

## GENERAL TERMS AND CONDITIONS OF PURCHASE OF SOREL FORGE CO. – FINKL STEEL - SOREL

### 1 INTERPRETATION

1.1 In these Conditions the following words shall have the following meanings:

**"the Company"** Sorel Forge Co. – Finkl Steel - Sorel, a company formed under the laws of the *Company Act* (Nova Scotia).

**"the Contract"** the Order and the Supplier's acceptance of the Order which is in accordance with these Conditions.

**"Goods"** any deliverables, such as - but not limited to goods, equipment or raw materials, agreed in the Contract to be purchased by the Company from the Supplier (including any part or parts of them).

**"Provided Materials"** means all materials provided by the Company to the Supplier for use in the manufacture of Goods, or the provision of Services, such as - but not limited to - raw materials, equipment, devices components, tools, models, samples, measuring and testing equipment, construction documents, drawings, specifications, data and similar items.

**"Order"** the Company's written instruction to supply the Goods or Services.

**"Services"** the services (if any) agreed in the Contract to be purchased by the Company from the Supplier.

**"Supplier"** the person, firm or company to whom the Order is addressed.

**"Working Day"** any day except Saturday, Sunday or other day on which the principal commercial banks in Montreal, Quebec are not open for business during normal business hours.

1.2 References to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified extended, re-enacted or replaced.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 Headings do not affect the interpretation of these Conditions.

### 2 APPLICATION OF CONDITIONS

2.1 Subject to any variation under Section 2.3, these Conditions are the only Conditions upon which the Company is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.

2.2 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification, invoice or similar document, whether additional or conflicting, will form part of the Contract, whether the Company explicitly objects the terms or conditions or not, and the Supplier waives any right which it otherwise might have to rely on such terms and conditions. In case of a reference by the Company to documents which contain or refer to Supplier's terms and conditions, such reference shall not be construed as an agreement to the Supplier's terms and conditions. All additional or conflicting terms and conditions proposed by the Supplier are rejected.

2.3 These Conditions apply to all the Company's Orders and purchases, without a requirement that these Conditions be included with or referred to in an Order and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by an officer of the Company.

### 3 OFFER, ORDER, ACCEPTANCE

3.1 Unless otherwise explicitly agreed in writing, the company will only make Orders in writing. The Company will not be bound by any orders, amendments or supplementations given verbally which are not subsequently confirmed in writing.

3.2 Orders may be accepted by written confirmation or by fulfilment. If an Order has not been confirmed or fulfilled by the Supplier within a period of two weeks from the date of the Order, the Company will cease to be bound by it unless a different period of time for fulfilment of the Order has been expressly agreed in writing by the Company.

3.3 The written form requirement under this Section 3 shall also be satisfied by EDI, facsimile or e-mail stating that it is a binding Order.

### 4 PRICES, DISCOUNTS, PAYMENT TERMS

4.1 The price of the Goods or Services shall be as stated in the Order and unless otherwise agreed in writing by the Company shall be inclusive of delivery, packaging, packing, shipping, carriage, insurance and all other charges, if any. Sales taxes assessed by the Canadian Revenue Agency or Canadian provinces shall be stated separately, but shall not be chargeable if the Company furnishes a certificate of resale.

4.2 No variation in the price or extra charges will be accepted by the Company.

4.3 Invoices must be issued in the currency stated in the Order and all invoices must be submitted on or after the date of delivery of the Goods or Services.

4.4 All taxes, fees and other charges due in connection with the transactions provided for in the Contract and which are levied by the relevant authorities shall be borne by the parties according to the party on which the taxes, fees and other charges are imposed by law, unless otherwise stipulated in these Conditions.

4.5 The timing of the payment by the Company of the purchase price of the Goods or Services shall be upon the terms agreed by the parties.

4.6 Without prejudice to any other right or remedy, the Company reserves the right to set-off any amount owing at any time from the Supplier to the Company against any amount payable by the Company to the Supplier under the Contract.

4.7 If the Supplier requires any deposit the Company will require a standby letter of credit for reimbursement upon Supplier's failure to perform, in form acceptable to the Company and issued by a major bank in Canada acceptable to the Company.

