

**TERMS AND CONDITIONS OF SALE FOR FRANKENSOLAR AMERICAS INC - CANADA.**

These Terms and Conditions of Sale govern the sale of Goods by Frankensolar Americas Inc. ("Frankensolar") to a third party purchaser ("Buyer"). All transactions between Buyer and Frankensolar are subject to these terms and conditions, which shall take precedence over the terms and conditions contained in Buyer's order or in any other form issued by Buyer, whether or not such form has been acknowledged or accepted by Frankensolar. Buyer shall be deemed to have full knowledge of the terms and conditions herein and these terms and conditions shall be binding upon Buyer if either the Goods referred to herein are delivered to and accepted by Buyer, or if Buyer does not within five days from the date hereof deliver to us written objection to these terms and conditions or any part thereof. No waiver, alteration or modification of these terms and conditions shall be binding upon Frankensolar unless made in writing and signed by a duly authorized representative of Frankensolar.

**1. Quotations and Order Confirmation**

- (a) Unless otherwise stated, Frankensolar's quotations shall be null and void unless accepted by Buyer within fourteen (14) days from the date of quotation.
  
- (b) An acceptance and official confirmation of Buyer's order (in the form of Frankensolar's issued sales order) shall constitute the complete agreement, subject to the terms and conditions of sale set forth herein, and shall supercede all previous quotations, orders or agreements.
  
- (c) Prices are in Canadian Dollar currency and are exclusive of all duties, costs (including costs of packing and transportation) and taxes of any kind. Buyer will pay all such duties, costs and taxes and will indemnify and hold Frankensolar harmless for any liability that may arise in connection thereto.

(e) Prices for undelivered Goods may be increased without notice to Buyer in the event of any increase in Frankensolar's cost, change in market conditions or any other causes beyond Frankensolar's reasonable control.

## 2. Payment

(a) Payment terms will be stated in Frankensolar's order confirmation. If no payment terms are provided for in the order confirmation, payment is required in full prior to shipment.

(b) Payment by bank transfer shall be deemed to have been effected on the date upon which the amount paid is credited to Frankensolar's bank account.

(c) Buyer shall pay all amounts when due in full without any deduction or withholding except as required by law and shall not be entitled to assert any credit, setoff, deduction, or counterclaim against Frankensolar in order to justify withholding payment of any such amount in whole or in part. Without limiting any other rights or remedies that may be available to it, Frankensolar may set off any amount owing to it by Buyer against any amount payable by Frankensolar to Buyer.

(d) Overdue accounts are subject to interest charges at the rate of eighteen per cent (18%) per annum, but in no event shall such rate exceed the maximum rate permitted by law. Buyer is liable for all costs and expenses, including legal fees, that Frankensolar may incur for collection of overdue accounts and damages suffered with respect thereto. In the event of legal proceedings, all court and other costs may be added to the principal owing, and interest may be compounded until date of judgment at the statutory rate.

(e) If, in its sole discretion, Frankensolar believes Buyer's ability to meet its payment obligations may become impaired or threatened, or if Buyer fails to comply with payment terms, Frankensolar may require advance payment, and/or may suspend delivery or cancel any existing order or remaining balance thereof, without prejudice to any of its other rights and recourses. In the event of the cancellation of an order, all outstanding debts of Buyer will become due with immediate effect.

(f) Frankensolar may apply any payment it receives from Buyer against any obligation owing to it by Buyer, regardless of any statements appearing thereon or with respect thereto, which will not discharge Buyer from any amounts Buyer owes.

### **3. Title / Security Interest**

(a) If any part of the purchase price for the Goods is to be paid at any future time or is to be paid in instalments, Frankensolar shall retain ownership right and title in and over the Goods and the Buyer hereby grants Frankensolar a security interest in the Goods, until such time as full payment of the Goods are made by Buyer and until Buyer has performed all other obligations owing to Frankensolar.

(b) Buyer agrees to do all things and to execute and deliver any and all documents necessary, in Frankensolar's sole discretion, for the creation, preservation, enforcement and protection of such security interest over the Goods. Buyer hereby appoints Frankensolar as its attorney to execute any documents or other instruments necessary to perfect and enforce its security interest.

(c) In the event of non-payment by Buyer of any part of the purchase price or non-payment of any instalment due to Frankensolar, Frankensolar shall have all rights and remedies under the applicable personal property security legislation, including, without limitation, the right to enter upon the premises of Buyer to repossess and remove the Goods without notice, wherever they are situated and by whatever means Frankensolar may deem appropriate.

(d) In the event of retention of title or security interest, in and over the Goods, and such Goods should be assembled with or integrated into parts over which Frankensolar has no right or title, Frankensolar will acquire joint ownership over the new product in proportion to the value of the Goods and its right to retention or rights as secured party will extend to such new product.

