

STANDARD TERMS AND CONDITIONS OF SALE AND SERVICE

These Standard Terms and Conditions of Sale and Service, together with the information contained within any proposal, offer, quotation, purchase order, service order, or similar document with Tolsma Grismich Canada Inc. ("Tolsma"), and any attachments and exhibits, whether physically attached or expressly incorporated by reference (collectively, the "Contract"), constitutes the entire agreement between Tolsma and the purchaser identified in the Contract ("Buyer") with respect to the subject matter of the Contract. Any term or condition different from or in addition to the terms of the Contract, whether communicated orally or contained in any purchase order, purchase order confirmation, invoice, acknowledgment, release, acceptance or other written correspondence of Buyer, irrespective of the timing, will not form a part of the Contract and is hereby expressly rejected, even if Buyer purports to condition its acceptance of the Contract on Tolsma's agreement to the different or additional term or condition. Buyer's acceptance of the Contract or commencement of performance of the Contract, whichever occurs first, will constitute Buyer's acceptance of the Contract.

- 1 **Quotations.** Unless otherwise stated in any proposal, offer, quotation, purchase order, service order, or similar document (collectively, a "proposal") from Tolsma, the proposal automatically expires thirty (30) calendar days from the date issued and is subject to withdrawal by notice any time before Buyer's acceptance. Tolsma may extend the term of any proposal. Any proposal issued by Buyer upon an expired Tolsma proposal may be accepted by Tolsma at its sole discretion. Unless otherwise specified, Tolsma's product prices in any proposal do not include the cost of shipping, installation, taxes and site adjustments for the products, and the prices are subject to adjustment in accordance with Tolsma's then current standard practices. Tolsma expressly disclaims any representation or warranty concerning "most favored customer" pricing, whether in Buyer's documents related to any Contract or elsewhere.
- 2 **Published Prices.** Tolsma's published prices are not unconditional offers to sell the products or perform services and the published prices, and the published prices subject to change without notice. If Buyer is offered pricing that differs from Tolsma's published prices, then the offered pricing is confidential and Buyer agrees to strictly maintain confidentiality of the differing pricing.
- 3 **Plans, Drawing and Illustrations.** Proposal pages, catalogue illustrations and preliminary drawings are submitted only to show the general style, arrangement and approximate dimensions of products. Tolsma reserves the right to make such changes of design, construction or arrangement as it deems necessary for its products.
- 4 **Taxes.** If Tolsma is required to collect or pay any sales, services, use, excise, or similar taxes related to any Contract, then Tolsma may add the amount of the taxes to the current or next invoice. If Buyer claims any exemption from taxes for any products or services, then Buyer must timely supply Tolsma with a valid and proper tax exemption certificate. If any exemption certificate provided to Tolsma is determined to be improper for any reason, then Tolsma may add the amount of the taxes to the current or next invoice.
- 5 **Payment Terms.** Payment terms will be as set forth in the Contract. Amounts past due are subject to a service charge equal to Five percent (5.0%) annually (or fraction thereof) past due, or the maximum charge permitted by applicable law, if less. If Tolsma determines that Buyer's credit is not acceptable, then Tolsma may require full or partial payment in advance of any continuance, production, shipment or performance. Except as otherwise expressly stated in Section 8, all sales are final without right of return. If Buyer fails to timely pay any amounts owed to Tolsma, then Buyer will reimburse Tolsma for all collection costs related thereto, including attorneys' fees and court costs.
- 6 **Delivery.** Shipments are "ex works" from Tolsma's facility (at North Bedeque, Prince Edward Island Canada) unless Buyer elects a freight collect shipment, in which case shipping charges plus the applicable Tolsma handling charges will be prepaid and billed as a separate item on the products invoice. Delivery dates are approximate and are based on prompt receipt of all necessary information regarding the products to be delivered, including but not limited to any import/export authorizations required by applicable law. Tolsma will use reasonable efforts to meet the indicated delivery and service dates but will not be held responsible for its failure to do so. Risk of loss will pass to Buyer upon Tolsma's delivery to a carrier. In the event of any delay in delivery caused by Buyer, Tolsma will store and handle all items at Buyer's risk and will invoice Buyer for the unpaid portion of the contract price, plus applicable storage, insurance, and handling charges. The invoice will be payable in full within 30 days from the invoice date. Tolsma has the right to make partial shipments and bill for those shipments. Buyer will make

payment in accordance with terms referenced in Section 4. Tolsma will not accept responsibility for any shortages or damages unless all shipping containers and packing materials are retained for inspection.