## 5 DELIVERY DATE AND CONTRACT DISRUPTIONS

5.1 The Goods should be delivered, carriage paid, to the Company's place of business specified in the Order unless delivery ex works has been agreed by the Company in the Order. Time for delivery of the Goods or performance of the Services shall be of the essence. The mere lapse of time in the performance of the obligations of any party in these Conditions or under the Contract will have the effect of putting such party in default in accordance with Articles 1594 to 1600 of the *Civil Code of Québec*. In case of pickup of the Goods by the Company, the Supplier shall make the Goods available in sufficient time to provide for the time required for loading and dispatch.

5.2 The date and time (if applicable) for delivery of the Goods or Services shall be as specified in the Order and shall be binding, or if no such date is specified then delivery shall take place within 14 days of the Order. If circumstances arise which the Supplier anticipates will make delivery on time impossible, the Supplier shall inform the Company immediately in writing.

5.3 The Supplier shall ensure that each delivery is accompanied by one copy of a packing slip which show, inter alia, the Order number, Company "part ID," any packaging material is to be returned to the Supplier, the number of packages and contents, and the weight of Goods supplied (if appropriate). The Supplier must package the Goods as required by the Company and use all measures necessary to protect the Goods. All packaging shall be prepared by the Supplier at its own cost, unless otherwise stipulated in the Order.

5.4 If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess, and at Company's option, will be returnable at the Supplier's expense.

5.5 In case of a delay of delivery the Company will be entitled after notice to the Supplier to receive a late penalty from the Supplier equal to 0.5% of the relevant Order value for each week or portion thereof of delay, or in case of an Order providing for multiple deliveries, of the relevant delayed delivery request, but not more than 5.0% in total.

5.6 The Company reserves the right to cancel the Contract or reduce the volume of the Goods or Services ordered any time prior to delivery unless the Goods have been specially manufactured for the Company and in any case to defer the date of purchase and delivery of any Good. If Goods are to be specially manufactured for the Company, the Company also has the right to cancel the Contract or reduce the volume of the Goods ordered, and shall owe the Supplier solely the actual cost of manufacture, less any scrap value. The Company may always suspend delivery of Goods or the performance of the Services if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials (each a "**Force Majeure**").

Should any of these circumstances prevent or delay the Company from carrying on of its business for more than one month, the Company may rescind that portion of the Contract which is affected, and the Supplier shall have the right, as its sole remedy, also, to rescind that portion of the Contract which is affected. The Supplier shall not be liable for any failure or delay in performance resulting from any event of Force Majeure affecting its performance provided that the Supplier (i) promptly notifies the Company of any anticipated delay, (ii) uses best efforts to resume performance as soon as possible, and (iii) accords the priority of the Orders to any available capacity. Excusable delay shall not include any predictable interruptions of operations such as shortage of staff or raw materials that could be avoided by advance or backup procurement of alternative resources. In the event of any event of Force Majeure affecting Supplier's performance, the Company shall have the right to cancel any unperformed Order without liability to either party and to obtain supply from alternative sources.

## 6 FORECASTS

6.1 Forecasts and blanket purchase orders are not binding on the Company.

## 7 TRANSFER OF RISK AND TITLE

7.1 The Goods shall remain at the risk of the Supplier until delivery to the Company is complete (including off-loading and stacking).

7.2 Goods comprising machines or technical installations shall remain at the risk of the Supplier until satisfactory completion of installation and acceptance tests performed by the Company.

7.3 Title of Goods shall transfer upon completion of delivery at the agreed location and point in time.

## 8 QUALITY AND WARRANTIES

8.1 The Supplier warrants that its Goods and Services comply at delivery with all applicable statutory and contractual requirements. The Supplier further warrants that at delivery and during the full warranty period in Section 8.8, the Goods and Services shall conform to and operation in accordance with agreed specifications and will not have any defects in materials, workmanship or design.

8.2 The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by the Company to the Supplier, and any standards shall be in force at the date of delivery or performance.

8.3 The Services shall be performed by appropriately qualified and trained personnel, with due care and diligence and to such standard or quality as may be required by any standard and/or regulations (if any) governing the provision of the Services and as it is reasonable for the Company to expect in all the circumstances.

8.4 In case of defective Goods or Services, the Supplier shall, at the Company's option, promptly repair or replace the defective Goods or Services at the Supplier's cost, including all costs of freight and labor, and shall be responsible to the Company for all costs and

damages suffered by the Company on account of the defect.

