

Terms and Conditions of Sale

ZHAN SUPPLY CO. LTD.

A corporation incorporated under the Canada Business Corporations Act · Registered office: 203 Mission Trail
Cres, Ottawa, Ontario, Canada

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These Terms and Conditions of Sale (these “Terms”) govern all quotations issued by, and all orders accepted by, ZHAN SUPPLY CO. LTD. (the “Seller”), a corporation incorporated under the Canada Business Corporations Act, having its registered office in the Province of Ontario, for the sale of goods to any purchaser (the “Buyer”). By submitting a purchase order, paying a deposit, or accepting delivery of any Goods, the Buyer accepts these Terms and agrees to be bound by them.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms: “Contract” means the agreement between the Seller and the Buyer for the sale and purchase of Goods, consisting of the Order Confirmation, the applicable Quotation and these Terms; “Goods” means the goods described in the Order Confirmation; “Order Confirmation” means the Seller's written acceptance of the Buyer's purchase order; “Quotation” means a written quotation issued by the Seller; “Incoterms 2020” means the Incoterms® rules published by the International Chamber of Commerce, 2020 edition; and “business day” means a day other than a Saturday, Sunday or statutory holiday in Ontario.

1.2 Headings are for convenience only and do not affect interpretation. “Including” means “including, without limitation.” References to statutes include the regulations made under them and any amendments or successor legislation. All monetary amounts are in Canadian dollars (CAD) unless otherwise stated.

1.3 In the event of an express conflict, the Order Confirmation prevails over the Quotation, and the Quotation prevails over these Terms.

2. APPLICATION OF THESE TERMS; ENTIRE AGREEMENT

2.1 These Terms apply to every Contract to the exclusion of any terms or conditions contained in or referred to in the Buyer's purchase order, acknowledgement, acceptance or any other document, or implied by course of dealing or trade usage. The Seller's performance of an order does not constitute acceptance of any of the Buyer's terms and does not modify or amend these Terms.

2.2 The Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior negotiations, understandings, representations and agreements, whether written or oral. The Buyer acknowledges that it has not relied on any statement, promise or representation made by or on behalf of the Seller that is not set out in the Contract.

2.3 No amendment to the Contract is effective unless it is in writing and signed by an authorized representative of each party.

3. QUOTATIONS, ORDERS AND ACCEPTANCE

3.1 Unless otherwise stated, each Quotation is valid for twenty-one (21) days from its date and may be withdrawn or revised by the Seller at any time before the Seller's acceptance of the Buyer's order.

3.2 The Buyer's purchase order constitutes an offer to purchase the Goods on these Terms. No order is binding on the Seller until the Seller issues an Order Confirmation or delivers the Goods, whichever occurs first.

3.3 Samples, drawings, descriptions, illustrations, weights and dimensions are approximate and for general information only, and do not form part of the Contract unless expressly stated in the Order Confirmation. No sale is a sale by sample. Where the Order Confirmation provides for pre-production samples, the samples approved in writing by the Buyer define the agreed standard of conformity for the corresponding production Goods.

3.4 Clerical, typographical or arithmetical errors or omissions in any Quotation, Order Confirmation, invoice or other document issued by the Seller are subject to correction without liability on the part of the Seller.

4. PRICES

4.1 Prices are as set out in the Order Confirmation, are stated in Canadian dollars, and unless otherwise stated are quoted DDP (Delivered Duty Paid) to the named place of destination in accordance with Incoterms 2020.

4.2 Unless otherwise stated in the Order Confirmation, prices include manufacturing, export packing, international freight, marine cargo insurance, Canadian customs clearance, customs duties and surtaxes as in effect on the date of the Order Confirmation, brokerage, and delivery to the named place of destination.

