

# TERMS AND CONDITIONS OF SUPPLY OF GOODS AND SERVICES OF PILOT DIAMOND TOOLS LTD.

## 1. Definitions

- (a) **"Buyer"** means the party buying Goods or procuring Services, who is named in the Purchase Order accompanying these Terms;
- (b) **"Engineered Goods"** means Goods requiring customization by the Seller to fulfil the Buyer's Purchase Order.
- (c) **"Delivery Location"** means the Seller's registered office located at 1851 Seymour Street, North Bay, Ontario, Canada P1A 3X7, or such other location or address as the Parties mutually agree to in writing.
- (d) **"Goods"** means products, consumable materials, equipment, equipment components, spare parts, software and other goods and materials supplied by Seller to Buyer;
- (e) **"Non-Conforming Goods"** means (i) Goods delivered are different than identified in Buyer's Purchase Order, or (ii) Goods label or packaging incorrectly identifies its contents.
- (f) **"Purchase Order"** means an order for Goods to be supplied by Seller to Buyer in specific quantities for a specified price.
- (g) **"Order Acknowledgement"** means a confirmed Purchase Order placed on Seller by Buyer and documented by Seller's document titled 'sales acknowledgement', signed by the Parties, on the Seller's form or letterhead.
- (h) **"Order Price"** means the price to be paid by Buyer for Goods pursuant to a Purchaser Order, with such Order Price for Goods being set by Seller, from time to time, in Seller's price list. Seller's price list is subject to change at the sole discretion of Seller.
- (i) **"Seller"** means Pilot Diamond Tools Ltd., whose registered office is at 1851 Seymour Street, North Bay, Ontario, Canada P1A 3X7 and who supplies the Goods and/or Services to Buyer.
- (j) **"Services"** means any services supplied by Seller to Buyer which are described in the Purchase Order.
- (k) **"Standard Non-Stocked Goods"** means Goods not currently stocked by the Seller, nor readily available for shipment, at its warehouse.
- (l) **"Standard Stocked Goods"** means Goods stocked by the Seller and readily available for shipment from the warehouse of the Seller.
- (m) **"Supply"** means the supply of Goods and/or Services described in the Purchase Order.

## 2. Applicability

- (a) These terms and conditions of sale (these "Terms") are the only terms which govern the sale of Goods by Seller to Buyer, named on the Purchase Order or Order Acknowledgement accompanying these Terms (together Seller and Buyer are the "Parties"). Notwithstanding anything herein to the contrary, if a written contract signed by both Parties is in existence covering the sale of Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- (b) The accompanying Purchase Order, Order Acknowledgement, and these Terms (collectively, this "Agreement") comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms

and conditions of purchase regardless of whether or when Buyer has submitted its Purchase Order or such terms. Fulfilment of Buyer's order does not constitute acceptance by Seller of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

- (c) These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each of the Parties.
- (d) Buyer shall have no right to assign or delegate any right or obligation under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section 2(d) is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.
- (e) Acceptance by the Buyer of any Goods from the Seller constitutes acceptance of these Terms and the Agreement.

## 3. Formation of Contract/Order of Precedence

- (a) A Purchase Order, whether or not it is based on a quotation or estimate shall not be binding on the Seller unless accepted by the Seller in writing in the form of an Order Acknowledgement.
- (b) Any representations or warranties made or given by anyone on behalf of the Company prior to the Company's acceptance of a Purchase Order and not contained in Company's written Purchase Order or Order Acknowledgement are hereby expressly excluded.
- (c) Only Goods as are specified in the Order Acknowledgement are included in the scope of this Agreement.
- (d) Seller shall not be obliged to alter the performance or features of Goods following the Party's acceptance of the Purchase Order by way of a signed Order Acknowledgement unless, in its absolute discretion, Seller agrees in writing to do so and subject to the payment by Buyer of any applicable extra charges.

