyer”) will be governed by the following terms and conditions. These terms and conditions are hereby incorporated into the Agreement between the Buyer and TAG and will supersede all prior and contemporaneous oral and written statements of any kind whatsoever made by TAG, the Buyer, or the representatives of each. All of these terms and conditions are subject to change without notice by TAG. A copy of the current terms and conditions is available upon request.

2. Acceptance

Buyer’s orders will not become contracts of sale unless and until accepted in writing by an authorized agent of TAG at its home office in Surrey, BC, Canada. TAG’s acceptance of any order is conditional upon the Buyer’s assent to these terms and conditions. No added, varied, or conflicting terms in a Buyer’s purchase order or elsewhere will be accepted by TAG, and TAG hereby objects to and declines to contract on the basis of such additions, variations or conflicting terms, unless they are expressly agreed to in writing by an authorized agent of TAG in a document which: (a) makes specific reference to these terms and conditions; and (b) specifically states that these terms and conditions are so amended. Buyer will notify TAG in writing, as soon as practicable after receipt of TAG’s acceptance of Buyer’s order, of any objection by Buyer to these terms and conditions. Buyer’s failure to notify TAG of any objection will be conclusively deemed to be Buyer’s assent to and acceptance of all of these terms and conditions. Buyer expressly accepts these terms and conditions and is bound from the time TAG commences performance on any purchase order requiring or providing for TAG to commence performance prior to Buyer’s receipt of TAG’s written acknowledgment.

3. Prices

TAG reserves the right to change, without notice, any prices contained in its price list or price offer. Whenever possible TAG will provide advance notice of such price changes to Buyer.

4. Taxes

Any applicable federal, provincial, state, or local tax or charge on the sale or shipment of the goods covered by these terms and conditions are the responsibility of the Buyer. Buyer will indemnify TAG from all such taxes, including interest and penalties thereon, and any associated costs and expenses.

5. Shipment, Freight, Delivery, and Pickup

Except as otherwise provided, all prices are F.O.B. TAG's facility in Surrey, BC, Canada.

6. Financial

Shipments and deliveries of all goods to Buyer will at all times be subject to approval of TAG's Credit Department. Buyer will submit a completed credit application in a timely manner prior to an initial order. In addition to TAG's existing rights and remedies, TAG reserves the right to withhold deliveries and/or terminate this or any other contract with Buyer if Buyer fails to comply with the terms of this Agreement or any other contract between TAG and the Buyer. Upon TAG's termination of this Agreement, all unpaid amounts Buyer owes TAG will become immediately due and payable.

7. Payment Terms

Payment terms are net 30 days from date of TAG's invoice. A late payment charge of 1.5% per month (18% per annum) may be added to all past due balances. Buyer will pay TAG for all reasonable legal fees, as well as other costs and expenses incurred in connection with the collection of past due balances. Buyer will have no right of set-off.

8. Buyer's Agreement to Defend

Buyer will defend, protect, and indemnify TAG against all actions or suits, at law or in equity, and from all associated costs, legal fees, expenses, damages, claims, and demands arising out of or awarded in connection with any goods: (a) sold or supplied to Buyer by TAG that are not maintained and operated in accordance with recommended procedures; or (b) sold or supplied to Buyer by TAG to meet Buyer's specifications, requirements, or instructions.

9. Notice of Accident or Malfunction

Buyer will notify TAG promptly, and in any event within 30 days, of any accident or malfunction involving goods manufactured or sold by TAG. Buyer will protect, defend, and indemnify TAG (as provided in clause 8), in the event that Buyer fails to give such notice to TAG and to so cooperate.

10. Warranty

TAG warrants for a period of 1 year from the date of shipment that the goods supplied to Buyer will be of good materials and workmanship and, when properly installed and used, will be fit for the ordinary purpose or purposes indicated in TAG's Product Specifications and/or to any other specifications supplied by TAG. TAG will repair, provide the Buyer with a replacement, or credit the Buyer's account for defective goods sold by TAG.

TAG makes no warranty for: (a) goods sold by TAG to Buyer for other than resale; or (b) any display goods sold by TAG to Buyer. THE FOREGOING WARRANTIES ARE EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. TAG DOES NOT ASSUME, NOR AUTHORIZE, ANY REPRESENTATIVE OR OTHER PERSON TO ASSUME FOR IT, ANY OBLIGATION OR LIABILITY OTHER THAN AS EXPRESSLY SET FORTH HEREIN.