4.3 If, after the date of the Order Confirmation, any new or increased duty, surtax, tariff, tax, levy or other governmental charge is imposed on the Goods, their importation or their carriage, or any change in law or governmental action materially increases the Seller's cost of supplying the Goods, the Seller may increase the price by the amount of such increase upon written notice to the Buyer. If the aggregate increase exceeds ten percent (10%) of the price of the affected Goods, the Buyer may cancel the affected undelivered portion of the order by written notice given within ten (10) days of the Seller's notice, in which case the Seller shall refund any payments attributable to the cancelled portion, less costs reasonably incurred or irrevocably committed by the Seller.

4.4 Except as provided in Section 4.3, prices are firm in Canadian dollars and are not subject to adjustment for currency exchange fluctuations.

5. TAXES

5.1 Prices are exclusive of GST/HST, QST, provincial sales taxes and all other applicable taxes, all of which will be added to the Seller's invoices where applicable and are payable by the Buyer.

5.2 If the Buyer claims an exemption from any tax, the Buyer shall provide the Seller with a valid exemption certificate and shall indemnify the Seller for any taxes, interest and penalties resulting from an invalid claim of exemption.

6. PAYMENT

6.1 Unless otherwise stated in the Order Confirmation, payment terms are: fifty percent (50%) of the price as a deposit upon issuance of the Order Confirmation, and the balance net fifteen (15) days from the date of delivery.

6.2 The deposit is applied to the price. The deposit is non-refundable once the Seller has placed the corresponding order with its manufacturer or production of the Goods has commenced, except as expressly provided in Sections 4.3, 7.5, 17 and 18.

6.3 Overdue amounts bear interest at the rate of two percent (2%) per month (26.82% per annum), calculated and compounded monthly, before and after judgment, from the due date until payment in full. The Buyer acknowledges that this rate is disclosed as an annual rate for the purposes of section 4 of the Interest Act (Canada).

6.4 The Buyer shall pay all amounts due without set-off, counterclaim, deduction or withholding of any kind, except as required by law.

6.5 The Seller may at any time require security for payment, revoke or reduce any credit extended, require payment in advance, and suspend production, shipment or delivery while any amount owed by the Buyer is overdue or the Seller has reasonable doubts as to the Buyer's ability to pay.

6.6 Payment shall be made by wire transfer, electronic funds transfer or such other method as the Seller may accept. Each party bears its own bank charges.

6.7 The Buyer shall pay, on demand, all costs and expenses reasonably incurred by the Seller in collecting or attempting to collect any overdue amount, or in enforcing any of the Seller's rights or remedies under the Contract, including legal fees and disbursements on a substantial indemnity basis, collection agency fees, court costs, and the costs of registering, maintaining, enforcing or realizing on any security interest. Such amounts form part of the indebtedness secured under Section 8.3 and bear interest at the rate set out in Section 6.3.

7. DELIVERY

7.1 Delivery is made in accordance with the Incoterms 2020 rule stated in the Order Confirmation and, if none is stated, DDP at the Buyer's facility named in the Order Confirmation. Incoterms 2020 apply except as modified by the Contract.

7.2 Delivery dates are estimates only, run from the later of the Seller's receipt of the cleared deposit and the Seller's receipt of all information and approvals required from the Buyer, and are not of the essence. The Seller is not liable for any loss or damage resulting from any delay in delivery, and delay does not entitle the Buyer to refuse delivery, except as provided in Section 7.5.

7.3 The Seller may make partial deliveries, and each partial delivery may be invoiced separately and paid for when due.

7.4 If the Buyer fails or refuses to take delivery of Goods when tendered, the Goods are deemed delivered for the purposes of payment and risk, and the Seller may store the Goods at the Buyer's risk and expense.

7.5 If delivery of any Goods is delayed by more than sixty (60) days beyond the estimated delivery date for reasons other than force majeure or causes attributable to the Buyer, the Buyer may cancel the affected undelivered portion of the order by written notice, and the refund of amounts paid in respect of that portion is the Buyer's sole and exclusive remedy for the delay.

8. TITLE, RISK AND SECURITY INTEREST

8.1 Risk of loss or damage to the Goods passes to the Buyer upon delivery in accordance with the applicable Incoterms 2020 rule.

