

**1. Definitions**

In these conditions the following words have the following meanings unless the context requires otherwise.

**"Acceptance"** the express act by the Buyer to accept the Products and/or Services delivered by Allen-Vanguard, at which point title and risk passes to the Buyer.

**"Brochure"** means any brochure published by Allen-Vanguard advertising and detailing the Products and/or the services provided by Allen Vanguard;

**"Buyer"** means the person whose order for Products and/or Services is accepted by Allen Vanguard;

**"Contract"** means any contract or Purchase Order between Allen-Vanguard and the Buyer incorporating these conditions for the sale of Products and/or the provision of the Services;

**"Liability"** means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities including but not limited to any claims under an indemnity;

**"Order"** means the same as Contract;

**"Products"** means any products and/or goods ordered from Allen-Vanguard by the Buyer or to be supplied by Allen-Vanguard to the Buyer and/or any goods, products and/or materials which are utilised in the performance of the Services and in which title is intended to pass once the Services have been completed;

**"Allen-Vanguard"** means Allen-Vanguard Corporation and any or all of its affiliates;

**"Services"** means the services and/or work to be performed by Allen Vanguard for the Buyer;

**"Website"** means any and all websites used by Allen-Vanguard to advertise and/or sell its products and/or services from time to time.

**2. Basis Of Contract**

**2.1** These conditions shall govern the agreement between Allen-Vanguard and the Buyer to the exclusion of any other terms or conditions, even where the orders placed by the Buyer are not expressed to be subject to them. Any orders placed via a Website shall be subject to any additional terms and conditions applicable to the use of the Website.

**2.2** No variation to these conditions shall be binding on Allen-Vanguard unless contained in Allen-Vanguard's quotation or agreed in writing between the Buyer and an authorized representative of Allen-Vanguard.

**2.3** Allen-Vanguard's employees, sub-contractors and/or agents are not authorized to make any representations or warranties concerning the Products unless confirmed by Allen-Vanguard in writing.

**2.4** The Buyer acknowledges that it does not rely on any representation and/or warranty which have not been made in accordance with these conditions.

**3. Orders And Contract**

**3.1** Quotations are not binding unless a Buyer Contract is placed and accepted by Allen-Vanguard (unless stated otherwise) and shall remain valid for a period of 90 days unless otherwise specified by Allen-Vanguard.

Quotations may be withdrawn by Allen-Vanguard at any time during this period by oral or written notice.

**3.2** The Contract between Allen-Vanguard and the Buyer shall come into effect on Allen-Vanguard's acceptance of the Buyer's order.

**4. Delivery and Acceptance**

**4.1** Dates for delivery are estimates only and are not guaranteed. Allen-Vanguard will use all reasonable commercial practices to ensure delivery on the dates specified. These dates are subject to change with any matter beyond Allen-Vanguard's reasonable control. In this event Allen-Vanguard will provide notice as soon as it learns of any such delays.

**4.2** Where Products are to be delivered in installments, each delivery shall constitute a separate and distinct contract and failure by Allen-Vanguard to deliver, or any claim by the Buyer in respect of, any installment shall not entitle the Buyer to repudiate and/or terminate this Contract as a whole.

**4.3** The Buyer shall have no right to reject Products and shall have no right to rescind for late delivery unless the due date for delivery has passed and the Buyer has served on Allen-Vanguard a written notice requiring the Contract to be performed and giving Allen-Vanguard not less than 30 days in which to do so and the notice has not been complied with.

**4.4** The Buyer shall be responsible at its own cost for all arrangements to unload the Products when delivered to the Buyer.

**4.5** If the Buyer refuses to take delivery of any Products then Allen-Vanguard shall be entitled to withhold delivery and/or performance of any other Products and/or Services and to treat this Contract as repudiated by the Buyer and shall have the right to rescind this Contract.

**4.6** Delivery Term is Ex Works (EXW) INCOTERMS 2010, unless otherwise agreed upon by Allen-Vanguard.

The named place where shipment is made available to

Buyer is Allen-Vanguard's facility which will ship the product. Title and risk passes to the Buyer at delivery, when the product is made available by Allen-Vanguard to the Buyer or the Buyer's freight forwarder. Risk and title transfers to the Buyer regardless of whether or not the Buyer has picked-up the shipment from the named place if it is past the contract scheduled due date for delivery.

**4.7** Formal Acceptance by Buyer occurs at delivery, in accordance with clause 4.6.

**5. Price and Payment**

**5.1** The price of the Products will be as shown in the appropriate Allen-Vanguard price list or as quoted, which may be amended from time to time. The price will be the current price at the date of the acceptance of the order or as set out in a valid quotation.