- 7 **Changes.** Buyer may request changes in the specifications for products or work covered by the Contract. If such changes are accepted by Tolsma, then the Contract price and delivery dates will be equitably adjusted to account for the changes, including costs and expenses incurred by Tolsma (plus reasonable overhead and profit thereon) for work and materials rendered unnecessary as a result of such changes and for work and materials required to effect the changes.
- 8 **Cancellation.** Any Contract may be canceled by Buyer only with Tolsma's written approval. Tolsma may cancel any Contract upon notice to Buyer for Buyer's actual or threatened material breach of its obligations thereunder. If any Contract is cancelled for any reason, then Buyer will pay to Tolsma the reasonable costs and expenses (including engineering expenses and all commitments to its suppliers and subcontractors) incurred by Tolsma prior to receipt of notice of such cancellations, plus Tolsma's usual rate of profit for similar work. The minimum cancellation charge will be 15% of the price of the item(s) cancelled.
- 9 **Warranties.** Absent a separate warranty issued from Tolsma to Buyer, Tolsma warrants the products and services provided by Tolsma only as expressly provided herein. Tolsma disclaims all other warranties, either express or implied (including without limitation warranties as to merchantability or fitness for a particular purpose). These warranties may be transferred to a subsequent purchaser of the products only with Tolsma's prior written consent. In addition, the following remedies will be the sole and exclusive remedies of Buyer for Tolsma's breach (or alleged breach) of its warranty hereunder.
 - A **Products.** Tolsma warrants that the products covered by this warranty will be free from defects in materials and workmanship for a period of one (1) year from date of original installation, or eighteen (18) months from the date of shipment to the original Buyer, whichever occurs first. Should any such defects be found and reported during the first thirty (30) days after installation (if installation occurs during the warranty period) Tolsma will, at its option, correct such defects, furnishing replacement parts, labor, and travel free of charge to Buyer. For the remainder of the warranty period, Tolsma will furnish necessary replacement parts and technician's on-site labor free of charge. Buyer is to pay reasonable technician's travel time and expenses to and from a service location authorized by Tolsma. Tolsma does not warrant that the products covered by this warranty will perform in accordance with specifications to the extent that products forming a part of a system which is not supplied by or approved for incorporation into a system by Tolsma. Products of other manufacturers sold by Tolsma as such, are warranted by Tolsma only to the extent of any warranty provided by the original manufacturer.
 - B **Software.** Tolsma warrants that software developed by Tolsma will perform substantially the functions described in the software documentation when properly installed. Tolsma does not warrant that the software is error free, that Buyer will be able to operate the software without interruption, or that the software will be free of vulnerability to intrusion or attack. The warranty period will be the same as the warranty period for Tolsma products with which the software is supplied. If the software is not embedded within Tolsma products, the terms and conditions of the respective end user license agreement will apply exclusively. If no end user license agreement is applicable, the warranty period will be ninety (90) days from the date of purchase by Buyer.
 - C **Services.** Tolsma warrants that services will be performed in a workmanlike manner in conformity with standard industry practice. Should any nonconformity be detected within thirty (30) days after the work is completed and prompt notification is made by Buyer in writing to Tolsma, Tolsma will supply the necessary service, direction or consultation to correct the nonconformity.
 - D **General.** Tolsma's warranties are further subject to the following general conditions: (1) consumables, accessories, normal wear and tear and are excluded from the warranties; (2) if Buyer requests the performance of warranty work provided for under the foregoing warranties during other than normal Tolsma work periods, Buyer must pay for all premium time; (3) the warranties will not apply where the products has been subjected to accident, alteration, misuse, abuse, or failure on the part of Buyer to ensure proper storage, operation and/or maintenance, installation or servicing of such products is made by other than Tolsma authorized personnel, the addition or supply of products not approved for incorporation into Tolsma's product, integration into Buyer's environment, or Buyer/third party supplied software or interfacing; (4) products of other manufacturers sold by Tolsma are warranted by Tolsma solely to the extent of any remaining warranty provided by the original manufacturer; and (5) if a product is repaired or replaced by Tolsma, the repair or replacement will not extend the applicable warranty period, nor generate new warranty coverage, for the product
 - E **Warranty Work.** To correct defects Tolsma may attempt to diagnose and resolve the defect over the telephone or electronically. Certain products contain remote support capabilities for direct problem reporting, remote problem determination, and resolution with Tolsma. When Buyer contacts Tolsma for warranty work, it must follow the problem determination, resolution and procedure that Tolsma specifies. At any time following or to assist in problem determination, Tolsma may require return of the part or product to Tolsma for service. If Tolsma determines on-site work is required, a service technician will be scheduled for onsite work. If Buyer gives notice of a defect to Tolsma and requests Tolsma for on-site work when the defect could have been remedied remotely, or if Tolsma responds to Buyer's notice of defect and no

defect is found for which Tolsma is liable, Tolsma will be entitled to compensation for any work performed and costs it has incurred as a result of Buyer's request. Tolsma encourages Buyer to use available remote support technologies. Failure to install and use available remote connectivity tools and products for direct problem reporting, remote problem determination and resolution may result in increased response-time and additional costs to Buyer. If Tolsma did not originally install the products into Buyer's facility, Tolsma shall have no obligation to remove or segregate any defective products so that the repairs or replacements can be made.

