

Marmon/Keystone Canada Inc. Terms & Conditions of Sale

1. **FORMATION OF CONTRACT:** These Marmon/Keystone Canada Inc. Terms and Conditions of Sale (this "Agreement") are incorporated into all contracts, however formed, with regard to all sales of goods and/or provision of services by Marmon/Keystone Canada Inc. ("us", "our", "we") to you, the body corporate, firm or person by which the goods and/or services are purchased ("you", "your"). No other terms, conditions, or understandings, whether oral or written shall be binding upon us, unless made in writing and signed by our authorized representative. Your acceptance is expressly limited to the terms of this Agreement; no order shall have any force or effect until acknowledged in writing by us or by our shipment of goods or provision of services, it being acknowledged that we are not obligated to accept any purchase order or may do so in whole or in part; any proposal for additional or different terms is hereby deemed material and is objected to and rejected. No terms of any document, purchase order or form submitted by you in any manner shall be effective to alter or add to this Agreement even where we do not object to them. Your receipt of any portion of the goods or our commencement of the performance of services, or any other conduct by you that recognizes the existence of a contract with respect to the goods or services described in our acknowledgment or invoice, shall constitute your acceptance of the terms of this Agreement without objection, and our acceptance of your order is expressly made conditional on your acceptance of the terms of this Agreement.

2. **PRICES:** All goods are subject to prior sale, unless we otherwise expressly indicate in writing. The prices quoted may be changed by us at any time and from time to time without notice. We reserve the right to correct any errors or omissions in specifications or prices without liability. Unless we otherwise specify in writing, all freight, insurance and shipping charges shall be at your sole cost and expense. Payment shall be made in Canadian dollars or otherwise in the currency specified in the Contract Documents.

3. **TAXES:** Any taxes which, under any existing or future law, we may be required to pay or collect with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the goods or services shall, if not separately shown, be added as a separate item to the quoted price and shall be paid by you to us on demand. The foregoing shall not apply to any taxes, the payment or collection of which by us is excused by reason of delivery to us of valid tax exemption certificates.

4. **QUANTITIES:** We reserve the right to allocate goods and services to our customers as we see fit. On certain commodities, the producing mill reserves the privilege of shipping over or under the ordered weight or quantity in accordance with our established trade practices which will constitute full and complete shipment of the material specified. Without limiting the foregoing, and unless the Contract Documents expressly specify otherwise, delivery to you of a weight or quantity of goods up to 10% less than or greater than that which we have agreed to sell shall under no circumstances be a breach of contract by us or entitle you to reject the goods delivered. Unless the Contract Documents specify otherwise, we shall be entitled to select the basis on which to charge the goods, and such basis may include charging the goods on a calculated basis taking into account any usual industry standard tolerances applicable to such goods, including the weight, length, thickness, scrap loss and/or packaging of goods. The weight or quantity of the goods printed upon our advice or dispatch note shall be final unless you shall have given notice to us of any discrepancy in weight or quantity within 14 days after receiving the goods and shall have given us reasonable opportunity to witness the weight and/or quantity of the goods being verified before they have been used, processed or sold.

5. **TERMS OF PAYMENT:** Upon credit approval, standard terms of payment shall be Net 30 days, unless we otherwise designate in writing. You shall not be entitled to withhold payment of any amount payable for the supply of goods or services or otherwise under the Contract Documents to us because of any disputed claim in respect of defective goods or services or any other alleged breach of the Contract Documents. All amounts you owe us shall be paid without abatement, deduction, or setoff. The date of payment of an invoice shall be the date the payment is received by us at the location designated on the invoice. If, in our judgment, your financial condition or other matters do not justify continuance on the terms of payment above, we reserve the right, without liability and without prejudice to any other rights and remedies, to suspend performance, decline to ship, stop goods in transit, require full or partial payment in advance or otherwise adjust the terms of this Agreement including ceasing to supply you. If your account becomes delinquent, you shall be liable for all costs and expenses related to collection of past due amounts, including, without limitation, costs of collection, legal fees, costs and expenses. We reserve the right to process/convert cheques electronically. We may at any time, whether before the beginning of the performance of the contract or after partial performance thereof, require from you, partly or wholly, a payment in advance or require a guarantee acceptable to us that you shall satisfactorily fulfill your obligations towards us. We shall be under no obligation to justify our requirement for such payment in advance or guarantee. Invoices not paid when due are subject a late payment service charge of the lesser of 18% per annum (1.5% per month) or the highest rate permitted under law, calculated daily and compounded monthly.

6. **DELIVERIES:** Any shipping and delivery dates or schedule indicated are approximate and are given for information only and shall under no circumstances be essential terms. Such dates are based on our present estimate of the time required to ship after receipt of your order, and prompt receipt of all necessary information from you, and in case of any item which is to be shipped from a producing mill upon current production schedules of the producing mill. Delays in securing your approval of any matter shall, at our discretion, extend the date of delivery. We reserve the right to make partial shipment(s) and invoice therefor, and each part delivery or instalment of the goods shall be deemed to be sold under a separate contract. We shall not be liable for any claim, loss, damage or expense of any kind whatsoever for delays in delivery or loss or damage in transit.