## 4. Shipping/Delivery of Goods

- (a) Goods will be delivered within a reasonable time after the receipt of Buyer's signed Order Acknowledgement. Seller shall not be liable for any delays, loss, or damage to Goods in transit.
- (b) Unless otherwise agreed in writing by the Parties, Seller shall deliver Goods Ex Works (Incoterms® 2020) ("EXW") at the Delivery Location, or such other Seller's facilities as determined in Seller's sole discretion, using Seller's standard methods for packaging such Goods. Buyer shall take delivery of Goods within five (5) days of Seller's written Notice that the Goods have been delivered to the Delivery Location if such Delivery Location is one of Seller's facilities.
- (c) Where delivery of Goods is to take place at any location other than one of Seller's facilities, Goods are deemed delivered as of the day of Seller's Notice that Goods are at the pre-determined Delivery Location, and Buyer is deemed to have taken delivery of Goods as of the day of Seller's Notice and: (i) if delivery of Goods is facilitated by the Seller's personnel, title and risk of loss shall pass to Buyer on delivery (ii) if Buyer fails to provide equipment and labour (as required under Section 4(d) herein) Seller assumes no risk or liability for damage to Goods if Seller's personnel are required to load and unload Goods (iii) cost of delivery, and any damage in transit, shall be at the

expense of Buyer and cost associated therewith shall be added onto the amount owing under the Purchase Order.

- (d) Buyer shall be responsible for all loading costs and provide equipment and labour reasonably suited for receipt of Goods at the Delivery Location.
- (e) Seller may, in its sole discretion, without liability or penalty, make partial delivery of Goods to Buyer. Each such delivery will constitute a separate sale, and Buyer shall pay for the units delivered whether such delivery is in whole or partial fulfilment of Buyer's Purchase Order.
- (f) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's Notice that the Goods have been delivered at the Delivery Location, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided commercially reasonable and appropriate instructions, documents, licenses or authorizations, or because Buyer has not provided Seller with commercially reasonable assistance so as to obtain any necessary licences or authorizations (e.g., export): (i) risk of loss to Goods shall pass to Buyer; (ii) Goods shall be deemed to have been delivered to Buyer; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance). Buyer's obligation to purchase and make payment on the Goods, and the right of Seller to invoice and to claim damages and costs for breach of such obligation, shall not be affected in any way whatsoever.
- (g) Any liability of Seller for non-delivery of Goods shall be limited to replacing such Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

## 5. Acceptance of Goods

- (a) Buyer shall inspect Goods upon delivery and such Goods will be deemed in compliance with the Purchase Order and accepted by Buyer unless a written Notice indicating otherwise is received by Seller within three (3) days after delivery of Goods to Buyer, with such Notice including written evidence or other documentation as required by Seller, to ascertain the nature of the Non-Conforming Goods.
- (b) Buyer shall have no recourse with Seller regarding any Non-Conforming Goods, or any of the Goods in general, after the expiry of fourteen (14) days from the date of delivery of Goods to Buyer (the "Warranty Period").

## 6. Title and Risk of Loss

- (a) Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Location. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds, including insurance proceeds, of the forgoing. The security interest granted under this provision constitutes a purchase money security interest under the Ontario *Personal Property Security Act*,

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RSO 1990, Chapter P10.

## 7. Cancellation/Return of Goods

- (a) Buyer shall have no right to cancel the Purchase Order or any part of the Purchase Order, unless Seller, at its sole discretion, agrees in writing to such cancellation.
- (b) Seller's determination as to whether it will accept any request for cancellation by Buyer shall be predicated on Buyer providing written Notice to Seller (i) requesting the cancellation of the Purchase Order, (ii) detailing the reasons of any such cancellation request, and (iii) providing such Notice within five (5) days of the circumstances giving rise to such reasons for cancellation.
- (c) Should Seller choose to accept Buyer's reasons for cancellation and cancel the Purchase Order, Buyer shall pay Seller's cancellation charges as herein provided, which the Buyer hereby acknowledges and agrees are reasonable.
  - (i) Standard Stocked Goods: 20% of Purchase Order Price;
  - (ii) Standard Non-Stocked Goods:
    - A. Prior to release for manufacturing: 15% of Purchase Order Price;
    - B. After production has commenced: 25% of Purchase Order Price; and
    - C. After production has completed: 35% of Purchase Order Price.
  - (iii) Engineered Goods:
    - A. Prior to release for manufacturing: 25% of Purchase Order Price;
    - B. After production has commenced: 50% of Purchase Order Price; and
    - C. After production has completed: 80% of Purchase Order Price.
- (d) Goods shall not be returnable by Buyer unless written approval is received from the Seller.