F **Warranty Returns.** If a new product component or part is provided to Buyer under the above warranties and Buyer fails to return the defective component or part to Tolsma, then Tolsma may invoice Buyer for the defective component at list price at the time of replacement, which invoice will be due and payable by Buyer upon receipt thereof.

- 10 **Confidentiality.** Each party will maintain the confidentiality of the other's Confidential Information. "Confidential Information" means all sensitive or proprietary information about a party's business affairs, products, services, confidential intellectual property, trade secrets, and third-party confidential information, regardless of its format. The parties will use their best efforts to identify material they believe is Confidential Information but the failure to do so will not prevent any information from being Confidential Information. The Contract and all drawings, specifications, proprietary information, trade secrets, intellectual property and other information, data and material furnished to Buyer by Tolsma will be Tolsma's Confidential Information. The obligations in this Section 10 do not apply to information that (a) is or becomes generally available to the public other than as a result of, directly or indirectly, any breach of legal obligations by the other party; (b) was known by or in the possession of the other party prior to being disclosed; (c) is or becomes available to the other party on a non-confidential basis from a third-party source, provided that such third party was not prohibited from disclosure; (d) was or is independently developed by a party without reference to or use of any of the Confidential Information; or (e) is required to be disclosed pursuant to applicable law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction, but only to the extent required by law and only after taking reasonable steps to prevent, limit or protect such disclosure.
- 11 **Patent Infringement.** Tolsma will defend any proceeding brought against Buyer so far as the proceeding is based on a valid claim that any Tolsma design product infringes on the patent of another, but only if Tolsma is notified promptly in writing and given authority, information and assistance for the defense of the claim, and if the alleged infringement is not the result of a design or other special requirement specified by Buyer or the result of the application for the use to which the product is put by Buyer or others. Tolsma makes no representation or warranty related to any modification, done by Buyer, of Tolsma's products or Tolsma's specified process without Tolsma's prior written consent. Tolsma will pay all damages and costs finally awarded in such suit or proceeding against Buyer provided that Tolsma has the sole and exclusive right to defend, settle or compromise any suit or proceedings and Buyer takes no action that would materially detract from Tolsma's ability to conduct an effective defense, settlement or compromise. If the products or part in such suit are held to infringe any such patent and the use thereof is enjoined, Tolsma will at its expense either, at its option; (a) obtain for Buyer the right to continue using such products or part or; (b) replace the same with non-infringing products, or; (c) modify the same so that it becomes non infringing or; (d) remove said products and refund the purchase price and the transportation and installation costs thereof. The foregoing states Tolsma's entire liability to Buyer for patent infringement.
- 12 **Regulatory Standards.** Tolsma endeavors to keep its products in conformance with applicable regulatory standards, but Tolsma's products are used in many applications, and the applicable regulatory standards for uses may change from time-to-time and may conflict with the regulatory standards for other uses and jurisdictions. Tolsma makes no promise or representation that its product will conform to any federal, provincial, state or local laws, ordinances, regulations, codes or standards except as particularly stated by Tolsma in writing. Tolsma's prices do not include the cost of any regulatory inspections, permits or fees, and Buyer will be responsible for any that may be required for Buyer's use of Tolsma's products.
- 13 **Security Interest.** Buyer grants Tolsma a purchase money security interest on any products supplied under any Contract until such time as the entire price for the products is paid in full. Buyer will assist Tolsma in perfecting Tolsma's security interest and, if Buyer defaults, Tolsma may exercise any right and remedy provided by law and equity, including the right to repossess the products.
- 14 **No Transfer of Intellectual Property.** The sale products and/or software to Buyer will in no way transfer to Buyer any right of ownership in any patents, copyrights, trademarks, technologies, designs, specifications, drawings, or other intellectual property incorporated into the products and/or software.
- 15 **No Consequential Damages.** IN NO EVENT WILL TOLSMA, ITS SUBCONTRACTORS OR SUBSUPPLIERS OR BUYER BE LIABLE IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL CONTEXT OR THEORY, INCLUDING NEGLIGENCE AND STRICT LIABILITY, FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR CHARACTER, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF PRODUCTIVE FACILITIES OR EQUIPMENT, COSTS OF PRODUCT RECALL, PLANT DOWNTIME, DAMAGE TO OR LOSS OF PRODUCT, CHEMICALS, CATALYSTS, FEEDSTOCK OR OTHER RAW MATERIALS,

LOSS OF REVENUES OR PROFITS OR LOSS UNDER PURCHASES OR CONTRACTS MADE IN RELIANCE ON THE PERFORMANCE OR NON-PERFORMANCE OF THE PRODUCTS OR SERVICES, WHETHER SUFFERED BY EITHER PARTY OR ANY THIRD PARTY.