7. **SHIPMENTS:** Unless otherwise expressly stated, shipment may be by carrier or other means selected by us. Unless otherwise agreed to in Contract Document, all shipments shall be at your cost. Risk of loss or damage to goods shall pass to you upon delivery to you, to your designated agent, or to a carrier for delivery to you, whichever occurs first.

8. **STORAGE:** In the absence of agreed shipping dates, we may invoice you and ship the goods once they are ready for shipment. If, because of your inability to take delivery, the goods are not shipped, stopped in transit or returned, we may store them for you at your expense and risk, and subject to Section 7 above, risk of loss shall pass to you when the goods are placed in storage, and the goods shall be deemed to be delivered to you as of such date.

9. **WARRANTIES:**

a. You warrant that all information, documents and data that you provide to us is accurate and complete, and understand and acknowledge that we are relying thereon. You consent to use using any such information for any purposes connected with the supply of goods or performance of services under the contract, including, without limitation, the carrying out of a credit check on you, arranging credit insurance, processing payment by you, enforcing your obligations under the contract and carrying out our own obligations under the contract.

b. We warrant that at the date of delivery the title to the goods sold shall be free of any

encumbrances, and the goods shall comply with any specification and standard specified by us in the Contract Documents, subject to section 10 below.

- c. Notwithstanding the provisions of section 9.b. above or any other provision of this Agreement, **ANY CONDITION, WARRANTY, STATEMENT OR UNDERTAKING AS TO THE QUALITY OF THE GOODS OR SERVICES, THEIR MERCHANTABILITY, THEIR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY AGAINST LATENT DEFECTS, HOWEVER OR WHENEVER EXPRESSED OR WHICH MAY BE IMPLIED BY STATUTE, CUSTOM OR USAGE OF TRADE OR OTHERWISE IS HEREBY EXPRESSLY EXCLUDED, EXCEPT AND ONLY TO THE EXTENT THAT ANY SUCH EXCLUSION IS SPECIFICALLY PREVENTED BY LAW.** Any technical advice provided by us with respect to the use of goods sold or services performed hereunder shall be for informational purposes only, and we make no representation or warranty, nor assume any obligation or liability for any such advice.
- d. Without prejudice to section 9.c. above, no statement or undertaking contained in any national standard, national edition of a CAS standard or ANSI standard, ISO standard, or other standard or technical specification as to the suitability of the goods for any purpose shall give any legal liability to us, except to the extent such exclusion is prevented by law. You shall be solely responsible to satisfy yourself that the goods are suitable for any product or application for which they are to be used before the goods are incorporated into such product or application, and we shall have no liability in this regard.

10. **TOLERANCE AND VARIATIONS:** All goods shall be subject to tolerances and variations consistent with usual trade practices and applicable specifications regarding dimensions, straightness, section, composition, and mechanical properties and normal variations in surface and internal conditions and quality and shall also be subject to deviations from tolerances and variations consistent with practical testing and inspection methods.

11. **TESTING, INSPECTION AND ACCEPTANCE OF GOODS AND SERVICES:**

- a. Unless otherwise specified in the Contract Documents you shall inspect or test all goods upon receipt. You shall be deemed to have accepted the goods and that the goods and services comply with the Contract Documents unless:
- i. in the case of a defect in the quality or state of the goods or the goods otherwise not complying with the Contract Documents, which defect or noncompliance was apparent upon careful inspection or reasonable testing of the goods (or would have been had a careful inspection or reasonable test been carried out), you give us a notice specifying such defect or noncompliance within 14 days after receiving the goods and in any event prior to their use or re-sale and, after doing so, give us a reasonable opportunity to inspect or test the goods before they are used or resold; or
 - ii. in the case of a defect in the quality or state of the goods or the goods otherwise not complying with the Contract Documents, which defect or noncompliance was not apparent upon careful inspection or reasonable testing of the goods (or would not have been had a careful inspection or reasonable test been carried out), you give us notice specifying such defect or non-compliance immediately upon discovering it and in any event not more than 12 months after receiving the goods and, after doing so, you give us a reasonable opportunity to inspect the goods. You shall not be excused from providing such opportunity by reason only that the goods have been

incorporated into the goods or property of a third party or that the goods are located in, upon or under the premises or land of a third party.

- b. Where the Contract Documents provide for testing or inspection of the goods by you or on your behalf before delivery (whether at our site or elsewhere), then you shall inspect and/or test the goods within 7 days of being notified by us that the goods are available for inspection or testing. If you do not inspect or test the goods within the time specified by us in that notice or if within 14 days of such testing or inspection you do not give notice to us stating that, and specifying the reasons why, the goods do not comply with the Contract Documents, then you shall conclusively be deemed to have accepted that the goods comply with the Contract Documents, and subject to section 11.a.(ii) shall not be entitled to reject the goods on the grounds of anything which such inspection or testing has or would have revealed.
- c. Unless otherwise specified in the Contract Documents, you shall be deemed to have accepted the services and that the services comply with the Contract Documents unless you provide us with written notice that the services and deliverables as provided by us are unsatisfactory or otherwise do not comply with the Contract Documents, such notice to be given by the earlier of 2 days of the non-compliance coming to your attention or 7 days of the completion of the services.

12. **BLANKET ORDERS.** All goods under a blanket order must be requested by you for delivery within the agreed-upon time frame, which shall not exceed one year from the date of the blanket order, and shall be delivered in the agreed-upon release quantities.

