

### 1. Applicability.

- (a) These terms and conditions of sale (these "Terms") are the only terms which govern the sale of the goods ("Goods") and services ("Services") by DYWIDAG Canada Ltd. ("DYWIDAG") to the party purchasing Goods and/or Services from DYWIDAG ("Buyer") and are exclusive and in lieu of all other terms and conditions appearing on Buyer's purchase order or elsewhere and apply to all supplies of Goods and/or Services by DYWIDAG to Buyer. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- (b) These Terms and any accompanying proposal or confirmation of sale (the "Sales Confirmation") from DYWIDAG (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, written or oral. Any other terms which are different or additional to these Terms are objected to by DYWIDAG and excluded. These Terms prevail over any of Buyer's general terms and conditions of purchase, whether in a purchase order or other document issued by or referred to by Buyer, irrespective of materiality, regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. There are no understandings, representations, or warranties of any kind not expressly set forth herein.
- (c) Notwithstanding anything to the contrary contained in this Agreement, DYWIDAG may, from time to time change the Services without the consent of Buyer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates.
- (d) Buyer may order, without invalidating this Agreement, changes in the work within the general scope of this Agreement consisting of additions, deletions, or other revisions. Before DYWIDAG shall be required to proceed with any such change, the parties must agree in writing as to the adjustment to the Contract price and delivery terms for such changed work, which shall be executed in a written change order signed by an authorized representative of each party.

### 2. Delivery of Goods and Performance of Services.

- (a) Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. DYWIDAG shall not be liable for any delays, loss, or damage in transit.
- (b) Unless otherwise agreed in writing by the parties, DYWIDAG shall deliver the Goods to DYWIDAG's facility (the "Shipping Point") using DYWIDAG's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within five (5) days of DYWIDAG's written notice that the Goods have been delivered to the Shipping Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Shipping Point.
- (c) DYWIDAG may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.
- (d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to DYWIDAG's notice that the Goods have been delivered at the Shipping Point, or if DYWIDAG is unable to deliver the Goods at the Shipping Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) DYWIDAG, at its sole option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- (e) DYWIDAG shall use reasonable efforts to meet any performance dates to render the Services specified in the Sales Confirmation, and any such dates, which will be provided upon receipt of a binding order from Buyer, shall be estimates only.
- (f) With respect to the Services, Buyer shall (i) cooperate with DYWIDAG in all matters relating to the Services and provide such access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested by DYWIDAG, for the purposes of performing the Services; (ii) respond promptly to any DYWIDAG request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for DYWIDAG to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as DYWIDAG may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

### 3. Non-Delivery.

- (a) The quantity of any installment of Goods as recorded by DYWIDAG on dispatch from DYWIDAG's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.
- (b) DYWIDAG shall not be liable for any non-delivery of Goods (even if caused by DYWIDAG's negligence) unless Buyer gives written notice to DYWIDAG of the non-delivery within five (5) days of the date when the Goods would in the ordinary course of events have been received.
- (c) Any liability of DYWIDAG for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered, provided such actual quantity is shown by conclusive evidence.
- (d) Buyer acknowledges and agrees that the remedies set forth in this Section 3 are Buyer's exclusive remedies for the delivery of non-conforming Goods. Except as provided in Section 3(c), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to DYWIDAG.

4. Quantity. If DYWIDAG delivers to Buyer a quantity of Goods of up to 10% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

5. Shipping Terms. Unless indicated otherwise in this Agreement, delivery of the Goods shall be made FOB Shipping Point for domestic delivery or Ex Works DYWIDAG's Facility (Incoterms 2020) for international delivery. Risk of loss or damage to, and responsibility for, the Goods shall pass to Buyer upon delivery to carrier at shipping point. No shipment shall be diverted or reconsign without DYWIDAG's prior written consent. Unless otherwise agreed, DYWIDAG shall select means of transportation and routing. Title and right to possession of any Goods covered by this Agreement shall remain with DYWIDAG until the purchase price is paid in full or until DYWIDAG's lien rights cease.

6. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Shipping Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to DYWIDAG a lien on and security interest in and to all of the right, title, and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest under this provision constitutes a purchase money security interest under the Ontario Personal Property Security Act.

