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# CONFIDENTIAL CREDIT APPLICATION & AGREEMENT

Please print or type  
Please fax back to: (604) 882-3517

**PLEASE READ AND SIGN ALL PAGES >>>**

Legal Name: \_\_\_\_\_ D-U-N-S #: \_\_\_\_\_

Trade Name:  Same as above, or \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Province / State: \_\_\_\_\_ Postal/Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_

Head Office Name: \_\_\_\_\_ Head Office D-U-N-S #: \_\_\_\_\_

Head Office Address: \_\_\_\_\_

City: \_\_\_\_\_ Province / State: \_\_\_\_\_ Postal/Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_

Type of Business: \_\_\_\_\_

Ownership:  Government Agency  Corporation  Partnership  Limited Company  Proprietorship

Projected Annual Purchases \$ \_\_\_\_\_ Would you like an order confirmation sent? (Please check one)

Yes, by email: \_\_\_\_\_  Yes, by fax: \_\_\_\_\_  No

Years in Business: \_\_\_\_\_ Other business ownerships: \_\_\_\_\_

BC Sales Tax #: \_\_\_\_\_ Federal ID #: \_\_\_\_\_

## OWNERS, PARTNERS & MAJOR SHAREHOLDERS

Name and Title	Home Address	Telephone
1) _____	_____	_____
2) _____	_____	_____
3) _____	_____	_____

## BANK INFORMATION

Your Bank: \_\_\_\_\_ Account No: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

**CREDIT REFERENCES**

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Contact: \_\_\_\_\_ Contact: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_ Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_

Contact: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**TERMS OF SALE**

1. Payment in full is due thirty (30) days from the applicable invoice date. Where any due date does not fall on a business day, the applicable payment due date shall be the business day preceding such due date.
2. The undersigned, hereinafter referred to as the **"Applicant"** represents, warrants and certifies to Apex Aluminum Extrusions Ltd., hereinafter referred to as **"APEX"** that the information supplied by the Applicant is complete, true and correct in all respects. Any false or misleading information stated on this credit application & agreement will entitle APEX to terminate credit privileges.
3. The Applicant(s) represent that they have the legal authority to enter into this agreement and that they have the financial ability and willingness to pay for all invoices, charges and balances due within the established terms.
4. The Applicant agrees to provide APEX with copies of incorporation/registration documents, proof of ownership documents, up-to-date financial statements and financial records upon each request of APEX.
5. The Applicant agrees to inform APEX prior to all changes in control or ownership involving the undersigned and to provide appropriate business and financial information requested because of such change. Upon sale or transfer of the assets of the business or of its shares to a third party, a prior written notice must be given to APEX no later than fifteen (15) days prior to the effective transfer/sale date and any and all outstanding amounts due to APEX under this account shall become due and payable immediately to be paid contemporaneously with the closing of such transfer/sale and APEX shall have the right to terminate this agreement at such time in its sole discretion.
6. The Applicant agrees that APEX account shall be paid in full on or before the due date, without any deduction, abatement or set-off, and further that the Applicant will be responsible for the delivery of all payments to APEX office on or before the due date.
7. It is understood and agreed that all invoices will be paid within terms as stated herein without any deduction, abatement or set-off, and further that failure to do so may be deemed sufficient cause for cancellation of credit terms and demand for payment in full.
8. The Applicant understands and agrees that any NSF (non-sufficient funds), returned or cancelled payments will be subject to a \$100.00 charge per occurrence and that any applicable discount will be forfeited. The charge amount is subject to change without notice.
9. The Applicant understands and agrees that interest on any and all overdue amounts payable hereunder will be charged at the rate of 26.8% per annum, calculated monthly in arrears and payable on demand without any deduction, abatement or set-off.
10. The Applicant agrees to indemnify APEX for all legal fees on a solicitor own client basis and other expenses incurred by APEX in connection with the collection of an account.
11. The Applicant hereby agrees that this agreement shall bind the Applicant's heirs, executors, administrators, successors or assigns.
12. The Applicant hereby agrees that where the Applicant comprises of more than one person, such persons shall be jointly and severally liable in the event of default hereunder.
13. The Applicant agrees that all vendor or other dating programs granted by APEX to the Applicant will become current and shall be deemed immediately due and owing from the Applicant to APEX in the event that (a) the Applicant's account is in default and/or becomes past due, and/or (b) the account is cancelled for any reason whatsoever (by the Applicant or APEX).
14. The undersigned Applicant and principals thereof hereby acknowledge and agree that they will execute any additional agreements, assignments or documents that may be deemed necessary by APEX to effectuate the purpose(s) of this agreement or to provide security for this agreement.
15. It is understood and agreed that APEX has the right to exercise offset or recoupment, in the event of delinquency and/or default, to satisfy any outstanding debt and that APEX, at its sole discretion, will apply any credits and/or payments to the oldest balance outstanding.