13. **CHANGES:** Changes in specifications or designs relating to any products, changes in delivery schedules or reschedules or cancellations of orders or changes to scope of services are not permitted unless we have accepted same in writing, have determined the additional charge to be made, if any, and the same has been paid by you.

14. **RETURNS:** Goods may not be returned without our prior written authorization and compliance with our return policies and procedures (current copies of which are available at [insert link/reference]). Requests to return goods must be made within 30 days after your receipt of goods. Goods must be in like-new condition, in their original packaging and able to be returned to stock. Goods that are made to order, discontinued or custom products are not returnable for credit. Returns are subject to a 25% restocking fee and must be shipped prepaid.

15. **REMEDIES:** Provided that you have complied with the requirements of section 11 (as applicable), if:

- a. the goods (or any part of them) are, at the applicable time of inspection, defective in quality or state or (save for discrepancy in weight or quantity) otherwise not in compliance with the Contract Documents, all as confirmed by us, then, either:
 - i. if the parties agree, you shall accept the goods at an agreed value; or
 - ii. if the parties do not so agree within 21 days after you give notice to us under section 11 (as applicable), you may return the relevant goods to us freight prepaid (risk of loss remaining with you until delivery at our site), upon which we shall, at our option either:
 - 1. repair the goods at our expense and return them to the original place of delivery as soon as may be reasonably practicable;
 - 2. repay you, or give you credit for, the invoice price of the goods; or
 - 3. replace the goods by delivering replacement goods to the original place of delivery as soon as may be reasonably practicable.

- b. the services (or any part of them) are unsatisfactory or otherwise not in compliance with the Contract Documents, all as confirmed by us, then either:
 - i. if the parties agree, you shall accept the services as provided at an agreed value; or
 - ii. if the parties do not so agree within 21 days after you give notice to us under section 11 (as applicable), we shall, at the our option either:
 - 1. repay you, or give you credit for, the invoice price of the relevant portion of the services; or
 - 2. re-perform the relevant portion of the services as soon as may be reasonably practicable.

16. **LIMITATION OF LIABILITY:** The undertakings in Section 15. are given in lieu of any other legal remedy you may have (whether in contract, delict, tort or otherwise) and shall be your sole and exclusive remedy in respect of goods or services (or any part of them) being defective in quality or state or otherwise not in compliance with the Contract Documents. Such undertakings do not attach to goods or parts not manufactured by us. We will pass on to you the warranty, if any, we receive from the manufacturer of such goods or part, but only to the extent allowed by such manufacturer. Our aggregate liability to you or anyone claiming through you or on your behalf, with respect to any claim or loss arising out of or relating to any goods or services or alleged to have resulted from any act or omission by us, whether negligent or otherwise, and whether in delict, tort, contract, or otherwise, shall be limited to an amount not to exceed the price received by us for the goods or services with respect to which such liability is claimed. **UNDER NO CIRCUMSTANCES SHALL WE OR ANY AFFILIATE BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OR ANY OTHER LOSSES OR EXPENSES, INCLUDING WITHOUT LIMITATION, FOR INJURIES TO PERSONS (INCLUDING DEATH) OR DAMAGE OR LOSS TO PROPERTY, LOSS OF PROFIT OR REVENUES OR USE, DIMINUTION IN VALUE, COST OF SUBSTITUTE PRODUCTS, LOSS OF USE, OR CLAIMS OF YOUR CUSTOMERS EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF THE THEORY (CONTRACT, DELICT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED AND NOTWITHSTANDING ANY FUNDAMENTAL BREACH OR THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

17. **TOOLS, DIES AND FIXTURES:** Unless otherwise expressly set forth in writing by us, any tools, dies or fixtures which may be used, developed or acquired for use in the production of the goods or performance of the services covered shall be owned by us or any producing mill, as we may elect, even though you are charged in whole or part for the cost of such tools, dies and/or fixtures.

18. **INDEMNIFICATION:** You shall defend, indemnify and hold us and any Affiliate, and our representatives, agents, employees, successors and assigns harmless from and against all claims, suits, demands, losses, liabilities, damages and expenses (including, without limitation, reasonable legal fees) (collectively, "Losses"), including death or injury, which may be made or brought against us, or any Affiliate, by any person, including (but not limited to) any purchaser of the goods or any product made therefrom arising out of or relating to (a) you or your agent's provided specifications, structure, operation, material, method of manufacture or other directions including, without limitation, any resulting violation of intellectual or proprietary rights; (b) accident, damage, use, abuse, misuse or disposal of the goods or any products in which such goods are used; (c) your non-compliance with any federal, provincial, or local law or regulation; (d) your breach of this Agreement or any act, omission, misconduct or negligence; abnormal

operating conditions or applications; (e) operating conditions or applications above the rated capacity of the goods; (f) repairs or modifications made to all or part of the goods without our prior written consent; and (g) any use or application other than or varying in any degree from the specifications and/or our instructions.

