



## **TERMS & CONDITIONS OF SALE**

*These terms and conditions of sale (the “Terms and Conditions”) shall apply to all services, equipment, goods or products manufactured, distributed or sold by Sansom Equipment Limited (the “Seller”) unless otherwise agreed in writing by the Seller and the Purchaser. For the purposes of this Agreement the following definitions shall apply:*

a) “Agreement” means the purchase order received from the Purchaser together with these Terms and Conditions;

b) “Equipment” means all equipment, workmanship, goods, products, and the license of software, related materials supplied to the Purchaser by the Seller pursuant to a purchase order.

### **1. ACCEPTANCE OF CONDITIONS**

The Purchaser, upon receipt of the Seller's acknowledgement of an order, or upon receipt in whole or in part of the Equipment sold under an order, or upon payment in whole or in part for the Equipment or rendition of services therefore, shall be deemed to have accepted, unconditionally, these Terms and Conditions. Any deletions from, alterations or modifications or additions to the Terms and Conditions or the Agreement, shall not be binding unless expressed in writing and signed by both the Seller and the Purchaser's authorized representative.

### **2. DELIVERY**

2.1 Equipment sold hereunder unless agreed otherwise shall be delivered Ex Works (named place) as per Incoterms 2010, depending on specified means of transportation. Delivery dates specified in any quote are approximate, unless specified as binding. Delivery and performance is dependent upon prompt receipt from the Purchaser of all specifications, final approved drawings and any other details essential to the proper execution of the Agreement. The Seller will not be liable for, or accept, late delivery fees or charges.

2.2 Upon notification of readiness of the Equipment by the Seller to the Purchaser, the Purchaser shall promptly take delivery of the Equipment. Any delay by the Purchaser to take delivery of the Equipment shall result in the Purchaser paying storage, maintenance and associated charges and the Seller shall invoice the Purchaser as if shipment or other performance had been made as originally scheduled. Such storage, handling, and maintenance shall be performed at the Purchaser's cost and risk. Failure of the Purchaser to take prompt delivery shall result in payment terms tied to such

delivery becoming due and payable immediately. The Warranty Period (as hereinafter defined) will begin upon such notification of readiness.

2.3 Unless otherwise agreed upon between the parties, the Purchaser shall have the sole responsibility of choosing the carrier and routing from the Seller's or the Seller's sub-contractor's manufacturing facilities to the final destination.

### **3. FORCE MAJEURE**

The Seller shall not be liable for delays in the execution of its obligations due to causes beyond its reasonable control, including but not limited to acts of God, acts of the Purchaser, fires, strikes, labour disturbances, floods, epidemics, quarantine restrictions, war, insurrection or riot, acts of a civil or military authority, compliance with priority orders or preference ratings issued by any Government, acts of Government authorities with respect with to revocation of export or re-export permits/licenses, freight embargoes, car shortages, wrecks or delays in transportation, unusually severe weather, or inability to obtain necessary labour, materials or manufacturing facilities or supplies or delays of sub-contractors. In the event of any such delay, the date of shipment will be extended for a minimum of time equal to the period of the delay. Agreement will in no event be subject to cancellation by the Purchaser, due either to delay in delivery or to any other cause, without the prior written consent of the Seller. In the case of cancellation, cancellation charges judged adequate by the Seller shall apply.

### **4. WARRANTIES**

4.1 Warranty and warranty guidelines of the original manufacturer of the Equipment (the “Manufacturer”) shall apply in respect of all Equipment sold hereunder. During the warranty period (as set out in the warranty guidelines for the Equipment) (the “Warranty Period”), the Equipment shall be free from defects in material and workmanship and shall be of the kind and quality designated or described in the specifications.

4.2 If within eighteen (18) months from the date of notification of readiness of shipment or twelve (12) months from date of first use by the Purchaser or any other end user, unless otherwise specified in writing, the Equipment does not meet the warranties specified above, the Seller agrees to facilitate with the Manufacturer to correct any defect, at its option, either by repairing any defective parts, or by making



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available Ex Works, repaired or replacement parts, provided the Purchaser notifies the Seller promptly of any such defects.

