

Terms and Conditions of Sale

Vertiv™ Canada ULC



Vertiv Canada ULC is herein referred to as the “Seller” and the customer or person or entity purchasing goods, parts and/or services (“Goods”) and/or parts required for services (“Parts”), and/or licensing software and/or firmware which are preloaded, or to be loaded into Goods (“Software”) from Seller is referred to as the “Buyer.” These Terms and Conditions, any price list or schedule, quotation, acknowledgment, Seller’s scope of work or invoice from Seller relevant to the sale and/or license of the Goods and licensing of Software and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement (“Agreement”) governing the sale of Goods, Parts and/or license of Software by Seller to Buyer. Seller’s acceptance of Buyer’s purchase order is expressly conditional on Buyer’s assent to all of Seller’s terms and conditions of sale, including terms and conditions that are different from or additional to the terms and conditions of Buyer’s purchase order. Buyer’s acceptance of the Goods and/or Software will manifest Buyer’s assent to these Terms and Conditions. Seller reserves the right in its sole discretion to refuse orders.

- 1. Prices.** Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Goods, Parts and/or Software shall remain in effect for thirty (30) days after the date of Seller’s quotation, Seller’s scope of work or acknowledgment of Buyer’s order, whichever occurs first, provided an unconditional authorization from Buyer for the shipment, performance or sale of the Goods, and/or Parts, and/or Software is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods, Parts and/or Software at the time of shipment, delivery or installation, as shall be determined solely by Seller. All prices and license fees are exclusive of taxes, transportation and insurance, which are to be borne by Buyer, and, in the event of a force majeure event, make equitable adjustments in Seller’s price for the Goods, Parts, and/or Software prior to Seller’s shipment or performance thereof. Seller reserves the right to correct any obvious errors in specifications or prices. Unless otherwise specified by Seller, parts (“Parts”) that are required for the performance of services will be furnished at Seller’s then-prevailing prices. A service charge of \$19.99 will be added to all orders which, excluding shipping charges, do not meet the minimum order value of \$750.00. The service charge amount and/or minimum order value may be changed by Seller at any time, without notice.
- 2. Taxes.** Any current or future tax or governmental charge (or increase in same), including without limitation Goods and Services Tax, sales tax, excise tax, use tax, environmental levies and import/export duties, affecting Seller’s costs of production, sale, or delivery or shipment, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods, Parts and/or Software, shall be for Buyer’s account and shall be added to the price. Seller may elect to add taxes to the price or bill Buyer separately, absent the receipt of a valid exemption from Buyer. Quoted or estimated prices referenced by Seller do not include any taxes unless otherwise expressly indicated.
- 3. Terms of Payment.** Unless otherwise specified by Seller, terms are net thirty (30) days from date of Seller’s invoice in Canadian currency. Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys’ fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Should Buyer’s financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries of Goods and/or Software. If such cash payment or security is not provided, in addition to Seller’s other rights and remedies, Seller may discontinue deliveries. Buyer hereby grants Seller a security interest in all Goods and/or Software sold to Buyer by Seller, which security interest shall continue until all such Goods and/or Software are fully paid for in cash, and Buyer, upon Seller’s demand, will execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest. In the event of bankruptcy or insolvency of Buyer, or in the event of any proceedings brought against Buyer, voluntary or involuntary, under bankruptcy or any other insolvency laws, Seller shall be entitled to cancel any orders then outstanding at any time and Seller shall receive reimbursement for its reasonable and proper cancellation charges.
- 4. Shipment and Delivery.** While Seller will use all reasonable commercial efforts to maintain the delivery date(s) and/or performance date(s) acknowledged or quoted by Seller, all shipping dates and/or performance dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods, Parts and/or Software for which Buyer has not provided shipping instructions and other required information. If the shipment or performance of the Goods, Parts and/or Software is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. For sales in which the end destination of the Goods, Parts and/or Software is outside of Canada, risk of loss and legal title to the Goods, Parts and/or Software shall transfer to Buyer immediately after the Goods, Parts and/or Software have passed beyond the territorial limits of Canada. All other shipments of Goods, Parts, and/or Software are made on an Ex Works (EXW) Seller’s Shipping Point basis, per Incoterms 2020, with Seller responsible to load goods on Buyer’s nominated vehicle. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Notwithstanding the above, risk of loss and legal title to Parts shall transfer to Buyer (i) upon delivery by the Seller, or (ii) at the time Parts are placed in storage due to Buyer’s delay or postponement. Shortages or damages must be identified and signed for at the time of delivery. Requests for changes in quoted transportation modes will not be made or accepted on orders already processed unless otherwise mutually agreed upon by Seller and Buyer. Requests for changes in quoted transportation modes to orders already accepted by Seller will be subject to new freight terms and billed at the price in effect at the time of the request for change. Any request for changes to quoted transportation modes must be submitted in writing to Seller and are subject to Seller’s acceptance and adjustment in freight price. The transportation costs quoted by Seller may be changed by Seller without notice in order to reflect Seller’s prices at the time of shipment and will reflect any market increase in transportation costs. If a price for delivery has been quoted, any changes at the destination for transportation modes, spotting, switching, handling, storage and other accessorial services and demurrage shall be borne by the customer, and any related increase in transportation charges shall be added to the quoted price.

