

Terms and Conditions

These Terms are incorporated into and form part of your Purchase Order for Goods. Please read them carefully.

1. **Definitions.** (a) **"Agreement"** means the PO and these Terms; (b) **"ALP"** means Ellworth Industries Ltd.; (c) **"Goods"** means items purchased by Purchaser pursuant to a PO; (d) **"Purchaser"** means the party placing an order for Goods pursuant to a PO; (e) **"PO"** means each purchase order issued by Purchaser for Goods, or where no purchase order has been issued, means an accepted quote for Goods subsequently ordered; and (f) **"Terms"** means these Terms and Conditions.
2. **Shipment, Delivery and Acceptance**
 - 2.1 **Shipment and Delivery.** Unless otherwise expressly stated in the PO, ALP will select the method of shipment and carrier for the Goods. ALP may, in its sole discretion, make partial shipments. Each shipment will constitute a separate sale and Purchaser will pay for the shipped Goods in accordance with the payment terms specified in these Terms, whether such shipment is in whole or partial fulfilment of the Goods. ALP will cause the delivery of the Goods to the delivery address specified in the PO, or as otherwise agreed between the parties.
 - 2.2 **Over/Under Run.** A shipment of Goods may be over or under the quantity specified in a PO by up to 10% and the parties accept such quantity without adjustment to the Purchase Price.
 - 2.3 **Timing of Delivery.** Any time or date quoted for delivery is an estimate only. ALP will use reasonable efforts to deliver all Goods on or before the agreed upon delivery date as set out in the accepted PO. If a shipment of Goods is delayed for more than 15 days after the agreed upon delivery date and if such delay is not due to any action or inaction of Purchaser, Purchaser may, as its sole remedy, cancel the portion of the PO covering the delayed Goods by giving written notice to ALP. Subject to the foregoing, no delay in shipment or delivery relieves Purchaser of its obligations hereunder.
 - 2.4 **Transfer of Title and Risk of Loss.** Unless otherwise set out in the PO, transfer of title and risk of loss are FOB Origin.
 - 2.5 **Inspection and Acceptance.** Purchaser will inspect all Goods received under the PO within 7 Days of receipt (the **"Inspection Period"**) and either accept or, only if any such Goods do not materially conform with the specifications set out in the PO, reject such quantity of Goods that do not materially conform with such specifications. Purchaser will be deemed to have accepted the Goods unless it provides ALP with written notice of any non-conforming Goods within the Inspection Period, specifying all defects and non-conformities and furnishing such other written evidence or documentation as may be reasonably required by ALP. All defects and non-conformities not specified will be deemed waived by Purchaser and such Goods will be deemed accepted by Purchaser, at ALP's sole discretion. If Purchaser notifies ALP of any non-conforming Goods during the Inspection Period, ALP will determine, in its reasonable discretion, whether the Goods are non-conforming. If ALP determines that such Goods are non-conforming, ALP will, in its sole discretion, either: (a) replace the non-conforming Goods with conforming Goods; or (b) refund the amount paid for such non-conforming Goods returned by Purchaser. Purchaser will ship all non-conforming Goods as directed by ALP. If ALP exercises its option to replace non-conforming Goods, ALP will ship to the delivery address specified in the PO or otherwise agreed, at ALP's expense, the replacement Goods. **THE REMEDIES SET FORTH IN THIS SECTION ARE PURCHASER'S EXCLUSIVE REMEDY FOR THE DELIVERY OF NON-CONFORMING GOODS.**
3. **Price and Payment.**
 - 3.1 **Purchase Price.** Purchaser will purchase Goods at the price set forth in the PO (**"Purchase Price"**). Unless stated in the PO, Purchaser will pay for all transporting, loading, unloading customs, tariffs, duties, vacuum bagging for items shipped by ocean, shipping charges and insurance costs, and applicable taxes, (such as GST, HST, PST, and other value added taxes, if any), in addition to the Purchase Price. All payments will be in the currency as specified in a PO, or if no currency is specified, Canadian dollars.
 - 3.2 **Payment Terms.** Purchaser will pay the Purchase Price as set out in the payment details of the PO. If no payment terms are set out in the PO, payments will be by wire transfer or electronic funds, payable in advance, as determined by ALP.
 - 3.3 **Late Payment.** In the event of late payments, ALP may suspend Purchaser's account until such time as payment has been made in full. Purchaser will reimburse ALP for all costs and expenses incurred in collecting any late payments, including legal fees and court costs.
4. **Art Work Specifications.**
 - 4.1 **Specifications.** Purchaser represents and warrants that it has all secured intellectual property rights to the art work as may be required to permit ALP to manufacture the Goods containing such artwork without liability to ALP and indemnifies ALP of and from all claims with respect to such art work. Purchaser is solely responsible for the accuracy of all data and specifications supplied to ALP and will accept all products manufactured in accordance with said specifications. If Purchaser desires to change the specifications, Purchaser will submit a request to ALP, in writing, prior to the manufacturing date and ALP will use reasonable efforts to accept such changes. ALP will notify Purchaser of any adjustments to the Purchase Price resulting from such changes.
 - 4.2 **Proofs.** Unless waived by Purchaser, ALP will provide Purchaser with proofs prior to the first production of Goods. ALP is not responsible for any errors after a proof has been approved by Purchaser. Additions, deletions and changes not on the original proof may require artwork changes and may result in a higher purchase price. For all subsequent orders of previously approved Goods, ALP will not be required to provide a proof.
5. **Warranty.** ALP warrants, for a period of 1 year from date of delivery, that the Goods will be free from material defect.
6. **Disclaimer and Limitation of Liability.** **NEITHER ALP NOR ANY PERSON ON ALP'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION, WARRANTY OR CONDITION WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, OR PERFORMANCE OF THE GOODS TO STANDARDS SPECIFIC TO THE COUNTRY OF EXPORT OR IMPORT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. IN ALL CASES, ALP'S AGGREGATE AND TOTAL LIABILITY UNDER EACH PO WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED THE AMOUNTS PAID BY PURCHASER TO ALP FOR THE GOODS PURSUANT TO THE PO ON WHICH SUCH CLAIM IS BASED.**
7. **Indemnification.** Purchaser will indemnify, defend and hold harmless ALP and its affiliates and each of their officers, directors, employees and agents (collectively, **"Indemnified Parties"**) against any and all losses, damages, liabilities, deficiencies, claims, actions, judgements, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable legal fees and disbursements incurred by the Indemnified Parties (collectively, **"Losses"**), relating to or arising out of or resulting from any third-party claim against the Indemnified Parties based on Purchaser's use of the Goods.
8. **General.** (a) Any delay or failure of ALP to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused by an event beyond ALP's reasonable control; (b) The failure of ALP to insist upon the strict compliance with any term hereof shall not constitute a waiver of any other term of this Agreement; (c) Purchaser may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of ALP; (d) This Agreement enures to the benefit of and is binding upon ALP and Purchaser and their respective successors and permitted assigns; (e) This Agreement will be governed by the laws of B.C. and the parties attorn to the exclusive jurisdiction of the courts of B.C.; (f) The PO, with these Terms, is the entire agreement of the parties with respect to the subject matter contained herein and supersedes all prior agreements, representations and warranties, both written and oral; and (g) The PO may be executed in counterparts all of which together is deemed to be one and the same agreement. A PO delivered by facsimile, or accepted via e-mail or other electronic means is deemed to have the same legal effect as delivery of an original signed copy of a PO.