7. Buyer's Acts or Omissions. If DYWIDAG's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, DYWIDAG shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

### 8. Inspection and Rejection of Nonconforming Goods.

- (a) Buyer shall inspect the Goods within five (5) days of receipt ("Inspection Period"). Buyer will be deemed to have irrevocably accepted the Goods unless it notifies DYWIDAG in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by DYWIDAG. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.
- (b) If Buyer timely notifies DYWIDAG of any Nonconforming Goods, DYWIDAG shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to the DYWIDAG facility from which the Goods were shipped or as directed in writing by DYWIDAG. If DYWIDAG exercises its option to replace Nonconforming Goods, DYWIDAG shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Shipping Point. DYWIDAG may, if it reasonably notifies Buyer, have a further reasonable time to tender substitute Goods.
- (c) Buyer acknowledges and agrees that the remedies set forth in Section 8(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 8(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to DYWIDAG.

### 9. Price.

- (a) Buyer shall purchase the Goods and Services from DYWIDAG at the prices (the "Prices") set forth in DYWIDAG's price list in force as of the date that DYWIDAG accepts Buyer's purchase order. If the Prices should be increased by DYWIDAG before delivery of the Goods to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased prices were originally inserted herein, and Buyer shall be billed by DYWIDAG on the basis of such increased prices.
- (b) Buyer agrees to reimburse DYWIDAG for all reasonable travel and out-of-pocket expenses incurred by DYWIDAG in connection with the performance of the Services.
- (c) All Prices are exclusive of all harmonized sales tax, goods and services tax, use tax, value added tax, excise tax, and any other taxes, duties, fees, and charges of any kind imposed by any governmental authority or financial institution on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided however, Buyer shall not be responsible for any taxes imposed on, or with respect to, DYWIDAG's income, revenues, gross receipts, personal or real property, or other assets.

### 10. Payment Terms.

- (a) Terms of payment shall be the terms set out on the face of this Agreement or Sales Confirmation as supplemented by the terms of this paragraph. If not otherwise stated on the face of this Agreement, DYWIDAG shall be entitled to invoice Buyer periodically as Goods and/or Services are provided and payment shall be due and payable within 30 days after the date of each invoice.
- (b) Buyer shall pay interest on all late payments at the lesser of the rate of 18% per annum or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall also be liable to DYWIDAG for all costs incurred in the collection of past due accounts, including, without limitation, legal fees. In addition to all other remedies available under these Terms or at law (which DYWIDAG does not waive by the exercise of any rights hereunder), DYWIDAG shall be entitled to suspend the delivery of any Goods or performance of any Services and stop Goods in transit if Buyer fails to pay any amounts when due hereunder or whenever DYWIDAG for any reason doubts Buyer's ability to make payments as agreed under this Agreement.
- (c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with DYWIDAG, including from any third party, whether relating to DYWIDAG's breach, bankruptcy, or otherwise.

### 11. Limited Warranty.

- (a) DYWIDAG warrants to Buyer, for a period of one (1) year from the date of shipment of the Goods ("Warranty Period"), only that such Goods will conform to the specifications set forth in Exhibit A/DYWIDAG's standard specifications in effect as of the date of delivery and will be free from material defects in material and workmanship. Any recommendations or technical advice provided to Buyer by DYWIDAG is believed reliable, but DYWIDAG makes no warranty of results to be obtained or fitness for Buyer's purpose and Buyer accepts any recommendations or advice provided at Buyer's risk. DYWIDAG also warrants that the Goods furnished hereunder will not, in the form in which furnished, infringe any valid United States patent which claims the Goods themselves, but DYWIDAG does not warrant against infringement by reason of Buyer's use thereof in combination with other materials or in the operation of any process. This warranty is conditioned upon Buyer's prompt notification in writing to DYWIDAG of any claim made against Buyer for such patent infringement, and upon Buyer's authorization of DYWIDAG to assume full and exclusive control of the defense or settlement of such claim or any legal action based thereon.
- (b) DYWIDAG warrants to Buyer that it shall perform the Services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services. Buyer's sole and exclusive remedy and DYWIDAG's entire liability with respect to this warranty will be, at the sole option of DYWIDAG, to either (a) use its reasonable commercial efforts to reperform or cause to be reperformed any Services not in substantial compliance with this warranty, or (b) refund amounts paid by Buyer related to the portion of the Services not in substantial compliance; provided, in each case, Buyer notifies DSI in writing within five (5) days after performance of the applicable Services.
- (c) EXCEPT AS SET FORTH IN SECTION 11(a) AND SECTION 11(b) OR IN ANY STATEMENT OF WORK THAT EXPRESSLY AMENDS DYWIDAG'S CONDITION OR WARRANTY, DYWIDAG EXPRESSLY DISCLAIMS ALL OTHER CONDITIONS OR WARRANTIES, REPRESENTATIONS, OR COVENANTS WHATSOEVER WITH RESPECT TO THE GOODS OR ARISING OUT OF OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES, INCLUDING WITHOUT LIMITATION, ANY CONDITION OR WARRANTY OF MERCHANTABILITY, DURABILITY, TITLE, ACCURACY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.
- (d) Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 11(a). For the avoidance of doubt, DYWIDAG MAKES NO REPRESENTATIONS, CONDITIONS, OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING WITHOUT LIMITATION, ANY CONDITION OR WARRANTY OF MERCHANTABILITY, DURABILITY, TITLE, ACCURACY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