11. Limitation of Remedies

TAG's obligations under the warranties contained in clause 10 above are conditional upon: (a) TAG receiving notice from Buyer of the alleged defect within 1 year from date of shipment; and (b) the allegedly defective goods revealing an actual defect upon examination by TAG. TAG will not be liable for: (a) any labour or other expenses incurred by Buyer in the removal, repair, or replacement of the goods or any component part claimed to be defective; (b) any expenses incurred by Buyer in order to remedy any defect; or (c) any consequential, special, or contingent damages or expenses, arising directly or indirectly from any defect in the goods, or from Buyer's use or inability to use such goods. The discharge of TAG's warranty obligation in clause 10 will constitute fulfillment of all liabilities of TAG to Buyer, whether based on contract, tort, or otherwise and will be the exclusive remedies available to the Buyer in lieu of all other remedies, and the liability of TAG, whether in contract, tort or otherwise, will not exceed the purchase price of the goods sold by TAG. Any action or suit by the Buyer arising out of or relating to this Agreement must be commenced within 1 year after the cause of action has accrued. The foregoing will not limit the time within which any action or suit must be brought by TAG to collect an amount agreed to be paid by Buyer or to enforce a judgment or to collect any amount awarded to TAG. The sole purpose of the warranty in clause 10 will be to provide Buyer with repair of, a replacement for, or credit to the Buyer's account for defective goods. This exclusive remedy will not be deemed to have failed of its essential purpose so long as TAG is willing to credit Buyer's account, repair, or replace the defective goods in the manner prescribed in clause 10.

12. Damages

For shipments sent F.O.B. by TAG, Buyer will be liable for any damages to goods sustained during shipment. Buyer will be responsible for filing any damage claims with freight carriers and is subject to the rules of the freight carriers regarding the timing and processing of claims.

For shipments sent Freight Prepaid by TAG, TAG will be liable for any damage to goods sustained during shipment. The liability of TAG in this clause 12 is conditional upon Buyer making note of any damage on documents received from the freight carriers. TAG will not be liable for damage if Buyer fails to: (a) note any damage; and (b) report the damage to TAG within 24 hours of receipt of the goods.

13. Shortages

For shipments received with missing goods which is not due to freight damage, Buyer must notify TAG within 2 business days of receipt.

14. Returns

All sales are final. TAG will not accept any returns.

15. Defaults or Delays

TAG will not be liable for any default or delay in the production or delivery of all or any goods resulting either directly or indirectly from any of the following: accidents to, breakdowns, or mechanical failure of TAG's plant, machinery, or equipment, strikes or other labour disputes, labour shortages, fire, flood, wars, acts of public enemy, acts of God, delays of suppliers, delays in transportation or lack of transportation facilities, embargos, shortages of or reductions in energy sources, priorities, allocations, limitations, restrictions, or other acts required or requested by federal, provincial or local governments, or any government authority or agency; or any cause beyond the control of TAG. In no event will TAG be liable for any consequential, special, or contingent damages arising out of TAG's default or delay in filling Buyer's order.

16. Confidential Information and Proprietary Information

TAG retains ownership of all design, engineering, and technical information (whether patentable or not), trade secrets including secrets of manufacturing, processes, treatments and chemical composition, plant layout and tooling, and TAG's sales and marketing documentation, including images ("Confidential Information"). Confidential Information may be disclosed by TAG in connection with this Agreement and Buyer will not disclose any Confidential Information to any third party without the prior written consent of TAG. Notwithstanding the foregoing, Buyer will have the right to disclose Confidential Information to the extent required to be disclosed by law, including a subpoena; provided Buyer promptly notifies TAG in writing of such requirement prior to any disclosure to allow TAG to seek a protective order or similar relief in TAG's sole and absolute discretion. This clause 16 will survive this Agreement indefinitely.

17. Patent, Trademark and Copyright Indemnity

Buyer will indemnify TAG from any and all losses, costs, damages or expenses (including legal fees and expenses) for any infringement or alleged infringement of any of TAG's patents, trademark or copyright contained within the Confidential Information if Buyer discloses or makes use of Confidential Information that has not been authorised by TAG. Any and all inventions and improvements conceived or discovered by TAG in performing any development work under this Agreement will be the sole property of TAG. This clause 17 will survive this Agreement indefinitely.

18. Waiver

The right of either party to require strict performance by the other party of any or all terms and conditions of this Agreement will in no way be affected or impaired by prior waiver, forbearance, or course of dealing.

19. Interpretation

Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement should be prohibited or invalid, that provision will be deemed deleted and the remaining provisions of the Agreement will remain in full force and effect. The subject headings of the clauses of this Agreement are included for convenience only and will not affect construction or interpretation of any of its provisions.

20. Binding Effect

The provisions of any order will bind and endure to the benefit of TAG and Buyer and their respective successors and permitted assigns. However, neither this Agreement, nor any part thereof or right thereunder, may be assigned by Buyer without the prior written consent of TAG.

21. Governing Law

This Agreement will be subject to and construed according to the laws of the Province of British Columbia, Canada.