8.5 The Company reserves a test period of 60 days for systems and equipment, which shall not be deemed accepted until successful completion of the test period.

8.6 If the tests have not been successfully completed the Company may reject the Goods or revoke acceptance, if applicable and the Supplier shall promptly replace the Goods with conforming Goods.

8.7 Notwithstanding any inspection, testing or acceptance of samples, specimens etc., the Supplier shall remain fully responsible for the Goods and any such inspection, testing or acceptance shall not limit Supplier's obligations under the Contract, including rights for warranty claims or other rights in case of defect or insufficient Goods or Services.

8.8 The Supplier's warranty period is 48 months from acceptance unless a longer warranty accompanies the Goods or Services. Claims may be made by mail, email or fax within this period. A new warranty period shall apply to any replacement Goods or Services. The Company shall always have the longer of 48 months from acceptance or one year from failure of warranty service to file suit, if being agreed that the warranties extends to future performance of the Goods and Services throughout the warranty period.

## 9 REPRESENTATIONS

9.1 The Supplier represents warrants and covenants to the Company (and will indemnify the Company for any losses incurred as a result of a breach of any such representation and warranty) that :

- 9.1.1 it is a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- 9.1.2 it has all requisite corporate power and authority to enter into and perform its obligations pursuant to the Contract;
- 9.1.3 the execution, delivery and performance of the Contract have been duly and validly authorized by all necessary corporate action of the Supplier and the Contract is a legal, valid and binding obligation of the Supplier enforceable in accordance with its terms, except as enforceability may be subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction;
- 9.1.4 the execution, delivery and performance of the Contract by the Supplier will not result in a breach or violation of any of the provisions of, or constitute a default under, or conflict with:
  - (1) any of the terms and conditions of the articles, by-laws or resolutions of the board of directors of the Supplier;
  - (2) any judgment, decree, order or award of any board, tribunal, court, governmental body, including any

regulatory authority, or arbitrator having jurisdiction over the Supplier;

- (3) any applicable laws; or
- (4) any contract or other obligation to which the Supplier is a party or by which it is bound or will be bound in the future;

9.1.5 it has or shall have all necessary licenses and permits to perform its obligations pursuant to the Contract;

9.1.6 no approval, consent or authorization of or filing or registration with any regulatory authority and no approval, consent or waiver of any person is required by the Supplier for the execution, delivery or performance of the Contract; and

9.1.7 its operations conform and shall continue to conform in all material respects with applicable laws governing such operations.

## 10 CONTRACT ASSIGNMENT

10.1 The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

10.2 The Company may assign the Contract or any part of it to any person, firm or company.

10.3 The Contract is binding upon and enures to the benefit of the parties and their respective successors and permitted assigns.

## 11 INTELLECTUAL PROPERTY

11.1 The Supplier warrants that no third parties' intellectual property rights have been or will be infringed by the manufacture, use or supply of the Goods or the use or supply of the Services worldwide.

11.2 In the event of any intellectual property claim by third parties, the Supplier shall indemnify the Company and its customers from and against all liabilities and damages, including but not limited to any costs, fees and other expenses incurred in connection with any legal action.

11.3 If Goods have been made utilizing any Company intellectual property, the Supplier shall have no rights in that intellectual property except to make the Goods for the Company and all improvements made by the Supplier to any Goods the design of which was provided by the Company shall belong to the Company.

## 12 SUPPLIER INDEMNITY AND INSURANCE

12.1 The Supplier shall indemnify the Company, its parent officers, directors, agents and employees from and against any and all claims, suits, liens, judgments, damages, losses and expenses including reasonable legal fees and costs arising in whole or in part and in any manner from:

- 12.1.1 defective workmanship, quality or materials of Goods or Services furnished;
- 12.1.2 an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods or the performance of the Services;

12.1.3 to the fullest extent permissible by law, any bodily injury, death or property damage in connection with the providing of Goods or Services. The indemnification obligation under this paragraph 12.1.3 shall not be limited in any way by any limitations on, and Supplier waives any right to limitations in respect, of the amount or type of damages, compensation or benefits payable by or for the benefit of the Supplier under any workers' compensation, human rights and freedoms, overtime pay, and occupational health and safety laws and regulations, or any other employee benefits laws.

