



## SALES TERMS AND CONDITIONS

### General:

1. These terms and conditions (the "Sales Terms and Conditions") shall govern the sale by LaPrairie ("LaPrairie") of any and all items (the "Goods") and for the services (including, without limitation, any material management, assembly and kitting services, and engineering and design services (whether performed by LaPrairie or a subcontractor)(The "Services") sold to you ("Buyer").
2. Buyer agrees the Sales Terms and Conditions constitute the entire agreement and supersede and replace any prior or contemporaneous agreements, representations, warranties or understandings between the parties.
3. Buyer agrees that provisions in their purchase orders or any other document Buyer send to LaPrairie that are contrary to the Sales Terms and Conditions are not binding on LaPrairie unless LaPrairie accepts them in writing.
4. Buyer agrees that no employees or agents of LaPrairie have authority to verbally modify, alter or waive any of the Sales Terms and Conditions.

### Pricing:

1. Buyer agrees quotations of Goods and Services are for immediate acceptance only, unless otherwise specified herein, are subject to change without notice, and are subject to acceptance by LaPrairie when received.
2. Prices are based on foreign exchange, customs tariff and other governmental taxes and charges in effect at date of order. Buyer agrees that if there is a material change in LaPrairie purchase price for the goods ordered due to a change in any of these costs prior to shipping, the price invoiced shall be adjusted accordingly.
3. The prices of any and all Goods and Services shall be confidential, and Buyer shall not disclose such prices to any unrelated third party. LaPrairie and Buyer acknowledge and agree that money damages for any and all breaches of Buyer's obligation not to disclose the price of any Goods or Services is both incalculable and insufficient and that any such breach would irreparably harm LaPrairie. Therefore, in the event of an actual or prospective breach of the obligation of Buyer not to disclose the prices of any Goods and Services, LaPrairie shall be entitled to a permanent and/or a preliminary injunction to prevent or remedy such breach and shall have the right to specific enforcement of this Agreement against Buyer in addition to any other remedies to which LaPrairie may be entitled at law or in equity.

## Shipping of Goods:

1. Shipment of all Goods shall be made Ex Works - Shipping Point - per INCOTERMS 2010. Buyer shall bear the risk of loss and damage to Goods after delivery to the point of shipment.
  2. LaPrairie will use its best efforts to meet any requested shipping schedule but LaPrairie does not guarantee a delivery time. Buyer agrees that LaPrairie is not accountable for delays in delivery occasioned by acts of God or other circumstances over which LaPrairie has no direct control. Factory shipment or delivery dates are the best estimates only, and in no case shall LaPrairie be liable for any indirect, special or consequential damages arising from any delay in delivery.
  3. If LaPrairie agrees to pay all or any portion of the shipping cost, Shipment of Goods shall then be made CPT- Destination - per INCOTERMS 2010, LaPrairie reserves the right to select carrier, rate, method and route of transportation.
  4. Unless otherwise agreed to by LaPrairie in writing, Buyer will pay all insurance costs in connection with delivery of the Goods, if any, and be responsible for filing and pursuing claims with carriers for loss of, or damage to, Goods in transit.
  5. Buyer is responsible for obtaining at its sole cost and expense any and all necessary licenses and permits for the Goods and Services, including, without limitation, any licenses and permits for transportation.
  6. If Buyer is unable to receive the Goods when they are tendered, Buyer will be liable to LaPrairie for any losses, damages, or additional expenses incurred or suffered by LaPrairie as a result of Buyer's inability to receive the Goods.
  7. Buyer agrees that if Buyer request special packaging, handling or shipping instructions, any additional cost will, unless agreed in writing, be billed to Buyer.
  8. Buyer immediately will inspect all Goods upon receipt and will be deemed to accept the Goods upon receipt. Any claims for shortages or discrepancies will be waived by Buyer unless made in writing to LaPrairie within five days of receipt of the Goods.
  9. For heat trace, wire and cable, delivery length tolerance is  $\pm 10\%$ . Cutting and reel charges will apply when other than standard manufacturer lengths are requested and delivery lead-times may be adjusted. Credit in full for reels will be allowed if reels are returned to LaPrairie in good condition, freight prepaid, within twelve months (1 year) from date of original shipment.
  10. LaPrairie may cancel in whole or in part any order for Goods or Services under the Agreement at any time.
11. Notwithstanding the above, until Buyer has fully and finally paid all amounts owed to LaPrairie for any Goods title for such goods shall remain with LaPrairie, and Buyer shall hold such Goods, in trust for LaPrairie, and LaPrairie may repossess them if Buyer fails to pay for them in a timely fashion.