8.2 Title to the Goods remains with the Seller and does not pass to the Buyer until the Seller has received payment in full of the price and all other amounts owing in respect of the Goods. Until title passes, the Buyer holds the Goods as bailee for the Seller, shall store them so that they are identifiable as the Seller's property, and shall keep them insured for their full replacement value.

8.3 As security for payment of the price and all other amounts owing, the Buyer grants the Seller a purchase-money security interest in the Goods and all proceeds thereof. The Seller may register a financing statement under the Personal Property Security Act (Ontario) or equivalent legislation of any applicable jurisdiction, and the Buyer shall execute all documents and do all things reasonably required to perfect and protect the Seller's security interest. To the extent permitted by law, the Buyer waives the right to receive a copy of any financing statement or verification statement.

8.4 Before title passes, the Buyer may resell the Goods in the ordinary course of its business, provided that the proceeds of any such resale are held by the Buyer in trust for the Seller to the extent of all amounts owing to the Seller.

9. INSPECTION, ACCEPTANCE AND CLAIMS

9.1 The Buyer shall inspect the Goods promptly upon delivery. Claims for shortage, incorrect items or damage apparent on reasonable inspection must be made in writing, with reasonable supporting detail, within five (5) business days of delivery, failing which the Goods are deemed accepted with respect to such matters. Latent defects are governed exclusively by the warranty in Section 10.

9.2 Where damage in transit is apparent at delivery, the Buyer shall note the damage on the carrier's delivery receipt and retain all packaging for inspection.

9.3 No Goods may be returned without a return material authorization ("RMA") issued by the Seller. Returns of conforming Goods are accepted only at the Seller's discretion, must be in unused, resaleable condition in original packaging, and are subject to a restocking charge of twenty-five percent (25%) of the price plus all transportation costs. Goods that are custom-made, custom-sourced or specially ordered for the Buyer are not returnable. For greater certainty, goods procured by the Seller from a manufacturer or supplier specifically to fulfil the Buyer's order, rather than supplied from the Seller's existing inventory, are "specially ordered" for the purposes of this Section and are non-returnable.

10. LIMITED WARRANTY

10.1 The Seller warrants that, for the applicable warranty period set out below (or such other period as is stated in the Order Confirmation), the Goods will conform in all material respects to the specifications set out in the Order Confirmation and will be free from defects in materials and workmanship under normal use and service. Unless otherwise stated in the Order Confirmation, the warranty period is: (a) for seals, gaskets, O-rings, wipers, and other elastomeric or consumable wear items, ninety (90) days from delivery; (b) for bearings, fittings, couplings and similar components, twelve (12) months from delivery; and (c) for hydraulic cylinders, gearboxes and assembled units, twelve (12) months from delivery or one thousand (1,000) hours of operation, whichever occurs first.

10.2 The Seller's sole obligation, and the Buyer's sole and exclusive remedy, for breach of the warranty in Section 10.1 is, at the Seller's option: (a) repair of the non-conforming Goods; (b) replacement of the non-conforming Goods, delivered DDP at the Seller's cost; or (c) refund or credit of the price paid for the non-conforming Goods.

10.3 To make a warranty claim, the Buyer must notify the Seller in writing within the warranty period and within ten (10) business days of discovery of the alleged non-conformity, provide reasonable supporting evidence, obtain an RMA before returning any Goods, and, at the Seller's request, make the Goods available for inspection by the Seller or its designate.

10.4 Repaired or replaced Goods are warranted for the unexpired balance of the original warranty period.

10.5 For greater certainty, the warranty in Section 10.1 applies only to defects in materials and workmanship present at the time of delivery, and does not extend to the service life, durability, or rate of wear of any Goods. Goods that perform as intended and subsequently reach the end of their service life through use are not defective.

