



Purchase order terms and conditions

1. COMPLETE AGREEMENT:

This Purchase Order will become a binding agreement of Seller and the Arlen Tool Co. Ltd. named on the front of this form (Buyer) upon Seller acknowledging acceptance of this Purchase Order (hereinafter referred to as the "Purchase Order" or "Order") or commencing performance of this Purchase Order, whichever occurs first. This Purchase Order, together with the specifications, drawings and documents referred to herein, and any other documents agreed to in writing by Buyer and Seller, and which by this reference are all made a part hereof, constitute the entire agreement between the parties, and all prior negotiations, proposals and writings pertaining to this Purchase Order or the subject matter hereof are superseded. Any reference to Seller's quotation, bid or proposal does not imply acceptance of any term, condition or instruction contained in such document.

Any invoice, acknowledgement or other communication issued by Seller in connection with this Purchase Order will be construed to be for record and accounting purpose only. Any terms and conditions stated in such communications will not be applicable to this Purchase Order and will not be considered to be Seller's exceptions to the provisions of this Purchase Order and are hereby excluded and objected to by Buyer. Trade custom and trade usage are superseded by this Purchase Order and will not be applicable in the interpretation of this Purchase Order. In the event of any ambiguities, express conflicts or discrepancies in the specifications, drawings or other documents which are a part of this Purchase Order, Seller will immediately submit the matter to Buyer for its determination and will comply with the determination of Buyer in such matter.

All headings in this Purchase Order are for the convenience of reference only and will not be used in the interpretation of any of the provisions of this Purchase Order.

2. TITLE

Seller warrants full and unrestricted title to Buyer for all goods and services furnished by Seller under this Purchase Order, free and clear of any and all claims, demands, liens, restrictions, security interests and encumbrances of suppliers or workmen or subcontractors of Seller who are providing services, labor, equipment or materials in any way related to this Purchase Order. In the event of any claim of lien or lien upon

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any property of Buyer by any such Seller suppliers, workmen or subcontractors, Seller, at its sole cost and expense, shall immediately take all action necessary to promptly remove such claim of lien or lien. If Buyer makes progress payments to Seller under this Purchase Order, title to the goods ordered will pass to Buyer at the time Seller identifies the goods to this Purchase Order. Seller will clearly identify the goods as property of Buyer by visible marking or tagging and Buyer shall have the right, at its option, to inspect and verify that the goods have been identified as Buyer's property. Care, custody and control of such goods remain with the Seller until such time as Buyer takes physical possession or otherwise agrees in writing by change order to this Purchase Order.

3. RESERVATION OF RIGHTS

The making or failure to make any inspection of, or payment for, the goods covered by this Purchase Order will not impair Buyer's right to reject nonconforming or defective goods or be deemed to constitute acceptance by Buyer of the goods or services, or affect in any way Seller's obligations under this Purchase Order notwithstanding Buyer's opportunity to inspect the goods or services. Neither Buyer's knowledge of the nonconformity or defect, its substantiality or the ease of its discovery, nor Buyer's failure to earlier reject the goods or services, shall affect Buyer's reservation of its right to reject.

4. WAIVER

Buyer's failure to insist on the performance of any term, conditions or instruction, or failure to exercise any right or privilege or its waiver of any breach, will not thereafter waive any such item, condition, instruction, right or privilege.

5. PRICE

This Order may not be filled at prices higher than shown on Buyer's Purchase Order without the prior written approval of Buyer. If no price is shown on this order, Seller will furnish at no higher price than last purchased, or will notify and obtain the written approval of Buyer before proceeding with this Order.

6. CASH DISCOUNTS

Cash discounts, if any, will be computed as commencing with the receipt of the invoice or of the goods, whichever is received later.

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7. TAXES

Seller agrees to pay all taxes now or hereafter imposed by law on or on account of the production, sale, shipment or use of any goods covered by this Order.

8. EXTRAS

Charge for extras must be approved in writing by Buyer's purchasing department before being incurred.

9. PACKING SLIPS

Separate packing slips will be included in each shipment showing order number, quantity, part number and description of the goods being delivered.

10. PACKING AND TRANSPORTATION CHARGES

No charge for packing, boxing, cartage, insurance or transportation will be allowed unless otherwise stated in this Order.