## **Credit and Payment**

1. All orders are subject to LaPrairie approval in respect to credit. If credit has not been arranged, payment must accompany order.
2. Payment for Goods and Services is due within 30 days from the date of LaPrairie invoice; provided, however, that LaPrairie reserves the right, in its sole discretion, to require full payment in cash before order entry, shipment, or delivery.
3. LaPrairie shall have the right to offset any and all amounts due and owing from LaPrairie to Buyer under this Agreement, including, without limitation, any chargebacks or rebates, against any amounts due and owing from Buyer to LaPrairie under this Agreement.
4. If Buyer defaults in payment, Buyer will be liable for all collection costs incurred by LaPrairie including, but not limited to, attorneys' and collection agency fees, and all related disbursements.
5. If Buyer does not pay when payment is due, past due amounts are subject to service charges of two percent (2%) per month, compounded monthly, and calculated from the due date on the invoice.
6. Buyer agrees that if any invoices are not paid within 30 days LaPrairie shall have the option/right to decline further credit sales.
7. Buyer agree that Buyer's account shall be assigned a credit limit in the discretion of LaPrairie that if at any time the total of unpaid invoices and unfilled orders exceeds that limit, LaPrairie shall have the right/option to decline further credit sales.
8. Buyer agrees that credit cards such as VISA and MasterCard are only accepted for payment of invoices at the time of purchase.

## **Taxes**

1. The purchase price of the Goods and Services does not include transportation taxes and sales, use, excise, import or any similar tax or other governmental charge arising pursuant to or in connection with the sale, purchase, processing, delivery, storage, use, consumption, performance or transportation of the Goods and Services. Buyer is responsible for payment of any transportation taxes, and any present or future sales, use, excise, import or any similar tax or other governmental charge applicable to the Agreement and to the sale and/or furnishing of the Goods and Services.

## **Cancellation**

1. Buyer may cancel its order for Goods and/or Services, but only if LaPrairie agrees to such cancellation in writing and only after Buyer pays reasonable charges for expenses already incurred and commitments made by LaPrairie in connection with the placement of such order(s).

## **Disclaimer of Warranties**

1. LAPRAIRIE HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN OR ORAL, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY CONTRACT, AT LAW, IN EQUITY, BY STRICT LIABILITY OR OTHERWISE, WITH RESPECT TO THE GOODS AND SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, ANY WARRANTY AGAINST DEFECTS IN DESIGN, MATERIALS AND WORKMANSHIP, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY AGAINST REDHIBITORY DEFECTS, ANY WARRANTY OF GOOD TITLE, AND ANY WARRANTY AGAINST INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY PATENTS, TRADEMARKS, OR COPYRIGHTS. LaPrairie shall, however, if given prompt written notice by Buyer of any claim of alleged patent, trademark or copyright infringement with respect to any Goods use its reasonable efforts to secure for Buyer such indemnity rights as the manufacturer may offer with respect to such Goods.

## **Specifications and Product Suitability**

1. Unless LaPrairie has expressly agreed otherwise in writing, it is Buyer's responsibility to ensure that the Goods and Services are the ones that it has requested and that all specifications and quantities are correct. LAPRAIRIE HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES THAT GOODS AND SERVICES CONFORM TO ANY SPECIFICATIONS, DRAWINGS, DESIGNS, OR SAMPLES.

2. Buyer assumes responsibility for compliance with such safety standards and regulations in the localities in which the Goods will be shipped, sold and used. Before purchase and use of any Goods, Buyer should review the product application, and national and local codes and regulations, and verify that the use and installation of the Goods will comply with them.

## **Ownership**

1. LaPrairie shall have and retain all right, title, and interest in and to any and all trade secrets, technical data, sales service and product plans, methodologies, techniques, designs, molds, tools, samples, systems, know-how, expertise and other proprietary information that it may use pursuant to or in connection with any Services, and Buyer shall not obtain a license to, or any other property rights in, any such LaPrairie property pursuant to or in connection with this Agreement.

## **No Waiver**

1. Nothing contained herein shall be construed to limit or waive any rights of LaPrairie under applicable Canadian federal, provincial or local laws. No waiver of any right or remedy in respect of any occurrence on one occasion shall be deemed a waiver of such right or remedy in respect of such occurrence on any other occasion.

