

# Surface Finishing Solutions



## Terms and Conditions of Sale

### 1. General

Unless otherwise agreed upon in writing, all sales quotes and contracts, including but not limited to, warranty terms, delivery terms and any other conditions of sale shall be exclusively according to these Terms and Conditions of Sale.

As used herein, "SELLER" means TIGER Drylac® Canada Inc.; "PRODUCT" means the good and/or service specified; "BUYER" means the person/entity purchasing the goods and/or services, and where such person/entity acts as agent for another, that person/entity and its principal, jointly and severally.

### 2. Price

Prices are subject to change without notice. Terms of payment are net thirty (30) days from date of invoice, unless otherwise specified in writing by SELLER.

In the event that the specified price is charged on a basis, which includes transportation charges, any increase or decrease in transportation charges shall be charged to BUYER's account. Any tax, levy or other governmental charge upon production, sale, importation or shipment of PRODUCT imposed by federal, provincial or local authorities or becoming effective for, or during, the specified period shall be added to and deemed part of the price.

### 3. Notice obligation of BUYER

BUYER shall notify SELLER in writing prior to ordering a PRODUCT from SELLER if BUYER intends to use the PRODUCT in any of the following fields:

- a. Automotive
- b. Aviation
- c. Railroad
- d. Wind energy
- e. Railed vehicles
- f. Cable cars
- g. Power plants
- h. Hydropower vehicles

If the PRODUCT is to be specially developed for BUYER, written notice thereof must be provided prior to SELLER beginning the first design draft of the PRODUCT.

### 4. Delivery, ship date

Unless otherwise stated on the invoice under "Point of Delivery", SELLER shall ship PRODUCT to BUYER F.O.B. destination. Title and risk of loss in transit shall pass to BUYER upon delivery by carrier to BUYER's receiving dock. This does not apply for items picked up by BUYER or shipped via BUYER's carrier. Such shipments shall ship F.O.B. SELLER's warehouse.

BUYER shall notify the SELLER in writing of any discrepancy concerning the amount and weight of the PRODUCT within twenty-four (24) hours of receipt of same. Failure to notify SELLER in this time frame of any such discrepancy shall result in SELLER not accepting any later complaint, and the PRODUCT shall be deemed to be of the correct amount and weight.

### 5. Return policy

All returns apply to Standard products only. Custom products are excluded from the Return policy. All returns must have prior written approval of SELLER. Returns received without prior written authorization will be credited only at discretion of an authorized agent of SELLER.

All returns must be received in the original, unopened boxes, in a re-sellable condition within thirty (30) days of the invoice date.

Inbound and outbound shipping charges are the responsibility of BUYER.

A twenty eight (28) percent handling fee will be charged based on the per kilogram price. The handling fee will apply to all returns.

Credit will be issued for the invoice amount less all shipping charges and/or handling fees, as determined by TIGER Drylac® Canada Inc.

### 6. Conditions of payment, default

SELLER shall be entitled to charge interest at the rate of one point five (1.5%) percent per month (18% per annum) on the amount of:

- a. any overdue payment of the price of PRODUCT; and
- b. the aggregate price of any such PRODUCT of which BUYER shall have failed to take delivery until the date that BUYER accepts delivery thereof.

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SELLER is entitled to be paid for each delivery as a separate transaction, without reference to any other delivery. BUYER may not withhold or set-off payment for PRODUCT delivered for any reason whatsoever. If BUYER shall be in default of any of these Terms and Conditions of Sale or any other contract with SELLER, SELLER may, at its option;

- a. defer further deliveries until such default be remedied; or
- b. without prejudice to any other remedy provided hereunder or under applicable law, decline further performance hereof.

If, in SELLER's judgment, BUYER's credit shall become impaired at any time, SELLER may decline to make deliveries hereunder except for cash until such time as such credit has been restored to SELLER's satisfaction.

SELLER's waiver at any time of any breach or failure, in full or in part, to enforce any of the terms and conditions of its contract with BUYER with respect to PRODUCT shall not constitute any waiver of SELLER's rights hereunder or under applicable law to enforce and compel strict compliance with every such term and condition or to enforce subsequent breaches of the same terms and conditions.

These Terms and Conditions of Sale set forth hereon supersede and discharge any and all previous contracts between BUYER and SELLER covering PRODUCT and constitute the entire agreement between BUYER and SELLER with respect thereto. No alteration or additional terms (whether embodied in a purchase order, or other document heretofore or hereafter sent by BUYER or received by SELLER) are acceptable to SELLER.

