

# Procor Terms and Conditions

## **1. Quantity**

The quantity of Material specified on this Order shall not be exceeded or changed without Buyer's prior written consent. In the event of over shipment or partial shipment not specifically authorized in writing by Buyer, all expenses arising therefrom incurred by Buyer shall be for Seller's account.

## **2. Routing**

When terms of delivery are f.o.b. destination, all transportation charges shall be paid by Seller. When terms of delivery are f.o.b. Seller's shipping point, all Material shall be forwarded by Seller in accordance with Buyer's routing instructions. If none are furnished by Buyer, Seller shall select routings that will affect speedy delivery at the lowest transportation cost and any excess transportation cost shall be charged to Seller's account.

## **3. Performance and Default**

Time is of the essence in this agreement and Seller guarantees final delivery of Material within the time specified in this Order. If Seller fails or refuses to deliver all Material in strict accordance with all terms and conditions contained herein, defaults in the performance of any of its other obligations hereunder or is adjudged bankrupt or makes a general assignment for the benefit of creditors or a receiver is appointed for Seller, then Buyer, at its option may terminate this Order in whole or in part by written notice to Seller without incurring any liability to Seller on account thereof in which case Buyer may take possession of any Material in Seller's possession without regard to its stage of completion (and Seller shall hold same for disposition in accordance with Buyer's instructions) and complete such Material or manufacture or procure goods and/or services to Material and charge any excess cost occasioned thereby to Seller. Buyer shall only be liable to Seller for the cost of any Material Buyer elects to accept following such notice of termination.

Notwithstanding the foregoing, the performance of any obligations of either party may be delayed or suspended at any time but only so long as such party is prevented from performance by reason of any cause whatsoever beyond its control including without limitation fire, lightning, flood, explosion, the elements, acts of God, civil or military authorities or of the Queen's enemies, riots, strikes or other labour disturbances or embargoes and such party shall not incur any liability or be required to indemnify the other party from any loss, damage or inconvenience sustained by the other party as a result of such delay in or suspension of performance. The period during which performance of any such obligation is delayed or suspended shall be added to the remainder of the applicable delivery schedule. Such delay in or suspension of performance shall not constitute cause for termination of this Order unless same persists for more than ten days in which case Buyer at its option may terminate this Order in whole or in part by written notice to Seller upon the same conditions concerning termination set out immediately above.

Buyer for any reason at any time may terminate this Order, in whole or in part by written notice to Seller in which case Seller may claim its reasonable costs incurred hereunder prior to the effective date of such termination provided, however, that the total sum payable shall not exceed the Order price reduced by payments previously made which price shall be prorated in the event that this Order is terminated only in part. As to partially completed work or raw materials included in Seller's costs, Seller shall hold the same for disposition in accordance with Buyer's instructions.

## **4. Discounts for Early Payment**

Discounts shall be taken on the gross amount of invoices and computed from the date of invoice or date of receipt of corrected invoices and all supporting papers, whichever is later C.O.D. shipments will not be accepted by Buyer without Buyer's prior written authorization.

## **5. Changes**

Buyer may change this Order from time to time and Seller shall comply with such changes but no additional charges shall be allowed unless authorization in writing by Buyer and time for delivery may be adjusted as may be required by agreement of Buyer and Seller.

## **6. Shipping Notice**

Two shipping notices shall be prepared by Seller showing for each shipment the Order number, quantity, full description, Buyer's item number specified on the Order and weight of Material. One shipping notice shall be packed inside each shipment, while the second notice shall be securely attached to the outside of each shipment. Each container, package or piece in a shipment shall be marked 1 of 6, 2 of 6 etc. with export symbols, serial numbers. Weights, measurements and all other identification as directed by Buyer without charge to Buyer. Shipping notices shall clearly indicate the container or package number in which each item of Material can be located. Material arriving without proper notices shall be held by Buyer until the desired information is furnished and all demurrage thus accruing shall be for Seller's Account. The Order number shall appear on all Bills of Lading and correspondence and shall be marked on or tagged to all material shipped.

## **7. Invoices**

Seller's invoices in duplicate for Material accompanied by a copy of the relevant Bill of Lading or other receipt and a paid freight or express bill from the carrier to substantiate any charges where applicable shall be mailed to Buyer's Accounts Payable Department only after the date of actual shipment. Each shipment shall be invoiced separately. Seller's invoices shall state the shipping point, place of delivery, routing, destination, discounts, whether the freight is collect, prepaid or prepaid and charged back and the Order number, quantity, full description, Buyer's item number specified on the Order and weight of Material. Failure by Seller to follow instructions for rendering invoices shall result in postponement of payment until defects are remedied to Buyer's satisfaction. Seller's invoices shall be returned to Seller for correction. Applicable taxes, duties and similar charges as well as applicable transportation charges shall be shown separately on each Seller's invoice.

## **8. Industrial Property**

Seller warrants that any Material delivered under this Order shall not infringe any valid patent, copyright, trade mark or industrial design, foreign or domestic, owned or controlled by any other person, firm, corporation or otherwise. Seller at its sole expense shall defend any claim, action or demand brought against Buyer, its affiliated companies and its purchasers and shall indemnify them from all loss, expense (including attorney's fees) and damages arising out of any alleged or actual infringement of any such patent, copyright, trade mark or industrial design resulting from the use or sale of Material in whole or in part purchased hereunder. If the sale or use of any Material is enjoined, Seller at its sole expense shall procure, if possible, for Buyer, its affiliated companies and its purchasers the right to continue to sell and use Material. If this is not possible, at Buyer's option, Seller shall replace the Material with equivalent non-infringing Material, modify the Material in a manner acceptable to Buyer so that it becomes non-infringing or refund to Buyer its purchase price and its cost of transportation, and installation, if any.