19. PATENTS. Except as provided in Section 18 and provided you have made all payments due, we shall defend any suit brought against you based upon a claim that the goods infringe any Canada patent issued as of the date of our quotation and shall pay any damages and costs finally awarded therein against you, provided that you notify us promptly in writing of such suit and we are given full authority, information and assistance by you to defend or settle the suit. Notwithstanding anything to the contrary, we will have no liability to the extent that the suit is based upon: (i) modifications to any item of the goods made by you or on your behalf in a manner that causes the infringement; (ii) use of any item of the goods in combination with other products that causes the infringement; (iii) your failure to use corrections or enhancements to the goods that are made available by us; (iv) your specifications; (v) your distribution, marketing or use for the benefit of third parties of the goods; or (vi) use not authorized under this Agreement. If the goods or any part thereof are deemed to infringe any such patent, we shall, at our expense and sole option either: procure for you the right to continue using said goods or part; replace them with non-infringing goods or parts; modify them so they become non-infringing; or remove them and refund the purchase price for them depreciated over no more than 3 years.

20. RETENTION OF TITLE: The parties expressly agree that until (i) we have been paid in full (in cash or cleared funds) for the goods; or (ii) all monies due or which become due from you to us on any account whatsoever have been paid in full (in cash or cleared funds), whichever comes first, the following provisions shall apply:

- a. legal and beneficial ownership of such goods remain with us, and we shall have a Security Interest or moveable hypothec (as the case may be) therein [NTD: additional documentation will be required to create/perfect security interest/hypotec; this can be addressed as a Contract Document];
- b. you hold the goods as bailee (depository) for us, and you shall keep the goods separate and in good condition as our fiduciary, clearly showing our ownership of the goods;
- c. we shall be entitled to inspect the goods and may recover all or any part of such goods at any time from you if they are in your possession and any of the events in Section 21 have occurred and for that purpose we, our servants and agents may enter upon any land or building upon or in which such goods are situated, subject only to such formalities as are provided by mandatory provisions of law;
- d. you have a right to dispose of such goods (as between you and your customers only) as principal in the ordinary course of its business provided that where you are paid by your customers you hold the proceeds of sale to the extent of the amount owing by you to us at the time of receipt of such proceeds in trust for us and do not mix those proceeds with any other monies, with such right being terminable by us giving to you notice at any time and being automatically terminated (without notice) upon the happening of any of the events referred to in section 21;
- e. under no circumstances shall we be liable to you for any expenses or any damage that you may incur or suffer while acting as our bailee (depository), and
- f. you hereby appoint us to execute all documents and do all things on your behalf in order to perfect and give full effect to the reservation of our ownership rights or security interests pursuant to this section and to maintain such rights or interest enforceable against third parties in all jurisdictions where the goods may be situated.

21. **TERMINATION:** In addition to our rights in section 5. above, we have the right to cease work or terminate this Agreement or any purchase order, in whole or in part, at any time, without liability, if (i) you are in breach or default of this Agreement or any other agreement you have with us; (ii) a petition under any applicable law relating to bankruptcy, insolvency, or reorganization is filed by or against you; (iii) you execute an assignment for the benefit or creditors; (iv) a receiver is appointed for you; or (v) we have any reasonable ground for insecurity with respect to your ability to perform and you are unable to provide us with adequate assurance immediately following our written request. In all cases, our rights shall be cumulative, are not exclusive and we shall be entitled to all other rights and remedies we may have at law or in equity. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination.

22. **CANCELLATION:** An order may be cancelled or modified only by our written consent and your payment of an additional charge, as we may determine (as liquidated damages and not as penalty), and (where applicable) you renounce to any right you might have to cancel any order for the provision of services pursuant to Article 2125 of the Civil Code of Quebec. Your assistance upon cancelling or suspending fabrication or shipment, or your failure to furnish specifications when required, may be treated by us as a breach of contract by you, and we may cancel any unshipped balance without prejudice to any other rights or remedies we may have.

23. **SETOFF (COMPENSATION):** You authorize us to apply toward payment of any moneys that become due us hereunder any sums which may now or hereafter be owed to you by us, or by any Affiliate.

24. **ASSIGNABILITY:** You shall not assign this Agreement or any right or obligation under this Agreement without our express written consent and any purported assignment shall be void and ineffective, but the Agreement shall be binding upon and inure to the benefit of your and our successors.

25. **AMENDMENT:** Any attempt by you to modify, supersede, supplement or otherwise alter this Agreement will not modify this Agreement or be binding on us unless such change has been approved in a signed writing by us which expressly states that this Agreement is modified, superseded, supplemented or otherwise altered.

26. **WAIVER:** All waivers by us shall be in writing. Our failure at any time to require your performance of any obligation hereunder shall not affect our right to require performance of that obligation. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein.

27. **FORCE MAJEURE:** We (and any Affiliate) shall not be liable for any delay or failure to perform this Agreement, in whole or part, when such delay or failure is caused by or results from contingencies beyond our control, including without limitation, act(s) of God, force majeure, war, acts of war (whether war is declared or not), invasion, revolution, civil commotion, terrorist threats or acts, riot, acts of public enemies, blockade or embargo, delays of, or failure to supply by, carriers, suppliers, producers or vendors, car shortage, fire, explosion, breakdown of plant, strike, lockout, labor dispute or slowdown or other industrial disturbances, casualty, accident, earthquake, epidemic, flood, cyclone, tornado, hurricane, lack or failure of sources of supply or increased cost of labor, raw materials, power or supplies, or excessive cost thereof, contingencies interfering with the production or with customary or usual means of transportation of the goods, or by reason of

any law, order, regulation, ordinance, demand, requisition or requirement or any other act of any governmental authority, national, provincial, or local, including court orders, judgments, or decrees, or any other cause whatsoever, whether similar or dissimilar to those above enumerated, beyond our reasonable control. Quantities so affected may be eliminated by us from this Agreement without liability. We shall resume the performance of our obligations as soon as reasonably practicable after the removal of the cause. In the event that the delay or failure remains uncured for a period of at least 10 days, we may thereafter cancel delivery of those goods and/or terminate this Agreement, in whole or part, without liability upon written notice to you.