11. WARRANTY EXCLUSIONS

11.1 The warranty in Section 10 does not apply to any non-conformity or defect resulting from: misuse, abuse, negligence or accident; improper transportation after delivery, storage, installation, commissioning, operation or maintenance; operation outside rated capacities or contrary to the Seller's or the manufacturer's instructions; modification, alteration or repair by anyone other than the Seller or its authorized designate; combination or integration of the Goods with other equipment, components or products where the non-conformity arises from such combination or integration; ordinary wear and tear; consumable and wear items; or designs, specifications, materials or components supplied or mandated by the Buyer.

11.2 The warranty does not cover, and the Seller is not liable for, costs of removal, reinstallation, diagnosis, field labour, travel, downtime or loss of use.

12. DISCLAIMER OF OTHER WARRANTIES; BUSINESS PURCHASE

12.1 Except for the express warranty set out in Section 10, all other warranties, conditions and representations of any kind, whether express, implied, statutory or collateral, are hereby excluded to the maximum extent permitted by law, including any implied warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose, durability or non-infringement, and any warranties or conditions arising under the Sale of Goods Act (Ontario) or equivalent legislation of any other jurisdiction, or from any course of dealing, course of performance or usage of trade.

12.2 The Buyer represents and warrants that it is purchasing the Goods for business or commercial purposes and not as a consumer, and that no consumer protection legislation applies to the Contract. If the law of any jurisdiction grants the Buyer rights that cannot lawfully be excluded, these Terms shall be read to limit such rights only to the minimum extent required by that law.

13. LIMITATION OF LIABILITY

13.1 To the maximum extent permitted by law, the Seller is not liable to the Buyer for any indirect, incidental, special, punitive, exemplary or consequential loss or damage of any kind, or for any loss of profits, loss of revenue, loss of anticipated savings, loss of data, loss of production, business interruption, loss of goodwill or cost of substitute goods, however caused and whether or not the Seller was advised of the possibility of such loss or damage.

13.2 The Seller's total aggregate liability arising out of or in connection with any order or the Goods supplied under it, however caused, shall not exceed the amounts actually paid by the Buyer to the Seller for the Goods giving rise to the claim.

13.3 The exclusions and limitations in this Section 13 apply regardless of the form or theory of action, whether in contract, tort (including negligence), strict liability, breach of statutory duty or otherwise. Nothing in these Terms excludes or limits liability for fraud or willful misconduct, or any liability that cannot be excluded or limited under applicable law.

13.4 To the extent permitted by law, no proceeding arising out of or in connection with the Contract, other than a proceeding by the Seller for payment, may be commenced more than twenty-four (24) months after delivery of the Goods giving rise to the claim. The parties agree that the Contract is a "business agreement" within the meaning of the Limitations Act, 2002 (Ontario) and that this Section varies the limitation period otherwise applicable.

14. BUYER'S RESPONSIBILITY FOR APPLICATION AND COMPLIANCE

14.1 The Buyer is solely responsible for determining the suitability of the Goods for the Buyer's intended application and end use, and for the selection, testing, integration, installation and safe operation of the Goods, including the design, engineering and safety of any product, machine or system into which the Goods are incorporated.

14.2 Unless expressly stated in the Order Confirmation, the Seller does not represent or warrant that the Goods or any end product incorporating them are certified or approved under any product safety, electrical, emissions or other standard or scheme, and the Buyer is solely responsible for obtaining all certifications, approvals and registrations required for the Buyer's end products and end use.

14.3 Where the Order Confirmation states that the Seller will supply the Goods with specified labelling or markings (including bilingual English/French labelling), the Seller's responsibility is limited to conformity of the labelling with the specification set out in the Order Confirmation.

14.4 The Buyer shall convey to its customers all warnings, instructions, manuals and safety information supplied with the Goods.