## **Exclusive Remedy**

1. Buyer's EXCLUSIVE remedy against LaPrairie arising out of any defect in a Good tendered to Buyer is the repair or replacement of the Good, or alternatively, at LaPrairie sole election, a refund of the purchase price of the Good. Buyer's EXCLUSIVE remedy against LaPrairie arising out of any defect in, or in connection with, any Service provided hereunder is the re-performance of that Service or, at LaPrairie sole election, a refund of the purchase price of the Service. These remedies only will only be available to Buyer for one year after the Good is tendered or Service is provided to Buyer, and LaPrairie obligations under this Section will be void unless Buyer provides LaPrairie with notice of the defect in the Good or Service within 30 days of discovery of the defect. Any Good returned to LaPrairie for repair, replacement or refund under this Section will be returned by Buyer in accordance with LaPrairie return material authorization procedures then in effect. Returns for a refund will be subject to applicable restocking fees.
2. Buyer agrees that any test or inspection required by Buyer must be made at point of shipment, unless otherwise agree in writing.
3. If goods shipped are not as ordered, Buyer agrees to accept the goods from the carrier and if Buyer desires to return the goods to LaPrairie, to follow the procedures set out herein. Buyer further agrees that Buyer will notify LaPrairie and make a claim for settlement within 5 days of the receipt of the goods.
4. If goods shipped show evidence of damage or injury upon receipt, Buyer agrees that Buyer will not accept the goods "in good condition" and will instead give receipt noting the damage or injury. If Buyer desires to return the goods to LaPrairie, Buyer agrees to follow LaPrairie return material authorization procedures then in effect. Buyer further agrees that Buyer will notify LaPrairie and the carrier of the claim without delay.

## **Limitation of Liability**

1. NOTWITHSTANDING ANYTHING ELSE CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT WILL: (A) LAPRAIRIE BE

LIABLE TO BUYER FOR ANY CIRCUMSTANTIAL, CONSEQUENTIAL, CONTINGENT, EXEMPLARY, INCIDENTAL, INDIRECT, LIQUIDATED, MATERIAL,

PUNITIVE, SPECIAL, SPECULATIVE OR OTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, SALES OR REVENUES, COST OF REPLACEMENT GOODS, LOST BUSINESS OR BUSINESS INTERRUPTIONS, OR ATTORNEYS FEES OR COURT COSTS ARISING IN ANY MANNER PURSUANT TO OR IN CONNECTION WITH THE AGREEMENT, THE GOODS OR THE SERVICES (EVEN IF LAPRAIRIE IS MADE AWARE OF THE POTENTIAL FOR SUCH DAMAGES); AND (B) LAPRAIRIE TOTAL LIABILITY RELATED TO ANY GOOD OR SERVICE EXCEED THE PURCHASE PRICE OF SUCH GOOD OR SERVICE.

## **Indemnification**

1. Upon prompt notice by Buyer of any claim of patent, copyright, or trademark infringement with respect to any Goods or Services, LaPrairie will use its reasonable efforts to secure for Buyer such indemnity rights as the manufacturer may customarily give with respect to such Goods. This Section sets forth Buyer's sole and exclusive remedy against LaPrairie regarding the infringement by any Goods or Services of any third party intellectual property rights, including, without limitation, any patents or trademarks.

2. Buyer will indemnify, defend and hold harmless LaPrairie, its shareholders, officers, directors, employees, agents and representatives from and against all losses, damages, liabilities, costs, and expenses including, but not limited to, property damage, loss of profits or revenue, loss of use of any property, cost of capital, cost of purchased or replacement power or temporary equipment, personal or bodily injury, or death ("Losses"), that may arise pursuant to or in connection with the Agreement, the Goods, or the Services (including, without limitation, Losses arising in connection with the performance of Services on Buyer's premises by LaPrairie employees, representatives, agents, or subcontractors), regardless of whether such Losses are suffered directly by Buyer or arise pursuant to or in connection with a third-party suit, claim, counterclaim, demand, judgment or other action (each a "Claim") and regardless of whether or not LaPrairie or any third-party is proportionately negligent with respect to such Losses and/or Claim, provided that Buyer need not indemnify LaPrairie for LaPrairie obligation, if any, to Buyer under Sections herein. For the avoidance of doubt and without limitation, this indemnification obligation requires Buyer to pay any judgments against LaPrairie or any other indemnified party resulting from any Claim, any court costs of LaPrairie or any other indemnified party in connection with any Claim, and any reasonable attorneys' fees and disbursements incurred by LaPrairie or any other indemnified party in LaPrairie defense of any Claim. LaPrairie will have the sole and exclusive right to conduct the defense of any Claim at Buyer's sole and exclusive cost and expense. Buyer's indemnification obligation does not depend on the truth or accuracy of any allegations made against LaPrairie, Buyer or any third party.

