

TOTE SOLUTIONS LTD.

TERMS AND CONDITIONS OF SALE

- 1. AGREEMENT.** The terms and conditions set forth herein (“**Terms**”) constitute the entire agreement between Seller and Purchaser in connection with any order submitted by or on behalf of Purchaser that is accepted by Seller for the sale of goods and parts manufactured or resold to Purchaser by Seller (“**Products**”). As used herein, the term Purchaser includes buying groups and their members. These Terms shall control over any terms or conditions in any order, and any and all terms contained in an order shall be deemed void and of no force or effect unless specifically agreed to and accepted by Seller in writing. Without limiting any other terms or conditions set forth herein, acceptance of the Products shipped shall constitute assent to the Terms, except as otherwise specifically agreed to by Seller in writing. Purchaser may not assign these Terms without the prior written consent of Seller. Seller shall be entitled to assign to or carry out this contract in whole or in part through one or more of the business enterprises of the Seller’s group of companies, who shall be authorized to act on Seller’s behalf, even though Seller continues to be Purchaser’s contracting party.
- 2. ORDERS.** An order will become binding on Seller only when accepted and approved by Seller’s written acknowledgement. An order will become binding on Purchaser when (1) acknowledged in writing by Seller or (2) at the time of Purchaser’s acceptance of delivery of all or any part of the Products described in the order, whichever event first occurs. Seller may limit the amount of Product supplied to Purchaser to its monthly purchases for the previous three-month period.
- 3.** Terms of payment shall be approved by Seller. If in the judgment of Seller, the financial condition of Purchaser at any time prior to shipment does not justify the terms of payment originally specified, Seller may require payment in advance, payment security satisfactory to Seller, or may cancel the order. Seller will notify Purchaser in advance to the extent possible.
- 4. PAYMENT.** (a) Unless otherwise agreed by Seller in writing, all payments are due 30 days from the date of Seller’s invoice, upon approval of Purchaser’s credit. (b) Seller has no obligation to ship any Products to Purchaser until Purchaser is current on all payments due. (d) Purchaser may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with Seller, regardless of whether relating to Seller’s breach, bankruptcy or otherwise. (e) Seller reserves the right to include a surcharge for purchases paid by credit card. (f) Purchaser is not relieved of its payment obligations or liability to Seller if it pays an unauthorized third party based upon the receipt of Fraudulent Instructions. For purposes of this clause, the term “**Fraudulent Instruction**” means any fraudulent or unauthorized written, electronic, telegraphic, cable, teletype or telephone instruction that is intended to

mislead Purchaser or any other third party through the misrepresentation of a material fact related to the Products purchased or Seller. If Purchaser receives a request to modify / change any agreed upon / utilized payment process (e.g., accounts/wire instructions, updates to lock box) for its account with Seller, Purchaser must promptly direct such request to Seller and verbally receive a confirmed receipt from Seller of a test wire or payment of \$1.00, prior to Purchaser accepting any changes to the payment process.

5. **INTEREST AND COSTS.** Purchaser shall pay, in addition to the overdue payment, a late charge equal to the lesser of 1 1/2% per month or any part thereof or the highest applicable rate allowed by law on all such overdue amounts plus Seller's attorneys' fees and court costs incurred in connection with any collection.
6. Seller's price does not include any federal, state or local property, license, privilege, sales, value-added, use, excise, gross receipts, or other like taxes, which may now or hereafter be applicable. Purchaser agrees to pay or reimburse any such taxes which Seller or its suppliers are required to pay or collect. If Purchaser is exempt from the payment of any tax or holds a direct payment permit at the time of the placement of order, Purchaser shall provide Seller a copy of any such certificate or permit acceptable to the relevant governmental authorities.
7. **FORCE MAJEURE.** Seller shall not be in default for failure to perform and shall not be liable for loss, damage, detention or delay when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), Acts of God, fire, terrorism, sabotage, power, explosions, epidemics, civil disturbances, strike, labor difficulties, acts or omissions of any governmental authority, compliance with government laws or regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, raw materials, or manufacturing facilities from usual sources, equipment failure, or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. If Seller incurs expenses, loss or damage, there shall be a reasonable increase in the contract price to cover such added expense, loss or damage. Upon the occurrence of any event or circumstance referenced above, Seller shall have the right to allocate all its available supply of goods among itself and its customers in its sole discretion. This Section supplements, and does not replace, any remedies available to Seller under applicable law.
8. **CANCELLATION OR MODIFICATION.** (a) Accepted orders may not be cancelled or modified by Purchaser without Seller's prior written consent. If Purchaser cancels an order without Seller's consent, Purchaser agrees to pay Seller a cancellation fee equal to the price of the order cancelled. (b) Either party may terminate the order for cause if the other party is in material breach of these Terms and such breach is not cured within 30 days after the non-breaching party issues written notice to the