(e) In the event of resale by Buyer of the Goods or of the new product into which the Goods were assembled or integrated into, Frankensolar shall retain and Buyer hereby assigns and grants to Frankensolar a continuing security interest in all debts, proceeds, accounts, and claims which may be owned by Buyer or due or owing to Buyer by any third party purchaser,

and also all documents relating to the Goods or their proceeds, up to the amount of Buyer's outstanding payments including interest and expenses. Buyer agrees to do all things and to execute all documents necessary to protect such security interest. The Buyer hereby appoints Frankensolar as its attorney for the purpose of executing any documents or other instruments necessary to perfect and enforce its continuing security interest.

(f) Buyer shall duly indicate such assignment in its records, which Frankensolar may examine at any time, and Buyer shall regularly provide Frankensolar with a detailed list of such claims. Buyer shall inform its buyers of such assignment. Frankensolar reserves the right to inform them directly at any time in its sole discretion.

(g) As long as Buyer complies with payment terms, Buyer is entitled to collect all amounts owing to it, and use such amounts to fulfill its payment obligations toward Frankensolar. All moneys collected or received by Buyer in respect of such claims shall be received as trustee for Frankensolar, and shall be forthwith paid over to Frankensolar in fulfillment of its payment obligations towards Frankensolar. Buyer is entitled to collect such amounts until notice to the contrary, subsequent to which Frankensolar may collect all amounts due directly. Any expenses, including legal fees, incurred by Frankensolar in collecting same may be added to the indebtedness of the Buyer.

(h) Buyer shall inform Frankensolar without delay of any seizure, notice, proceeding, action, claim or other occurrence that may adversely affect Frankensolar's right, title or ability to enforce its rights or its security interest hereunder.

#### **4. Delivery and Title**

(a) Unless otherwise agreed upon in writing, all sales are FOB Shipping Point, Freight Prepaid and Added. Delivery will be deemed complete and all risk of loss, destruction and damage to Goods will pass to Buyer upon delivery of Goods to carrier at Frankensolar's facility. Buyer shall reimburse Frankensolar for all transportation costs prepaid by Frankensolar. Buyer is solely and entirely responsible for all insurance costs and risks associated with the transport of the Goods, including loading of Goods onto carrier. In the event of any loss, destruction or damage, Buyer's claim shall be against carrier only and any such loss, destruction or damage shall not relieve Buyer of its obligations under this agreement.

(b) Frankensolar shall package Goods according to normal industry standards and does not guarantee that any special care or materials will be used. Such special care or materials may be used if so requested by Buyer, which request Frankensolar may accept or refuse at its sole discretion, and in which case any additional costs arising therefrom shall be borne by Buyer.

(c) In no case shall carrier be deemed as Frankensolar's agent, notwithstanding Frankensolar's prepayment of transportation costs, and Buyer undertakes to fulfill all obligations to carrier, financial or otherwise, in relation to the acceptance and transport of the Goods. Buyer shall indemnify, defend and hold Frankensolar harmless in the event any claim, action, proceeding, charge, damage or expense is brought against Frankensolar by any carrier.

(d) Buyer shall, at its own cost and expense, keep all Goods fully insured against loss or damage until all sums owing to Frankensolar have been fully paid, with each insurance policy issued naming Frankensolar as an insured with loss payable to Frankensolar. Buyer will assign and deliver such insurance policy to Frankensolar as security.

(e) Buyer acknowledges that time of delivery is not of the essence, that any delivery dates indicated by Frankensolar are estimates only, and that Frankensolar is not liable for delays in delivery or for failure to perform due to causes beyond Frankensolar's reasonable control. In the event of such delay, Frankensolar shall use its best efforts to extend the date of delivery for a period equal to the time lost. If due to force majeure, Frankensolar may, at its option, extend delivery time or cancel order in whole or in part. Delay in delivery of one order shall not entitle Buyer to cancel another order. In no event shall Frankensolar be liable for any incidental, special or consequential damages or any loss of profit resulting from failure or delay in delivery, even if it has been advised as to the possibility of same.

(f) In the event that delivery is delayed due to fault of Buyer, for any reason, including, without limitation, (i) not providing Frankensolar with necessary information or documentation, (ii) not fulfilling payment obligations, or (iii) not accepting Frankensolar's delivery, Frankensolar may, in its sole discretion, extend date of delivery or cancel order, in which case Buyer will not be released of its obligations and will remain liable for all costs incurred due to such delay, including but not limited to storage costs.

(g) Frankensolar reserves the right to make partial shipments and to submit invoices for partial shipments.