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## **9. Responsibility**

Seller shall treat as confidential any designs, drawings, specifications, dies, jigs, patterns, moulds or templates or any machinery or equipment with which work is to be performed by Seller hereunder which are delivered by Buyer to Seller and Seller shall be responsible for loss of or damage to such articles while in possession or control of Seller or en route to or from Seller regardless of how such loss or damage occurs. Such articles shall remain the exclusive property of Buyer and shall be safely stored by Seller separate and apart from its other property. Seller shall not reproduce, disclose or use such articles for any purpose other than the provision of Material to be supplied hereunder without prior written authorization of Buyer. Seller shall only use such articles properly and in connection with this Order and shall promptly return such articles not consumed in the work to Buyer upon completion or cancellation of this Order in the same condition as received, ordinary wear and tear alone excepted. Seller shall be responsible for safeguarding all confidential information or trade secrets that may be disclosed to it by Buyer or that it may develop for Buyer hereunder and shall require a similar covenant from all its employees, contractors and agents to whom any work relating hereto may be allotted.

## **10. Assignment**

This Order including any money to be payable hereunder, shall not be assigned in whole or in part by Seller without prior written consent of Buyer and any attempted assignment without Buyer's consent shall render this Order voidable at Buyer's option. Notwithstanding Buyer's consent, Seller shall remain fully responsible for the work and performance of any assignee of Seller hereunder.

## **11. Applicable Law**

This Order and the agreement herein contained shall be construed in accordance with and governed by the laws within the provinces

## **12. Inspection and Rejection**

All Material to be supplied hereunder shall be subject to inspection at all times on or before shipment and within a reasonable period after delivery at destination and at all places as to progress, materials and workmanship at Buyer's option, by Buyer or by an authorized representative of Buyer. Seller shall provide proper access for such inspection if such inspection reveals in Buyer's sole opinion, that any Material is not in accordance with description or the latest issue of applicable drawings, specifications or designs stipulated in and forming part of this Order. Buyer shall notify Seller of its rejection of such Material and shall hold same at Seller's risk subject to Seller's disposition instructions with all charges occurring to Seller as a result of such rejection. Seller shall pay all transportation charges for rejected material to and from its destination. Rejection of any Material shall not imply acceptance of the balance of Material Payment for review, comment, approval, inspection or acceptance of or failure to inspect, discover or reject any defective Material by Buyer shall not relieve Seller of any unperformed responsibility with respect to Material supplied hereunder. Buyer and Seller agree that the price of the balance of Material shall be adjusted in accordance with the price of rejected Material, such rejected Material not being replaced or repaired by Seller without prior written consent of Buyer. Buyer reserves the right upon rejecting any defective Material to treat this Order as breached or to demand its continued performance in whole or in part.

## **13. Packing**

Buyer shall not be liable for any charge for packing, boxing, containers, storage cartage or for any other matter incidental to putting Material in a deliverable

state. Loss of or damage to any Material supplied hereunder resulting from improper preparation of Material for shipment shall be charged to Seller's Account.

## **14. Taxes**

Prices on this Order are deemed not to include all applicable taxes, duties and similar charges unless otherwise indicated herein. If any taxes, duties or similar charges paid by Buyer to Seller were not required to be paid, Seller shall promptly apply for a refund thereof and forward same to Buyer upon receipt.

## **15. Waiver**

No waiver of any provision of this Order shall be deemed to be made by Buyer unless agreed to in writing, executed by Buyer and delivered to Seller. No such waiver by Buyer shall extend to or be taken to affect any other breach or default or any other rights of Buyer.

## **16. Warranty**

Acceptance of this Order by Seller constitute an express warranty by Seller that (1) all Material supplied hereunder shall be (a) fit for the purpose intended (of which purpose Seller shall be deemed to have been advised by Buyer), (b) of merchantable quality, (c) in every respect strictly conform to description and the latest issue of applicable drawings, specifications and designs and (d) in every respect strictly comply with all applicable federal, provincial, and local laws, rules, regulations and the like (and Seller shall upon request furnish Buyer with a certificate to such effect in such form as Buyer may require from time to time. (II) all work shall be complete and finished in every respect and (III) all Material shall be free of all defects in workmanship and materials and shall successfully perform the purpose intended for a period of one year from the date of final payment on account hereof. If any Material is found to be in breach of this warranty, Buyer upon written notice to Seller shall have the right, at Buyer's option, to repair such defective Material at Seller's expense or require Seller to promptly correct or replace same at Seller's expense and Seller shall indemnify Buyer from any loss including economic loss and any indirect special consequential and liquidated damages and penalties occasioned hereby.

The rights and remedies of Buyer contained in this Order shall not be exclusive but shall be cumulative and in addition to all other rights and remedies existing at law or in equity available to Buyer.

## **17. Course of Dealing**

Seller shall strictly comply with the terms and conditions contained in this Order, notwithstanding any usage of trade or course of dealing to the contrary.

## **18. Entire Agreement**

This Order is expressly limited to and made conditional upon Seller's acceptance of the terms and conditions on the face and reverse side hereof, any provision in any bid, acknowledgement, acceptance, shipping document or other instrument inconsistent with or in addition to these terms and conditions is hereby objected to by Buyer and shall be waived by Seller by accepting this Order and shall not be binding upon Buyer notwithstanding delivery of Material to Buyer or the retention thereof or payment therefor by Buyer. This Order and Seller's acceptance hereof contain the entire agreement of the parties relating to this purchase and sale which agreement shall only be modified in writing by agreement of the parties. In the event of conflict between the terms and conditions of the face hereof and the conditions on the reverse side, the former shall prevail. Clerical and typing errors and omissions are excepted and are subject to correction.