12.2 The Supplier shall name the Company and its parent as additional insureds on the Supplier's commercial general liability policies for not less than combined bodily injury/property damage of \$1 million per occurrence and \$2 million aggregate, and shall provide certificates of insurance as evidence thereof and shall provide for waiver of rights of subrogation under both commercial general liability and workers compensation policies. The policies shall not limit coverage in respect of any bodily injury or death to the Supplier's employees.

12.3 To the extent that the Company or its customer is required or elects to carry out a product recall due to a defect of Goods supplied or default of Services rendered by the Supplier or carries out such product recall to prevent serious damage, the Supplier shall bear all costs and damages in connection with such product recall.

### **13 CONFIDENTIALITY**

13.1 The Supplier is obliged to keep secret and treat confidential (i) all terms of the Order, (ii) all information, data and technical specifications regarding the Provided Materials and (iii) all information and documents provided for such purpose (except for information made public through no fault of the Supplier) and to use them only for the purpose of carrying out the respective Order. In particular the Supplier must not make use of for any purposes other than the purposes of the Order, copy or make available to third parties the Provided Materials or any documents and information regarding construction, design or workmanship of any Provided Material as well as specifications which have been made available to the Supplier by the Company.

13.2 This obligation lasts until the end of the fifth year as of the expiration and/or termination of the Contract.

13.3 Upon the Company's request or after completion of the Order the Supplier is obliged to return the Provided Materials and any received documents from the Company without undue delay, and to destroy any copies and duplicates as well as to delete all electronic data irreversibly and to confirm this in writing to the Company, except for one archive copy to be held solely for the purpose of any litigation.

13.4 Without the Company's prior written consent, the Supplier is not allowed to refer to the business relationship to the Company in its advertising material, brochures, internet presentations, other presentations, etc.

13.5 The Supplier shall commit its sub-suppliers and subcontractors to the obligations of this Section 13.

### **14 PROVIDED MATERIALS, CONSTRUCTION DOCUMENTS AND SPECIFICATIONS**

14.1 Upon delivery of the Provided Materials, the Supplier shall notify the Company in writing within three days to confirm its acceptance of the Provided Materials with a detailed statement of the materials including the quantity, measurement, weight, quality and/or working status, if applicable, and to state any defects or its refusal to accept the Provided Materials with justified reasons, if any. Any failure of the Supplier to duly send the notice and/or to provide the justified reasons for its refusal of acceptance will be deemed as the Supplier's acceptance of all of the Provided Materials.

14.2 The risk of any damage, loss, destruction or deterioration of the Provided Materials shall pass to the Supplier at the time of delivery. Upon the delivery of the Provided Materials, the Supplier has its duty of care to store and maintain the materials on its own site in safe custody, i.e., it shall take the same attentiveness to take care of the Provided Materials that applies to its own properties. In case of any damage, loss, destruction or deterioration of the Provided Materials, the Supplier shall immediately notify the Company via fax in the same day of discovery. In any case, any repair of the Provided Materials is subjected to prior written consent by the Company.

14.3 Notwithstanding Section 14.2, the Provided Materials shall remain the Company's exclusive property at all times. The Provided Materials may not be copied, loaned out to third parties or used otherwise than as authorized by the Company in writing. The Supplier is required to duly mark "Property of Finkl Steel - Sorel " on the Provided Materials in order to clearly distinguish them from other properties.

14.4 All intellectual property rights in the Provided Materials shall remain the exclusive properties of the Company. The Supplier shall not have any rights to use and/or dispose in any way the intellectual property rights in the Provided Materials including but not limited to any trademark, patent, know-how, owned and/or used by the Company, during and after the expiration of the Contract.

14.5 The Supplier shall provide the Company with a manual containing instructions for the proper operation and maintenance of the Goods or Services. If requested to do so the Supplier will submit to the Company for approval, plans, construction drawings technical calculations etc. in respect of the Goods and Services, and, where appropriate, after verification deliver up the respective information and documents to the extent that the Company requires these information or documents for normal use or repair work.

14.6 In addition, the Supplier will supply to the Company drawings for the essential spare parts with sufficient details for the procurement for spare parts if required.

14.7 The approval by the Company of such plans, constructions, drawings, calculations, etc. shall not affect the Supplier's contractual obligations for their accuracy or the requirements of performance of the Goods.