16. Acceptance of returned merchandise is subject to APEX applicable return policy, as it is amended by APEX from time to time.
17. It is understood and agreed that account privileges may be cancelled at any time at the discretion of APEX.
18. It is understood and agreed that all product purchased from APEX is for domestic sale only.
19. It is understood and agreed that these credit terms may be changed by APEX from time to time, upon prior written notice to the Applicant.
20. These Terms of Sale will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein and will be treated in all respects as a British Columbia contract.
21. Each of the Applicant and Apex irrevocably submits to the non-exclusive jurisdiction of any court in the Province of British Columbia for the purposes of any legal or equitable suit, action or proceeding in connection with these Terms of Sale.
22. The Applicant acknowledges and agrees with the terms of the notice immediately below.

**COLLECTION, USE AND DISCLOSURE OF BUSINESS (AND/OR PERSONAL) INFORMATION:**

The Applicant(s) hereby consents to and authorizes APEX (and/or its agents or assigns) to collect, retain, use and disclose any and all business (and personal) information required to conduct credit investigations and inquiries for the purpose of assessing whether the Applicant is eligible for credit from APEX now and throughout the duration of the Agreement, if any, between the Applicant(s) and APEX as well as for purposes of maintaining the integrity of the credit records of the Applicant(s). For this purpose, APEX may collect credit related information from the Applicant and any credit reporting agency, bank, supplier and/or any other institution that has information that is reasonably related to the Applicant(s)'s credit worthiness. The Applicant(s) further consents to APEX disclosing to and exchanging with any credit reporting agency the appropriate and required credit information to monitor and assess the credit worthiness of the Applicant(s) as well as to maintain the integrity of the credit records relating to the Applicant. This consent to collect, retain and use business and/or personal information about the above-mentioned persons will be valid until the Applicant(s) no longer conducts business with APEX and the Applicant(s) account has been paid in full. Further information about APEX's personal information handling practices is set out in APEX's privacy policy ("**Privacy Policy**") at <https://www.apextrusions.ca/cms/wp-content/uploads/2021/04/Apex-Privacy-Policy.pdf> Notwithstanding any of the terms hereof, APEX shall be under no obligation to extend credit or provide product or services to the Applicant(s). By signing, the Applicant(s) confirm that I/We have read, understand and agree (individually & collectively) to the contents of this Credit Application & Agreement, and the Privacy Policy, and acknowledge that the Applicant(s) have been given the opportunity to seek legal advice prior to signing this document.

**NOTE: CREDIT APPLICATION MUST BE SIGNED**

Applicant (Please print): \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ACCOUNTS PAYABLE CONTACT**

Name: \_\_\_\_\_

Email: \_\_\_\_\_

**PURCHASING OFFICER CONTACT**

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Would you like your invoices sent by email?  Yes  No