(e) DYWIDAG shall not be liable for a breach of the warranties set forth in Section 11(a) or Section 11(b) unless: (i) Buyer gives written notice of the defective Goods or Services, as the case may be, reasonably described, to DYWIDAG within five (5) days of the time when Buyer discovers or ought to have discovered the defect; (ii) if applicable, DYWIDAG is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 11(a) to examine such Goods and Buyer (if requested to do so by DYWIDAG) returns such Goods to DYWIDAG's place of business for the examination to take place there; and (iii) DYWIDAG reasonably verifies Buyer's claim that the Goods or Services are defective.

(f) DYWIDAG shall not be liable for a breach of the warranty set forth in Section 11(a) or Section 11(b) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow DYWIDAG's oral or written instructions as to the storage, installation, commissioning, use, or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of DYWIDAG.

(g) Subject to Section 11(e) and Section 11(f), with respect to any such Goods during the Warranty Period, DYWIDAG shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if DYWIDAG so requests, Buyer shall, at DYWIDAG's expense, return such Goods to DYWIDAG.

(h) Subject to Section 11(e) and Section 11(f), with respect to any Services subject to a claim under the warranty set forth in Section 11(b), DYWIDAG shall, in its sole discretion, (i) repair or re-perform the applicable Services or (ii) credit or refund the price of such Services at the pro rata contract rate.

(i) THE REMEDIES SET FORTH IN SECTION 11(G) AND SECTION 11(H) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTION 11(A) AND SECTION 11(B), RESPECTIVELY.

## 12. Limitation of Liability.

(a) IN NO EVENT SHALL DYWIDAG BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR ANY LIQUIDATED OR DELAY DAMAGES OR FOR ANY COSTS RELATED TO DELAYS OR THE AVOIDANCE OF DELAYS, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, FINES, PUNITIVE DAMAGES, LOSS OF PROFIT, BUSINESS, OR CONTRACT, PURE ECONOMIC LOSS, OR DEPLETION OF GOODWILL INCURRED OR SUFFERED BY BUYER), WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL DYWIDAG'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SUPPLY OF GOODS AND/OR SERVICES, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED 100% OF THE TOTAL OF THE AMOUNT PAID TO DYWIDAG FOR THE GOODS AND SERVICES SOLD HEREUNDER.

(c) The limitation of liability set forth in Section 12(b) shall not apply to (i) liability resulting from DYWIDAG's gross negligence or willful misconduct and (ii) death or bodily injury resulting from DYWIDAG's acts or omissions.

## 13. Claims.

(a) All claims, except for the infringement of patents, must be made in writing strictly within 30 days after delivery of the Goods or completion of Services hereunder, and failure to do so shall constitute a waiver by Buyer of any such claims. Buyer shall use all reasonable efforts to minimize such claims or sums and to mitigate its losses. No claim of any kind may be greater in amount than the paid purchase price of the Goods or Services for which a claim is made. Any claim that is not asserted as a claim, counterclaim, defense or setoff in a judicial proceeding instituted within one (1) year after the date on which the Goods were delivered to Buyer or Services performed, whichever date is earlier, shall be forever waived, barred, and released. Time is of the essence for all Buyer notifications to DYWIDAG.

(b) Buyer shall indemnify, hold harmless and defend DYWIDAG from and against any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including actual legal fees and expenses, attributable or alleged to be attributable in whole or in part to Buyer's breach of the Agreement, its negligence, or other fault arising out of or pertaining to the use, performance, non-performance or misuse of the Goods or Services supplied by DYWIDAG hereunder.

**14. Insurance.** If requested by DYWIDAG, Buyer shall, at its own expense, maintain and carry insurance in full force and effect during the course of this Agreement, which includes, but shall not be limited to, commercial general liability (including product liability) and other types of coverage in amounts acceptable to DYWIDAG with financially sound and reputable insurers. Upon DYWIDAG's request, Buyer shall provide DYWIDAG with a certificate of insurance from Buyer's insurer evidencing the specified insurance coverage. DYWIDAG may require the certificate of insurance to name DYWIDAG as an additional insured. Buyer shall provide DYWIDAG with 30 days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against DYWIDAG's insurers and DYWIDAG.