28. **CONFIDENTIALITY AND INTELLECTUAL PROPERTY:** We reserve all and any property rights and intellectual property rights in all and any drawings, illustrations, estimates of cost and other documents received by you from us. Such documents and any other confidential information may not be used or disclosed by you unless you receive our prior written consent, such information enters the public domain (other than as a result of a breach of this paragraph) or the use or disclosure is required by law.

29. **APPLICABLE LAW AND VENUE:** The Contract Documents, including this Agreement, your purchase of goods or services and all other aspects of our relationship with you shall be construed according to the laws of the Province of Ontario and the laws of Canada applicable therein, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another choice of law. Any action or proceedings by either party against the other may only be brought in the Courts of the Province of Ontario.

30. **NOTICES:** Except where expressly stated otherwise in any of the Contract Documents, a notice in respect of the contract shall only be effective if it is in writing. Email and notices given via any other electronic data interchange system between the parties are permitted. Notices in respect of the contract or under any of the Contract Documents shall be sent to a party at its address or number and for the attention of the individual specified in the Contract Documents, provided that a party may change its notice details on giving notice to the other party of the change in accordance with this section.

31. **SEVERABILITY:** In the event that, for any reason, any provision in this Agreement is held to be void, unenforceable or otherwise invalid, all the other provisions of this Agreement, and the remainder of any provision where the effect of some part of it is held to be void, unenforceable or otherwise invalid, shall remain fully effective.

32. **MISCELLANEOUS:** Provisions which by their nature should survive, including without limitation Sections 9, 11, 15-20, and 28 will remain in force after any termination or expiration. The section headings contained herein are not part of this Agreement and are included solely for the convenience of the parties.

33. **LANGUAGE:** The parties hereto confirm that it is their wish that this Agreement as well as other documents relating hereto, including notices, have been and shall be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette convention de même que tous les documents, y compris tous avis, s'y rattachant, soient rédigés en langue anglaise seulement.

34. **ENTIRE AGREEMENT:** The Contract Documents constitute the whole and only agreement between the parties relating to the subject matter of the contract. You acknowledge that

in entering into the contract you are not relying upon any pre-contractual statement which is not set out in the Contract Documents. Except in the case of fraud, no party shall have any right of action against any other party to this agreement arising out of or in connection with any pre-contractual statement except to the extent that it is repeated in the Contract Documents. For the purposes of this section, 'pre-contractual statement' means any draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the subject matter of the contract made or given by any person at any time prior to the date of this Agreement. Where we provide any information or advice to you in connection with the delivery of any goods or performance of the services other than as specifically required under the Contract Documents, you acknowledge that we do not accept any responsibility for providing inaccurate or incomplete information or advice. You acknowledge that before relying on any information or advice which we or any Affiliate may supply, you should satisfy yourself of the accuracy and appropriateness of that information or advice.

35. DEFINITIONS: In this Agreement, unless the context requires otherwise:

"Affiliate" means in relation to us, any other person directly or indirectly controlling, controlled by, or under common control with us. A person shall be deemed to "control" another person if such person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other person, whether through the ownership of voting securities, by contract or otherwise.

"Contract Documents" means, in relation to each contract for the sale of goods or services by us to you:

- (a) this Agreement;
- (b) any order acknowledgement, advice, dispatch note or other delivery documentation or invoice given by us to you in respect of the contract; and
- (c) any other document expressly accepted in writing by us as forming part of the contract,

and "Contract Document" shall mean any one of them.

"Goods" means, in relation to each contract, the goods referred to in the Contract Documents as being sold by us to you and all our obligations in connection with the sale of these goods, including but not limited to design, manufacture, insurance, delivery, testing and installation and all references to 'delivery of the goods' shall be construed, where the context permits, to include a reference to performance of all such obligations.

"Security Interest" has the same meaning as that term is given in the *Personal Property Securities Act* (Ontario), as amended, replaced or superseded from time to time.

"Services" means, in relation to each contract, the services referred to in the Contract Documents as to be provided by us to you and all our obligations in connection with the performance of these services.