## **Interpretation of the Agreement**

1. None of LaPrairie's or Buyer's shareholders, directors, officers, partners, managers, employees, agents or representatives has any authority to orally modify or alter in any way the terms and conditions of the Agreement. The terms, conditions, and limitations set forth in the Agreement can be modified, altered, or added to only by a subsequent written instrument signed by an authorized representative of LaPrairie. Regardless of how many times Buyer purchases, or has purchased, goods and services from LaPrairie by whatever means, each time Buyer accepts the Agreement, Buyer and LaPrairie enter into a separate agreement that will be interpreted without reference to any other agreement between Buyer and LaPrairie, or what Buyer may claim to be a course of dealing or course of performance that has arisen between Buyer and LaPrairie. No inconsistent usage of trade or industry custom, if any, prior to, contemporaneous with or subsequent to the making of the Agreement will waive, vary, serve to explain or serve to interpret any of the terms, conditions and limitations of the Agreement. The Agreement is the sole and exclusive agreement with respect to the matters discussed herein and the provision of Goods and Services hereunder, (except for any contemporaneous writing agreed to in writing by LaPrairie expressly modifying the terms and conditions hereof, which is hereby incorporated herein by reference and made a part hereof) and supersedes all prior and contemporaneous agreements and understandings, negotiations, inducements, representations or conditions, whether oral or written, whether express or implied, with respect to such matters. Failure by LaPrairie to enforce any of the terms, conditions and limitations of the Agreement will not constitute a waiver of those terms, conditions and limitations or a waiver of any other terms, conditions or limitations of the Agreement, and the failure of LaPrairie to exercise any right (whether provided by the Agreement, law, equity, or otherwise) arising from Buyer's default under the Agreement will not constitute a waiver of that right or any other rights.

## **Force Majeure**

1. LaPrairie will not be liable for its failure to perform under the Agreement (including, without limitation, the failure to deliver any Goods or perform any Services) due to circumstances beyond its control, including, without limitation, fire, flood, earthquake, pestilence or similar catastrophe; war, act of terrorism, or strike; lack or failure of transportation facilities, shortage of suitable parts, materials or labour; any existing or future law, rule, regulation, decree, treaty, proclamation, or order of any governmental agency; inability to secure fuel, materials, supplies, equipment or power at reasonable prices or in sufficient amounts; act of God or the public enemy; or any other event or cause beyond LaPrairie reasonable control, including, without limitation, any delay caused by Buyer (each, a "Force Majeure Event"). If any Force Majeure Event prevents LaPrairie performance of any of its obligations under the Agreement, LaPrairie will have the right to (a) change, terminate or cancel the Agreement, or (b) omit during the period of the Force Majeure Event all or any portion of the quantity of the Goods deliverable during that period, whereupon the total quantity deliverable under the Agreement will be

reduced by the quantity omitted. If LaPrairie is unable to supply the total demands for any Goods to be delivered under the Agreement due to a Force Majeure Event, LaPrairie will have the right to allocate its available supply among its customers in whatever manner LaPrairie deems to be fair and equitable. In no event will LaPrairie be obligated to purchase materials from other than its regular sources of supply in order to enable it to supply Goods to Buyer under the Agreement. No change, cancellation or proration by LaPrairie will be deemed to be a breach of any clause, provision, term, condition, or covenant of the Agreement.

### **Choice of Law; Choice of Venue**

1. The negotiation, execution, performance, termination, interpretation and construction of the Agreement will be

governed by the law of the Province of Ontario. If either LaPrairie or Buyer brings a lawsuit or any other action arising out of the Agreement against the other party, such party must file its lawsuit or other action in a provincial or federal court located in New Market, Ontario. LaPrairie and Buyer expressly submit to the exclusive jurisdiction of those courts and consent to venue in those courts, and LaPrairie and Buyer consent to extra-territorial service of process on LaPrairie and Buyer. Any provision of the Agreement held to be invalid, illegal or unenforceable will be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof.

### **Binding Authority**

1. Any director, officer, employee, representative, or agent of Buyer signing or otherwise entering into this Agreement hereby represents and warrants that he or she is duly authorized to execute and enter into this Agreement on behalf of Buyer.

*This policy was last updated May 2, 2017*