14.8 Any tools, equipment, dies or molds used in the manufacture of Goods and paid for by the Company shall become the property of the Company upon payment. All such tools, equipment, dies or molds shall be held by the Supplier in safe custody at its own risk and free of charge

until release to the Company at any time upon request of the Company. The Supplier shall not dispose of any tools used in connection with the manufacture of the Goods without prior written agreement from the Company and shall be used solely for manufacture of Goods for the Company.

## **15 PRODUCT AND/OR PROCEDURE CHANGES**

If Supplier is in an ongoing business relationship with the Company, Supplier shall notify the Company in writing if it intends to make product and/or procedure changes or modifications to the analysis method with regard to Goods and Services being sold to the Company, whether or not a current Contract exists. If any existing Contracts are affected, the Company's consent is required.

## **16 MEANS, MANNERS AND METHODS OF THE WORK; COMPLIANCE AND SAFETY**

16.1 The Supplier assumes complete responsibility for the means, manners and methods of the work on site and all responsibility for safety of its employees and subcontractors' employees.

16.2 Supplier acknowledges and will observe the requirements of the Company's safety rulebook, which is available upon request.

16.3 The Supplier shall conduct its business and the supply of the Goods or Services in compliance with any laws and regulations including laws and standards relating to environment protection, health and safety, accident prevention, transport, plant safety, and anticorruption laws or its domicile country. The Supplier shall not authorize, make or participate in a payment of money or a gift of materials, services, facilities or anything else of value to any agency or official, any governmental customers or prospective customer; or employees, agents or associates of such persons for the purpose of obtaining or retaining business for the Supplier and the Company.

## **17 FACTORY RULES**

17.1 When working at one of the Company's factories, the Supplier shall supply the Company before the start of work with the names of its workers whose qualifications and instruction must be verified. All factory rules must be observed.

17.2 In case that invoices based on hourly timesheets have been agreed, payment by the Company requires that the hours worked are documented by the Supplier and countersigned by a Company representative.

17.3 Resources and tools supplied by the Company are used at the Supplier's own risk.

17.4 For the delivery and installation of machines and equipment all relevant legal and further regulations as well as the Company's specifications must be observed.

## **18 COMPANY TERMINATION**

18.1 The Company shall have the right to terminate the Contract prior to completion if:

18.1.1 the Company provides 90 days' prior written notice to the Supplier;

18.1.2 the Supplier commits a material breach of any of the terms and conditions of the Contract;

18.1.3 the financial position of the Supplier deteriorates to such an extent that the capability of the Supplier to adequately fulfil its obligations under the Contract has been placed in jeopardy;

18.1.4 the Supplier ceases or threatens to cease to carry on its business; or

18.1.5 the Company reasonably believes that any circumstances have arisen that will prevent the Supplier from completing the Contract.

18.2 On termination or cancellation of the Contract for any reason:

18.2.1 the Supplier shall immediately, at its expense, return all Provided Materials to the Company as far as they still have a value; and

18.2.2 the Supplier shall immediately, at its expense, return to the Company all property in its possession belonging to the Company.

## **19 APPLICABLE LAW AND COURT OF JURISDICTION**

The formation, existence construction, performance, validity in all aspects of the Contract shall be governed by the laws of the Province of Quebec and the federal Laws of Canada applicable therein, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). The parties agree that the courts of the District of Montréal, Province of Quebec, Canada, will have exclusive jurisdiction for the adjudication of any and all disputes or controversies arising out of or relating directly or indirectly to the Contract and waive any objections to the assertion or exercise of jurisdiction by such courts, including any objection based on *forum non conveniens*.

## **20 NATURE OF RELATIONSHIP**

These Conditions and the Contract do not constitute or create a joint venture, employment relationship, agency, pooling arrangement, partnership, franchise or sales representative relationship of any kind between the parties and, except as expressly provided herein, neither party has the power or authority to act for, represent or bind the other in any manner.

## **21 SEVERABILITY**

If any provision of these Conditions is wholly or partly illegal, invalid, void, voidable or unenforceable it shall, to the extent of such illegality, invalidity, voidness, voidability or unenforceability be deemed severable and the remaining provisions of these Conditions and the remainder of such provision shall continue in full force and effect.