- 16 **Limitation of Liability.** EXCLUDING ANY AMOUNTS DUE FROM BUYER TO TOLSMA FOR PRODUCTS OR SERVICES PROVIDED BY TOLSMA PURSUANT TO A CONTRACT, BUYER AND TOLSMA AND TOLSMA'S SUBCONTRACTORS' AND SUBSUPPLIERS' AGGREGATE RESPONSIBILITY AND LIABILITY, WHETHER ARISING OUT OF CONTRACT OR TORT OR ANY OTHER LEGAL CONTEXT OR THEORY, INCLUDING NEGLIGENCE AND STRICT LIABILITY, UNDER THE CONTRACT, INCLUDING, BUT NOT LIMITED TO, ALL CLAIMS FOR BREACH OF ANY WARRANTY OR GUARANTEE, FAILURE OF PERFORMANCE OR DELAY IN PERFORMANCE BY SELLER OR PERFORMANCE OR NON-PERFORMANCE OF THE PURCHASED EQUIPMENT SHALL NOT EXCEED THE CONTRACT PRICE FOR THE PURCHASED PRODUCTS OR SERVICES; PROVIDED, HOWEVER, THAT THIS LIMITATION WILL NOT APPLY TO ANY LIABILITY OF BUYER OR FOR DIRECT DAMAGES CLAIMED BY THIRD PARTIES FOR SUCH THIRD PARTIES' PERSONAL INJURY OR PHYSICAL PROPERTY DAMAGE FOR WHICH BUYER OR SELLER IS LIABLE UNDER OTHERWISE APPLICABLE LAW.
- 17 **Gratuitous Information, Assistance or Advice.** Tolsma may provide gratuitous information, assistance or advice to Buyer from time-to-time. Buyer agrees that any such information, assistance or advice will be without liability to Tolsma.
- 18 **Arbitration.** Because litigation can be very expensive, burdensome and time consuming, both parties agree that it is in their mutual best interest to provide a fair, impartial and expeditious alternative to litigation for the resolution of disputes under this Agreement. Accordingly, if Buyer desires to make a claim against Tolsma under any legal theory (e.g., contract, tort, negligence, strict liability or otherwise) that is in any way related to Tolsma's obligations under any Contract, the parties agree that the claim will be resolved in an individual arbitration conducted in accordance with Federal Arbitration Act (9 U.S.C. § 1) before a single arbitrator. The arbitrator may be any commercial attorney or retired judge selected by mutual agreement between the parties or otherwise appointed pursuant to the Act. The arbitrator will set the rules, procedures and schedule for the arbitration, it being the intent of the parties that the arbitration be as expeditious and informal as the nature of the dispute permits. The arbitrator may order the parties to exchange documents. The arbitrator's fees and costs will be shared between the parties equally; provided, however, the arbitrator may award the substantially prevailing party some or all of the arbitrator's fees and reasonable attorneys' fees and costs as part of the arbitration award. The arbitrator's decision will be final and binding on the parties (except as otherwise provided in the Act) and subject to enforcement in any court of competent jurisdiction. If any action is filed to interpret or enforce the arbitrator's decision, the substantially prevailing party is entitled to recover reasonable attorneys' fees and costs.
- 19 **General Provisions.** The Contract will be governed by the laws of Prince Edward Island Canada, with provincial courts located in Prince Edward Island as the exclusive jurisdiction for any dispute related to the Contract. If any provision of the Contract is invalid, illegal or unenforceable under applicable law, the Contract will be construed as if such term or provision was not included. If Buyer transfers, assigns, or leases any products sold by Tolsma, then the party acquiring the products will be bound by the terms of the Contract related to the products acquired. If any action is filed to interpret or enforce the Contractor's decision, the substantially prevailing party is entitled to recover reasonable attorneys' fees and costs. If Tolsma's ability to fulfill its obligations is limited or delayed by conditions beyond Tolsma's reasonable control (including, but not limited to, labor unrest, insurrection, acts of God, war, terrorist activities, emergencies, shortages or unavailability of materials, weather, change in law or other similar causes), then the period for Tolsma's performance will be extended for an amount of time equal to the period that Tolsma's ability to perform was limited or delayed, plus a reasonable remobilization period. During any period that Tolsma's performance is limited, Tolsma agrees to continue to perform to the extent feasible in view of applicable circumstances.

ACCEPTED AND AGREED:

 (Buyer Name)

By: _____

Name: _____

Title: _____

Date: _____