5. **Buyer's Inspection.** Buyer shall inspect Goods and/or Software delivered to it by Seller immediately upon receipt, and, any course of dealing to the contrary notwithstanding, failure of Buyer to give Seller notice of any claim within 30 days after receipt of such Goods and/or Software shall be an unqualified acceptance of such Goods and/or Software. Buyer, at its option and expense, may inspect and observe the testing by Seller of the Goods and/or Software for compliance with Seller's standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller's plant at such reasonable time as is specified by Seller. Any rejection of the Goods and/or Software must be made promptly by Buyer before shipment. Tests shall be deemed to be satisfactorily completed and the test fully met when the Goods and/or Software meet Seller's criteria for such procedures.
6. **Returned Goods.** Advance written permission to return Goods and/or Software must be obtained from Seller. Such Goods must be current, unused, catalogued Goods still in original packaging and must be shipped, transportation prepaid, to Seller. Returns made without proper written permission will not be accepted by Seller. If applicable, credit for such returned Goods will be at the billing price or current price, whichever is lower, from which will be deducted an inspection and repacking charge and the cost of any reconditioning. Seller reserves the right to inspect Goods prior to authorizing return.
7. **Limited Warranty.** Subject to the limitations of Section 8, Seller warrants that the Goods and/or Software sold by Seller will be free from defects in material and workmanship and meet Seller's published specifications at the time of shipment or performance under normal use and regular service and maintenance for a period of one (1) year from the date of shipment or performance by Seller, unless otherwise specified by Seller in writing. Consumables, including, without limitation, glass parts and electrodes, membranes, liquid junctions, electrolytes and reagents, o-rings, plastic tubes, elastomers, etc. are warranted to be free from defects in material and workmanship under normal use and service for a period of ninety (90) days from the date of shipment by Seller. Thermal Solution Components, including but not limited to, fans, air-to-air heat exchangers, air conditioners, emergency DC vent systems and filtered thermal vent systems are warranted to be free from defects in material and workmanship for a period of twelve (12) months from date of shipment, or manufacturer's pass through warranty, whichever is longer, provided the following conditions are met: (i) Semi-annual preventive maintenance logs are maintained by Buyer and such logs are available to Seller upon request; and (ii) Input voltage to the air conditioner unit does not vary by greater than +/-10%; and (iii) in the event of accidental or intentional shut-off, a Thermal Solution Component will not be restarted for at least five (5) minutes; and (iv) The refrigerant specified on the unit nameplate label will be the only refrigerant utilized in the air conditioner unit; and, (v) Buyer complies with all installation, operations and maintenance instructions provided by Seller. Goods purchased by Seller from a third party for resale to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer. Seller warrants that it will perform services as described in this agreement and will exercise all reasonable skill, care and due diligence in the performance of the services and shall perform the services in accordance with professional practice. Seller warrants that all services performed shall be free from faulty workmanship for a period of thirty (30) days from completion of services. Seller assigns to Buyer any warranties that are made by manufacturers and suppliers of Parts and which are assignable. Goods and/or Software repaired or replaced during the applicable warranty period will be returned to Buyer at Seller's expense and will be covered by the foregoing warranties for the remainder of the original warranty period or ninety (90) days from the date of shipment, whichever is longer. Except as specified above, Parts furnished hereunder are furnished AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. THE WARRANTY SET FORTH IN THIS SECTION 7 AND THE WARRANTY SET FORTH IN SECTION 11, ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS AND/OR SOFTWARE AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE. SELLER'S WARRANTY EXTENDS ONLY TO PURCHASERS WHO BUY FOR INDUSTRIAL OR COMMERCIAL USE. BUYER ACKNOWLEDGES THAT IT IS NOT PURCHASING THE PARTS AND/OR SERVICES FOR PERSONAL, HOUSEHOLD, FAMILY OR DOMESTIC USE. These warranties do not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and/or Software and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein which are affected by such conditions shall be null and void. Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods and/or Software, either alone or in combination with other products/components.
8. **Limitation of Remedy and Liability.** THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 11) SHALL BE LIMITED TO, AT SELLER'S SOLE OPTION, REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE UNDER SECTION 7. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS, PARTS AND/OR SOFTWARE PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment. Buyer expressly acknowledges and agrees that Seller has set its prices and entered into the agreement in reliance upon the limitations of liability and other terms and conditions specified herein, which allocate the risk between Seller and Buyer and form a basis of this bargain between the parties. It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods and/or Software is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