## 8. Price and Payment

- (a) Buyer shall purchase the Goods from Seller at the prices set forth in Seller's price list in effect at the time that Seller accepts the Purchaser Order and Buyer signs and returns the Order Acknowledgment to Seller. The Parties may elect to revise the Order Price on their mutual written agreement, which shall be evidenced by a revised Purchase Order and a revised, executed, Order Acknowledgement.
- (b) The Order Price is exclusive of shipping charges and insurance costs. Buyer shall pay for and shall hold Seller harmless from all shipping charges and insurance costs incurred by Seller in the delivery of Goods to Buyer.
- (c) The Order price is exclusive of all applicable taxes (including HST). Each Party shall be responsible for the payment of, and will pay, any applicable taxes, duties, and levies levied on that Party from time to time in relation to this Agreement.
- (d) Seller shall issue an invoice for each Purchase Order fulfilled by Seller. Buyer shall pay all invoiced amounts due to Seller net Thirty (30) days from the date of Delivery by Seller of the Goods to the Delivery Location, except for any amounts disputed by Buyer in good faith. Buyer shall make all payments in Canadian Dollars (CAD) by bank draft, certified cheque, or wire transfer in accordance with the instructions printed on the fact of the Purchaser Order.
- (e) If Seller determines in its sole discretion that Buyer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to

Seller's other rights under this Agreement, or otherwise, Seller may without liability or penalty take any of the following actions:

- (i) accelerate any amounts owed by Buyer to Seller under this Agreement and any other Agreement between the Parties;
  - (ii) on Five (5) days written notice to Buyer, modify the payment terms specified in Section 8(a) for outstanding and future transactions between the Parties, including requirement Buyer to pay cash in advance.
  - (iii) cancel any previously accepted Purchase Orders;
  - (iv) delay any further shipment of Goods to Buyer;
  - (v) on Five (5) days written notice to Buyer, terminate this Agreement; or
  - (vi) any combination of the above.
- No actions taken by Seller under this Section 8(e) (nor any failure of Seller to act under this Section 8(e)) constitute a waiver by Seller of any of its rights to enforce Buyer's obligations under this Agreement including the obligation of Buyer to make payments as required under this Agreement.
- (f) Buyer shall notify Seller in writing of any dispute with any invoice (along with substantiating documentation and a reasonably detailed description of the dispute) within Five (5) days from the date of such invoice. Buyer will be deemed to have accepted all invoices for which Seller does not receive timely notification of disputes and shall pay all undisputed amounts due under such invoices within the period set forth in Section 8(d). The Parties shall seek to resolve all such disputes expeditiously and in good faith. Notwithstanding anything to the contrary, Buyer shall continue performing its obligations under this Agreement during any such dispute, including, without limitation, Buyer's obligation to pay all due and undisputed invoice amounts.
  - (g) Except for invoiced payments that Buyer has successfully disputed under Section 8(f), Buyer shall pay interest on all late payments, calculated daily and compounded monthly at the lesser of the rate of Twelve Percent (12.0%) per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall also reimburse Seller for all reasonable costs incurred in collecting any late payments, including legal fees on a solicitor-and-client basis. In addition to all other remedies available under this Agreement or at law (which Seller does not waive by the exercise of any rights under this Agreement), if Buyer fails to pay any amounts when due under this Agreement, Seller may (i) suspend the delivery of any Goods, (ii) reject Buyer's Purchase Orders, (iii) cancel Purchase Orders accepted by Order Acknowledgment, or (iv) terminate this Agreement under the terms of Section 14.
  - (h) In accordance with Section 6(a) and this Section 8(h), Buyer hereby grants Seller a security interest in all Goods purchased hereunder (including Goods, Non-Conforming Goods, and Excess Goods) and the proceeds therefrom to secure Buyer's payment obligations under this Agreement. Buyer acknowledges that the security interest granted under this Section 8(h) is a purchase money security interest under Ontario

