

## Terms and Conditions of Sale

**These terms and conditions govern the sale of Products ("Products") and the provision of services ("Services") by STANMECH Technologies Inc. and its divisions, subsidiaries and affiliates ("STANMECH"). These terms and conditions ("Agreement") take precedence over Buyer's supplemental or conflicting terms and conditions to which notice of objection is hereby given. Acceptance by Buyer is limited to and conditioned upon Buyer's assent to these terms and conditions. Neither STANMECH's commencement of performance or delivery shall be deemed or constituted as acceptance of Buyer's supplemental or conflicting terms and conditions. Buyer's acceptance of the Products and/or Services from STANMECH shall be deemed to constitute acceptance of the terms and conditions contained herein. THESE TERMS AND CONDITIONS MAY ONLY BE WAIVED OR MODIFIED IN A WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF STANMECH.**

### 1. Orders

All orders placed by Buyer are subject to acceptance by STANMECH. Orders may not be cancelled or rescheduled without STANMECH's written consent. All orders must include delivery dates, quantities and complete description of Products being purchased. STANMECH may in its sole discretion allocate Product among its Customers. STANMECH may designate certain Products as non-cancelable, non-returnable ("NCNR") or customer specific ("CS") Products and the sale of such Products shall be subject to the special terms and conditions contained in STANMECH's Special Product Agreement, which shall prevail and supersede any inconsistent terms and conditions contained herein or elsewhere.

### 2. Prices

(a) The prices of the Products are those specified on the front of STANMECH's invoice. Pricing for undelivered Product may be increased in the event of any increase in STANMECH's cost, change in market conditions or any other causes beyond STANMECH's reasonable control. Price quotations, unless otherwise stated, shall automatically expire thirty (30) calendar days from the date issued and may be cancelled or amended within that period upon notice to Buyer.

(b) Unless otherwise agreed to in writing by STANMECH, all prices quoted are exclusive of transportation and shipping insurance costs, and all taxes including, but not limited to, federal and provincial sales, excise, goods and services taxes and any other taxes. Buyer agrees to pay these taxes unless Buyer has provided STANMECH with an exemption resale certificate in the appropriate form for the jurisdiction of Buyer's place of business and any jurisdiction to which Products are to be directly shipped hereunder, or unless the sale is otherwise exempt from these taxes. Buyer agrees to indemnify and hold STANMECH harmless for any liability for tax in connection

with the sale, as well as the collection or withholding thereof, including penalties and interest thereon. When applicable, transportation and taxes shall appear as separate items on STANMECH's invoice.

### 3. Payment

(a) Full payment using VISA, MasterCard, American Express, C.O.D., cash or certified company cheque is due promptly upon placing an order with the STANMECH. For all other orders, upon approval of credit, corporate standard terms of payment are net thirty (30) days from the date of invoice unless otherwise specified in writing by STANMECH. In addition, Buyer will be deemed to have accepted an invoice upon the tenth (10th) day from the date of invoice and no further objections to the invoice will be permitted or accepted. STANMECH may invoice each shipment separately and each shipment shall be considered a separate and individual contract. Buyer agrees to pay such invoice pursuant to its terms without the benefit of setoff or deduction.

(b) All late payments shall be charged interest computed on a daily basis from the due date until paid in full. A late charge of one and one-half percent (1 1/2%) per month or the maximum rate permitted by applicable law, whichever is less, will be imposed on all past due accounts. Buyer shall be liable for costs of collection, including reasonable attorneys' fees and court costs, in any action to collect past due amounts.

(c) Transportation charges, including transportation insurance, from STANMECH's facility to Buyer's facility shall be paid by Buyer to STANMECH, in addition to the purchase price of the Product, unless otherwise agreed to in writing by STANMECH. STANMECH will select the carrier in the absence of specific instructions by Buyer.

(d) STANMECH reserves the right to establish and/or change credit and payment terms extended to Buyer when, in STANMECH's sole opinion, Buyer's financial condition or previous payment record warrants such action. Further, on delinquent accounts, STANMECH shall not be obligated to continue performance under any agreement with Buyer.

(e) If STANMECH believes in good faith that Buyer's ability to make payments may be impaired or if Buyer shall fail to pay any invoice when due, STANMECH may suspend delivery of any order or any remaining balance thereof until such payment is made or cancel any order or any remaining balance thereof, and Buyer shall remain liable to pay for any Products already shipped and all NCNR and CS Products ordered by Buyer.