11. INSPECTION

Goods purchased under this Order are subject to Buyer's reasonable inspection, testing and approval at Buyer's destination, or anytime by Buyer (or its customers when required by Buyer) at all times and places prior to delivery. Notwithstanding prior payment, if inspection or the use of the goods are not in accordance with this Order or Seller's representations or warranties, express or implied, Buyer may, in addition to any other rights it may have in law or equity, reject or revoke acceptance, return any goods for full credit or cash refund at its option and cancel any remaining unshipped portion of this Order without obligation. If it is impractical to make an inspection at the time of receipt, the foregoing will apply whenever inspection may reasonably be made. Goods rejected as nonconforming will be returned at Seller's expense, including transportation and handling.

12. WARRANTY

Seller expressly warrants that the goods and services ordered will be merchantable, will conform to this Purchase Order and to specifications, drawings and other descriptions referenced in this Purchase Order, and to any accepted samples, and will

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be free from defects in materials and workmanship, and defects in design, unless design was supplied by Buyer, and will be fit for sale or use for the intended purposes. Seller further warrants that all goods and their packaging materials will be produced, packaged, marked and labeled in compliance with applicable province and federal laws and regulations, including without limitation province laws relating to packaging requirements for heavy metals, and that Seller has obtained the necessary government approvals and certifications. Seller also represents and warrants that any goods and services delivered hereunder do not infringe any Canada or foreign patent, trademark, trade secret or copyright, or any proprietary, intellectual property, industrial property, contract or other right held by any third party.

Seller will, at its expense including, without limitation costs of removal, packing, transportation and reinstallation, promptly, at Buyer's option, either repair or replace or refund the purchase price paid for any goods and services furnished to Buyer which within 12 months after operational start up or within 18 months after shipment, whichever occurs first, fail to conform to the requirements of this Purchase Order. Seller will at any time be chargeable for repairs made by Buyer to correct such a failure to meet this warranty when Seller has been given notice of such failure and thereafter has failed to take prompt and effective action to correct the failure in accordance with the foregoing.

The above warranties are in addition to all other warranties, express or implied. All such warranties will extend to Buyer, its successors, assigns and to customers and users of the goods.

13. RECALL

If a recall of the goods is required by a defect, a failure to conform to specifications, applicable laws or any other reason within Seller's control, Seller will bear all cost and expenses of such recall, including without limitation, costs of notifying customers, customer refunds, cost of returning goods, lost profits and other expenses incurred to meet the obligations of third parties.

14. INDEMNIFICATION

Seller will indemnify, defend and hold harmless Buyer, its successors, assigns, employees, customers and users of the goods or services, with respect to all claims, liability, damage, loss, and expenses, including attorney's fees, incurred relating to or caused by: (a) actual or alleged claim of infringement of patent, copyright, trademark or other rights, misappropriation of trade secrets, breach of confidential relationships

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or violation of other property right arising out of the purchase, sale of use of the goods or service covered by this Purchase Order; (b) actual or alleged defects in the goods or in the design, manufacture or material of the goods; (c) actual or alleged breach of warranty, (d) failure of Seller to deliver the goods or services on a timely basis, or (e) failure of the goods or services to meet the requirements of all federal or province laws; and (f) any and all claims, demands, liens, restrictions, security interests, and encumbrances of suppliers or workmen or subcontractors of Seller who are providing services, labor, equipment or materials in an way related to this Purchase Order.

In the event of a claim under this Section, Buyer may, at its option, terminate this Order or defer acceptance of the balance of the goods or services ordered until the claim is resolved. If Buyer is enjoined from the use of the goods, Seller will, at Buyer's option, either procure for Buyer the right to continue to use the goods, replace the goods with substantially equivalent goods, modify the goods so as to be useable by Buyer or repurchase the goods at the price set forth in this Order. This section shall not be constructed to indemnify Buyer for any loss to the extent it is attributable to Buyer's design, specification or negligence.

15. INSURANCE

Seller shall obtain and keep in force for three years after the last delivery under this Order general comprehensive liability insurance covering each occurrence of bodily injury and property damage in an amount of not less than \$2 million (or any other amount Buyer may indicate in this Order) combined single limit with special endorsements providing coverage for (a) Products and Completed Operations Liability; (b) Blanket Broad Form Vendor's Liability, and (c) Blanket Contractual Liability.