Law. Seller may file a financing statement for such security interest, and Buyer shall execute any documentation necessary to perfect Seller's security interest in such Goods.

## 9. Intellectual Property Rights and Confidentiality

- (a) Seller retains ownership in any technical information, drawings, specifications, and other intellectual property rights relating to the development, manufacturing, and supply of Goods. All such information, whether marked as "confidential" or not, shall be kept confidential by Buyer and shall not be disclosed to any third party unless and until the same is or becomes public knowledge nor shall any such information be used by Buyer for any purpose other than for the purpose of using any Goods supplied under this Agreement without Seller's prior written consent. Seller's trademarks and names and those of its associated companies shall not be used by Buyer otherwise than as applied by Seller to Goods or associated documentation.

## 10. Representations

- (a) All drawings, descriptive matter, weights, dimensions and specifications supplied by Seller are approximate only unless otherwise stated and all descriptions and illustrations contained in Seller's catalogues, price lists and advertising matter are by way of general description, are stated by Seller in good faith based on Seller's experience as being correct within acceptable tolerances but are approximate only, in no way are binding on Seller and do not form part of the Agreement unless specifically stated to do so.
- (b) It is Buyer's responsibility to ascertain whether the capacity and performance of the Goods are sufficient and suitable for Buyer's purposes. Seller makes no representation whatsoever with respect to the Goods, including any: (i) Condition or warranty of merchantability; or (ii) Condition or warranty of fitness for a particular purpose, whether express or implied by law, course of dealing, course of performance, usage of trade, or otherwise.
- (c) Seller shall have no liability to Buyer in respect of any defect in the Goods, and all conditions and warranties, whether express or implied, as to the quality of the Goods, their fitness for any particular purpose, or their design, manufacture, materials, components, specification, and performance, are excluded.
- (d) Except as expressly warranted in writing to Buyer, the Goods are supplied by Seller "as is" and Buyer assumes all risk as to the results of the Goods.

## 11. Limited Warranty

- (a) Seller shall not be liable for defect in the Goods unless: (i) Buyer gives written Notice of the defect, clearly described, to Seller within five (5) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the Notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Buyer's cost for the examination to take place there; and (iii) Seller verifies Buyer's claim that the Goods are defective and deems the Goods defective in writing to Buyer.
- (b) Seller shall not be liable for defect in the Goods if: (i) Buyer makes any further use of such Goods after giving such Notice; (ii) the defect arises

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because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use, or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of the Seller.

- (c) With respect to any such Goods deemed defective by the Seller, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part); or (ii) credit or refund the price of such Goods at the pro rata rate provided in the Purchase Order; provided that, if Seller so requests, Buyer shall, at Buyer's expense, return all such defective Goods to Seller.
- (d) In any event, Seller shall not be liable for any defects of any Goods supplied hereunder if Buyer fails to provide Notice of such defect to the Seller within the Warranty Period.
- (e) The remedies set forth in Section 11(c) shall be Buyer's sole and exclusive remedy and Seller's entire liability for any defective Goods accepted as such by the Seller.
- (f) Buyer shall indemnify and hold harmless Seller from and against any costs, claims, demands, liabilities, damages, or losses and all interest, penalties, legal and other professional costs, and expenses whatsoever arising out of or in connection Buyer's use of the Goods or Buyer supplying Goods to any party who is not a party to these Terms and this Agreement and the subsequent use of the Goods by such third party. This indemnity shall cover (but is not limited to) Seller's liability to third parties arising out of the use or supply of the Goods.