4.3 The cost of removal of the defective Equipment from its related system, site and/or ancillary equipment, and the cost of its reinstallation in such system, site and/or ancillary equipment, including all transportation costs to and from the Seller's, or any sub-contractor of the Seller's, plant or repair shop, shall be borne exclusively by the Purchaser. The Purchaser shall not return or dispose of any Equipment or part thereof with respect to which it intends to make a claim under the foregoing warranty, without the Seller's express prior written authorization.

4.4 Where the Seller supplies Services, the Seller warrants that it shall re-perform Services which are found to have been performed other than in a professional manner and in accordance with sound, generally accepted and professional practices in effect at the time of performance, provided the Seller receives written notification of the defect within thirty (30) days from date of such performance.

4.5 Any repair, replacement or re-performance pursuant to the foregoing warranties shall not renew or extend the Warranty Period. The foregoing warranties shall be void to any deficiency or defect resulting from, the Equipment being improperly installed or cared for, operated under abnormal conditions or contrary to specifications or instructions of the Seller or the Manufacturer, normal wear and tear, modifications or alterations made by the Purchaser or a third party without the Seller's consent.

4.6 THE EXPRESS WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE AND NO OTHER WARRANTIES OF ANY KIND, WHETHER STATUTORY, ORAL, WRITTEN, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY. THE PURCHASER'S EXCLUSIVE REMEDIES AND THE SELLER'S ONLY OBLIGATIONS ARISING OUT OF OR IN CONNECTION WITH DEFECTIVE EQUIPMENT OR SERVICES OR BOTH, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE THOSE STATED HEREIN.

### **5. SECURITY INTEREST, INSURANCE, CHARGES & PROPER CARE**

5.1 So long as sums shall remain owing by the Purchaser to the Seller, the Purchaser shall exercise proper care in the possession and use of the Equipment and shall keep same at

all times in good repair and, excepting any liens, options, charges, pledges, privileges and/or encumbrances held on the Equipment by the Seller, shall keep the Equipment free of all liens, options, taxes, charges, pledges, privileges and encumbrances.

5.2 The Purchaser hereby grants the Seller a security interest in the Equipment to secure the unpaid balance of the purchase price and all other obligations of the Purchaser to the Seller however arising. The Purchaser authorizes the Seller to file all necessary financing statements and other similar documents required to perfect the security interest granted herein and irrevocably agrees to execute any documents required by the Seller relating thereto.

5.3 As general and continuing security for the payment and performance of all obligations of the Purchaser to the Seller, the Purchaser hereby grants and assigns to the Seller, all right, title and interest that the Purchaser now has or may hereafter have, be possessed of, be entitled to, or acquire, now or hereafter or may hereafter have in the Equipment.

5.4 The Purchaser acknowledges that value has been given and agrees that the interests granted hereby will attach when the Purchaser signs this Agreement.

5.5 The Purchaser shall insure the Equipment against loss, destruction or theft for the full value of the replacement purchase price of the Equipment (the "Insurance Policy"), and so long as sums shall remain owing by the Purchaser to the Seller with respect to the Equipment, the Purchaser shall be designated as the beneficiary of the proceeds of the Insurance Policy.

### **6. TITLE & RISK**

6.1 The title to and property in the Equipment sold hereunder and any substitutions or additions thereto and the right to possession thereof, whether attached to realty or otherwise, shall pass from the Seller to the Purchaser when the full purchase price of the Equipment has been paid. Upon failure to make any payment as herein provided, the whole purchase price and any note or security given on account therefore shall forthwith become due and payable and the Seller may immediately enter the premises where the Equipment is located and take possession of and remove the same as its personal property, and may retain any or all partial payments already received as a rental charge for the use of the Equipment without affecting any further or other claims which the Seller may have against the Purchaser.



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6.2 Equipment sold hereunder shall be at the Purchaser's risk on delivery to it as specified in Article 2 above and the loss or destruction of all or part of said Equipment shall not release the Purchaser from any obligations of payment hereunder.

### **7. LIMITATION OF LIABILITY**

7.1 Modifications or adjustments to the Purchaser's processes or the Equipment which is made by the Purchaser upon the good faith recommendations of the Seller shall be made at the Purchaser's risk. In no event shall the Seller be liable for conditions of the Purchaser's site.