**CO-COVENANT AGREEMENT**

To induce the extension of credit to Applicant(s) the undersigned Co-Covenantor (jointly and severally, if more than one) hereby guarantees payment of all existing and future indebtedness of Applicant(s) to APEX, including any costs, expenses, and all legal fees on a solicitor and own client basis payable as a consequence of APEX collection efforts. This personal guarantee is absolute, complete, irrevocable and continuing and it shall not be necessary for APEX to give notice to Co-Covenantor of any extension of credit to Applicant(s), any renewal thereof, any modification of the terms thereof, or APEX arrangements with any other Co-Covenantor. Co-Covenantor agrees to provide personal financial information as reasonably requested by APEX. Co-Covenantor agrees that any demand made or notice given by APEX hereunder can be made to the address of the Co-Covenantor noted below. The limitation period on this guarantee shall not begin to run until demand is made on this guarantee, and such limitation period (is hereby extended to a period of six (6) years from the date such demand is made. For further certainty, all limitation periods that may arise under statute, regulation or as a matter of contract are hereby tolled from and including the date of this agreement, as set out below, until six (6) years after demand is made on this guarantee.

The Co-Covenantor (jointly and severally if there are more than one) hereby consents to and authorizes APEX (and/or its agents or assigns) to collect, retain, use and disclose any and all business (and personal) information required to conduct credit investigations and inquiries for the purpose of assessing whether the Applicant is eligible for credit from APEX and the strength of the Co-Covenantor's guarantee now and throughout the duration of the Agreement, if any, between the Applicant(s) and APEX as well as for purposes of maintaining the integrity of the credit records of the Co-Covenantor. For this purpose, APEX may collect credit related information from the Co-Covenantor and any credit reporting agency, bank, supplier and/or any other institution that has information that is reasonably related to the Co-Covenantor's credit worthiness. The Co-Covenantor further consents to APEX disclosing to and exchanging with any credit reporting agency the appropriate and required credit information to monitor and assess the credit worthiness of the Co-Covenantor as well as to maintain the integrity of the credit records relating to the Co-Covenantor. This consent to collect, retain and use business and/or personal information about the abovementioned persons will be valid until the Applicant(s) no longer conducts business with APEX, the Applicant(s) account has been paid in full and the Co-Covenantor has been released from his/her/it's guarantee. Further information about APEX's personal information handling practices is set out in APEX's privacy policy ("**Privacy Policy**") at <https://www.apextrusions.ca/cms/wp-content/uploads/2021/04/Apex-Privacy-Policy.pdf> Notwithstanding any of the terms hereof, APEX shall be under no obligation to extend credit or provide product or services to the Applicant(s). By signing, the Co-Covenantor confirm that I/We have read, understand and agree (individually & collectively) to the contents of this Credit Application & Agreement, and the Privacy Policy, and acknowledge that the Co-Covenantor has been given the opportunity to seek legal advice prior to signing this document.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Address: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Address: \_\_\_\_\_

**APEX OFFICE USE ONLY**

Approved by: \_\_\_\_\_ Account #: \_\_\_\_\_ Credit Limit: \_\_\_\_\_ Terms: \_\_\_\_\_

OE	PN	CONF	ACTG	SR	EMAIL
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## I. GENERAL

1. These Terms and Conditions of SALE (the "**Terms**") shall apply to sales of any goods and/or services (collectively, the "**Goods**") by **APEX ALUMINUM EXTRUSIONS LTD.** ("**Apex**") to you (the "**Buyer**" and together with Apex, the "**Parties**").

## II. GOODS AND SERVICES; PURCHASE ORDERS

1. Apex will supply the Goods in accordance with these Terms and with the specifications, pricing, delivery, and other terms set forth in a purchase order, proposal, request for quotation or other written document that has been: (i) issued by a Buyer and accepted by Apex; or (ii) issued by Apex and accepted by the Buyer or by Buyer Party that has been authorized by the Buyer to do so; or (iii) agreed to in writing by both Apex and the Buyer (each a "**Confirmed Order**"). A Confirmed Order may be amended only by written agreement of Apex. "**Acceptance**" by the Buyer or the authorized Buyer Party for purposes hereof must be in writing, bearing an original or facsimile signature of a person duly authorized to enter in the Agreement, or by email or electronic communication bearing a scanned or electronically verified signature. "**Acceptance**" by Apex for purposes hereof may be in writing, including email or electronic communication. The provisions of these Terms and any Confirmed Orders existing between the Parties are referred to as the "**Agreement**," which shall control and shall constitute the entire agreement between the Parties with respect to the subject matter of each such Confirmed Order; no other terms or conditions, including without limitation terms or conditions set forth in any Buyer documentation, will become a part of the Agreement unless agreed to in writing by both parties. In the event of a conflict between the provisions of a Confirmed Order and these Terms, the provisions of these Terms shall govern and control, and will not affect transactions pursuant to any other Confirmed Order. Apex shall not provide any goods or services unless and until a Confirmed Order with respect thereto exists.

