

STANDARD TERMS & CONDITIONS

1. Ravago Canada Co.'s ("Seller") acceptance of an order by the buyer named on the reverse side hereof ("Buyer") is conditional upon Buyer's acceptance of the terms and conditions set forth herein, and including those set forth on the reverse side hereof (collectively, the "Terms and Conditions"), notwithstanding the provisions contained in any purchase order, acknowledgement, acceptance or other document of Buyer containing any inconsistent, supplemental, additional or different terms. Seller does not accept, and expressly disclaims, all terms and conditions other than those expressly set forth herein and those contained in any written sales contract signed between the Buyer and Seller covering the goods delivered hereunder. Receipt of the goods by Buyer shall constitute acceptance of these Terms and Conditions.
2. Buyer shall notify Seller in writing of any alleged defects in the material, latent or otherwise, within seven (7) days after Buyer learns of the alleged defects, but in no event later than thirty (30) days after Buyer receives the goods. Failure to give such notice, or the grinding, processing or any other alteration or change in the form of the goods, or combining with other materials, shall constitute a waiver of all claims for defects. Buyer shall submit with its notification a sample of the goods supplied from Seller and the Buyer's finished product claimed to be defective and shall afford Seller the opportunity to inspect any goods in Buyer's possession. Buyer shall not return any goods unless authorized in writing by the Seller.
3. Seller's liability (and Buyer's sole and exclusive remedy) with respect to any defective goods shall be limited to the replacement of that portion of goods or a credit to Buyer in the amount of the invoice for such goods, as Seller in its sole discretion may elect. Seller's analysis of quality and weights shall govern except in the case of proved error. Any claims for shortages must be greater than one-half of one percent (0.5%) of the gross weight of any shipment of packaged goods or greater than one percent (1%) of the gross weight of bulk shipments. Claims for bulk shipments shortages must be supported by certified scale tickets and Seller shall have the opportunity to have an independent weighing.
4. Seller shall not be liable for failure to deliver or for delays in delivery, as to all or any part of the goods, due to acts of God, fire, flood, accident, war (declared or undeclared), terrorism, civil disorder, labor difficulties, strikes, shortages of materials, delays or defaults of suppliers or carriers, embargo, actions of governmental authorities or any other cause beyond Seller's control, irrespective of whether such cause was foreseeable or unforeseeable. In such event, Seller may allocate its available supply of goods in an equitable manner as it determines and may terminate this transaction without liability as to any unfiled portion of the order.
5. SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR ANY PURPOSE OR USE, OR ALLEGEDLY ARISING FROM ANY USAGE OF ANY TRADE OR FROM ANY COURSE OF DEALING, OR OTHERWISE, WHETHER ORAL OR WRITTEN, WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE OF THE INVOICE AND ANY SALES CONTRACT, WHERE APPLICABLE.
6. Any action by the Buyer for claimed breach by Seller must be commenced within one (1) year* after the cause of action has accrued (* this period is extended to three (3) years in respect of actions by a Buyer that is a resident in the Province of Quebec). IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, LOSSES OR EXPENSES OF ANY KIND OF BUYER OR OF ANY OF BUYER'S CUSTOMERS, INCLUDING, WITHOUT LIMITATION, PRODUCTION COSTS, CLAIMED LOSS OF ANTICIPATED PROFITS, INJURY TO CREDIT, REPUTATION OR GOOD WILL. BUYER ASSUMES ALL RISKS AND LIABILITY FROM THE HANDLING AND USE OF THE GOODS AND SHALL BE SOLELY RESPONSIBLE FOR TESTING AND DETERMINING SUITABILITY OF USE IN A PARTICULAR APPLICATION.
7. Seller may furnish technical advice without charge, at its sole discretion, and Seller assumes no obligation or liability for any advice given or the results obtained therefrom. Buyer (and its customers) shall use its own independent skill and expertise in the evaluation and use of such advice and accepts such advice at its sole risk.
8. Title and risk of loss or damage to product hereunder shall pass to Buyer as the product passes into the transportation equipment at Seller's shipping point. However, for product sold by Seller for export overseas to a non-Canadian location, title and risk of loss of product shall transfer from Seller to Buyer at the first point upon which the delivering marine vessel crosses the outer boundary of the Exclusive Economic Zone (EEZ). The EEZ extends 200 nautical miles beyond the coastal baseline defined in the United Nations Convention on the Law of the Sea. For product sold by Seller to Buyer that is transported by land to the United States, title and risk of loss of the product shall transfer from Seller to Buyer at the frontier in the relevant border city between Canada and the adjoining jurisdiction (not unloaded) but prior to the customs border of the applicable foreign jurisdiction. If Seller is to pay freight, selection of the carrier and routing of shipments is at Seller's option.
9. Shipping dates are approximate and conditional upon availability of goods. Seller does not guaranty delivery on a specific date and time. All sums shall be considered due and payable within terms as invoiced, are payable in legal US tender unless otherwise indicated, and made payable to the order of Seller at the designated address. If Buyer is in any respect in default of any provisions of this contract, Seller may elect to defer further deliveries until the breach is cured, or terminate the contract without prejudice as to any other remedy available to Seller. If, in Seller's sole discretion, the financial responsibility of Buyer becomes unsatisfactory, Seller may reduce or eliminate the credit limit then in effect (if any) and/or demand advance cash payment and may withhold shipments until receipt. Interest on unpaid balances shall accrue at the lesser of 1% per month (12% per annum) or the highest rate permitted by law.
10. Buyer shall pay or reimburse Seller for all expenses, fees, charges, claims and fines incurred in connection with the registration, licensing, possession or use of the material and all taxes or duties (including, without limitation, goods and services taxes, value added taxes, retail sales taxes, provincial sales tax and/or Quebec Sales Tax) other than taxes levied on the net income of Seller. The payments of harmonized sales tax by Buyer provided for herein shall be absolutely net to Seller free of all set-offs, expenses or outgoings of any kind or nature.