15. INDEMNIFICATION

15.1 The Buyer shall indemnify, defend and hold harmless the Seller and its directors, officers, employees and agents from and against all claims, demands, actions, losses, damages, liabilities, fines, penalties, costs and expenses (including reasonable legal fees) brought by or owed to any third party to the extent arising out of or relating to: (a) the Buyer's use, operation, resale, marketing, distribution, installation, integration, modification or alteration of the Goods; (b) any product, machine or system into which the Goods are incorporated; (c) the Buyer's failure to comply with applicable laws in connection with its resale or use of the Goods; (d) the Buyer's breach of the Contract; or (e) specifications, designs, materials or instructions supplied by the Buyer — except, in each case, to the extent caused by the Seller's breach of the warranty in Section 10 or by the Seller's fraud or wilful misconduct.

16. BUYER-SUPPLIED SPECIFICATIONS; INTELLECTUAL PROPERTY; NON-CIRCUMVENTION

16.1 Where Goods are manufactured or sourced to specifications, designs or samples supplied by the Buyer, the Buyer warrants that their use will not infringe the intellectual property rights of any third party, and the Buyer shall indemnify the Seller against all claims, losses and expenses arising from any alleged infringement.

16.2 All intellectual property, know-how, documentation, supplier information and sourcing methodology of the Seller remain the exclusive property of the Seller. No licence is granted to the Buyer except the right to use documentation supplied with the Goods for the purpose of using the Goods.

16.3 The Buyer acknowledges that the identities of the manufacturers and suppliers introduced to the Buyer by the Seller, and the commercial terms available from them, are valuable confidential information of the Seller. During the parties' business relationship and for eighteen (18) months after the last delivery under any Contract, the Buyer shall not, directly or indirectly, purchase Goods of the type supplied under the Contract from any manufacturer or supplier whose identity was first disclosed to the Buyer by the Seller or solicit or induce any such manufacturer or supplier to supply the Buyer directly, without the Seller's prior written consent. Nothing in this Section restricts the Buyer from purchasing goods from any manufacturer, supplier or distributor whose identity the Buyer establishes independently of the Seller.

17. CHANGES, CANCELLATION AND STORAGE

17.1 Requests by the Buyer to change quantities, specifications, delivery schedules or destinations are subject to the Seller's written agreement and to equitable adjustments to price and schedule.

17.2 Orders may not be cancelled by the Buyer after issuance of the Order Confirmation except as expressly provided in these Terms. If the Seller consents in writing to a cancellation, the Buyer shall pay cancellation charges equal to all costs incurred or irrevocably committed by the Seller (including amounts paid or owed to manufacturers, carriers and service providers), plus a reasonable allowance for overhead and profit, and the Seller may apply the deposit against such charges.

17.3 Goods that are custom-made, custom-sourced, branded, labelled or otherwise specially ordered for the Buyer are non-cancellable and non-returnable.

18. FORCE MAJEURE

18.1 Neither party is liable for any failure or delay in performing its obligations (other than obligations to pay money) to the extent caused by an event beyond its reasonable control, including acts of God, fire, flood, storm, earthquake, epidemic or pandemic, war, invasion, terrorism, civil unrest, sabotage, strikes, lockouts or other labour disputes, shortages of materials, energy or transportation, carrier delays, port congestion or closure, acts or omissions of governmental authorities, embargoes, sanctions, import or export restrictions, denial or revocation of licences or permits, and failures or delays of manufacturers, suppliers or subcontractors caused by any such event (each, a “Force Majeure Event”).

18.2 The affected party shall promptly notify the other party, use commercially reasonable efforts to mitigate the effects of the Force Majeure Event, and resume performance as soon as reasonably practicable. Time for performance is extended for the duration of the delay.

18.3 If a Force Majeure Event continues for more than ninety (90) consecutive days, either party may cancel the affected undelivered portion of the order by written notice, in which case the Seller shall refund any payments made in respect of undelivered Goods, less costs reasonably incurred or irrevocably committed by the Seller.

19. COMPLIANCE WITH LAWS; ANTI-CORRUPTION; SANCTIONS

19.1 Each party shall comply with all laws applicable to its performance of the Contract, including the Corruption of Foreign Public Officials Act (Canada) and all applicable anti-bribery, anti-money-laundering, economic sanctions and export and import control laws of Canada and any other applicable jurisdiction.