7.2 The liability of the Seller, its agents, directors, officers, subcontractors, and/or suppliers, for all claims, actions, judgements, expenses related to or resulting from any loss or damage arising out of performance or non-performance of obligations in connection with the design, manufacture, sale, delivery, storage, of the Equipment shall in no case exceed the Seller's net unit price Ex-Works of such Equipment or part thereof involved in a claim. Where the Seller sells Services, the liability of the Seller, its agents, directors, officers, employees, subcontractors, and/or suppliers for all claims, actions, judgment, expenses related to or resulting from any loss or damage arising out of performance or non-performance of Services, shall in no case exceed in the aggregate, the amount paid by the Purchaser to the Seller for the Services performed under this Agreement.

7.3 No such claim shall be asserted against the Seller, or its agents, directors, officers, employees, subcontractors, and suppliers, unless the injury, loss or damage giving rise to the claim is sustained prior to the expiration of the Warranty Period and no suit or action thereon shall be instituted or maintained unless it is filed in a court of competent jurisdiction within one year after the date the cause of action arises.

7.4 In no event shall the Seller be liable for loss of profit and for any indirect, special, incidental or consequential damages of any nature or kind including but not limited to delays, loss of revenue, loss of use, loss of data, loss of production, costs of capital or costs of replacement power, even if the Seller has been advised of the possibility of such damages.

7.5 The limitations set forth in this Article 7 shall apply and be effective with respect to any claim, cause of action, or legal theory whatsoever including, but not limited to, contract or warranty (including performance guarantees) or breach

thereof, indemnity, tort (including negligence), and strict liability.

### **8. PRICES & PAYMENT TERMS**

8.1 Prices are valid thirty (30) days from the date of quotation by the Seller, unless otherwise stated in writing. Price adjustment clauses, if applicable, will be stated at the time of quotation and a copy will be included as part of the Agreement, in an Appendix thereto.

8.2 All prices are Ex-Works unless otherwise specified in writing by the Seller. Prices quoted do not include federal, provincial, local or any other taxes, tariffs, charges, levies and duties, and if same are applicable these shall be promptly paid by the Purchaser. Any penalty or interest charge levied against the Seller due to the Purchaser's late payment shall be to the Purchaser's account and the Purchaser shall reimburse the Seller for same.

8.3 In cases where Seller's price includes taxes, tariffs, charges, levies and duties, in the event of any changes in any taxes, tariffs, charges, levies or duties, imposed under any federal, provincial municipal or local legislation or authority, after the date of submitting of Seller's tender or quotation and applicable to Equipment sold hereunder, the Seller's sale price shall be adjusted to reflect such increases or decreases. Any penalty or interest charge levied against the Seller due to the Purchaser's late payment shall be to the Purchaser's account.

8.4 Price information published in catalogues, bulletins or price lists is not a definite quotation or offer to sell.

8.5 The Seller reserves the right to adjust prices on any Agreement for any alterations or changes authorized or made by the Purchaser subsequent to the Agreement.

8.6 All prices are in Canadian Dollars unless otherwise specified.

8.7 Payment shall be made direct to the Seller's office in accordance with the conditions stated in the order. Unless otherwise specified, payment shall be due net thirty (30) days from the date of sending of the relevant invoice by the Seller, and time is of the essence in Purchaser's execution of any payment hereunder. Any late payment shall bear interest at the rate set by the Seller from time to time which is one and a half percent (1.5%) per month, eighteen percent per annum (18%), at the date of issue, calculated and due on a monthly basis.



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8.8 Where the Seller supplies Services, in the event of a request by the Purchaser for additional specialist services, the services will be invoiced at the current per diem per person rate for those services as outlined in the Sansom Hourly Rate Schedule. Associated travel and living costs will be outlined in the invoice. For extended hours (beyond regular business hours 8 hours/daily), the rate for specialist services will change to an hourly rate per person at one and a half (1.5) times the equivalent rate based on the per diem. Similarly, weekend and holiday requirements will be charged at two (2) times the hourly rate per person. All prices/rates quoted are valid for ninety (90) days from proposal date. Otherwise, prices are subject to change without notice. Travel and lodging will be billed at actual cost. Kilometer charge is in addition to hourly rates as per the Sansom Hourly Rate Schedule.