### **12. Limited Liability**

- (a) in no event shall Seller be liable for any direct, indirect, consequential, incidental, special, exemplary, or punitive damages, lost profits, lost revenues, lost business, lost production, or diminution in value, arising out of or relating to any breach of these Terms, whether or not the possibility of such damages has been disclosed in advance by Buyer or could have been reasonably foreseen by Buyer, regardless of the legal or equitable theory (contract, tort, or otherwise) upon which the claim is based, and notwithstanding the failure of any agreed or other remedy of its essential purpose.
- (b) The limitation of liability set forth in this Section 12 shall not apply to (i) liability resulting from Seller's gross negligence or wilful misconduct, and (ii) death or bodily injury resulting from the Seller's grossly negligent acts or omissions.
- (c) Seller's liability under this Agreement and for negligence or misconduct arising out of the Agreement shall be capped to an overall limit of the amount actually received by Seller from Buyer under this Agreement.

### **13. Force Majeure**

- (a) No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (i) acts of God; (ii) flood, tsunami, fire, earthquake, explosion; (iii)

epidemics, pandemics, including the 2019 novel coronavirus pandemic (COVID-19); (iv) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (v) government order, law or actions; (vi) embargoes or blockades in effect on or after the date of this Agreement; (vii) national or regional emergency; (viii) strikes, lockouts, labour stoppages or slowdowns, labour disputes, or other industrial disturbances; (ix) shortage of adequate power or telecommunications or transportation facilities; (x) failure of any governmental or public authority to grant a necessary licence or consent; and (xi) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give Notice within five (5) days of a Force Majeure Event to the other party, stating the period the occurrence is expected to continue. The Impacted Party shall use commercially diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. If the Impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive days following written Notice given by it under this Section 12(a), the other party may thereafter terminate this Agreement upon thirty (30) days' written Notice.

### **14. Termination**

- (a) In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written Notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for five (5) days after Seller's written Notice of non-payment being sent to Buyer; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.
- (b) Termination shall be without prejudice to any prior right of either Party or any provisions contained herein.

### **15. Waiver**

- (a) No waiver by Seller of any of the terms of this Agreement is effective unless explicitly set forth in writing and signed by an authorized representative of Seller. No failure to exercise or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

### **16. Relationship of the Parties**

- (a) The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither party shall have the authority to contract for or bind the other party in any manner whatsoever.

### **17. No Third-Party Beneficiaries**

- (a) This Agreement 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 these Terms.

### **18. Governing Law**

- (a) All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without giving effect to any choice or conflict of law provision or rule (whether of the Province of Ontario or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Province of Ontario. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

### **19. Dispute Resolution**

- (a) Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the ADR Institute of Ontario, under the *Arbitration Act, 1991*, SO 1991, c 17.

### **20. Notices**

- (a) All notices, request, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the Parties at the addresses set forth on the face of the Order Acknowledgement or to such other address that may be designated by the receiving party in writing. Notices sent in accordance with this Section will be deemed effectively given: (i) when received, if delivered by hand, with signed confirmation of receipt; (ii) when received, if sent by a nationally recognized overnight courier, signature required; (iii) when sent, if by facsimile or email (in each case, with confirmation of transmission) if sent during the addressee's normal business hours, and on the next business day if sent after the addressee's normal business hours; and (iv) on the fifth (5<sup>th</sup>) day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid.

### **21. Severability**

- (a) If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

### **22. Survival**

- (a) Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Purchase Order including, but not limited to, the following provisions: Section 8 (Price and Payment), Section 9 (Intellectual Property and Confidentiality), Section 11 (Limited Warranty), Section 12 (Limited Liability), Section 15 (Waiver), Section 18 (Governing Law), Section 19 (Dispute Resolution), and this Section 22 (Survival).