2. Apex objects, in advance, to any terms and conditions set forth in any of Buyer's contract documents, specifications, or purchase orders that may be provided to Apex prior to, contemporaneous with or subsequent to the Confirmed Order from the Buyer, and Apex shall not be bound by any such terms.

## III. PRICE AND PAYMENT

1. The price for the Goods will be as stated in the Confirmed Order, exclusive of all applicable taxes or any other applicable costs, including but not limited to any Tooling Service Charges in accordance with Section V hereto (the "**Price**").

2. The Buyer hereby acknowledges and agrees that the Price is subject to change, without prior notice to the Buyer, to reflect any increase or decrease in Apex's actual cost resulting in fluctuations in the price of aluminum. Prices on quotations are good for thirty (30) days subject to the above.

3. Credit terms may be offered to the Buyer, subject to satisfactory credit vetting of the Buyer by Apex.

4. Any offer of credit will be at the sole discretion of Apex.

5. Where credit is offered, payment of the Price, applicable taxes, and any other applicable costs shall be due within thirty (30) days of the date of the invoice supplied by Apex, unless otherwise agreed in writing (the "**Credit Date**"). In cases where credit is not offered, payment of the Price will be required before release or provision of any Goods by Apex (the "**Non-Credit Date**", the Credit Date or the Non-Credit Date, as the case may be, the "**Payment Date**").

6. Apex shall be entitled to charge interest on overdue invoices from the Payment Date until the date payment is received by the Buyer, at an annual interest rate of 28.6%, compounded monthly.

7. If payment of the Price or any part thereof is not made by the Payment Date, Apex shall be entitled to:

- a. Require payment in advance of delivery in relation to any Goods not previously delivered;

- b. Refuse to make delivery of any undelivered Goods without incurring any liability whatsoever to the Buyer or any other party for non-delivery or any delay in delivery; and

- c. Report payments not made by the Payment Date to a Canadian credit bureau, including any combination of Equifax Canada and TransUnion Canada.

## IV. DESCRIPTION, SPECIFICATIONS AND TOLERANCES

1. Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract for the provision of Goods by Apex.

2. Buyer acknowledges that any order placed by Buyer is accepted by Apex with the understanding that the Goods will be produced in accordance with specifications and/or drawings on hand in Apex's files, or furnished to Apex with Buyer's order and specifically as agreed to and accepted by Apex, in writing. All manufacturing tolerances are to be in accordance with Standard Aluminum Association Tolerances or as detailed on the die drawings.

## V. SAMPLE

1. Where a sample of the Goods is shown to and inspected by the Buyer, the parties hereto accept that such a sample is representative in nature and that the Goods received may differ slightly as a result of the manufacturing process.

## VI. TOOLS AND DIE

1. Tooling purchased by Apex for a Buyer shall remain the exclusive property of Apex and its' possession. Apex agrees to maintain tooling in condition to furnish material to original specifications subject to tolerances on approved drawings. Any charge implemented by Apex for tooling will be considered a "**Tooling Service Charge**" and does not affect ownership of the tooling, however the production of extrusions from the die will be for the exclusive benefit of the Buyer. Should Apex not receive an order for any die within a two-year time frame, the tooling will be scrapped or otherwise disposed of without reference or accounting to the Buyer.