8.9 All tariffs imposed on goods or services in connection with the sale of the products under this agreement shall be the sole responsibility of the Buyer. The Buyer agrees to pay for all applicable tariffs and any other related fees at the time of shipment or upon arrival of the goods in the destination country, as required by local regulations. The Seller shall not be liable for any costs associated with tariffs or duties.

### **9. DAMAGES & LOSS CLAIMS**

9.1 The Seller shall carefully pack all Equipment sold hereunder and the Seller shall assume no responsibility for damage after having received "in good order" receipts from the carrier at the Seller's works.

9.2 All claims for loss, damage and delay in transit are to be transacted by the consignee directly with the carrier. Claims for shortages or incorrect equipment must be made in writing to the Seller within fifteen (15) days after receipt of the shipment. Failure to give such notice shall constitute unqualified acceptance and a waiver by the Purchaser of all claims for shortages or incorrect equipment.

### **10. CHANGES**

The Seller reserves the right to make changes in design or to add any improvement on Equipment or other goods at any time, without incurring any obligations to install same on equipment or goods previously purchased or leased. Any changes caused or requested by the Purchaser affecting the Equipment or otherwise affecting the scope of work must be accepted by the Seller and any resulting adjustment to price, schedule, or both, must be mutually agreed upon in writing.

### **11. TESTING & ACCEPTANCE OF GOODS**

11.1 Testing of the Equipment before shipment is carried out in accordance with the Seller's test procedures and at the Seller's cost. Additional tests shall be agreed upon specifically between the Seller and the Purchaser and shall be charged to the Purchaser.

11.2 The Purchaser shall examine the Equipment upon taking possession of same and shall inform the Seller immediately in writing of all defects and deficiencies for which the Seller is responsible. If the Purchaser omits to so notify the Seller within fifteen (15) days of the Purchaser's possession of the Equipment, same shall be deemed to have been accepted.

11.3 Acceptance tests are carried out only if they have been agreed upon in writing by the Seller. As far as circumstances allow, such tests will be carried out in the Seller's facility. If, for reasons beyond the Seller's control, the acceptance tests cannot be carried out within the specified time, the qualities to be determined by these tests shall be deemed proved.

11.4 If it is found from one of the aforementioned tests that the Equipment does not fulfil the terms of the Agreement, the Purchaser shall make available to the Seller suitable opportunity to remedy any deficiency.

11.5 The Purchaser shall have no other rights than the rights outlined above, in case of delivery of deficient equipment.

### **12. TECHNICAL DOCUMENTS**

12.1 Technical documents, such as drawings, descriptions, illustrations and the like, and all weight data, shall serve as an approximate indication only, provided they have not been expressly specified as binding. The Seller reserves the right to make any alterations considered necessary.

12.2 All plans, drawings, technical specifications, documents, software, microfilm, data, or proprietary information relating to the Equipment sold, distributed or manufactured hereunder shall be treated in confidence by the Purchaser, who shall ensure the confidentiality thereof. They remain the Seller's exclusive property and may be neither copied nor reproduced nor communicated to a third party in any way whatever nor used for manufacture of the Equipment, or parts thereof. They may be used only for operation and maintenance of the Equipment, under terms and conditions specified by the Seller.



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12.3 All documents submitted with tenders that do not result in an order shall be returned to the Seller on request.

### **13. SOFTWARE**

13.1 Where the Seller supplies a system program, the Seller hereby grants to the Purchaser a revocable non-transferable and non-exclusive license to use the computer software packages, related materials, and the intellectual property contained therein, furnished hereunder (collectively, the "Program") for the limited use described in the Agreement and in the other documents transmitted to the Purchaser by the Seller. This license shall remain in effect unless terminated by the Seller due to the Purchaser's breach of the provisions of the license.

13.2 The Program shall be used only in connection with the Seller's Equipment. The Purchaser shall have no right to use, print, display modify or disclose the Program nor duplicate or copy the Program, with the exception that one copy may be made for security purposes.