9. **Drawings.** Seller's prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefor.
10. **Software.** Notwithstanding any other provision herein to the contrary, Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, non-transferable royalty free license to use the Software incorporated into the Goods solely for purposes of Buyer properly utilizing such Goods purchased from Seller. All other Software shall be furnished to, and used by, Buyer only after execution of Seller's (or the licensor's) applicable standard license agreement, the terms of which are incorporated herein by reference.
11. **Patents and Copyrights.** Subject to the limitations of the second paragraph of Section 8, Seller warrants that the Goods and/or Software sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid Canadian or U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notifies Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperates fully with Seller and permits Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to utility patents only applies to infringement arising solely out of the inherent operation according to Seller's specifications and instructions of such Goods and/or Software. In the event (i) such Goods and/or Software are held to infringe such a Canadian or U.S. patent or copyright in such suit, and the use of such Goods and/or Software is enjoined, or (ii) a compromise or settlement is made by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods and/or Software, or replace them with non-infringing Goods and/or Software, or modify same to become noninfringing, or grant Buyer a credit for the depreciated value of such Goods and/or Software and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods and/or Software, without liability.
12. **Excuse of Performance.** Seller shall not be liable for delays in performance or for nonperformance due to acts of God; acts or omissions of Buyer; war; viral outbreaks, disease, pandemic, widespread sickness, or epidemic; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; unavailability of or delays in the supply of materials, components, parts or labor required for the design and/or manufacture of Goods, Software or the performance by Seller hereunder; failure or interruption of computer or telecommunication systems; default of suppliers; or unforeseen circumstances or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of the agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods, Parts and/or Software, or to obtain material used directly or indirectly in the manufacture of the Goods, Parts and/or Software is hindered, limited or made impracticable due to causes set forth above, Seller may delay or cancel performance, make equitable adjustments in Seller's price for the Goods, Parts, and/or Software, and/or allocate its available supply of the Goods, Parts and/or Software or such material (without obligation to acquire other supplies of any such Goods, Parts, Software or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.
13. **Cancellation.** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and, to cover commitments made, by the Seller and a reasonable profit thereon. Seller's determination of such termination charges shall be conclusive. Orders for non-standard Goods and/or custom Goods are final and non-cancelable.
14. **Changes.** Buyer may request changes or additions to the Goods and/or Software consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price, license fees and dates of delivery or performance. Seller reserves the right to change designs and specifications for the Goods, Parts and/or Software without prior notice to Buyer, except with respect to Goods and/or Software being made-to-order for Buyer. Seller shall have no obligation to install or make such change in any Goods and/or Software manufactured prior to the date of such change.
15. **Nuclear/Medical.** GOODS, PARTS AND SOFTWARE SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS. Buyer accepts Goods, Parts and Software with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.
16. **Tooling.** Tool, die, and pattern charges, if any, are in addition to the price of the Goods and are due and payable upon completion of the tooling. All such tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies, and patterns do not convey to Buyer, title, ownership interest in, or rights to possession or removal, or prevent their use by Seller for other purchasers, except as otherwise expressly provided by Seller and Buyer in writing with reference to this provision.
17. **Assignment.** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

