



**CUES CANADA INC.**  
**STANDARD TERMS AND CONDITIONS OF SALE**

**ACCEPTANCE AND GOVERNING PROVISIONS.** No orders shall be binding upon CUES CANADA INC. ("Seller") until accepted in writing by an authorized representative of Seller at its headquarters office or factory. SELLER'S ACCEPTANCE OF BUYER'S ORDER IS CONDITIONED UPON BUYER'S ACCEPTANCE OF THE TERMS AND CONDITIONS SET FORTH HEREIN (THE "TERMS") AND BUYER'S AGREEMENT TO BE BOUND BY AND COMPLY WITH THE TERMS. THESE TERMS, THE TERMS ON THE FACE OF THIS DOCUMENT, AND ALL REFERENCED ATTACHMENTS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN BUYER AND SELLER, AND NO AMENDMENT OR MODIFICATION SHALL BE BINDING ON SELLER UNLESS SIGNED BY AN OFFICER OF SELLER. THE FAILURE OF SELLER TO OBJECT TO PROVISIONS CONTAINED IN ANY PURCHASE ORDER OR OTHER DOCUMENT OF BUYER SHALL NOT BE CONSTRUED AS A WAIVER BY SELLER OF THE TERMS OR AN ACCEPTANCE OF ANY SUCH PROVISIONS. ANY CONFLICTING OR ADDITIONAL TERMS OR CONDITIONS SET FORTH BY BUYER IN A PURCHASE ORDER OR OTHER DOCUMENT ARE NOT BINDING UPON SELLER, AND SELLER HEREBY EXPRESSLY OBJECTS THERETO. In the event of any conflict among these Terms and any quotation, order confirmation, invoice or other document issued by Seller, these Terms shall prevail unless such other document expressly states that it is intended to amend these Terms and is signed by an authorized representative of Seller.

**GOVERNING LAW AND JURISDICTION.** These Terms, any order accepted by Seller, and any dispute, controversy or claim arising out of or relating to these Terms, any such order, the goods sold hereunder, or the relationship between Buyer and Seller shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms, any order, or any goods sold hereunder. Buyer irrevocably submits and attorns to the exclusive jurisdiction of the courts of the Province of Ontario, sitting in Toronto, in respect of any such dispute, controversy or claim. Buyer waives any objection to the venue of any legal proceeding in the Province of Ontario and agrees not to plead or claim in any such court that such proceeding has been brought in an inconvenient forum. During the resolution of any dispute, controversy or claim, Buyer shall continue to perform its obligations under these Terms and any order, including payment of all amounts then due.

**LIMITED WARRANTY.** Seller warrants that all parts, components, and equipment manufactured by Seller shall be free from defects in material and workmanship under normal use and service for which they were intended for a period of twelve (12) months from the date of shipment of materials by Seller to Buyer. Seller's obligation under this warranty is limited. Seller, at its option, may replace or repair any defective materials returned freight prepaid, to the Seller's designated service facility. For all warranty claims, the materials must be returned in accordance with Seller's Material Return Policy or as otherwise directed by the Seller. Buyer must notify Seller of a breach of warranty not later than the last day of the warranty period; otherwise, such claims shall be deemed waived.

Major items of equipment, such as vehicles, generators, etc., furnished, but not manufactured by Seller, will be covered only under the warranty of the third party manufacturer of such equipment. Expendable parts, such as light bulbs, fuses, connectors, etc., are excluded from this warranty. Seller does not warrant the materials to meet the requirements of the safety codes, standards, by-laws, regulations, or other requirements of any federal, state, provincial, territorial, municipal or other governmental or administrative authority. Buyer assumes all risk and liability whatsoever resulting from the use of Seller's products, whether used singly or in combination with other products, machines or equipment. This Warranty shall not apply to any materials, or parts thereof, which have: **(a)** been repaired or altered by anyone other than Seller without Seller's written consent; **(b)** been subject to misuse, abuse, negligence, accident, or damage; **(c)** not been installed or operated in accordance with Seller's printed instructions; or **(d)** been operated under conditions exceeding or more severe than those set forth in the specifications or design tolerances of the equipment.

THIS WARRANTY AND THE OBLIGATIONS AND LIABILITIES OF SELLER HEREUNDER ARE EXCLUSIVE AND IN LIEU OF, AND BUYER HEREBY WAIVES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES, GUARANTEES, REPRESENTATIONS, CONDITIONS, OBLIGATIONS, OR LIABILITIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, ARISING BY LAW OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, DURABILITY, CORRESPONDENCE WITH DESCRIPTION, TITLE, QUIET POSSESSION OR NON-INFRINGEMENT, REGARDLESS WHETHER OR NOT OCCASIONED BY SELLER'S NEGLIGENCE. SELLER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE RESULTING, DIRECTLY OR INDIRECTLY, FROM THE USE OR LOSS OF USE OF THE MATERIALS, OR FOR ANY INCIDENTAL, SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR SIMILAR DAMAGES OF ANY NATURE, ECONOMIC LOSSES, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF BUSINESS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF DATA,



LOSS OF GOODWILL, DAMAGE TO PROPERTY, OR LOSS OF USE. Without limiting the generality of the foregoing, this exclusion from liability includes Buyer's expenses for downtime or for making up downtime, damages to property, and injury to or death of any persons.

Seller neither assumes nor authorizes any person (including employees, agents, or representatives of Seller) to assume for it any other liability, guarantee, or warranty in connection with the sale or use of the materials, and no oral agreements, warranties, or understandings exist collateral to or affecting this warranty. This warranty shall not be extended, altered, modified, or waived except by a written instrument signed by Seller.