breaching party. (c) Effect of termination. Purchaser shall pay Seller the sale price of the Products based on percentage of work completed as of the effective date of termination, plus costs incurred from vendors as a result of early termination. Seller may attempt to mitigate the monetary impact of cancellation or termination, at its discretion. (d) Upon receipt of payment, Seller will deliver Products to Purchaser or scrap the same at Purchaser's direction. (e) Any provisions of these Terms that, by their nature, extend beyond the completion, termination or expiration of any sale of Products will remain in effect until fulfilled.

9. If Seller holds Product(s), parts, fixtures and/or molds, components and/or raw material inventory for Purchaser, Purchaser must pay for and accept delivery of all such items after 90 days. Seller reserves the right to charge Purchaser additional storage fees for any inventory held longer than 90 days.
10. **CHANGES IN PRODUCT DESIGN OR MANUFACTURE.** (a) Seller has the right to change, discontinue or modify the design and construction of any of its Products and to substitute material equal to or superior to that originally specified unless the Product is manufactured to a design owned by the Purchaser, in which case Seller can discontinue the Product but cannot modify or change the design without Purchaser's consent. (b) Every change order shall reflect modifications to the Agreement, the delivery schedule, and the price. Seller has no obligation to perform any changes until the change order is mutually agreed in writing. Seller has the right to reject post-production Product changes requested by Purchaser without payment in advance.
11. **PRICES.** (a) Seller reserves the right to change its pricing with thirty (30) days prior written notice. Prices in Seller quotes are good for 30 days. In the event of a Force Majeure, pricing adjustments will be made to the order as determined by Seller without notice. (b) Seller's price excludes customs, duties and other similar fees which may not or hereafter be applicable. Purchaser agrees to pay or reimburse any such customs, duties and other fees which Seller or its suppliers are required to pay or collect. Any duties, fees, taxes, other charges or exactions on the Products payable to any government or other entity are the sole responsibility of Purchaser. (c) Seller's price includes standard packaging for shipment by truck, unless otherwise stated by Seller in writing. Any change after the proposal date in such rates, or additional packaging required by Purchaser or required to transport the Products via another mode of transportation, shall be paid to Seller in addition to the quoted price. (d) Seller reserves the right, at its sole discretion, to discontinue the sale of a Product(s) to any Purchaser if such Purchaser that (or, if Purchaser is a buying group, any of Purchaser's members) uses such Product(s) for the purposes of Loss Leadering and/or Bait-and-Switch Selling. "**Loss Leadering**" means selling a Product at a low price for the purpose of advertising, rather than for the purpose of making a profit. "**Bait-and-Switch Selling**" means using a Product not for the

purpose of selling it at a profit, but for the purpose of attracting customers in the hope of selling them other products.

12. **DELAYS.** Shipping and delivery dates are estimates only and are contingent upon Purchaser's timely approvals and delivery by Purchaser of any documentation required for Seller's performance hereunder. Seller shall not be liable for damages for a partial or incomplete shipment of or any added expenses incurred by Purchaser because of Seller's delay or because of the acts or omissions of Purchaser.