**5. Inspection and Acceptance**

(a) Buyer shall perform whatever inspection or tests Buyer deems necessary as promptly as possible, but no later than five (5) days following delivery, after which time Buyer will be deemed to have irrevocably accepted the Goods in their condition received unless Frankensolar has received written notice to the contrary in that time period.

(b) The foregoing shall also apply to all data, information and documentation Frankensolar may send to Buyer either with the Goods, or from time to time, such as, without limitation, any plans, certificates, part lists and bills of quantity.

(c) Any discrepancy in quantity of Goods ordered and delivered must be reported to Frankensolar within five (5) days of receipt of the Goods. Buyer may return any surplus at Frankensolar's expense or may elect to keep such subject to price adjustment. Returned Goods must be in their original condition and packaging.

**6. Changes and Cancellation**

Orders accepted by Frankensolar are not subject to changes or cancellation by Buyer except with Frankensolar's written consent. In such cases where Frankensolar authorize changes or cancellation, Buyer agrees that Frankensolar may charge Buyer an amount equal to five per cent (5%) of the total purchase price as liquidated damages, being a reasonable pre-estimate by the parties of Frankensolar's minimum costs, together with Frankensolar's reasonable costs based upon expenses already incurred and commitments made by Frankensolar, including, without limitation, material or Goods ordered, usual overhead and reasonable profit and cancellation charges from Frankensolar's suppliers.

**7. Returned Goods**

No goods may be returned to Frankensolar without its prior written permission. Frankensolar

reserves the right to decline all returns or to accept them subject to a handling/restocking charge of ten per cent (10%) of the total purchase price.

Even after Frankensolar has authorized the return of goods for credit, Frankensolar reserves the right to adjust the amount of any credit given to Buyer on return of the Goods based on the condition of the Goods on arrival in Frankensolar's warehouse. Credit for returned goods will be issued to Buyer only where such goods are returned by Buyer and not by any subsequent owner of the Goods. Goods will be considered for return only if they are in their original condition and packaging.

### **8. Installation**

Unless otherwise expressly stipulated, the Goods shall be installed by and at the risk and expense of Buyer. In the event that Frankensolar is requested to supervise such installation, Frankensolar's responsibility shall be limited to exercising that degree of skill customary in the trade in supervising installations of the same type. Buyer shall remain responsible for all other aspects of the work including compliance with the local regulations.

### **9. Limited Warranty and Limitation of Liability**

(a) The original manufacturer's warranty (including any restrictions, conditions, and guidelines applicable to the warranty) shall apply to Goods sold to Buyer, to the extent assignable by Frankensolar. Frankensolar does not make any warranty on its own behalf with respect to any Goods. Buyer acknowledges that Frankensolar is not the manufacturer of the Goods and shall have no liability therefor.

(b) In the event of any breach of the original manufacturer's warranty (whether by reason of defective materials, production faults or otherwise), Buyer's recourse is limited to the terms of the original manufacturer's warranty. Warranty claims or service requests must be made in compliance with the terms of the original manufacturer's warranty. The original manufacturer (or

Frankensolar, if authorized to do so by the original manufacturer) shall make the final determination as to the existence and cause of any alleged defect.

(c) Frankensolar does not accept any responsibility or liability for the condition, duration, or extent of the original manufacturer's warranty, and such warranty terms are subject to change without notification by the original manufacturer

(d) THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES, EXPRESS OR IMPLIED, BY STATUTE OR COMMON LAW, THAT FRANKENSOLAR GIVES IN CONNECTION WITH THE GOODS, AND FRANKENSOLAR DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND WARRANTIES AGAINST LATENT DEFECTS.

(e) Frankensolar does not warrant or guarantee the accuracy of any data or information whether contained in written documentation, such as any pamphlets, proposals, specifications, technical drawings, and samples, or in a verbal statement, whether such documentation or statement is of a private or public nature, whether emanating from Frankensolar, any party related to Frankensolar in whatsoever manner, or an independent third party, including any manufacturer, distributor or supplier of Goods.

(f) BUYER SHALL NOT IN ANY EVENT BE ENTITLED TO, AND FRANKENSOLAR SHALL NOT BE LIABLE FOR, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING WITHOUT LIMITATION, BUSINESS INTERRUPTION COSTS, REMOVAL AND / OR REINSTALLATION COSTS, REPROCUREMENT COSTS, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION OR LOSS OF CUSTOMERS, EVEN IF FRANKENSOLAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BUYER'S RECOVERY FROM FRANKENSOLAR FOR ANY CLAIM SHALL NOT EXCEED BUYER'S PURCHASE PRICE FOR THE GOODS GIVING RISE TO SUCH CLAIM IRRESPECTIVE OF THE NATURE OF THE CLAIM, WHETHER IN CONTRACT, TORT, WARRANTY, OR OTHERWISE. FRANKENSOLAR SHALL NOT BE LIABLE FOR AND BUYER SHALL INDEMNIFY, DEFEND AND HOLD FRANKENSOLAR HARMLESS FROM ANY CLAIMS BASED ON FRANKENSOLAR'S COMPLIANCE WITH BUYER'S DESIGNS, SPECIFICATIONS OR INSTRUCTIONS, OR MODIFICATION OF ANY GOODS BY PARTIES OTHER THAN FRANKENSOLAR, OR USE IN COMBINATION WITH OTHER GOODS.



