

Terms And Conditions Of Sale

The items described in this document and other documents provided by Flexmaster Canada Limited, their subsidiaries and their authorized representatives ("Seller") are available for sale at prices established by Seller. An order from any customer ("Buyer") shall be governed by all of the following terms and conditions of sale ("Terms and Conditions"). Upon Seller's acceptance of Buyer's purchase order the Terms and Conditions from part of the agreement between Buyer and Seller. All goods available for sale are referred to as "Products". The Terms and Conditions are also available on our website at www.novaflex.com.

1. **Prices; Price Adjustments; Payments.** Prices stated in this document are valid for 30 days. Minimum purchase per order is \$250. After 30 days, Seller may change prices to reflect any increase in its costs resulting from state, provincial, federal or local legislation, price increases from its suppliers, or any change in the rate, charge, or classification of any carrier. The prices in this document do not include any sales, use, or other taxes unless so stated. Buyer shall be responsible for any present or future sales, exercise or similar tax applicable to the sale or use of the Products. Unless otherwise specified by Seller, all prices are F.O.B. Seller's facility, and payment is due 30 days from the date of invoice. After 30 days, Buyer shall pay interest on any unpaid invoices at the rate of 1.5% per month.

2. **Delivery Dates; Title and Risk; Shipment.** All delivery dates are approximate and Seller shall not be responsible for any damages resulting from any delay due to a cause beyond its control. Regardless of manner of shipment, title to any Products and risk of loss or damage shall pass to Buyer upon tender to the carrier at Seller's facility. Unless otherwise stated, Seller may exercise its judgment in choosing the carrier and means of delivery. At Seller's option carrier charges shall be prepaid and invoiced to Buyer. A \$5.00 handling charge will be added to all UPS shipments. No deferment of shipment at Buyers' request beyond the respective dates indicated will be made except on terms that will indemnify and hold Seller harmless against all loss and additional expense. Buyer shall be responsible for any additional shipping charges incurred by Seller due to Buyer's changes in shipping or product specifications.

3. **Buyer Responsibility and Acceptances.** Buyer, and user, if different, through their own analysis and testing are solely responsible for making the final selection of Products and assuring that all performance, endurance, maintenance, safety and warning requirements are met. User must analyze all aspects of the application in the field and follow applicable industry standards and Product information. Adequate testing in actual service conditions must be carried out by Buyer and/or user to establish definite suitability for end use. If Seller suggests Products for an application based on data, drawings, designs, diagrams, specifications or other communications ("Information") provided by Buyer or user, then Buyer and user are responsible for determining that the Information is suitable for use of the Product in the application. Submission of an order for production quantities of a Product following receipt of a final version of a prototype is (a) Buyer's acceptance of the prototype as meeting all of Buyer's requirements as set out in the Information supplied by Buyer and, (b) Buyer's acceptance of the Products based on the prototype, provided the Products are manufactured within Seller's standard tolerances.

4. **Returns, Cancellations and Changes.** Returns shall not be accepted. Orders shall not be subject to cancellation or change by Buyer for any reason, except with Seller's written consent on terms

which protect Seller from any loss. Seller may change product features, specifications, designs and availability with notice to Buyer.

5. **Claims.** Buyer shall promptly inspect all Products upon delivery. No claims for corrections or deductions from invoices will be allowed unless reported to Seller within 30 days of delivery.

6. **Contingencies.** Seller shall not be liable for any default or delay in performance if caused by circumstances beyond the reasonable control of Seller.

7. **Warranty.** Seller warrants that the Products sold hereunder shall be free from defects in material or workmanship for a period of twelve months from the date of delivery to Buyer. This warranty is made only to Buyer and does not extend to anyone to whom Products are sold after purchased from Seller. The prices charged for Seller's products are based upon the exclusive limited warranty stated above, and upon the following disclaimer: **DISCLAIMER OF WARRANTY: This warranty comprises the sole and entire warranty pertaining to Products. Seller disclaims all other warranties, express and implied, including merchantability and fitness for a particular purpose.**

8. **Limitation of Liability.** For a period of 30 days from delivery Seller will, upon notification, at its option, repair or replace a defective product, or refund the purchase price. **In no event shall Seller be liable to Buyer for any special, indirect, incidental or consequential damages arising out of, or as the result of, the sale, delivery, non-delivery, servicing, use or loss of use of the Products or any part thereof, or for any charges or expenses of any nature incurred without Seller's written consent, even if Seller has been negligent, whether in contract, tort or other legal theory. In no event shall Seller's liability under any claim made by Buyer exceed the purchase price of the Products.**

9. **Improper Use and Indemnity.** Buyer shall indemnify, defend, and hold Seller harmless from any claim, liability, damages, lawsuits, and costs (including lawyer's fees), whether for personal injury, property damage, patent, trademark or copyright infringement or any other claim, brought by or incurred by Buyer, Buyer's employees, or any other person, arising out of: (a) improper selection, improper application or other misuse of Products purchased by Buyer; (b) any act or omission, negligent or otherwise, of Buyer; (c) Seller's use of Information furnished by Buyer to manufacture Products; or (d) Buyer's failure to comply with the Terms and Conditions. Seller will not indemnify Buyer under any circumstances except as otherwise provided.

10. **Limitation on Assignment.** Buyer may not assign its rights or obligations under this agreement without the prior written consent of Seller.

11. **Entire Agreement.** This agreement contains the entire agreement between the Buyer and Seller with respect to the subject matter of this agreement and supersedes all prior agreements, understandings, negotiations and discussions whether written or not.

12. **Waiver.** Failure to enforce any provision of this agreement will not waive the provision nor prejudice Seller's right to enforce the provision in the future.

13. **Governing Law.** This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.