(f) STANMECH retains a purchase money security interest in the Products delivered to Buyer, and in their accessories, replacements, accessions, proceeds and Products, including accounts receivable (collectively, the "Collateral") to secure payment of all amounts due under this Agreement. Buyer's failure to pay all amounts hereunder in full when and as due shall constitute a default hereof and shall give STANMECH all rights of a secured party. If Buyer fails to pay any amount when due, STANMECH shall have the right to repossess and remove all or any part of the Collateral from Buyer. Any repossession or removal shall be without prejudice to any other remedy of STANMECH hereunder, at law or in equity. Buyer agrees, from time to time, to take any act and execute and deliver any document (including, without limitation, financing statements) reasonably requested by STANMECH to transfer, create, perfect, preserve, protect and enforce this security interest.

(g) Any payment received from Buyer may be applied by STANMECH against any obligation owing from Buyer to STANMECH, regardless of any statement appearing on or referring to such payment, without discharging Buyer's liability for any additional amounts owing from Buyer to STANMECH, and the acceptance by STANMECH of such payment shall not constitute a waiver of STANMECH's right to pursue the collection of any remaining balance.

#### **4. Delivery and Title**

All deliveries will be made FOB STANMECH's facility. Subject to STANMECH's right of stoppage in transit, delivery of the Products to the carrier shall constitute delivery to Buyer and title and risk of loss shall thereupon pass to Buyer. Selection of the carrier and delivery route shall be made by STANMECH unless specified by Buyer. Buyer acknowledges that delivery dates provided by STANMECH are estimates only and STANMECH shall not be liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of STANMECH nor shall the carrier be deemed an agent of STANMECH. In the event of delay caused by such event, the date of delivery shall be extended for a period equal to the time lost as a consequence of the delay in delivery without subjecting STANMECH to any liability or penalty. If the Products perished while in the custody of the carrier, the STANMECH shall be deemed to have performed its obligations in full. Delivery of a quantity, which varies from the quantity specified, shall not relieve Buyer of the obligation to accept delivery and pay for the Products delivered. Delay in delivery of one installment shall not entitle Buyer to cancel other installments.

#### **5. Acceptance/Returns**

Shipments will be deemed to have been accepted by Buyer upon delivery of the said shipments to Buyer unless rejected upon receipt. Buyer shall perform whatever inspection or tests Buyer deems necessary as promptly as possible but in no event later than five (5) days after delivery, after which time Buyer will be deemed to have irrevocably accepted the Products. Any discrepancy in shipment quantity must be reported within five (5) working days of receipt of the Products. In the event of an over shipment, Buyer shall have the option to return the Products to STANMECH at STANMECH's expense or alternatively, Buyer may elect to retain the Products (subject to adjustment of the invoice or the issuance of another invoice to account for such additional items.) Any Product returns shall be subject to compliance with STANMECH's Return Merchandise Authorization ("RMA") policies and procedures as well as a restocking charge equivalent to 50% of the value of such Product as specified in STANMECH's invoice to Buyer. Returned Products must be in the original packaging and conform to minimum package quantity ("MPQ") requirements. Products not eligible for return shall be returned to Buyer freight collect.

#### **6. Limited Warranty and Limitation of Liability**

(a) STANMECH will transfer to Buyer any transferable warranties or indemnities that the manufacturer of the Product provides to STANMECH. If such warranty is not transferable to Buyer, then STANMECH shall warrant the Product or service in the same manner and to the same extent as if the original manufacturer warranty had been transferable to Buyer. **STANMECH SHALL HAVE NO LIABILITY TOWARDS BUYER BEYOND THE EXPRESS TERMS OF SUCH MANUFACTURER PRODUCT WARRANTIES. IT IS BUYER'S OBLIGATION TO REQUEST**

**COPIES OF ANY APPLICABLE MANUFACTURER WARRANTIES AND BUYER SHALL BE DEEMED TO HAVE ACCEPTED SUCH WARRANTIES UPON ACCEPTANCE OF THE PRODUCTS AND/OR SERVICES.**

(b) STANMECH's exclusive obligations with respect to a non-conforming Product or Service shall be, at STANMECH's option, to repair or replace the Product, if it is determined to be defective, or to re-perform the Service, or to refund to Buyer the purchase price paid for the Product or Service. Notwithstanding anything herein to the contrary, the liability of STANMECH under this Section 6(b) for all claims shall not exceed the sum of Buyer's payments for the Products or Services, which are the subject of the dispute, and the foregoing is Buyer's sole and exclusive remedy for all claims under this Section 6(b). **THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES, EXPRESS OR IMPLIED, GIVEN BY STANMECH IN CONNECTION WITH THE PRODUCTS AND SERVICES, AND STANMECH DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND WARRANTIES AGAINST LATENT DEFECTS.**

(c) Replacement Products shall be warranted as set forth in Section 6(a) above. Any Products repaired or serviced by STANMECH shall be warranted as provided in this Section 6(b) for the remainder of the manufacturer's warranty period.

