

# ALLIED BLOWER & SHEET METAL LTD.

## TERMS AND CONDITIONS

1. Offer, Governing Provisions, Disputes and Cancellation. This writing is an offer by Allied Blower & Sheet Metal Ltd. ("Seller") to sell the goods and/or services described herein to the party to which this form is addressed ("Buyer"), subject to the terms and conditions set forth on the face of this form. Acceptance is limited to said terms and conditions; and Seller hereby objects to any additional or different terms which may be contained in any of Buyer's purchase order, acknowledgement or other forms of correspondence. This offer expires thirty days from its date or upon prior written notice thereof to Buyer, unless goods or services are subsequently tendered by Seller and accepted by Buyer. These terms, when accepted by Buyer explicitly, by acceptance of goods or services or otherwise, shall constitute the entire agreement between Seller and Buyer on the subject hereof, superseding all prior oral or written communications and negotiations. SELLER'S OFFER AND ANY AGREEMENT OF SALE RESULTING THEREFROM SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF BRITISH COLUMBIA, CANADA. All disputes arising out of or in connection with any contract resulting from this offer, or in respect of any legal relationship associated therewith or derived therefrom, shall be referred to and finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Centre pursuant to its Rules. The place of arbitration shall be Vancouver, British Columbia, Canada. No order may be cancelled or altered by Buyer except upon terms and conditions acceptable to Seller.

2. Payment. Payment is due upon Buyer's receipt of Seller's invoices, unless Seller requires payment in advance. Interest will be charged at the rate of 18% per year (but not more than the highest rate permitted by applicable law) on accounts more than 30 days past due.

The prices set forth in this offer are Seller's prices for such goods and/or services with (a) the exclusive Warranty of repair or replacement, as found in Section 7 below, and (b) the Exclusion of Consequential Damages and Disclaimer of Other Liabilities, as found in Section 10 below, enforceable against Buyer. If Buyer wishes Seller to provide a greater or additional warranty and/or to be liable for some or all of the matters excluded/disclaimed in Section 10, then Buyer must notify Seller before Buyer accepts (or is deemed to accept) this offer, in which event Seller will amend this offer to reflect higher sales prices reasonably compensating Seller for assuming that additional exposure. In the absence of such a notification, by accepting this offer Buyer is accepting such limitations and disclaimers/exclusions in exchange for the lower prices set forth herein.

3. Taxes and Other Charges. Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value added tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and Buyer shall be paid by Buyer in addition to the prices quoted or invoiced. In the event the Seller is required to pay any such tax, fee or charge, Buyer shall reimburse Seller therefor.

4. Delivery, Claims and Force Majeure. Delivery of goods to a carrier at Seller's plant or other loading point shall constitute delivery to Buyer; and regardless of shipping terms or freight payment, all risk of loss or damage in transit shall be borne by Buyer. Seller reserves the right to make delivery in instalments, unless otherwise expressly stipulated herein; all such instalments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any instalment shall not relieve Buyer of its obligations to accept remaining deliveries. Claims for shortages or other errors in delivery must be made in writing to Seller within 10 days after receipt of shipment; and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer. Claims for loss or damage to goods in transit should be made to the carrier and not to Seller.

All delivery dates are approximate. Further, Seller shall not be liable for any damage as a result of any delay or failure to deliver due to any cause beyond Seller's reasonable control, including but not limited to any act of God, act of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, riot, delay in transportation, or inability to obtain necessary labour, materials or manufacturing facilities. In the event of any such delay the date of delivery shall be extended for a period equal to the time lost because of the delay. Buyer's exclusive remedy for other delays and for Seller's inability to deliver for any reason shall be rescission of the contract arising out of this order.

5. Storage. If goods are not shipped within 15 days after notification to Buyer that they are ready for shipping, for any reason beyond Seller's reasonable control, including Buyer's failure to give shipping instructions, Seller may store such goods at Buyer's risk in a warehouse or yard or upon Seller's premises, and Buyer shall pay all handling, transportation and storage charges at the prevailing commercial rates upon submission of invoices therefor.

6. Changes. Seller may at any time make such changes in design and construction of goods as shall constitute an improvement in the judgement of Seller. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers.