13. **SHIPMENT AND DELIVERY.** Unless otherwise agreed by the parties in writing, all Products will be shipped FCA origin (Seller's facility) (Incoterms 2020). Seller may, in its sole discretion, without liability or penalty make partial shipments of Products to Purchaser. Each shipment will constitute a separate sale and Purchaser shall pay for the Products shipped, in accordance with the payment terms specified in Section 4, whether such shipment is in whole or partial fulfillment of an order. Purchaser shall not be permitted to reject a partial shipment on the basis that it does not meet the exact quantity specified in an order. If the parties agree that Purchaser will arrange for shipping of the Products, then Seller will notify Purchaser when the Products are ready for shipment and Purchaser must arrange for such Products to be shipped within five days of such notice. If Purchaser does not arrange for shipment within five days of receiving notice from Seller, Seller may, in its sole discretion, (a) ship the Products to Purchaser at Purchaser's cost OR (b) warehouse Purchaser's Products at Purchaser's cost. Seller will select the carrier and ship "Prepaid and Add" but shall not be deemed thereby to assume any liability or risk of loss in connection with the shipment nor shall the carrier be construed to be the agent of Seller. Purchaser must provide its own insurance. Title and risk of loss or damage to all Products sold hereunder shall pass from Seller to Purchaser upon delivery by Seller to the possession of the carrier, provided that Seller reserves a purchase money security interest in the Products. Any claims for loss, damage or mis-delivery thereafter shall be filed by Purchaser with the carrier. All Products shall be deemed finally inspected and accepted within 10 days after delivery unless notice of rejection is given in writing to Seller within such period. Acceptance shall constitute acknowledgement of full performance by Seller of all obligations under the order and the Terms except as stated in Section 12.

14. **CLAIMS.** Notice of claims against Seller hereunder for any reason, including breach of warranty, must be made to Seller in writing within 48 hours of discovery, but in no event more than the applicable warranty period. Seller must have an opportunity to investigate facts and mitigate any damages for all claims in case Seller determines it is its responsibility. Failure to give such notice to Seller shall constitute a waiver by Purchaser of any right later to assert such a claim, and such failure shall constitute an irrevocable acceptance of the Products and an admission that they fully comply with all of the terms and conditions of the order.

15. **RETURNS.** Any return of Products requires a return material authorization. Upon return of any product, Seller shall inspect such product to determine whether the nonconforming product is covered by Seller's warranty. If the Product is covered by Seller's warranty, Seller will comply with Section 16. If the non-conformity is not covered by Seller's warranty, Purchaser will pay for Seller's inspection, the repair (if requested) and all shipping to and from Seller's facility. Non-warranty returns are prohibited without Seller's prior written consent.

16. **WARRANTY.** Seller warrants that the Products sold by Seller to Purchaser conform to Seller's specifications and are free from defects in material and workmanship. Unless otherwise specified by Seller in writing, this warranty extends for one year from the date of original purchase. All warranties apply only to the original Purchaser unless otherwise agreed by Seller in writing. Seller's sole obligation and Purchaser's exclusive remedy for any justified claim under this warranty shall be limited to one of the following, at Seller's sole discretion: (a) repair or replacement of the Product or (b) a credit for the price paid by the original Purchaser of the Product. This express warranty does not apply to, and no warranty remedy will be given for, Product issues resulting from: (a) accident, acts of nature, improper installation, improper assembly, unreasonable or improper use, lack of proper maintenance, unauthorized repairs or modifications, abuse, normal wear or tear of replaceable parts such as spouts and hoses, or other causes not directly arising from defects in materials or workmanship; (b) any Product damaged by the failure of the owner to use, maintain, or store the Product as specified in any applicable instructions and/or warnings provided by Seller or the manufacturer. **EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, SELLER MAKES NO WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR AGAINST INFRINGEMENT. IN THE EVENT WARRANTIES EXIST AT LAW THAT MAY NOT BE DISCLAIMED; PURCHASER AGREES THAT SUCH WARRANTIES SHALL BE LIMITED IN DURATION TO THE ONE YEAR WARRANTY PERIOD AND TO THE REPLACEMENT VALUE OF THE PRODUCT.**

17. **LIMITATION OF LIABILITY. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF BUSINESS OR PROFITS, DIMINUTION IN VALUE OR PUNITIVE DAMAGES. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE PRODUCT GIVING RISE TO THE CLAIM. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO PURCHASER. THIS WARRANTY GIVES THE**

OWNER SPECIFIC LEGAL RIGHTS, AND THE OWNER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM PROVINCE TO PROVINCE OR STATE TO STATE.