(d) No warranty shall apply to any Product that has been subject to misuse, improper testing, assembly, mishandling, or which has been operated contrary to current instructions relating to installation, maintenance or operation, or contrary to industry standards relating to acceptable input power.

(e) STANMECH disclaims, and shall have no liability for any trademark, trade dress, trade secret, copyright, design or patent infringement, or any other intellectual property right, which may occur, as a result of the sale of Products to Buyer. The only remedy or recourse for trademark, trade dress, trade secret, copyright, design or patent infringement, or any other intellectual property right, shall be against the manufacturer of the Products, which is explicitly subject to the limited warranty of the manufacturer of the Product. There shall be no remedy or recourse against STANMECH or the manufacturer to the extent the infringement arises from or is otherwise based upon (i) the manufacturer's compliance with the particular requirements of Buyer that differ from the manufacturer's standard specifications for the Product; (ii) modifications or alterations of the product other than by the manufacturer; or (iii) a combination of the Product with other items not furnished or manufactured by the manufacturer.

(f) **BUYER SHALL NOT IN ANY EVENT BE ENTITLED TO, AND STANMECH SHALL NOT BE LIABLE FOR, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION COSTS, REMOVAL AND/OR REINSTALLATION COSTS, REPROCUREMENT COSTS, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION OR LOSS OF CUSTOMERS, EVEN IF STANMECH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BUYER'S RECOVERY FROM**

**STANMECH FOR ANY CLAIM SHALL NOT EXCEED BUYER'S PURCHASE PRICE FOR THE PRODUCT GIVING RISE TO SUCH CLAIM IRRESPECTIVE OF THE NATURE OF THE CLAIM, WHETHER IN CONTRACT, TORT, WARRANTY, OR OTHERWISE. STANMECH SHALL NOT BE LIABLE FOR AND BUYER SHALL INDEMNIFY, DEFEND AND HOLD STANMECH HARMLESS FROM ANY CLAIMS BASED ON STANMECH'S COMPLIANCE WITH BUYER'S DESIGNS, SPECIFICATIONS OR INSTRUCTIONS, OR MODIFICATION OF ANY PRODUCTS BY PARTIES OTHER THAN STANMECH, OR USE IN COMBINATION WITH OTHER PRODUCTS. IF, FOR ANY REASON, THE FOREGOING LIMITATIONS ARE FOUND BY AN ARBITRATION PANEL OR COURT OF COMPETENT JURISDICTION TO BE INVALID OR INAPPLICABLE UNDER ANY APPLICABLE STATE OR PROVINCIAL LAW, BUYER AGREES THAT STANMECH'S TOTAL LIABILITY FOR ALL DAMAGES, LOSSES, OR CAUSES OF ACTION OF ANY KIND OR NATURE SHALL BE LIMITED TO ACTUAL DAMAGES WITHOUT REGARD TO ANY PUNITIVE OR EXEMPLARY DAMAGES PROVIDED BY ANY SUCH APPLICABLE LAW.**

(g) Buyer acknowledges that this Agreement was entered into at arms length and that it was not fraudulently induced to enter into this Agreement, in whole or any part, and Buyer explicitly disclaims and waives any claim with respect thereto.

#### **7. Intellectual Property**

If any Product includes intellectual property, such intellectual property is provided by STANMECH to Buyer subject to the copyright and user license, if any, for such Products, the terms and conditions of which are set forth in the license agreement accompanying such intellectual property. Nothing herein shall be construed to grant any rights or license to use any intellectual property in any manner or for any purpose not expressly permitted by such license agreement. Buyer acknowledges and understands that STANMECH is not the manufacturer of any Products ordered or to be supplied to Buyer and is not liable to Buyer or any third party for any copyright, design or patent issue, right or claim that may arise in relation to any Product.

#### **8. Export Control/Use of Products**

Buyer certifies that it will be the recipient of Products to be delivered by STANMECH. Buyer acknowledges that the Products may be subject to the export and/or import control laws and regulations of various countries. Buyer agrees to comply with all export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required and acknowledges that it shall not directly or indirectly export any Products to any country to which such export or transmission is restricted or prohibited. Products sold by STANMECH are not designed, intended or authorized for use in life support, life sustaining, nuclear, or other applications in which the failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If Buyer uses or sells the Products for use in any such applications: (1) Buyer acknowledges that such use or sale is at Buyer's sole risk; (2) Buyer agrees that STANMECH and the manufacturer of the Products are not liable, in whole or in part, for any claim or damage arising from such use; and (3) Buyer agrees to indemnify,

defend and hold STANMECH and the manufacturer of the Products harmless from and against any and all claims, damages, losses, costs, expenses and liabilities arising out of or in connection with such use or sale.