Conditions of Purchase

1. Entire Agreement Acceptance. This Purchase Order, including these Conditions of Purchase (collectively "Order") is an offer by Marmon/Keystone Canada Inc. ("Buyer") and supersedes all other agreements, oral or written, and all other communications between Buyer and the person or entity to whom this Order is addressed ("Seller") suggesting additional or different terms, and represents the final and complete understanding of the parties. This Order expressly limits acceptance to these terms, and any proposal for the addition of different terms or any attempt by Seller to vary in any way any of the terms hereof is hereby deemed material and objected to and rejected. No terms of any document or forms submitted by Seller shall be effective to alter or add to the terms and conditions contained in this Order. Unless otherwise stated herein, Seller's acknowledgement of this Order or commencement of any work or performance of any services hereunder shall constitute acceptance by Seller of this Order and all of its terms and conditions.
2. Prices. (a) All prices are firm and include all costs and expenses; and (b) payment terms are net 45 days from the later of the date of the receipt of a complete invoice or Buyer's acceptance of the goods ("Goods") or provision of services ("Services"). No invoices may be rendered by Seller until after the Goods have been shipped or the Services rendered. No increase in the price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer. Seller is not entitled to suspend deliveries of the Goods or performance of the Services as a result of any sums being outstanding.
3. Favored Nations. If, during its performance hereunder, Seller sells to any other customer goods or services of the same or similar type and quantity purchased hereunder on more favorable terms or conditions, including price, Seller shall advise Buyer, and Buyer shall have the right, at its option, to have such more favorable terms or conditions applied to this Order effective [from the first purchase of Goods or acceptance of Services] or [from the next order of Goods or Services].
4. Delivery. Time is of the essence with respect to this Order. If the delivery of Goods or providing of Services purchased hereunder is not completed within the time frame indicated on your confirmation of our PO, Buyer may, in addition to any other rights or remedies it may have, terminate this Order, without liability, as to Goods not yet shipped or Services not yet provided and purchase substitute goods or services and charge Seller for any additional costs incurred thereby. If, in order to comply with the delivery date specified on the front hereof, Seller must ship by a more expensive way than specified herein, Seller shall pay any increased costs. If type of carrier is not specified, route by lowest cost transportation.
5. Warranties. Seller represents and warrants that the Goods or Services purchased hereunder will be (a) in full conformity with applicable law and the specifications, drawings, descriptions and/or samples furnished or specified by Buyer, (b) that all Goods are free from defects in material, workmanship and design and that all Services will be performed in a timely, competent and workmanlike manner, and (c) that all Goods are of good merchantable quality and fit and sufficient for the purposes intended, (d) free and clear of all liens, priorities, prior claims, moveable hypotecs, security interests or other encumbrances, and (e) free of claims of infringement or misappropriation of any third party's intellectual property rights. All warranties shall survive any inspection, testing, delivery, acceptance or payment or failure to inspect, test or discover any defect or other nonconformance, and such actions or omissions shall not relieve Seller of any of its obligations under the Order or impair any rights or remedies of Buyer. **NO ATTEMPT BY SELLER TO DISCLAIM, EXCLUDE, LIMIT, OR MODIFY ANY WARRANTIES (WHETHER PROVIDED HEREIN OR IMPLIED BY LAW) OR SELLER'S LIABILITY FOR DIRECT, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES SHALL BE OF ANY FORCE OR EFFECT.**

With respect to Goods or Services that are resold or otherwise transferred to a third party by Buyer, such third party shall have the full benefit of all warranties and indemnities from Seller and its suppliers, whether hereunder or otherwise, and Seller agrees to execute any assignments of such warranties and indemnities to such third parties.

6. Recall. In the event that Buyer determines, in Buyer's sole discretion, that any defect, nonconformance or deficiency in any of the Goods requires a field campaign, recall or similar action ("Recall"), or to comply with applicable federal or provincial laws regarding product safety, or to repair, replace or remediate any Goods or any of Buyer's products in which Goods are incorporated, Seller shall be liable to Buyer and its customers for all costs and expenses arising from or related to such Recall including, without limitation, legal fees and litigation costs.
7. Inspections. All Goods are subject to inspection by an authorized representative of Buyer at all times and places, including during production. No Goods or Services shall be considered accepted prior to inspection by Buyer at Buyer's place of business. Buyer reserves the right to reject or to revoke acceptance of Goods that fail to meet any requirement of this Order, notwithstanding any payment or any prior inspection or test.
8. Title and Risk. Title to Goods shall pass to Buyer upon delivery, or if earlier, upon payment to Seller of 51% of the price for the Goods. Risk in compliant Goods delivered in accordance with this Order shall pass to the Buyer on delivery. Goods belonging to or provided by Buyer which are in Seller's custody for any purposes shall be clearly marked and recorded by Seller as belonging to the Buyer and shall be at the Seller's risk. Where Buyer rejects any Goods in accordance with this Order, such Goods shall be deemed to have remained the property and risk of Seller at all times.
9. Rejection and Remedy of Defects. Rejected Goods shall be collected by Seller promptly at its sole cost, if Buyer so elects. Upon rejection of any Goods or Services, Buyer shall have the right to require Seller to repair or replace them within such time as may be stipulated by Buyer or terminate this Order without prejudice to its other rights and remedies. If Seller fails to remedy any defect as above provided, Seller shall return any money paid by Buyer in respect of the defective items and Buyer shall be entitled to terminate this Order without prejudice to its other rights and remedies.
10. Indemnification. Seller shall indemnify, hold harmless and defend Buyer, its parents, subsidiaries, and affiliate companies and their respective successors and assigns, against all lawsuits, damages, losses, expenses, claims, liabilities, judgments, fines, settlements or penalties, including all legal fees and litigation costs, whether direct or indirect, incidental, consequential, or otherwise (collectively, "Claims and Losses") for: (i) claims for personal injury (including death), property loss or damage, or other loss, injury, incident or damage arising out of, relating to, or connected with the use, possession, consumption, manufacture, fabrication, or sale, of the Goods or Services sold or provided by Seller to Buyer, (ii) claims arising from, relating to, or connected with Seller's negligence, acts, willful misconduct or omissions or failure to comply with all the terms of this Order or any other agreement between Buyer and Seller, (iii) any Recall of the Goods, and (iv) claims that the use or possession of the Goods actually or allegedly infringes or misappropriates any intellectual property right of any third party. Seller further agrees to indemnify, hold harmless and defend Buyer, its parents, subsidiaries and affiliate companies and their respective successors and assigns, and each of its customers, against all Claims and Losses, arising from, relating to, or connected with Seller's breach of any of the warranties expressed herein or any warranties implied by law. Seller shall not enter into any settlement of any Claims of Losses without Buyer's prior written consent.
11. Intellectual Property. Seller represents and warrants that the manufacture, sale and use of the Goods will not infringe any patent, copyright, trademark, trade secret or any other intellectual property or proprietary right. If all or any portion of the Goods are held to constitute an infringement of a patent and/or their use is enjoined for any reason, Seller shall promptly, and at its own expense, at Buyer's election, either procure for Buyer the right to continue using such Goods royalty-free or replace such Goods to Buyer's satisfaction with non-infringing Goods of equal quality and performance. Any inventions, patents, copyrights, design rights and other intellectual property rights arising from the execution of this Order shall become the property of Buyer and Seller shall not disclose the same to any third party. Seller shall do all things and execute such documents as may be necessary to assign such property to Buyer.
12. Insurance.
 - a. Seller shall obtain and maintain at all times during which this Order is in effect maintain at Seller's cost the following insurance with insurers having a current A.M. Best rating of "A- VIII" or better:

(1) primary comprehensive or commercial general liability insurance with limits of at least \$1 million per occurrence and \$2 million annual aggregate combined single limit for bodily injury and property damage, including coverage for:

- (i) Products and Completed Operations liability;
- (ii) Blanket Contractual liability; and
- (iii) Cross Liability endorsement or Severability of Interest clause.

b. The required insurance required shall:

- (1) be endorsed to insure Buyer, its officers, directors, employees, representatives, parents, subsidiaries and affiliate companies and agents as additional insureds on an ISO form CG 20 26 07 04, Additional Insured - Designated Person or Organization or the equivalent;
- (2) be endorsed to waive any rights of subrogation against Buyer; provide contractual liability coverage to Seller for its indemnity obligations assumed under this Order, although any failure to comply will not affect the validity or enforceability of such indemnity obligations; and
- (3) be endorsed to provide that such insurance is primary to and non-contributory with any other insurance obtained by, for or on behalf Buyer notwithstanding any "other insurance" provision contained within such policies.

c. Seller shall provide written notice to Buyer no less than 30 days prior to the effective date of cancellation or material reduction of any required insurance coverage, including any modification affecting any policy's compliance with the terms of this Order.

d. Prior to the effective date of this Order, Seller shall provide certificates of insurance to Buyer with endorsements to demonstrate the insurance coverages required herein.

e. If this Order covers construction work, installation or repair of machinery or equipment, or performance of services, prior to the commencement of work hereunder, Seller shall furnish Buyer with a Certificate of Insurance, in amounts and coverage satisfactory to Buyer, evidencing Seller's bodily injury and property damage liability insurance and Worker's Compensation insurance covering Seller's liability in the province in which the work or services covered by this Order are to be performed and, where applicable, a clearance certificate from the *Commission de santé et de la sécurité du travail* ("CSST") attesting to the fact that all assessments have been paid. Said Certificate of Insurance will provide that the insurance issued to Seller will not be cancelled before the completion of the work or services covered by this Order without thirty days prior written notice to Buyer. At Buyer's request, Seller shall before final payment, furnish Buyer with a lien waiver and sworn statement that all subcontractors, laborers, and material suppliers have been paid in full.

f. Seller specifically recognizes and acknowledges that the insurance required in this Order does not limit Seller's responsibility in the event of a loss.

13. Tooling. Any tooling provided by or specifically paid for by Buyer shall be and remain the sole property of Buyer. Seller shall be responsible for maintenance of the tooling while in its possession and shall return tooling to Buyer immediately upon demand. Seller waives any lien rights or other rights to retain tooling and acknowledges that its obligation to return tooling upon demand is unconditional, subject to applicable law.

14. Changes. Buyer shall have the right at any time to make changes in drawings, specifications, materials, packaging, time and place of delivery, and method of transportation or to the scope of services. If any such changes cause an increase or decrease in the cost or the time required for performance, an equitable adjustment shall be made therein, and this Order shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this section.