**5.2** Except as otherwise stated by Allen-Vanguard, prices are Ex-Works Allen-Vanguard, and the Buyer shall be liable to pay Allen-Vanguard's charges (if any) for export and import costs, transport, packaging and insurance.

**5.3** Allen-Vanguard's prices are exclusive of any applicable VAT or other sales tax for which the Buyer shall additionally be liable.

**5.4** Allen-Vanguard's terms of payment shall be established at time of Order confirmation, subject to Allen-Vanguard's credit policy and more specifically, the terms of credit offered by Allen-Vanguard to the Buyer. Time for payment shall be of the essence.

**5.5** If the Buyer fails to make any payment in full on the due date, Allen-Vanguard may charge the Buyer any reasonable additional administration costs and/or interest (both before and after judgment) on the amount unpaid at the per annum rate of 4% above the base rate from time to time of Allen-Vanguard's bank or the applicable rate applied by law, whichever is the greater. Such interest shall be compounded by monthly rates.

**5.6** The Buyer shall pay all sums due to Allen-Vanguard under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.

**5.7** Payment shall not be deemed to be made until Allen-Vanguard has received either cash or cleared funds in respect of the full amount outstanding.

**5.8** Allen-Vanguard shall be entitled to render an invoice to the Buyer in accordance with any payment terms agreed between Allen-Vanguard and the Buyer and/or at any time on or after delivery/part delivery of the Products.

**5.9** If payment in full is not made to Allen-Vanguard when due then Allen-Vanguard may withhold or suspend future or current deliveries of the Products and delivery and/or performance under any other agreement with the Buyer.

**6. Specification**

**6.1** Any specification supplied by Allen-Vanguard to the Buyer shall only be approximate unless agreed by Allen-Vanguard in writing.

**6.2** The quantity, quality, description and/or specification for the Products and/or the Services shall be that set out in Allen-Vanguard's quotation (if agreed by the Buyer) or the Buyer's order (if agreed by Allen-Vanguard) unless otherwise agreed in writing by the parties.

**6.3** The Buyer is responsible for checking the quotation and satisfying itself that any specification given is accurate and adequate for the Products and/or Services.

**6.4** Details and/or specifications in any Brochure, on any Website or in any price lists (including but not limited to technical data, dimensions and weights produced by Allen-Vanguard) are intended as a guide only and only give a general approximation of the Products and/or Services.

**6.5** The Buyer agrees to indemnify and keep indemnified Allen-Vanguard against any Liability arising out of Allen-Vanguard's use of specifications, details and/or drawings supplied by the Buyer.

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**6.6** Allen-Vanguard reserves the right to make changes to the specification of the Products and/or Services at any time provided that they do not have a material adverse effect on the quality and/or performance of the Products and/or the Services.

**6.7** If Allen-Vanguard does make changes to the specification of the Products and/or Services which have a material adverse effect then the Buyer shall have the right to cancel the affected Contract without Liability.

**6.8** Allen-Vanguard reserves the right to withdraw Products from a Brochure or from a Website at any time. Where a Product has been withdrawn and/or is no longer available, Allen-Vanguard shall be entitled to (where possible) offer the Buyer a reasonable alternative. If Allen-Vanguard does withdraw a Product from a Brochure and/or a Website and no reasonable alternative is available, the Buyer shall have the right to cancel the Contract without Liability.

**7. Intellectual Property Rights And Confidentiality**

**7.1** The Buyer shall not make any modification to the Products or their packaging, nor alter, remove, or tamper with any trademarks used on or in relation to the Products.

**7.2** All intellectual property rights (including without limitation all patents, copyright, design rights (whether registered or unregistered), trade marks (whether registered or unregistered), skill and/or know-how and other similar rights, whether existing now and/or in the future, wherever existing in the world together with the right to apply for protection of the same) in the Products, their packaging and/or arising from the Services shall be owned by Allen-Vanguard absolutely.

**7.3** The Buyer agrees that, at Allen-Vanguard's cost, it will do all acts and/or things and execute all documents and/or deeds which are necessary or desirable to give effect to clause 7.2 above and/or to assist Allen-Vanguard in the application, registration, renewal and/or protection of such intellectual property rights.

**7.4** Each party agrees with the other that it will keep all confidential business information regarding the other party confidential and not disclose or use such information which may be disclosed to it or which it may learn except where such information is public knowledge or it is required to be disclosed by law.