13.3 The Program is proprietary to the Seller and this license allows the Purchaser only the limited right to use the Program, and nothing contained herein shall be deemed to convey any title to or ownership in the Program to the Purchaser.

### **14. DELAYS**

Where the Seller supplies Services, if there is a delay in the engineering or servicing due to any cause beyond the reasonable control of the Seller, then the Purchaser shall pay the Seller all additional charges with respect to the delay, including but not limited to temporary relocation of the Seller's personnel performing under this Agreement.

### **15. RESPONSIBILITY OF PURCHASER**

15.1 The operation of the Equipment is within the exclusive control of the Purchaser and the Purchaser shall indemnify and save the Seller harmless from any and all expense and liability (including legal fees) incurred by or imposed upon the Seller based upon injury to persons (including death) or damage to property (including the Equipment) resulting from the Purchaser's tests, cleaning, operation, or maintenance of the Equipment or from modifications to the Equipment by the Purchaser or by third parties.

15.2 The Seller's Service Representative(s) are not authorized to supervise operation nor are they authorized or licensed to

operate the Equipment and therefore neither the Seller nor its representative(s) shall be deemed to have any responsibility for the operation of the Equipment.

15.3 The Purchaser agrees to provide the Seller with safety practices at the site where the Services will be performed and identify any potential health hazards or other hazardous working conditions. The Seller agrees to comply with identified safety practices and applicable laws and regulations at such site. The Purchaser shall be responsible for any influencing deficiencies at the Purchaser's site, including, but not limited to input signals of poor quality, different environmental conditions, improper application engineering, process problems or difficulties and delays.

### **16. CANCELLATION**

16.1 Where the Seller supplies Services or Equipment, either party may cancel a portion or all of the supplied Services of Equipment upon one hundred and twenty (120) days prior written notice only under the following conditions:

A. Where the Seller supplies Services, during the notification period, the Seller will continue to deliver the full scope of supply; and

B. Where the Seller supplies Services, the Purchaser will continue to pay the rate defined in the Agreement during the one hundred and twenty (120) day period; and

C. Where the Seller supplies Equipment, a cancellation must be pre-approved by the Manufacturer and cancellation charges, if any, will be determined by the Manufacturer and paid by the Purchaser; and

D. Cancellation of the Supplied Services by the Purchaser for any reason will result in a minimum of twenty-five percent (25%) cancellation charge unless the Seller and the Purchaser have agreed to any other amount in writing.

### **17. GENERAL**

17.1 The Purchaser shall not assign this contract or any part thereof without the written consent of the Seller.

17.2 Any order received by the Seller is subject to credit approval and may be cancelled if the Purchaser's credit standing is not satisfactory to the Seller.



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17.3 This Agreement and any order or contract placed hereunder shall be governed by and interpreted in accordance with the laws of the Province of New Brunswick and the federal laws of Canada applicable therein. The parties hereto irrevocably consent to the exclusive jurisdiction of the courts of New Brunswick to hear all matters in relation hereto without regard to conflicts of laws.

17.4 No terms of the Purchaser's purchase order shall apply to the Agreement, even if subsequent to the terms and conditions hereof, unless agreed in writing by an authorized representative of the Seller.

17.5 No penalties or liquidated damages shall apply pursuant to the in execution of the Seller's obligations hereunder, unless accepted in writing by the Seller's authorized representative.

17.6 These terms and conditions shall supersede and abrogate all previous communications, obligations,

commitments or agreements, oral or written, expressed or implied, between the Purchaser and the Seller, in relation to this Agreement and all provisions under the United Nations Convention on Contracts for the International Sale of Goods.

17.7 The Purchaser and the Seller acknowledge having specifically requested that this Agreement and all related documents and correspondence be drafted in English.

17.8 Any addenda or appendices to this Agreement, to be applicable to any order hereunder, must be signed by both the Purchaser's and the Seller's respective authorized representatives.

17.9 The invalidity in whole or in part of any part of this Agreement shall not affect the validity of the remainder of the Agreement.

17.10 Either party's failure to enforce any provisions of the Agreement shall not be construed a waiver of party's right thereafter to enforce each and every such provision.