**15. Compliance with Law.** (a) Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. DYWIDAG may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

(b) DYWIDAG agrees that the Goods shipped hereunder will be produced in compliance with the Fair Labor Standards Act of 1938, as amended, and when applicable, the Equal Opportunity Clause of Executive Order 11246, as amended, and other applicable federal, state, or local laws. Buyer agrees that the Goods purchased hereunder will be used in compliance with all applicable laws.

## 16. Termination.

(a) In addition to any remedies that may be provided under these Terms, DYWIDAG may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement and such failure continues for 30 days after Buyer's receipt of written notice of nonpayment; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

(b) If this Agreement covers Goods which are manufactured especially for Buyer and the Agreement is terminated or an order thereunder cancelled, Buyer will take delivery of and make payment for such Goods as have been manufactured and such are in the process of being manufactured on the date notice of such termination of cancellation is received by DYWIDAG.

**17. Waiver.** No waiver by DYWIDAG of any provision of this Agreement is effective unless explicitly set forth in writing and signed by DYWIDAG. No failure to exercise, or delay in exercising, any right, remedy,

power, or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**18. Confidential Information.** All non-public, confidential or proprietary information of DYWIDAG, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by DYWIDAG to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by DYWIDAG in writing. Upon DYWIDAG's request, Buyer shall promptly return all documents and other materials received from DYWIDAG. DYWIDAG shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is:

(a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party. The provisions of this Section 18 are in addition to and not in substitution for any separate confidentiality or non-disclosure agreement between the parties.

**19. Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to DYWIDAG hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, Acts of God, flood, earthquake, or other natural disaster; epidemic or pandemic; war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions; terrorist attack, civil war, civil commotion or riots; nuclear, chemical or biological contamination or sonic boom; any law or government order, rule, regulation or direction, or any action taken by a government or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary license or consent; fire, explosion or accidental damage by a third party; loss during transportation; adverse weather conditions; interruption or failure of utility service, including but not limited to electric power, gas or water; any labor dispute, including but not limited to walkouts, strikes, industrial action or lockouts (other than by DYWIDAG's employees); non-performance by DYWIDAG's suppliers, inability to obtain raw materials; and unexpected failure of plant machinery, machinery, computers or vehicles, and other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give written notice of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 90 days following written notice given by it under this Section 19, DYWIDAG shall be entitled to terminate its obligations under this Agreement without penalty by notice to Buyer and shall be entitled to payment by Buyer of a pro-rata sum of the Price to reflect Goods and/or Services delivered by DYWIDAG up to the date on which it terminated its obligations under this Agreement. DYWIDAG reserves the right to allocate its available supply of Goods among any or all purchasers, as well as departments and divisions of DYWIDAG on such basis as it may deem reasonable, fair and practical, without liability for any failure of performance relating to this Agreement.

**20. Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of DYWIDAG. Any purported assignment or delegation in violation of this Section is null and void and totally ineffective for all purposes. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

**21. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**22. No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

**23. Governing Law and Choice of Forum.** All matters arising out of or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, are governed by and construed in accordance with the internal laws of the province in which DYWIDAG's office indicated in this Agreement is located without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction. Any action arising out of or related to this Agreement shall and may be brought only in the court of appropriate jurisdiction of the province of the pertinent DYWIDAG location and each party irrevocably submits to the exclusive jurisdiction of such court in any such suit, action, litigation, or proceeding; provided, however, that DYWIDAG, at its sole option, may bring an action in any jurisdiction where the Goods and/or Services provided hereunder are located, or where Buyer maintains an office or other facility, or as permitted by any bond. Service of process, summons, notice, or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action, litigation or other proceeding brought in any such court. Each Party agrees that a final judgment in any such suit, action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Parties irrevocably and unconditionally waive any objection to the venue of any action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

**24. Notices.** All notices, request, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) on the tenth day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid; and (d) when sent, if by email, if sent during the addressee's normal business hours, and on the next business day if sent after the addressee's normal business hours.

**25. Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**26. Survival.** Provisions of these Terms which by their nature apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following: Section 11 (Limited Warranty); Section 12 (Limitation of Liability); Section 13 (Claims); Section 14 (Insurance); Section 15 (Compliance with Law); Section 17 (Waiver); Section 18 (Confidential Information); Section 21 (Relationship of the Parties); Section 22 (No Third-Party Beneficiaries); Section 23 (Governing Law and Choice of Forum; Section 24 (Notices); and this Section 26 (Survival).

**27. Amendment.** These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.