**8. Site For Services**

**8.1** The Buyer will allow and/or procure sufficient access to Allen-Vanguard's employees, subcontractors and/or agents to allow them to carry out the Services.

**8.2** Allen-Vanguard shall inform the Buyer in advance of the equipment and/or facilities that it will require in order to perform the Services.

**8.3** If Allen-Vanguard is providing training to the Buyer's personnel, Allen-Vanguard shall inform the Buyer of the minimum qualifications and/or experience that those personnel must hold.

**9. Property**

**9.1** Allen-Vanguard shall retain ownership of the Products until title has passed to the Buyer in accordance with clause 4.6.

**9.2** Until Allen-Vanguard has received payment in full in cash or cleared funds of all sums due and/or owing for all Products and/or Services supplied to the Buyer by Allen-Vanguard under this Contract, the Buyer shall keep the Products insured for the price at which the Products were sold to the Buyer against all insurable risks and shall ensure that Allen-Vanguard is named on such policy of insurance as loss payee. Any monies received from the Buyer by Allen-Vanguard in accordance with this clause shall not discharge the Buyer's liability to pay the price for the goods plus interest accrued in accordance with clause 5.5 but shall be set off against any such liability.

**10. Default**

**10.1** If the Buyer:

- (i) fails to make any payment to Allen-Vanguard when due;
- (ii) breaches the terms of this Contract (and, if the breach is capable of remedy, has not remedied the breach within 30 days of receiving notice requiring the breach to be remedied);
- (iii) persistently breaches any one or more terms of this Contract;
- (iv) pledges or charges any Products which remain the property of Allen-Vanguard, or ceases or threatens to cease to carry on business, or proposes to compound with its creditors, has a Bankruptcy Petition presented against it, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver appointed over all or any of its assets, or takes or suffers any similar action in any jurisdiction; or
- (v) Appears reasonably to Allen-Vanguard to be about to suffer any of the above events then Allen-Vanguard shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 10.2 below.

**10.2** If any of the events set out in clause 10.1 above occurs in relation to the Buyer then:-

- (i) Allen-Vanguard may enter, without prior notice, any premises of the Buyer (or premises of third parties with their consent) where Products owned by Allen-Vanguard may be and repossess and dispose of or sell any Products found which are owned by Allen-Vanguard so as to discharge any sums due to Allen-Vanguard under this Contract or any other agreement with the Buyer;
- (ii) Allen-Vanguard may require the Buyer not to resell or part with the possession of any Products owned by Allen-Vanguard until the Buyer has paid in full all sums due to Allen-Vanguard under this Contract or any other agreement with the Buyer;
- (iii) Allen-Vanguard may withhold delivery of any undelivered Products and stop any Products in transit;
- (iv) Allen-Vanguard may withhold the performance of

any Services and cease any Services in progress;  
(v) Allen-Vanguard may cancel, terminate and/or suspend without Liability to the Buyer any contract with the Buyer; and/or  
(vi) all monies owed by the Buyer to Allen-Vanguard shall immediately become due and payable.

**11. Guarantee**

11.1 Allen-Vanguard guarantees that the Products and/or Services will be free from defects in materials and/or workmanship for a period of 12 months –  
(i) in the case of Services, the date of completion of the performance of the Services;

and/or  
(ii) in the case of Products, the date of delivery of the Products to the Buyer.

11.2 The guarantee in clause 11.1 above is given by Allen-Vanguard on condition that Allen-Vanguard shall be under no Liability:-

(i) in respect of any defect in the Products and/or Services arising from any drawing, design or specification supplied by the Buyer;  
(ii) in respect of any faults arising after risk in the Products has passed which are caused by any subsequent mechanical, chemical, electrolytic or other damage not due to a defect in the Products and/or Services as appropriate; and/or

(iii) in respect of any faults or defects caused by wilful damage, abnormal working conditions, failure to follow Allen-Vanguard's instructions, misuse, alteration or repair of Products and/or Services without Allen-Vanguard's approval, improper maintenance or negligence on the part of the Buyer or a third party; and/or

(iv) in respect of any defect in the Products caused as a result of fair wear or tear.

11.3 If any Products and/or Services prove to be defective and are covered by the guarantee in clause 11.1 above then Allen-Vanguard shall at its sole option either repair or replace or re-perform such Products and/or Services within a reasonable period of time of being notified of the defect. Provided Allen-Vanguard complies with this clause the repair, replacement and/or re-performance shall be the Buyer's sole remedy in respect of claims under the guarantee under clause 11.1 above.