## **10. Compliance**

(a) Buyer will comply with all applicable and current import and export rules and regulations of the countries from which the Goods shall originate transit and arrive and shall take all steps to keep itself advised of any changes to all such rules and regulations. Frankensolar shall not be responsible to notify Buyer of any changes to any such rules and regulations which may affect the transport of Goods. Buyer shall be responsible to procure and furnish any and all documentation, permits, approvals and/or licenses required for the international transit of the Goods.

(b) Frankensolar does not guarantee compliance with any federal, provincial or municipal fire, building, health, or other safety codes. Buyer shall satisfy itself that the Goods comply with any regulations as to safety, packaging, marking, etc.

## **11. Product Liability**

(a) Buyer expressly acknowledges that the nature of Goods is known to it, including any potential danger or risk associated with Goods. Buyer acknowledges that the information, warnings and notices given with respect to Goods are sufficient to fully understand such danger and risks and undertakes to forward such information upon resale of Goods and products into which Goods are assembled with or integrated into. Buyer undertakes to impose the same obligation on its buyers in order to ensure such information is transmitted down the contractual chain.

(b) Failure to comply with the above obligation shall entail full and complete liability unto Buyer for all losses and damages that may arise from such failure, whether directly or indirectly, and notwithstanding nature of loss or damage and notwithstanding identity or relation, or lack thereof with claimant. Buyer shall defend, indemnify and hold Frankensolar harmless of all claims, actions and legal proceedings that may be introduced against Frankensolar due to such failure, and for all losses and damages that it may suffer as a consequence thereof.

## **12. Confidentiality**

Buyer shall keep confidential any information and document that Frankensolar has indicated to be of confidential nature and will not directly or indirectly disclose such to any third party or use it for its own benefit and shall not cause nor permit disclosure thereof in any form without Frankensolar's prior written consent. Buyer agrees to use reasonable care and its best efforts to protect such confidential information.

### **13. Force Majeure**

Frankensolar shall not be responsible or liable for any delay or failure to perform its obligations arising from causes beyond Frankensolar's reasonable control, including, without limitation, acts of God, war, invasion, insurrection, riot, the order of any civil or military authority, fire, flood, weather, acts of the elements, delays in transportation, unavailability of equipment or materials, breakdown, sabotage, lock-outs, strikes or labour disputes, or the failure of suppliers to meet their delivery promises. The acceptance of delivery of the Goods by Buyer shall constitute a waiver of all claims for loss or damage due to any delay whatsoever.

### **14. Non-Waiver**

No failure on Frankensolar's part to strictly enforce any of these terms and conditions or any of its rights shall be construed as a waiver of such term, condition or right and Frankensolar's acceptance of an order shall not be deemed an acceptance of any terms and conditions that may be contained therein.

### **15. Severability**

In the event that any provision of these terms and conditions or any part thereof should be held to be invalid, illegal or unenforceable, the remainder of these terms and conditions shall remain valid and enforceable.

### **16. Applicable law and jurisdiction**

These terms and conditions are governed by the laws of the Province of Ontario and the federal laws applicable therein save and except to the extent that local provincial laws governing security interests and rights of repossession may apply to Goods delivered outside of Ontario. Any dispute with respect thereto shall be submitted to the courts in the judicial district of Toronto, Province of Ontario, and the parties submit to the jurisdiction of the courts in that judicial district as the exclusive venue for the adjudication of any and all disputes hereunder and waive any claim of forum non conveniens. If any dispute falls under the jurisdiction of the Federal Court of Canada, then the parties agree to submit the dispute to the exclusive jurisdiction of the Federal Court sitting in the judicial district of Toronto, Province of Ontario. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

### **17. Notices**

All notices hereunder must be given to Frankensolar in writing at its principal place of business for receipt within the time specified herein.

### **18. Language**

Buyer hereby agrees that all terms, forms, contract and other kinds of agreements and documents exchanged or entered into between the Buyer and Frankensolar shall be in the English language only. Les parties aux présentes conviennent expressément que cette convention ainsi que tous les avis et documents s'y rattachant soient rédigés en anglais.