18. **Billable Services.** Additional charges will be billed to Buyer at Seller's then-prevailing labor rates and Parts prices for any of the following: a) any services not specified in Seller's quotation, Seller's order acknowledgement or other documents referenced herein or therein; b) any services performed at times other than Seller's normal service hours; c) if reasonable site and/or equipment access is denied the Seller's services representative; or d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller service personnel will provide supervision only and the cost of such union or contract labor will be charged to Buyer.
19. **Non-Solicitation.** Buyer shall not solicit, directly or indirectly, or employ any employee of Seller during the period any Goods and/or Software are being provided to Buyer and for a period of one (1) year after the last provision of Goods and/or Software.
20. **Export/Import.** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of Canada, the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods, Parts and/or Software may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods, Parts or Software in violation of such applicable laws, regulations, orders or requirements.
21. **Buyer Supplied Data.** To the extent that Seller has been provided by or on behalf of Buyer any specifications, description of operating conditions or other data and information in connection with the selection or design of the Goods and/or Software or the provision of services, and the actual operating conditions or other circumstances differ from those provided by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.
22. **General Provisions.** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction. The rights, remedies and protections afforded to Seller under the agreement, including but not limited to indemnification of Seller, limitation of remedy and liability and limited warranty shall extend to Seller and to its affiliates, subsidiaries or related companies performing or supplying work, Goods or services under the agreement or any agreement into which it is incorporated by reference. Seller does not agree to indemnify Buyer or name Buyer as an additional insured. It is intended that these Terms and Conditions shall be reasonable as between the parties having regard to the nature of the agreement, but if at any time any of these Terms and Conditions is either unenforceable or void at law or pursuant to any ruling of any governmental authority, court or tribunal, it shall not adversely affect or prejudice the remainder of them or the agreement and it shall be deemed to be excluded from these Terms and Conditions and, where possible, be replaced by such other enforceable or valid term or condition as shall be as near as may be to the original in both form and effect. The validity, performance, and all other matters relating to the interpretation and effect of this Agreement shall be governed by the law of the Province of Ontario and the laws of Canada applicable therein, without regard to its conflicts of laws principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in Toronto, Ontario and the parties agree to submit to such exclusive jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the claim has been discovered. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this Agreement.
23. **Indemnity.** Each party shall indemnify and hold the other party harmless from loss, damage, liability or expense resulting from damage to personal property of a third party, or injuries, including death, to third parties to the extent caused by a negligent act or omission of the party providing indemnification or a party's subcontractors, agents or employees during performance of services hereunder. Such indemnification shall be reduced to the extent damage or injuries are attributable to others. The indemnifying party shall defend the other party in accordance with and to the extent of the above indemnification, provided that the indemnifying party is: i) promptly notified by the other party, in writing, of any claims, demands or suits for such damages or injuries; ii) given all reasonable information and assistance by the other party; iii) given full control over any resulting negotiation, arbitration or litigation, including the right to choose counsel and settle claims, or the indemnifying party's obligations herein shall be deemed waived.
24. **Non-Solicitation.** Buyer acknowledges that Seller has expended considerable resources in selecting and training Seller's employees. Accordingly, Buyer shall not, within Canada, directly or indirectly, through, in conjunction with, or for the benefit of any person, solicit or employ, assist any person to solicit or employ, or have any direct or indirect interest or concern in any person (excluding a publicly traded company) if any of the activities of such person in whole or in part consist of soliciting or employing, any employee of Seller during the period any services are being provided to Buyer and for a period of one (1) year after the last provision of services. Should Buyer breach the foregoing provision, Buyer agrees to pay Seller, as liquidated damages and not as a penalty, an amount equal to Buyer's standard hourly fee for the employee in question multiplied by 2,000 hours. The liquidated damages stated above represent a reasonable estimate of Seller's extra expenses, which expenses are difficult to estimate with accuracy, for hiring and training replacement employees.