## 7. Warranty, damages

### 7.1 Warranty

SELLER warrants that for a period of six (6) months after delivery to BUYER, PRODUCTS delivered by it are; (1) free of defects in material or workmanship; and (2) shall be free of liens and encumbrances (other than SELLER's lien) when shipped to BUYER. Notices of defect referring to the condition of the PRODUCT shall be made in writing to SELLER before processing or mixing of the PRODUCT and shall be submitted to SELLER within seven (7) days following receipt of the PRODUCT, otherwise all claims shall be forfeited.

SELLER shall not be liable for any conditions attributable to (i) improper installation or testing, (ii) inadequate or improper maintenance or storage, (iii) normal wear and tear, (iv) failure to provide a suitable operating environment, (v) use of the PRODUCT for purposes other than that for which it was designed, (vi) failure to monitor or operate the PRODUCT in accordance with applicable SELLER's specifications and good industry practice, (vii) unauthorized alteration of any part of the PRODUCT, (viii) unusual mechanical, physical electrical stress, extreme environmental conditions or chemical exposure, (ix) modifications done by other than SELLER, (x) mishandling during shipment of the PRODUCT, (xi) any defects or performance failures resulting from product components from a third party that are integrated into SELLER's PRODUCT, (xii) any defects or lack of quality of the painting, coating, etc. made of PRODUCTS (xiii) the incompatibility, improper design, manufacture, installation, operation or maintenance of products, accessories, equipment or materials not supplied by SELLER (xiv) minor variations in quality, color or effect or, (xv) any other abuse, misuse, neglect or accident.

BUYER's exclusive remedy, if any, under these warranties is limited, at SELLER's election, to any one of (a) reduction of SELLER's purchase price, or (b) replacement of any such PRODUCT. **BUYER acknowledges that except as specifically set forth or referenced in this paragraph, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, IN ADVERTISING MATERIALS, BROCHURES, OR OTHER DESCRIPTIVE LITERATURE) BY SELLER OR ANY OTHER PERSON, EXPRESS OR IMPLIED, AS TO THE CONDITION OR PERFORMANCE OF ANY PRODUCTS, THEIR MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE AND ANY SUCH WARRANTIES ARE SPECIFICALLY DISCLAIMED BY BUYER.**

### 7.2 Indemnification and limitation of damages

BUYER shall, to the extent permitted by applicable law, indemnify, exonerate, hold harmless and defend SELLER from and against any actions or suits and any claims, liability, damage, loss, cost or expense (including without limitation, attorney's fees and costs) arising out of:

- a. injury or death to an employee, servant or agent of BUYER wholly or proximately caused by the failure of BUYER (or the inadequacy thereof), for whatever reason, whether negligent or not, to call to the attention of such employee, servant or agent any or all warnings, safety data sheet, instructions for safe use and the like contained in or attached to containers of PRODUCT or otherwise provided by SELLER to BUYER;
- b. damage to persons or property resulting from use or application of PRODUCT in manufacturing processes, in combination with other substances or otherwise;
- c. patent infringement in respect to any or all uses to which BUYER shall put PRODUCT; and
- d. any claims or proceedings by third parties asserting claims or seeking damages not within the scope of SELLER's express limited warranty contained in section (7) hereof.

**IN NO EVENT WILL BUYER BE ENTITLED TO, OR SELLER BE LIABLE TO BUYER, OR ANY OTHER PARTY, FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, TORT OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY NATURE, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES FOR BUSINESS INTERRUPTION COSTS, LOSS OF REVENUES, PROFITS OR SAVINGS, LOSS OF DATA, LOSS OF GOODWILL, REPROCUREMENT, REMOVAL OR REINSTALLATION COSTS, OVERHEAD OR INJURY TO REPUTATION OR LOSS OF CUSTOMERS, OR FOR ANY CLAIMS ASSERTED AGAINST BUYER BY A THIRD PARTY ARISING DIRECTLY OR INDIRECTLY OUT OF, OR IN CONNECTION WITH, THE MANUFACTURE, DELIVERY, SALE, USE OR DEFECT OF PRODUCTS SOLD BY SELLER TO BUYER, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. IN NO**