11.4 Any work carried out by Allen-Vanguard which is not covered by the guarantee in clause 11.1 above will be charged for at a reasonable price.

11.5 Allen-Vanguard shall have no Liability to the Buyer under the guarantee in clause 11.1 above unless any defect is notified to Allen-Vanguard within 30 working days of the defect becoming apparent or suspected or when it should reasonably have become apparent to or suspected by the Buyer.

11.6 The guarantee in clause 11.1 above will not apply if the Buyer has not paid in full for the relevant Products and/or Services on the due date for payment.

**12. Repairs and Replacements**

12.1 Allen-Vanguard will at its option either repair, replace free of charge or re-perform any defective Products and/or Services where the defect is apparent on inspection provided that the defect is notified to Allen-Vanguard in writing within 3 working days of delivery of such Products or of performance of the Services.

12.2 Any defective Products must be returned to Allen-Vanguard for inspection if requested by Allen-Vanguard before Allen-Vanguard will have any Liability for defective Products.

12.3 Allen-Vanguard may at its sole discretion replace, repair free of charge or re-perform defective Products and/or Services which are not notified to Allen-Vanguard within the specified time limit where in the opinion of Allen-Vanguard the defect would not have been ascertainable on inspection and has been notified to Allen-Vanguard as soon as reasonably practicable.

12.4 Allen-Vanguard will replace free of charge any Products missing from a delivery of Products provided that the missing items are notified to Allen-Vanguard in writing within 7 working days of delivery or, in the event of total non-delivery, this fact is notified to Allen-Vanguard within 14 working days of receipt of the invoice by the Buyer.

**13. Limitations on Liability**

13.1 Allen-Vanguard shall have no Liability:-

(i) for defective Products and/or Services where the defect has been caused or contributed to by the Buyer to the extent so contributed, including but not limited to where the Buyer continued use of defective Products and/or Services;

(ii) For any loss and/or damage suffered by the Buyer as a result of late delivery of the Products and/or late performance of the Services;

(iii) If the price for the Products and/or the Services has not been paid in full by the due date for payment;

(iv) for defective Products and/or Services, Products not dispatched or Products damaged or lost in transit

unless the event is notified to Allen-Vanguard within the appropriate time limit set out in this Contract; and  
(v) To the extent that the Buyer is covered by any policy of insurance and the Buyer shall ensure that the Buyer's insurers waive any and all rights of subrogation they may have against Allen Vanguard .

13.2 The Buyer shall give Allen-Vanguard a reasonable opportunity to remedy any matter for which Allen Vanguard is liable before the Buyer incurs any costs and/or expenses in remedying the matter itself. If the Buyer does not do so Allen-Vanguard shall have no Liability to the Buyer.

13.3 Allen Vanguard shall have no Liability to the Buyer for any:

(i) consequential losses;

(ii) loss of profits and/or damage to goodwill;

(iii) economic and/or other similar losses;

(iv) special damages and indirect losses; and/or

(v) business interruption, loss of business, contracts, opportunity and/or production.

13.4 Allen- Vanguard's total Liability to the Buyer shall not exceed the Contract price. To the extent that any Liability of Allen-Vanguard to the Buyer would be met by any insurance of Allen-Vanguard then the Liability of Allen-Vanguard shall be extended to the extent that such Liability is met by such insurance.

13.5 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:

(i) Liability for breach of contract and/or these Conditions of Sale;

(ii) Liability in tort (including negligence);

(iii) Liability for breach of statutory duty; and

(iv) Liability for breach of Common Law except clause 13.4 above which shall apply once only in respect of all the said types of Liability.

13.6 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.

**14. General**

14.1 The Buyer agrees to indemnify and keep indemnified Allen-Vanguard against any and all losses, proceedings, lost profits, damages, awards, expenses, claims, costs (including increased administration costs and legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by Allen-Vanguard and arising from or due to any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by the Buyer.

14.2 No waiver by Allen-Vanguard of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.

14.3 Allen-Vanguard shall have no Liability to the Buyer for any delay in performance of this Contract to the extent that such delay is due to any events outside Allen-Vanguard 's reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, subcontractor delays, shortages of stock and/or raw materials, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. If Allen-Vanguard is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.

14.4 The Buyer shall not assign its interest in the Contract (or any part) without the written consent of Allen-Vanguard.

14.5 All third party rights are excluded and no third party shall have any right to enforce this Contract.

14.6 This Contract is governed by and interpreted in accordance with the laws of Ontario and the parties agree to submit to the exclusive jurisdiction of the Canadian courts.