## VII. DELIVERY AND INSPECTION

1. Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on, or as close as possible to, the date required by the Buyer. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

2. The standard shipping tolerances are +/- fifteen percent (15%) on weight.

3. If Apex is unable to deliver the Goods because of actions or circumstances under the control of the Buyer, then Apex shall be entitled to place the Goods in storage until such times as delivery may be affected and the Buyer shall be liable for any expense associated with such storage and any such associated expense must be paid by the Buyer prior to delivery of the Goods.

4. Buyer shall inspect the Goods upon receipt and notify Apex in writing of any damages, shortages, over deliveries and duplicated orders within thirty (30) days of signed receipt to enable replacement or credit if appropriate in the circumstances as determined by Apex in its sole and absolute discretion, whose decision shall be final and binding. Apex shall be allowed a reasonable opportunity to inspect the Goods, and cure any claim of alleged non-conformity, including reasonable access to the Goods whether on Buyer's premises, at a storage facility or on the job site.

5. However, if there is visible damage to the outside of the crate, the damage must be reported to Apex in writing within 48 hours after delivery.

6. Delivery dates indicated on quotations and on acknowledgements of orders are approximate and not guaranteed. Apex will do everything possible to maintain the shipping dates given herein, but Apex shall not

be liable for delays in delivery or in performance or failure to manufacture or deliver due to causes beyond its reasonable control such as acts of God, civil or military authority, priorities, fires, strikes or other labor disturbances, floods, epidemics/pandemics, war, riot, delays in transportation, or inability to obtain necessary labor, materials and components. In the event of such delay, the date of delivery or performance shall be extended. Apex shall be entitled to partial deliveries.

7. The Buyer's failure to inspect (or, if applicable, its failure to inspect timely) shall be tantamount to a waiver of such non-conformity and shall relieve Apex of any liability for such non-conformity.

**VIII. RISK**

1. Risk in the Goods shall pass to the Buyer upon receipt of the Goods. Where the Buyer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or set aside for its collection, whichever happens first.

**IX. TITLE**

1. Title in the Goods shall not pass to the Buyer until Apex has been paid in full for the Goods, including any amounts owed pursuant to these Terms.
2. On passing of the title in the Goods to the Buyer, Apex shall assign to the Buyer any assignable rights Apex may have under any warranty extended by a third party covering the subject Goods sold by Apex. Materials or Goods manufactured by others and resold by Apex do not carry any additional warranty by Apex unless specifically granted in writing by Apex.
3. If, prior to the Buyer's full payment of the Goods:
  - a. The Buyer commingles the Goods with its own products, Apex shall grant the Buyer a security interest and lien on the new commingled product(s), with Apex's interest being commensurate to the percentage of the value of the Goods on the date of the commingling in comparison with the value of the Buyer's products on the date of commingling; or
  - b. The Buyer sells the Goods to a third party without Apex having received payment in full for them, the Buyer shall hold in trust for Apex any proceeds received as a result of such sale.

**X. RETURN OF DEFECTIVE GOODS**

1. Subject to applicable laws, all Goods are sold on a firm sale basis. Apex will not accept return of, and shall not credit the Buyer for, any purchased Good, unless otherwise agreed in writing, in which case the following terms apply
2. Any returns must be accompanied by provision of a Returned Material Authorization Number and be authorized in writing by a representative of Apex before any credit will be given. Any such return or credit given shall be authorized by a representative of Apex at Apex's sole and absolute discretion, whose discretion shall be final and binding.
3. Where Apex agrees to accept the return of Goods, the Buyer will be responsible for the cost of carriage and will ensure that the returned Goods are carefully packaged to avoid any damage in transit, and the Buyer remains liable for the returned Goods until such a time as they are accepted by Apex. Apex will not be obliged to accept any Goods and will only accept returns that appear in Apex's current sales record.
4. Goods so returned will be repaired or replaced at Apex's option as determined by Apex in its sole and absolute discretion, whose discretion shall be final and binding.