19.2 The Buyer shall not sell, export, re-export, transfer or otherwise dispose of the Goods, directly or indirectly, in violation of any applicable sanctions or export control laws, or to any person or destination prohibited by such laws.

20. CONFIDENTIALITY

20.1 Each party shall keep confidential, and use only for the purposes of the Contract, all non-public information of the other party disclosed in connection with the Contract, including prices, terms, and supplier and customer identities. This obligation does not apply to information that is or becomes public through no fault of the receiving party, was lawfully known to the receiving party before disclosure, is lawfully received from a third party without duty of confidence, or is required to be disclosed by law or court order (with prompt notice to the disclosing party where lawful). This Section survives for three (3) years after the last delivery, and does not limit Section 16.3.

21. DEFAULT; SUSPENSION; TERMINATION

21.1 Each of the following is an event of default by the Buyer: (a) failure to pay any amount when due; (b) breach of any other obligation under the Contract not cured within ten (10) days of written notice; (c) the Buyer becomes insolvent, makes an assignment for the benefit of creditors, or becomes subject to any bankruptcy, receivership, arrangement or similar proceeding.

21.2 Upon an event of default, the Seller may, without prejudice to any other right or remedy: suspend or cancel any pending production, shipment or delivery; declare all amounts owing by the Buyer immediately due and payable; terminate the Contract in whole or in part; repossess Goods in which the Seller holds title or a security interest, and enter any premises where such Goods are located for that purpose to the extent permitted by law; and apply any deposits or other amounts held against the Buyer's obligations. The Seller's rights and remedies are cumulative.

22. ASSIGNMENT AND SUBCONTRACTING

22.1 The Buyer may not assign the Contract or any rights or obligations under it without the Seller's prior written consent. The Seller may subcontract manufacture, sourcing, inspection and logistics, and may assign the Contract or any receivable to an affiliate, to a financing party, or in connection with a sale of its business.

23. NOTICES

23.1 Notices under the Contract must be in writing and delivered personally, by courier, or by email to the addresses set out in the Order Confirmation (or such other address as a party may designate by notice). A notice is deemed received: if delivered personally or by courier, on delivery; if sent by email before 5:00 p.m.

(recipient's local time) on a business day, on that day, and otherwise on the next business day, provided no delivery failure notification is received.

24. GOVERNING LAW; JURISDICTION

24.1 The Contract and any dispute arising out of or in connection with it (including non-contractual disputes) are governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflict of laws principles.

24.2 The parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario sitting in Toronto for all disputes arising out of or in connection with the Contract, subject to the Seller's right to seek injunctive or protective relief, or to enforce a judgment, in any court of competent jurisdiction.

24.3 The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Contract.

25. GENERAL

25.1 If any provision of these Terms is held invalid or unenforceable, it will be modified to the minimum extent necessary to make it valid and enforceable, and the remaining provisions remain in full force.

25.2 No waiver of any provision or of any breach is effective unless in writing and signed by the waiving party, and no waiver constitutes a waiver of any other or subsequent breach.

25.3 Sections 8, 12, 13, 14, 15, 16, 20, 21, 24 and 25, and any other provision that by its nature should survive, survive delivery, payment, termination and cancellation.

25.4 The parties are independent contractors. Nothing in the Contract creates any partnership, joint venture, agency or employment relationship.

25.5 Except for the persons indemnified under Section 15, no person other than the parties has any right to enforce any provision of the Contract.

25.6 The Contract may be accepted and delivered by electronic means, and electronic signatures and records are valid and binding.

26. LANGUAGE

26.1 The parties confirm that they have expressly agreed that these Terms and all documents relating to them be drawn up in English.

ACCEPTED AND AGREED (WHERE SIGNATURE IS REQUIRED)

Buyer (legal name): _____

By (signature): _____

Name and title: _____

Date: _____