If services are performed under this Order on Buyer's premises, Seller shall also obtain Premises-Operations, Personal injury and independent Contractors Protective Liability endorsements and shall further obtain Workers' Compensation, Employer's Liability and Automotive Liability Insurance coverage in amounts acceptable to Buyer. If requested, Seller shall furnish Buyer with a certificate evidencing the required insurance.

16. RISK OF LOSS

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Seller shall bear the risk of loss or damage to the goods covered by this Order until they are delivered to and accepted by Buyer.

17. BUYER FURNISHED MATERIAL

Seller shall not use, reproduce or appropriate for anyone other than Buyer any material, tooling, dies, drawing, designs or other property or information furnished or paid for by Buyer ("Material") without Buyer's prior written approval. Title to all Material shall remain in Buyer at all times and where practicable the Material shall be clearly marked or tagged to indicate this ownership. Seller shall bear the risk of loss or damage to the Material until it is returned to Buyer. All Material, whether or not spoiled or used, shall be returned to Buyer at termination or completion of this Order unless Buyer shall otherwise direct. Seller agrees to hold in confidence and to use only for the benefit of Buyer all Material, methods, processes, techniques, shop practices, formulas, compounds, compositions, equipment, designs, drawings, blueprints, specifications, research data, marketing and sales information, customers lists, plans and information provided or know-how and trade secrets owned by Buyer or in Buyer's possession and disclosed to Seller as a result of this Purchase Order. Until such information has been lawfully published or disclosed to the general public, Seller agrees not to use or disclose such information to others and then only with Buyer's prior written consent.

18. REFERENCES TO BUYER

Except to the extent required by law, Seller shall make no reference, advertisement or promotion regarding Buyer or Buyer's purchase or use of the goods or services covered by this Order without the prior written consent of Buyer.

19. USE OF SELLER'S INFORMATION

All information disclosed to Buyer by Seller in connection with this Order is furnished as part of the consideration for Buyer's placement of this Order. This information is not to be treated as confidential or proprietary, and no claim will be asserted against Buyer, its assigns or customers for its disclosure or use.

20. CANCELLATION FOR DEFAULT

In the event Seller shall be adjudged bankrupt, make a general assignment for the benefit of its creditors, or if a receiver shall be appointed on account of Seller's

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insolvency or in the event Seller is in default of any provisions or requirement of this Purchase Order, Buyer may, by written notice to Seller, without prejudice to any other rights or remedies which Buyer may have at law or equity, and without further liability or obligation to Seller, cancel further performance by Seller under this Purchase Order. In the event of such cancellation, without waiving or limiting any other right or remedy that Buyer may have at law or in equity, Buyer may complete the performance of the Purchase Order by such means as Buyer selects, and Seller shall be responsible for any additional costs incurred by Buyer in doing so. Seller shall deliver or assign to Buyer any work in progress as Buyer may request, and any amounts due Seller for goods and services completed by Seller in full compliance with the terms of this Purchase Order prior to such cancellation shall be subject to set off of Buyer's additional costs and expenses of completing the Purchase Order and other damages incurred by Buyer as a result of Seller's default. Waiver by Buyer of any default of Seller may only occur in a writing signed by Buyer and any such waiver shall not be considered to be a waiver by Buyer of any provision of this Purchase Order or of any subsequent default by Seller.

21. TERMINATION FOR CONVENIENCE

Buyer may terminate for its convenience further performance of all separable parts of this Purchase Order at any time by written notice to Seller. On the date of such termination stated in the notice, Seller shall discontinue all work pertaining to this Purchase Order, Seller shall place no additional material or component orders supporting Buyer's Order, and Seller shall preserve and protect materials on hand purchased for or committed to this Purchase Order, work in progress, and completed work both in Seller's and Seller's supplier's plants pending Buyer's instructions, and shall dispose of same in accordance with Buyer's instructions. Payment to Seller or refund to Buyer, if any, shall be promptly and mutually agreed to by Buyer and Seller based on that portion of the Purchase Order satisfactorily performed to the date of termination, including reimbursement for reasonable and necessary expenses resulting from the termination, as substantiated by documentation satisfactory to and verified by Buyer, disposition of work and materials on hand and amounts previously paid by Buyer. Seller shall not be entitled to any loss of prospective profits, contribution to overhead or incidental, consequential or other damages because of such termination. Payment made under this clause will constitute Buyer's only liability and Seller's exclusive remedy in the event Buyer terminates this Purchase Order for convenience. Such payment by Buyer in any event shall not exceed the contract price for the goods specified in this Purchase Order that are the subject of Buyer's termination for convenience.