18. **INTELLECTUAL PROPERTY.** Seller retains ownership of any patent, know-how, trade secret, trademark, service mark, copyright, or other intellectual property right that is related to the Products or is otherwise developed by or provided to Purchaser in connection with the supply of the Products.
19. **WORK PRODUCT.** “Work Product” shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, service deliverables, inventions, Products, special tooling, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Seller alone or with others that result from or relate to the Products. All Work Product shall at all times be and remain the sole and exclusive property of Seller. Purchaser hereby agrees to irrevocably assign and transfer to Seller and does hereby assign and transfer to Seller all of its worldwide right, title and interest in and to the Work Product including all associated intellectual property rights. Purchaser hereby waives any and all moral and other rights in any Work Product or any other intellectual property created, developed or acquired in respect of the Products. Seller will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name or to declare any other intellectual property rights which may apply.
20. **INDEMNIFICATION.** Purchaser will defend, indemnify, and hold harmless Seller and its parent company, their respective subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, members, managers, and employees from and against any loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, fees (including import and export customs fees), or expense (including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing insurance providers) (“Claims”) arising out of or occurring in connection with the negligence or willful misconduct of Purchaser or its employees or agents, including but not limited to: (a) any misuse or modification of the Products sold hereto by Purchaser or its employees or agents, (b) any act (or failure to act) by Purchaser or its employees or agents in contravention of any safety procedures or instructions that Seller provides to Purchaser or its employees or agents, or (c) the failure to store, install, operate, or maintain the Products in accordance with the instructions.
21. **CONFIDENTIALITY.** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts

or rebates, disclosed by Seller to Purchaser, 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 these Terms is confidential, solely for the use of performing these Terms and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller’s request, Purchaser shall promptly return all documents and other materials received from Seller. Seller 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 Purchaser at the time of disclosure; or (c) rightfully obtained by Purchaser on a non-confidential basis from a third party.

22. PATENT INDEMNITY. In the event any Product is made in accordance with drawings, samples or manufacturing specifications designated by Purchaser, Purchaser agrees to indemnify, defend and hold Seller harmless from any and all damages, costs and expenses (including attorney’s fees) relating to any claim arising from or relating to the design, distribution, manufacture, marketing, sale, or use of the Product or arising from or relating to a claim that such Product furnished to Purchaser by Seller, or the use thereof, infringes any claim of any patent, foreign or domestic, and Purchaser agrees at its own expense to undertake the defense of any suit against Seller brought upon such claim or claims.

23. COMPLIANCE WITH LAWS. Purchaser shall comply with all applicable laws, regulations and ordinances. Purchaser shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under these Terms. Purchaser shall comply with all export and import laws of all countries involved in the sale of the Products under these Terms or any resale of the Products by Purchaser. Purchaser assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate these Terms if any governmental authority imposes antidumping or countervailing duties or any other penalties on the Products. Products may be regulated / certified for sale / resale / use in specific geographic markets and Purchaser is liable for the illegal sale / resale of such Products. By purchasing Products from Seller, Purchaser represents and warrants that Purchaser is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National.

24. LAW; VENUE; PERSONAL SERVICE. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the Province of British Columbia without giving effect to any choice or conflict of law provision or rule (whether of the Province of British Columbia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Province of British Columbia. Any legal suit, action or proceeding arising out of or relating to these Terms will be instituted in the federal or Provincial courts located in Langley, British Columbia. Each party irrevocably submits to the

exclusive jurisdiction of such courts in any the suit, action or proceeding. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to these Terms or any transactions created thereby or construed therewith.

25. **SEVERABILITY.** If any term or provision of these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.
26. **WAIVERS; AMENDMENTS.** No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from these Terms 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. Seller may amend or modify these Terms upon written notice to Purchaser.
27. Purchaser shall notify Seller in writing (a) upon the institution by or against Purchaser of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Purchaser's debts, (b) upon Purchaser making an assignment for the benefit of creditors, or (c) upon Purchaser's dissolution or ceasing to do business.
28. **INDEPENDENT CONTRACTOR.** 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.