11. Seller shall not be obligated to deliver in any month more than a proportionate part of the maximum quantity specified in a sales contract between the parties, determined by dividing such maximum quantity by the total number of months included in the contract period. If Buyer fails to take in any month all of such proportionate part, the undelivered quantity may, at Seller's election, be cancelled from the contract. Buyer shall use its best efforts to spot, properly unload, and return Seller's rail cars as soon as possible and shall pay demurrage and detention charges to Seller in accordance with Seller's then policy.
12. Prices and terms of payments are subject to change without notice and, as to any shipment, will be those in effect on date of shipment. If, before shipment, Seller's costs for the goods have been increased directly or indirectly by reason of any domestic or foreign law, governmental decree, order or regulation, including, without limitation, the imposition of any new or additional taxes, surcharge or duty, the revaluation or devaluation of currency, import restrictions, or by supplier imposed pricing adjustment, Seller may, at its option, terminate the transaction or, to the extent lawful, increase the selling price by the amount of such increased costs. If Buyer (i) files a petition in bankruptcy; (ii) has a petition in bankruptcy filed against it, which petition is not dismissed within sixty (60) days of the date of filing thereof; (iii) seeks, obtains or has a receiver, trustee, custodian or other third party appointed to manage, control or supervise Buyer, its properties, assets or any material portion thereof; (iv) seeks relief or remedy under any provincial law related directly or indirectly to bankruptcy, receivership, reorganization or insolvency or the protection of the rights of debtors generally; (v) is insolvent; or (vi) becomes unable to pay any material obligations (including, without limitation, any amounts due to Seller) in the ordinary course of Seller's business, then Seller shall have the right to terminate immediately any and all contracts and agreements (including, without limitation, any open purchase orders, and unfulfilled sales contracts) by and between Buyer and Seller.
13. The goods sold hereunder may be or become hazardous, whether singly or in combination with other goods. Buyer acknowledges that it is familiar with, and will take all steps necessary to familiarize, inform and warn its employees, agents, customers, and contractors, who may handle or come into contact with the goods, of all the hazards pertaining to, and proper procedures for safe use of, the goods and of the containers or equipment in which the goods may be handled, shipped, or stored. Buyer also undertakes to label as appropriate any goods which it makes or resells that includes the goods sold hereunder. BUYER WILL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM AND AGAINST ANY CLAIM, LIABILITY OR EXPENSE (INCLUDING LEGAL FEES) INCLUDING, BUT NOT LIMITED TO, INJURY OR DEATH ARISING DIRECTLY OR INDIRECTLY FROM BUYER'S FAILURE TO SO FAMILIARIZE, INFORM, AND WARN. THESE UNDERTAKINGS APPLY IN FULL MEASURE WHETHER SELLER IS ALLEGED OR FOUND TO BE CONCURRENTLY, PARTIALLY OR JOINTLY NEGLIGENT OR AT FAULT OR LIABILITY WITHOUT FAULT IS SOUGHT TO BE IMPOSED ON SELLER.
14. Seller's waiver of any breach or failure to enforce any of the terms and conditions hereunder shall not be deemed to be a continuing waiver of any subsequent or continuing breach or a continuing waiver of the enforcement of such terms and conditions or of any other terms and conditions and such waiver shall not in any way affect, limit or waive, by reason of any course of performance, dealing, usage of trade or otherwise, Seller's rights to enforce and compel strict compliance with every term and condition hereof.
15. These Terms and Conditions and any related contract may not be modified or terminated other than as herein provided, nor any of its provisions waived, except by a writing signed by the party to be charged, or in the case of a waiver, by the party issuing the waiver, may not be assigned by Buyer, and shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada, without giving effect to choice of law principles. The U.N. Convention on Contracts for the International Sale of Goods is expressly excluded from and shall not apply to this Agreement or any transaction hereunder.
16. ANY DISPUTE BETWEEN THE PARTIES SHALL BE DETERMINED BY ARBITRATION ADMINISTERED BY ADR CHAMBERS ("ADR") UNDER ITS ARBITRATION RULES ("RULES"). THERE SHALL BE ONE ARBITRATOR, SELECTED PURSUANT TO THE RULES' APPOINTMENT PROVISIONS. THE ARBITRATION SHALL BE HELD IN ENGLISH IN TORONTO, ONTARIO AND SHALL BE DETERMINED UNDER ONTARIO LAW. REASONABLE, PROPORTIONAL DISCOVERY SHALL BE ALLOWED. THE ARBITRATOR'S AWARD (WHICH MAY INCLUDE PREVAILING PARTY'S ATTORNEYS' AND EXPERTS COSTS AND FEES, AND THE ARBITRATOR'S COMPENSATION) SHALL BIND THE PARTIES, THEIR SUCCESSORS AND ASSIGNS. NOTWITHSTANDING THE FOREGOING, SELLER MAY BRING ACTIONS TO RECOVER OUTSTANDING DEBTS, UNPAID INVOICE AMOUNTS AND COSTS (INCLUDING COLLECTION AND REASONABLE ATTORNEY'S FEES ASSOCIATED WITH THIS CONTRACT'S ENFORCEMENT) IN ANY COURT OF COMPETENT JURISDICTION.
17. THE PARTIES HERETO ACKNOWLEDGE AND ARE SATISFIED THAT THE FOREGOING BE DRAWN UP IN THE ENGLISH LANGUAGE; LES PARTIES AUX PRÉSENTES RECONNAISSANT QU'ILS ONT EXIGÉ QUE CE PRÉCÈDE SOIT RÉDIGÉ EN ANGLAIS.