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22. SET-OFF

Any counter claim against Seller or any of its related entities which arise out of this or any other transaction may be set off against money due Seller under this Purchase Order.

23. DELAYS

Time is of the essence for this Purchase Order. Seller shall promptly notify Buyer of any actual or anticipated delay in delivery and take all reasonable steps to avoid or end delays without additional cost to Buyer. Where the delay is caused by acts of God, acts of civil or military authority, epidemics, war, riot, strikes or similar cause beyond Seller's control and which Seller could not have reasonably foreseen or provided against, Buyer shall have the right to either (a) terminate by written notice to Seller all or part of this Purchase Order; or (b) extend Seller's performance for a period equal to the duration of the delay, but Seller shall not be entitled to any extra compensation for such delay. Seller shall not be excused from performance hereunder where alternate sources of supply of materials, goods, or services are available. Strikes, fires, accidents or any other causes beyond the reasonable control of Buyer that affect the Buyer's ability to receive and use or sell the goods or services ordered shall constitute valid ground for Buyer's suspension of performance or cancellation of this Purchase Order, upon written notification to the Seller and without penalty to Buyer.

24. ASSIGNMENT

Neither this Purchase Order nor any portion hereof may be assigned or delegated without Buyer's prior written consent and any such assignment or delegation will be void. Buyer reserves the right to assign this Purchase Order to Buyer's affiliates at any time upon written notice to Seller.

25. CHANGES

Buyer shall have the right at any time prior to the delivery date by written direction to make changes in the specifications, drawings, packaging, quantities (if reasonable), time, place and method of delivery, for goods or services covered by this Purchase Order. If Seller believes that such change affects the price or delivery date for such goods or services, Seller shall so notify Buyer in writing (with adequate supporting

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documentation) within 5 calendar days after receipt of said direction. Seller shall suspend performance of the change unless thereafter released in writing by Buyer to perform such change and Buyer and Seller shall mutually agree in writing upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change. Seller's request for any adjustments shall be deemed waived unless submitted in writing within 5 calendar days after Seller receives direction to make such changes. Seller shall not suspend performance of the unaffected portion of this Purchase Order while Buyer and Seller are in the process of making such changes and any related adjustments or at any time thereafter unless so instructed in writing by Buyer. If released in writing by Buyer, Seller shall comply with and perform such change in accordance with the terms of this Purchase Order during the time Seller and Buyer require to mutually agree upon an equitable adjustment. No substitutions shall be made in this Purchase Order without prior written authority of Buyer. No agreement or understanding modifying the terms and condition of this Purchase Order shall be binding upon Buyer nor will extra compensation be paid by Buyer unless the agreement or understanding is made in writing and signed by Buyer.

26. LAWS AND REGULATIONS

Seller warrants that the manufacturing, packaging, pricing, sale and delivery of all goods and performance of services supplied pursuant to this Purchase Order will comply with all applicable laws, ordinances and regulations and further Seller shall provide all permits, certificates and licenses which may be required for the performance of the Purchase Order.

27. GOVERNING LAW

This Purchase Order and the performance under it shall be controlled and governed by the internal laws of the Province of Ontario, excluding its conflicts of law's provisions and also excluding the U.N. Convention on International Sales of Goods. Seller hereby submits to the jurisdiction of the province and federal courts residing in Essex County, Ontario for purposes of resolving any disputes arising from or relating to this Purchase Order or the performance thereof.

28. SAFETY AND HEALTH

Seller is Responsible for assuring that all Health/ Safety/ Government Regulations are met during the manufacture and supply of goods and services noted for this order.

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29. NOTICES

All notices, consent requests, instructions, approvals and other communications hereunder shall be in writing and be given by personal delivery or by facsimile and by registered and certified mail, return receipt requested to the address of Buyer or Seller as shown on this Purchase Order or to such other address as any party hereto may, from time to time, designate in writing. Notices shall be deemed to be effectively given upon receipt by the receiving party.

30. SEVERABILITY OF PROVISIONS

In case any one or more of the provisions contained in this Purchase Order should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

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