**XI. LIMITED WARRANTY, DISCLAIMERS, EXCLUSIVE REMEDY AND LIMITATION OF LIABILITY**

1. Apex warrants that the Goods are manufactured free from defects in materials and workmanship under normal use, and, if used as specified will remain in such condition for a period of thirty (30) days from the date of manufacture. This limited warranty extends only to the original Buyer. **THERE ARE NO OTHER WARRANTIES EXPRESSED OR IMPLIED.**

2. Damage and/or injury due to or resulting from shipment, and/or use not in accordance with specifications including, but not limited to, faulty installation, adjustments, repair, exposure to excessive pressure or temperature, exposure to moisture and/or corrosive chemicals, improper application, misuse or abuse, non-specified product or part modification or the negligence of others are not covered by the warranty and are not the responsibility of Apex.

3. **THE EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY OR ANY OTHER APEX OBLIGATION IS, AT APEX'S SOLE OPTION, REPAIR, REPLACEMENT, OR REFUND OF THE PRICE OF THE GOODS DIRECTLY CAUSING THE BREACH. THIS WARRANTY DOES NOT COVER LABOR OR OTHER COSTS INCURRED IN REPAIRING, REMOVING, INSTALLING, SERVICING, OR HANDLING OF ANY GOODS. THIS IS THE LIMIT OF APEX'S LIABILITY.**

4. **UNDER NO CIRCUMSTANCES OR EVENT SHALL APEX OR ITS AFFILIATES, EMPLOYEES, AGENTS, OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, RELIANCE, COVER OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO, DAMAGES FOR: LOSS OF PROFITS; LOSS OF SAVINGS; LOSS OF CONFIDENTIAL OR OTHER INFORMATION; BUSINESS INTERRUPTION; PERSONAL INJURY; LOSS OF PRIVACY; LOSS OR DAMAGE OF OR TO PROPERTY, SYSTEMS, RECORDS, OR DATA; FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE; NEGLIGENCE; AND ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) INCURRED OR SUFFERED BY THE BUYER OR ANY OTHER PERSON ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE GOODS PROVIDED, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES WITH RESPECT TO THE GOODS, THIRD PARTY CLAIMS, LIABILITIES RELATED TO AN INDIVIDUAL'S PRIVACY RIGHT, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THE GOODS, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY OF APEX OR ITS AFFILIATES, EMPLOYEES, AGENTS, OR SUPPLIERS, EVEN IF APEX OR ITS AFFILIATES, EMPLOYEES, AGENTS, OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE BUYER IS SOLELY RESPONSIBLE AND LIABLE FOR VERIFYING THE SECURITY, ACCURACY AND ADEQUACY OF ANY GOODS, AND FOR ANY RELIANCE THEREON.**

5. **APEX WILL IN NO EVENT OR CIRCUMSTANCES BE LIABLE FOR ANY LOSS, DAMAGE, COST OF REPAIR INCIDENTAL, CONSEQUENTIAL, SPECIAL, DIRECT OR INDIRECT DAMAGES OF ANY KIND CAUSED BY DEFECTIVE PRODUCTS OR PARTS, DELAY OR DEFAULT IN DELIVERY, OR OTHERWISE AND ALL OBLIGATIONS OF APEX FOR DAMAGES (INCLUDING LEGAL FEES ON A SOLICITOR AND OWN CLIENT BASIS) EXCEEDING THE PURCHASE PRICE ARE EXCLUDED AND DISCLAIMED. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, AND APEX DISCLAIMS ALL OTHER EXPRESS WARRANTIES, AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE OTHER THAN AS SET OUT IN SECTION XI(1) HERETO.**

**XII. INTELLECTUAL PROPERTY RIGHTS; PATENTS; TRADEMARKS AND COPYRIGHTS**

1. All intellectual property rights, including, without limitation, moral rights, produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of Apex, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in Apex by the execution of appropriate instruments or the making of agreements with third parties.
2. All patents, trademarks, copyrights and other industrial property rights existing with respect to the Goods and all information and documents pertaining to development, production and sale of the Goods shall remain the exclusive property of Apex, the Buyer declares and warrants that it shall not use any information received from Apex with respect to the Goods in order to develop or manufacture Goods, which compete with Apex products. The Buyer shall hold Apex free and harmless from all costs and shall indemnify Apex for all losses or loss of profit directly

or indirectly due to any infringement by the Buyer for patents or other protective rights of Apex.