#### **9. Technical Assistance or Advice**

Any technical assistance or advice offered by STANMECH in regard to the use of any Product or provided in connection with Buyer's purchases is given free of charge and only as an accommodation to Buyer. STANMECH shall have no obligation to provide any technical assistance or advice to Buyer and if any such assistance or advice is provided, such fact will not obligate STANMECH to provide any further or additional assistance or advice. STANMECH shall not be held liable for the content or Buyer's use of such technical assistance or advice nor shall any statement made by any of STANMECH's representatives in connection with the Products or Services constitute a representation or warranty, express or implied.

#### **10. Limitation Period**

Subject to any of the limitations expressed in the applicable manufacturer's warranty, no action by Buyer may be brought at any time for any reason against STANMECH or the manufacturer more than twelve (12) months after the facts occurred upon which the cause of action arose.

#### **11. Dispute Resolution**

The validity, interpretation and performance of this Agreement for all Products delivered to or in Canada, and all Services performed in Canada, shall be governed by, and construed in accordance with the laws of Ontario, without giving effect to conflict of laws principles. Both parties agree that any action, demand, claim or counterclaim relating to the terms and provisions of this Agreement, or to any claimed breach, shall be commenced in a court of competent jurisdiction in the judicial district of Burlington, Ontario, and both parties expressly acknowledge that personal jurisdiction and venue shall lie exclusively and is properly in Burlington, Ontario. With respect to all disputes, the provisions of the United Nations Convention on Contracts for the International Sale of Goods 1980 (as amended, replaced or codified from time to time) shall not apply.

#### **12. Force Majeure**

Force Majeure: STANMECH shall not be liable for its inability to secure sufficient quantities of any Product or failure to deliver due to causes beyond STANMECH's reasonable control including, but not limited to, acts of God, natural or artificial disaster, riot, war, strike, delay by carrier, shortage of Product, acts or omissions of other parties, acts or omissions of civil or military authority, Government priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, acts of terrorism, delays in transportation or inability to obtain labor, materials or Products through its regular sources, which shall be considered as an event of force majeure excusing STANMECH from performance and barring remedies for non-performance. In an event of force majeure condition, the STANMECH's time for performance shall be extended for a period equal to the time lost as a consequence of the force majeure condition without subjecting STANMECH to any liability or penalty.



STANMECH may, at its option, cancel the remaining performance, without any liability or penalty, by giving notice of such cancellation to Buyer.

### **13. Non-Waiver**

No course of dealing or failure of either party to strictly enforce any term, right or condition of this Agreement shall be construed as a waiver of that term, right or condition nor shall STANMECH's acceptance of a purchase order be deemed as an acceptance of any terms and conditions therein.

### **14. Entire Agreement**

This Agreement (together with any agreements, policies or terms incorporated by reference) shall constitute the complete, final and exclusive statement of the terms of the Agreement between the parties with respect to the subject matter of this Agreement and the transactions between the parties and shall not be modified or rescinded, except by a writing signed by STANMECH and Buyer. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements, and understandings of the parties with respect to the subject matter of this Agreement. Products furnished and services rendered by STANMECH are done so only in accordance with these terms and conditions. If any provisions of this Agreement are found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these terms and conditions, which shall remain in full force and effect.

### **15. General**

As used herein, terms appearing in the singular shall include the plural and terms appearing in the plural shall include the singular. No rights, duties, agreements or obligations hereunder may be assigned or transferred by Buyer, by operation of law, merger or otherwise, without the prior written consent of STANMECH. Any attempted or purported assignment shall be void. STANMECH's obligations under these terms and conditions may be performed by divisions, subsidiaries or affiliates of STANMECH. The obligations, rights, terms and conditions hereof shall be binding on the parties hereto and their respective successors and assigns. The waiver of any provision hereof or of any breach or default hereunder shall not be deemed a waiver of any other provision hereof or breach or default hereunder. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction.

### **16. Personal Data and Privacy**

The use of any personal data collected or exchanged in connection with any orders for Products shall be governed by STANMECH's Privacy Policy as updated from time to time, the terms of which are incorporated herein by reference as if fully set forth herein. A copy of STANMECH's Privacy Policy may be obtained from its Website.