7. Warranties. Seller warrants goods manufactured by it and supplied hereunder to be free from defects in materials and workmanship for a period of twelve months from date of shipment, and that services performed by it and provided hereunder shall be performed in accordance with standards acceptable in Seller's industry. If within such period any such good or service shall be proved to Seller's satisfaction to be defective, any such good shall be repaired or replaced at Seller's option, and any such service shall be properly re-performed. Such repair, replacement or re-performance shall be Seller's sole obligation and Buyer's exclusive remedy hereunder and shall be conditioned upon Seller's receiving written notice of any alleged defect within 10 days after its discovery and, at Seller's option, return of any such goods to Seller, F.O.B. its factory.

**THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES, GUARANTEES AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE AND WARRANTIES ARISING FROM USAGE OF TRADE OR COURSE OF DEALING.**

Any description of the goods or services, whether in writing or made orally by Seller or Seller's agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Buyer's order are for the sole purpose of identifying the goods and/or services and shall not be construed as an express warranty. Any suggestions by Seller or Seller's agents regarding use, application or suitability of the goods and/or services shall not be construed as an express warranty unless confirmed to be such in writing by Seller.

8. Returns. Goods may be returned to Seller only when Seller's written permission has been obtained by Buyer in advance. Returned goods must be securely packaged to reach Seller without damage; and any cost incurred by Seller to put goods in marketable condition will be charged to Buyer.

9. Patents, Trademarks and Copyrights. Seller will at its own expense, defend any suits that may be instituted by anyone against Buyer for alleged infringement of any United States or Canadian patent, trademark or copyright relating to any goods manufactured and furnished, or any services provided, by Seller hereunder, if such alleged infringement consists of the use of such goods and/or services in Buyer's business for any of the purposes for which the same were sold by Seller, and provided Buyer shall have made all payments then due hereunder and shall give Seller immediate notice in writing of any such suit and transmit to Seller immediately upon receipt all processes and papers served upon Buyer and permit Seller through its counsel, either in the name of Buyer or in the name of Seller, to define the same and give all needed information, assistance and authority to enable Seller to do so. If such goods and/or services are in such suit held in and of themselves to infringe any valid United States or Canadian patent, trademark or copyright, then: (a) Seller will pay any final award of damages in such suit attributable to such infringement, and (b) if in such suit use of such goods and/or services by Buyer is permanently enjoined by reason of such infringement, Seller shall, at its own expense and at its sole option, either (i) procure for Buyer the right to continue using the goods and/or services, (ii) modify the goods and/or services to render them non-infringing, (iii) replace the goods and/or services with non-infringing goods and/or services, or (iv) refund the purchase price and the transportation costs paid by Buyer for the goods and/or services.

Notwithstanding the foregoing, Seller shall not be responsible for any compromise or settlement made without its written consent, or for infringements of combination or process patents covering the use of the goods and/or services in combination with other goods or materials not furnished by Seller. The foregoing states the entire liability of Seller for infringement.

As to any goods and/or services furnished by Seller to Buyer manufactured or provided in accordance with drawings, designs or specifications proposed or furnished by Buyer or any claim of contributory infringement resulting from the use or resale by Buyer of goods sold hereunder, Seller shall not be liable, and Buyer shall indemnify Seller against any and all loss, liability and cost, including reasonable attorneys' fees for any and all patent, trademark or copyright infringement.

10. Exclusion of Consequential Damages and Disclaimer of Other Liabilities. Seller's liability with respect to the goods and/or services sold hereunder shall be limited to the warranty provided in Section 7 hereof, and, with respect to other performance of the contract arising out of this offer, shall be limited to the contract price.

**SELLER SHALL NOT BE SUBJECT TO AND DISCLAIMS: (a) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY, (b) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO GOODS SOLD OR SERVICES RENDERED BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, AND (c) ALL CONSEQUENTIAL, INCIDENTAL, SPECIAL AND CONTINGENT DAMAGES WHATSOEVER.**

Without limiting the generality of the foregoing, Seller specifically disclaims any liability for property or personal injury damages, penalties, special or punitive damages, damages for lost profits or revenues, loss of use of goods or any associated equipment, cost of capital, cost of substitute goods, facilities or services, down-time, shut-down or slow-down costs, or for any other types of economic loss, and for claims of Buyer's customers or any third party for any such damages.

11. Buyer's Property. Any property of Buyer placed in Seller's custody for performance of the contract arising out of this offer is not covered by insurance, and no risk is assumed by Seller in the event of loss or damage to such property by fire, water, burglary, theft, civil disorder or any accident beyond the reasonable control of the Seller.

12. The parties have requested that this Agreement and all related documents be drawn up in English. Les parties ont exigé que le présent contrat ainsi que tous les documents qui s'y rattachent soient rédigés en anglais.