15. Set-Off. Buyer has the right to set off (compensate) against any amounts due Seller hereunder any amounts owed to Buyer by Seller arising from any other transaction.
16. Force Majeure. Buyer shall not be liable for failure to take delivery of Goods or to allow performance of the Services if such failure or inability is due to causes beyond Buyer's reasonable control, including without limitation act(s) of God, act or omission of government, war or similar event, or labour dispute.
17. Termination for Cause.
 - a) Buyer may terminate this Order without liability, in whole or in part, at any time, if (i) Seller fails to deliver the Goods or to perform the Services covered hereby at the time specified on the front hereof or any extension thereof authorized by Buyer in writing, (ii) a petition initiating a proceeding under any applicable law relating to bankruptcy, insolvency, or reorganization is filed by or against Seller, (iii) Seller executes an assignment for benefit of creditors, (iv) a receiver is appointed for Seller or any substantial part of its assets, or (v) Buyer shall have any reasonable ground for insecurity with respect to Seller's ability to perform and Seller is unable to provide Buyer with adequate assurance of its ability to perform within ten days after written request therefore by Buyer.
 - b) Buyer's right to terminate this Order is not an exclusive remedy. Buyer shall be entitled to all other rights and remedies it may have either at law, contract or in equity. No termination of this Order shall affect any rights or obligations of either party accrued as of the effective date of such termination.
18. Termination at Buyer's Convenience. Buyer may terminate this Order, in whole or part, at its convenience at any time by written notice to Seller. In such event, Seller may claim only properly documented out-of-pocket costs for work already performed. For specially prepared Goods or products that are unique to Buyer's order, any partially completed work or raw materials whose full costs are included in the cancellation charges shall be identified in writing and held by Seller for disposition in accordance with Buyer's written instructions.
19. Safety and Health. Seller hereby warrants that the Goods sold and the Services performed hereunder meet all applicable requirements of all federal, provincial and local legislation in effect in connection with occupational health and safety, toxic substances, food, drugs and cosmetics, pharmaceutical and natural health products, and product safety. Without limiting the foregoing, the Goods shall be delivered complete with all instructions, warnings and other data necessary for safe and proper operation, otherwise the Goods shall be considered to be defective.
20. Compliance. Seller shall comply with all applicable federal and provincial employment standards legislation.
21. Waiver. Failure of Buyer at any time to require Seller's performance of any obligation under this Order shall not affect Buyer's right to require performance of that obligation. Any waiver by Buyer of any breach of any provision hereof must be in writing and shall not be construed as a waiver of any continuing or succeeding breach of such provision or waiver or modification of this provision itself, or a waiver or modification of any right under this Order.
22. Assignment. Seller shall not assign this Order or any monies due or to become due hereunder, without Buyer's prior written consent, and any attempted assignment without Buyer's prior written consent shall constitute a material breach of this Order.
23. Applicable Law and Venue. This Order, the purchase of Goods or Services by Buyer from Seller and all other aspects of the relationship between Seller and Buyer, shall, except as otherwise set out herein, be construed and governed according to the laws of the Province of Ontario and the laws of Canada applicable therein excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another choice of law. Seller agrees that any litigation relating to this Order, or which otherwise arises directly or indirectly out of or in connection with the purchase of Goods or Services by Buyer from Seller, or out of or in connection with any transaction of any nature between Buyer and Seller, shall only be commenced in the courts of the Province of Ontario. Seller hereby consents to personal jurisdiction in the Province of Ontario.

24. Notices. Any and all notices or other communications required or desired to be given in connection with this Order will be given in writing and will be deemed effective upon personal delivery, on the third day after mailing if sent by registered or certified mail, postage prepaid, return receipt requested, or one business day after deposit if sent by a nationally recognized courier service which maintains evidence of the time, place and receipt of delivery, and in each case if addressed as set forth in the Order (or such other addresses a party may designate in writing from time to time), plus Seller shall dispatch a copy to Robert W. Webb, Esq., Senior Vice President and General Counsel, The Marmon Group LLC, 181 West Madison Street, 26th Floor, Chicago, Illinois 60602. For the purposes of this Order, a business day is any day (other than Saturday or Sunday) on which the Toronto Dominion Bank in Toronto, Ontario is open for commercial banking business during normal banking hours.
25. Buyer Information. BUYER MAKES NO WARRANTY WITH RESPECT TO INFORMATION PROVIDED BY BUYER TO SELLER OR WITH RESPECT TO THE ACCURACY OR COMPLETENESS THEREOF. BUYER IS PROVIDING ANY INFORMATION ON AN "AS IS" BASIS. ANY IMPLIED WARRANTIES OR CONDITIONS THAT MAY EXIST WITH RESPECT TO ANY INFORMATION PROVIDED BY BUYER, INCLUDING ANY WARRANTY OF QUALITY, MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED TO THE EXTENT PERMITTED BY APPLICABLE LAW. Seller acknowledges and agrees that any sales forecasts, quantity purchase estimates or similar projections received from Buyer are not purchase commitments of Buyer, but rather represent estimates for planning purposes only. Buyer shall have no obligation to purchase or otherwise compensate Seller for any of Seller's finished products, or unfinished raw materials, not covered by a purchase order issued by Buyer.
26. Mill Test Reports. If required by the Order, Certification and/or mill test reports shall be forwarded immediately with shipment and delivery shall not be completed unless certification and/or reports have been received.
27. Confidentiality. Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to Seller by Buyer or its agents, sub-contractors, or affiliated companies and any other confidential information concerning Buyer's business or its products which Seller may obtain and Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging Seller's obligations to Buyer and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality.
28. Miscellaneous. Provisions which by their nature should survive will remain in force after any termination or expiration. The section headings contained herein are not part of this Order and are included solely for the convenience of the parties. This Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Order. If any term or provision of this Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Order or invalidate or render unenforceable such term or provision in any other jurisdiction.
29. Language. The parties hereto confirm that it is their wish that this Order as well as other documents relating hereto, including notices, have been and shall be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette commande de même que tous les documents, y compris tous avis, s'y rattachant, soient rédigés en langue anglaise seulement.