3. The Buyer shall give Apex immediate written notice of all third-party allegations of infringement with respect to the Goods. If any such claims are made against the Buyer for infringement of the intellectual property or other rights of third parties in the use of the Goods, Apex shall decide, at its sole discretion, if and how any litigation arising there from is to be conducted. In this respect, the Buyer shall not settle or make any other concession without the prior written consent of Apex, which consent Apex may withhold in its sole and absolute discretion. Apex's vis-à-vis the Buyer for infringement of the intellectual property or other rights of third parties is in any case limited to the Price of the Goods.

4. Apex shall not be liable for infringement of intellectual property or other rights in connection with the delivered Goods, if they are not used in a way specified by Apex, or if the infringement is caused by utilization or linking of the Goods with other products neither generated, nor specified in writing, by Apex.

**XIII. CANCELLATION**

1. In the event the Buyer cancels an order, Buyer shall pay Apex, as liquidated damages, the full Price for such materials as are completed and an equitable price for such materials as are in process at the time of cancellation.

**XIV. INDEMNIFICATION**

1. The Buyer agrees to indemnify, defend, protect and hold Apex, and its respective officers, directors, owners, employees, representatives, attorneys, subsidiaries and affiliated companies (collectively, "**Indemnified Parties**") harmless from and against any and all liabilities, costs, claims, causes of action, suits and other damages (including costs of defense, settlement and attorneys' fees) that the Indemnified Parties may suffer, incur, become responsible for, or pay, arising out of or in connection with any breach of any representation warranty, covenant or agreement of the Buyer in the Agreement, any taxes that are the responsibility of the Buyer, and/or the negligence, reckless conduct or willful acts or omissions of the Buyer, its subcontractors or suppliers, or any of its or their agents, employees or representatives, or any other party for which or whom Buyer is legally responsible, to the extent connected in any manner to the performance of the Agreement by the Buyer, its subcontractors or suppliers, agents, employees or representatives.

**XV. FORCE MAJEURE**

1. Apex shall not be liable for any delay or failure to perform any of its obligations hereunder if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, disease, pandemic, epidemic/pandemic, lock outs, accidents, war, fire, governmental acts and/or regulations, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and Apex shall be entitled to a reasonable extension of its obligations without any additional compensation to the Buyer for any such extension. If the delay persists for such time as Apex considers unreasonable in its sole discretion, it may, without liability on its part, terminate the contract without penalty.

**XVI. RELATIONSHIP OF PARTIES**

1. Nothing contained in these Terms shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms shall be deemed to construe either of the parties as the agent, employee, or employer of the other.

**XVII. ASSIGNMENT**

1. The contract between the Buyer and Apex for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of Apex.

**XVIII. WAIVER**

1. The failure by Apex to enforce at any time or for any period any one or more of the Terms herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms of this Agreement and no waiver of any right by Apex shall be effective except where expressly stated in writing and only to the extent stated therein.

**XIX. SEVERABILITY**

1. If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms had been agreed with the invalid, illegal or unenforceable provision eliminated.

**XX. DISPUTES AND APPLICABLE LAWS**

1. This Agreement shall be governed by and construed in accordance with the laws of British Columbia and the laws of Canada applicable therein.

2. Any dispute or controversy occurring between the Parties hereto relating to the interpretation or implementation of any of the provisions of these Terms shall be resolved by arbitration. Such arbitration shall be conducted by a single arbitrator appointed by agreement between the parties, or, in default of agreement, such arbitrator shall be appointed in accordance with the provisions of the *Arbitration Act* or any re-enactment or amendment thereof. Any arbitration shall be held in the City of Vancouver. The procedure to be followed shall be agreed by the parties or, in default of agreement, determined by the arbitrator. The decision arrived at by the arbitrator shall be final and binding and no appeal shall lie therefrom.

I HAVE READ AND AGREE TO ABOVE TERMS AND CONDITIONS

Name	Signature	Date
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