25. **Data Collection and Use.** By using the Software, Buyer grants Seller, its affiliates, subsidiaries, and service providers a non-exclusive, irrevocable, royalty free, worldwide right and license to collect, compile, retain, use, reproduce, and create derivative works of, Buyer non-personal information and data, which includes without limitation, all data, materials, reports, text, sound, video, image files, software or any other information (“Service Data”) that is provided by, or on behalf of, Buyer, or collected or compiled by Seller, its affiliates, subsidiaries, or service providers through the Software. Seller, its affiliates, subsidiaries, and service providers may collect, compile, retain, use, reproduce, and create derivative works of Service Data: (i) to provide services, support, and maintenance; (ii) to develop and improve products, software, and services; and (iii) for scientific and technical research and marketing purposes. Buyer is solely responsible for the Service Data, and Buyer will secure and maintain all rights necessary for Seller, its affiliates, subsidiaries, and service providers to process and use Service Data as described in this paragraph without violating the rights of any third party or otherwise obligating Seller, its affiliates, subsidiaries, and service providers to Buyer or any third party. The Service Data will be aggregated with other information, materials, or data collected or compiled by, or provided to, Seller, its affiliates, subsidiaries, or service providers and anonymized, such that the Service Data will not intentionally reveal Buyer’s identity. In accordance with applicable law, Service Data may be transferred, transmitted, or distributed to, stored, and processed in, cloud computing environments in the United States or any other country in which Seller, its affiliates, subsidiaries, or service providers maintain operations. By using the Software, Buyer agree to such use, transfer, transmission, distribution, storage, and processing of the Service Data. Seller, its affiliates, subsidiaries, and service providers will retain Service Data for as long as is necessary for Seller and its affiliates and subsidiaries’ business purposes in accordance with applicable law. The rights and licenses granted herein to Seller service providers shall only be granted to the extent service providers are providing goods and services on Seller’s and its affiliates and subsidiaries behalf.
26. **Additional Service Conditions.** Buyer shall furnish to Seller, at no cost, suitable working space, storage space, adequate heat, telephone, light, ventilation, regulated electric power and outlets for testing purposes (the “Facilities”). The Facilities shall be located at a reasonable distance from the location where such services are to be provided (the Facilities together with the location where such services are to be provided are collectively referred to as the “Site”). Seller and its representatives shall have full and free access to the Site and equipment in order to provide the necessary services. Buyer authorizes Seller to send a service technician or an authorized agent to access any site requested by Buyer to perform services, including services on different scopes of work and equipment as requested by Buyer. Buyer shall provide the means to shut-off and secure electric power to the equipment and provide safe working conditions. Seller is under no obligation to remove or dispose of Parts or equipment unless specifically agreed upon in Seller’s scope of work. Buyer shall immediately inform Seller, in writing, at the time of order placement and thereafter, of any unsafe or hazardous substance or condition at the Site or any other circumstance altering Seller performance of services, including, without limitation, the presence of asbestos or asbestos-containing materials (“Unsafe Conditions”), and shall provide Seller with any applicable Material Data Safety Sheets regarding the same. Any losses, costs, damages, claims and expenses incurred by Seller and/or its employees or agents, directly or indirectly, as a result of Buyer’s failure to so advise Seller shall be borne by Buyer. BUYER SHALL HOLD HARMLESS AND INDEMNIFY SELLER, ITS EMPLOYEES, DIRECTORS, OFFICERS, AGENTS, CONTRACTORS SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY LIABILITY, LOSS, COSTS (INCLUDING LEGAL FEES), EXPENSE, DAMAGE OR INJURY ARISING FROM, RELATING TO OR IN CONNECTION WITH THE SITE INCLUDING WITHOUT LIMITATION AS A RESULT OF UNSAFE CONDITIONS, BREACH OF THE FOREGOING PARAGRAPH, OR NEGLIGENCE OF BUYER, ITS AGENTS, CONTRACTORS OR EMPLOYEES. Seller, in its sole discretion and without cost or penalty, reserves the right to cancel its performance under the agreement or any order immediately upon written notice to Buyer following Seller discovery of unsafe or hazardous site substance or condition or any other circumstance altering Seller performance of services. Buyer shall appoint a representative familiar with the Site and the nature of the services to be performed by Seller to be accessible at all times that Seller personnel are at the Site. Seller shall not be liable for any expenses incurred by Buyer in removing, replacing or refurbishing any Buyer equipment or any part of Buyer’s building structure that restricts Seller access. Buyer personnel shall cooperate with and provide all necessary assistance to Seller. Seller shall not be liable or responsible for any work performed by Buyer.
27. **Insurance.** Seller shall maintain the following insurance or self-insurance coverage: Worker’s Compensation in accordance with the statutory requirements of the province in which the work is performed. Employer’s Liability with a limit of liability of \$1,000,000 per occurrence for bodily injury by accident or bodily injury by disease. Commercial General Liability (CGL) for bodily injury and property damage with a limit of \$1,000,000 per occurrence and aggregate. CGL includes Contractual Liability. CGL does not include Products and Completed Operations coverage. Automobile Liability insurance that covers usage of all owned, non-owned and leased vehicles and which is subject to a combined single limit per occurrence of \$1,000,000. Automobile Liability insurance includes Contractual Liability, but no special endorsements. The parties acknowledge that it is their express wish that the agreement, as well as all documents and notices related thereto, be drawn up in the English language. Les parties reconnaissent avoir exigé la rédaction en anglais de la présente convention, ainsi que tous les documents et avis qui s’y rattachent.



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