

## MC Commercial Inc. ("MABE") Terms and Conditions of Sale

**The parties agree that the following terms and conditions represent the entire agreement and shall govern** notwithstanding any other agreement (web based, electronic, oral or written) entered into or implied by law and whether or not such agreement precedes or is made contemporaneous or subsequent to the date hereof, save only for an agreement between the parties which specifically references this Rider and the exclusions or additions thereto, signed by a Company Officer of MABE:

**Payment.** Payment for Product is due within the stated invoice terms, without deduction, holdback, abatement or set-off, after which interest shall accrue monthly on the unpaid balance at MABE's prevailing rate of interest at the time. Interim invoices may be submitted if the delivery of Product is staged by MABE or is delayed as a result of the actions or inactions of the Purchaser. In no event will payment be contingent on the Purchaser's ability to collect payment from any other party whatsoever. In addition to any other remedy hereunder or at law, if the Purchaser fails to make payment for Product in accordance with the terms hereof, MABE in its absolute discretion shall have the right to refuse to make any further deliveries of Product pursuant to this agreement and stop delivery of any Product that is in transit. MABE's right to file a lien against the Purchaser will not be restricted if the Purchaser fails to pay the purchase price for the Product in accordance with the terms hereof. Post audit claims are limited to a maximum of 12 months from the date of the invoice.

**Insurance.** MABE will not be required to name the Purchaser as an additional insured party and MABE shall not waive its rights of subrogation nor shall it be required to amend or extend its insurance coverage beyond that which it has in place.

**Delivery.** The Purchaser shall give reasonable notice as determined by MABE for its requirement for Product. MABE shall deliver the Product in accordance with an up-to-date schedule provided to the Purchaser by MABE; however, MABE shall not be liable for shortages or delays in delivery if occasioned by factors beyond its reasonable control, including, without limitation, accidents or disruptions, fires, explosions, breakdowns of essential machinery or equipment and power shortages, transportation or storage delays, labour difficulties or failure or delay in its usual source of supply. In the event that the Product as referred to herein becomes discontinued or otherwise unavailable, MABE may, in its discretion and without liability to the Purchaser, substitute an available, comparable model or merchandise therefor; however, the Purchaser may at any time within five (5) days after being notified of such substitution, cancel so much of any purchase order as related to such discontinued or unavailable merchandise. If upon delivery of the Product the Purchaser is not ready for delivery of the Product then MABE reserves the right to either deliver the Product to the Purchaser, which shall constitute delivery for all purposes hereof without further liability or obligation of MABE or shall return the Product to its point of shipment or such other place and all charges in connection with such delivery and storage and re-delivery when the Purchaser is ready for delivery of the Product shall be charged to the Purchaser at the discretion of MABE. MABE reserves the right to charge a Fuel Surcharge based on the prevailing market price of fuel at its discretion.

**Limited Liability.** In any event, MABE's liability on any claim for loss or damage arising out of this agreement or from the performance or breach thereof or connected with the supplying of any Product or any other goods hereunder, or their sale, operation or use, whether based in contract, warranty, tort (including negligence), strict liability or other grounds shall not exceed the price allowable for such product or goods or part thereof,

involved in the claim. MABE shall not, in any event, be liable to the Purchaser whether as a result of breach of contract, warranty, tort (including negligence), strict liability or other grounds for liquidated, special, penal, consequential or incidental damages including but not limited to loss of profits or revenues, loss of use of the Product or any associated product, cost of capital, cost of substitute products, facilities or services or claims of customers or consumers of the Purchaser for such damages.

**Title to Product.** All sales of Product are final and are made f.o.b. at point of shipment. Title to Product is transferred to the Purchaser at point of shipment. Notwithstanding the foregoing transfer of title to Product, MABE reserves to itself a security interest in all Product and the proceeds thereof, to secure the performance and payment of the obligations of the Purchaser hereunder. Purchaser shall keep and maintain the Product in good order and be responsible to MABE for loss or damage by any cause whatsoever and shall pay all taxes and assessments levied against the same. In the case of Product that is delivered to the Province of Quebec, Purchaser hereby hypothecates all of its right, title and interest in such Product to and in favour of MABE for the amount of the Purchase Price plus 10% with interest thereon at the rate of 15% per annum. In the event that the Purchaser defaults in the payment of the Product or any part thereof, MABE may enter Purchaser's premises and retake possession of the Product or any part thereof, sell or otherwise dispose of Product by public or private sale, and may exercise such other remedies available to a secured party under applicable law. The Purchaser agrees to reimburse MABE for all expenses, including reasonable legal fees incurred by MABE in connection with the enforcement by MABE of its rights hereunder.

**Product Warranty and Inspection.** MABE's obligation in respect to Product shall be limited to MABE's printed warranty. Unless specifically provided for hereunder, the selection, application and installation of Product are the responsibilities of the Purchaser and not of MABE. Except as otherwise provided in MABE's printed warranty, it shall be the Purchaser's responsibility to promptly examine and inspect Product delivered and to notify MABE in writing within one (1) business day of delivery of any complaint that relates to such Product, including shortages, failing which the Purchaser shall be deemed to be satisfied that the quality and quantum of Product as delivered complies with MABE's obligations hereunder. Damage to the Purchaser's property, which the Purchaser attributes to the actions of MABE and/or its delivery agent must be reported to MABE within one (1) business day of delivery and must provide MABE and or its delivery agent the opportunity to inspect for cause of said damage. Failure to report property damage as aforesaid shall be deemed to mean that such property damage was not caused by the actions or inactions MABE or its delivery agent. Provincial 'New Home Warranty' programs do not apply to Product supplied by MABE.

**General.**

- (a) This agreement shall not be assigned by the Purchaser without the express written consent of MABE.
- (b) The terms and conditions set forth in this Rider and the Quotation and/or Sales Order to which it is attached constitute the entire and only agreement between the parties with regard to the subject matter hereof and any representation, promise or condition (whether set forth in printed forms utilized by the Purchaser or otherwise) which is not fully set forth herein or expressly incorporated herein by reference shall not be binding on either party. No alteration or modification of the foregoing condition shall be valid or binding upon MABE unless signed by a Company Officer of MABE.
- (c) This Rider and the Quotation and/or Sales Order to which it is attached and any other agreement between the parties hereto is not valid unless executed by an Officer of MABE.
- (d) This agreement is governed by and construed in accordance with the laws of the Province of Ontario.