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EVENT WILL SELLER BE LIABLE FOR ANY PERSONAL INJURIES OR DEATH ARISING DIRECTLY OR INDIRECTLY OUT OF, OR IN CONNECTION WITH, THE MANUFACTURE, USE OR DEFECT OF ANY SUCH PRODUCTS. NOTWITHSTANDING ANYTHING ELSE CONTAINED IN THESE TERMS AND CONDITIONS OF SALE, BUYER'S RECOVERY FROM SELLER FOR ANY CLAIM WILL NOT EXCEED BUYER'S PURCHASE PRICE (PLUS SHIPPING CHARGES AUTHORIZED BY SELLER FOR RETURN THEREOF) FOR THE PRODUCT GIVING RISE TO SUCH CLAIM, IRRESPECTIVE OF THE NATURE OF THE CLAIM, WHETHER IN CONTRACT, TORT, WARRANTY OR OTHERWISE.

## 8. Representations, technical instructions

Notwithstanding the fact that SELLER may provide BUYER with technical advice or assistance relating to the use or application of PRODUCT, or make available to BUYER's personnel to supervise or assist in the use of application thereof, SELLER makes no representation or warranty of any kind as to the accuracy, thoroughness, or effectiveness of such supervision, assistance or advice or the date, results or conclusions offered thereby, and BUYER hereby agrees that:

- a. providing of such personnel advice does not in any way create any further warranty, beyond the warranty provided herein;
- b. and BUYER will make its own independent judgment before using or relying on any such supervision or advice;
- c. and BUYER will hold SELLER harmless from and against any and all loss, cost, liability, or expense of any kind whatsoever arising out of, or in connection with, BUYER's use of any such supervision, assistance, or advice.

## 9. Force majeure

If war, plant breakdown of any kind, unavailability of transportation, Acts of God or other instances of force majeure, strike or lockout, labor dispute, difficulties in the supply of raw material, act by a government or a court or any circumstance of like or different character beyond the reasonable control of SELLER shall cause a delay in, or prevent, the manufacture or delivery of PRODUCT, then for the duration, and to the extent of such circumstance, SELLER shall be released from the obligation to deliver PRODUCT and entitled to withdraw from the contract between BUYER and SELLER with respect to PRODUCT without being liable, wholly or in part, to BUYER therefor.

If, for any reason, SELLER's supply of PRODUCT shall be insufficient to meet all its requirements, SELLER shall have the right, at its option and without liability to BUYER, to apportion its supply of PRODUCT among its customers, including its affiliated divisions and companies, in such manner as SELLER at its sole discretion believes equitable, without being liable, wholly or in part, to BUYER therefor.

## 10. Applicable law, jurisdiction

These Terms and Conditions of Sale and the sale of goods and services hereunder shall be governed by, and construed, in accordance with the laws of the Province of Ontario and the federal laws in Canada, excluding laws directing the application of the laws of another jurisdiction, and BUYER hereby attorns to such exclusive jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods will not, for any purpose, govern or apply to the sale of goods and services or any transactions, performance or disputes hereunder. All legal proceedings arising under these Terms and Conditions of Sale or in respect of the sale of the PRODUCT will be initiated and maintained solely and exclusively in the Province of Ontario in Toronto, Canada. The parties hereby irrevocably consent to such jurisdiction and venue.

## 11. Partial validity

It is intended that all provisions of this Agreement shall be fully binding and effective between the parties. But in the event that any particular provision or provisions or a part of one is found to be void, voidable or unenforceable, for any reason whatsoever, then the particular provision or provisions or part of the provision shall be deemed severed from the remainder of this agreement and all other provisions shall remain in full force.

## 12. Acknowledgement by BUYER

These Terms and Conditions of Sale constitute the sole and entire agreement between SELLER and the BUYER for the sale of the goods and/ or services as described in SELLER's order acknowledgement with respect to the goods or services purchased by the BUYER. Any term or condition contained on any printed form of BUYER, including but not limited to any order, confirmation or other document, which is in any way inconsistent with, or in addition to, the terms and conditions contained in these Terms and Conditions of Sale is hereby expressly rejected. BUYER, by accepting any goods or services from SELLER, making any payments or ordering any goods or services having previously received these Terms and Conditions of Sale, agrees to be bound by these Terms and Conditions of Sale.

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Sold-to Company

\_\_\_\_\_  
Authorized Agent Name (Printed)

\_\_\_\_\_  
Street Address/City/Province/Postal Code

\_\_\_\_\_  
Authorized Agent Signature

\_\_\_\_\_  
Date (MM|DD|YYYY)