**INTELLECTUAL PROPERTY.** (a) If notified promptly by Buyer in writing and provided with authority, information, and assistance, Seller shall defend or may at any time settle, at Seller's option, any action, application or other proceeding alleging that any goods designed and sold by Seller pursuant to Seller's proposal infringe any United States or Canadian patent, trademark or other intellectual property right. Seller shall pay any damages awarded in such action, application or other proceeding up to the amount of the depreciated purchase price of the goods. In the event any goods are held to constitute such infringement and the use of the goods is enjoined, Seller shall, at its option and expense: (i) procure for Buyer the right to continue using the goods; (ii) replace the goods with non-infringing goods; (iii) modify the goods so that they become non-infringing; or (iv) remove the goods and return the depreciated purchase price. THE FOREGOING CONSTITUTES THE ENTIRE LIABILITY OF SELLER AND THE SOLE AND EXCLUSIVE REMEDY OF BUYER FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT RELATED TO THE GOODS. (b) NOTWITHSTANDING THE FOREGOING, SECTION (a) ABOVE SHALL NOT APPLY TO ANY ACTION, APPLICATION OR OTHER PROCEEDING ALLEGING INFRINGEMENT OR MISAPPROPRIATION RESULTING FROM OR RELATED TO SELLER'S COMPLIANCE WITH THE SPECIFICATIONS OR DESIGN OF BUYER OR THE USE OF GOODS OF SELLER IN COMBINATION WITH OTHER GOODS OR MATERIALS. Buyer shall defend, indemnify and hold harmless Seller from and against any and all losses, damages, liabilities, costs and expenses, including reasonable legal fees, arising out of or relating to any such action, application or other proceeding.

**DELIVERY AND DELAY.** (a) Unless otherwise agreed to in a writing signed by Seller: (i) goods shall be delivered Ex Works Seller's premises (Incoterms 2020), with availability of goods to the carrier constituting delivery to Buyer; (ii) title to the goods and risk of damage or loss shall pass to Buyer upon loading of goods on the initial carrier at Seller's premises; (iii) transportation costs shall be paid by Buyer; and (iv) Buyer shall have sole responsibility for filing any claims with any carrier for delay, loss or damage. (b) Dates of delivery or other performance are estimates and are based on timely receipt from Buyer of accurate and complete approved drawings and technical data. Seller shall not be liable for any delay, non-performance or failure of performance to the extent caused by events or circumstances beyond Seller's reasonable control, including, without limitation, accident, severe weather, embargo, act or omission of Buyer or third parties, labour disputes, strikes, lockouts or other industrial disturbances, national emergency, war, terrorism, civil unrest, riots, epidemic, pandemic, public health emergency, quarantine, supply chain disruption, non-delivery or delay by suppliers, delays of carriers or delivery agents, inability to obtain labour, materials, components, energy or manufacturing facilities, acts of God, fire, flood, or governmental restrictions, prohibitions, orders, requirements or delays. In the event of any such delay, non-performance or failure of performance, Seller's time period for delivery or performance shall be extended accordingly. Seller's sales under these Terms are intended for delivery to, and use by, customers in Canada only, unless Seller expressly agrees otherwise in writing. **REGARDLESS OF THE CAUSE, SELLER SHALL HAVE NO LIABILITY FOR PENALTIES OF ANY NATURE AS A RESULT OF A DELAY.** During any period of shortage due to the stated or similar causes, Seller may prorate its supply of material among its internal demand and its customers in whatever manner it chooses.

**LIMITATION OF LIABILITY.** (a) EXCEPT TO THE EXTENT SPECIFICALLY PROVIDED UNDER THE "LIMITED WARRANTY" SECTION ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER SHALL NOT BE LIABLE UNDER ANY THEORY OF RELIEF, INCLUDING BREACH OF WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, EQUITY, STATUTE OR OTHERWISE, ARISING OUT OF OR RELATED TO AN ORDER, THE GOODS, OR SELLER'S ACTS OR OMISSIONS, FOR: (i) ANY INCIDENTAL, SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR SIMILAR DAMAGES OF ANY NATURE, ECONOMIC LOSSES, OR ANY LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF BUSINESS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF DATA, LOSS OF GOODWILL, DAMAGE TO PROPERTY, OR LOSS OF USE, INCLUDING ANY LOSS OR DAMAGE RESULTING, DIRECTLY OR INDIRECTLY, FROM THE USE OR LOSS OF USE OF THE MATERIALS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE OTHERWISE FORESEEABLE; OR (ii) ANY DAMAGE OR LOSS IN EXCESS OF THE PURCHASE PRICE ACTUALLY PAID BY BUYER. (b) Any action, application or other proceeding by Buyer must be commenced within one year after the cause of action has accrued.

**CHANGES, SUBSTITUTIONS AND CANCELLATION.** (a) Any material changes requested by Buyer are not effective unless



accepted in writing by an authorized representative of Seller. Any changes accepted by Seller which affect the specifications or scope of work of an order shall be reflected in an updated purchase order and entitle Seller, as appropriate, to an adjustment to the price, delivery schedule, or other terms affected by such change. **(b)** Seller may furnish suitable substitutes for materials unobtainable due to regulations of governmental authorities or unavailability of materials from suppliers. Details of design and construction in any proposal are approximate and subject to revision by Seller. If changes in materials, design, layout or arrangement of goods are desired or required by conditions of which Seller was unaware or which were unforeseen by Seller, the price is subject to revision. **(c)** Buyer may cancel an order only with the written consent of Seller and upon payment of cancellation charges. In the event Seller accepts such cancellation for all or any part of the goods, Buyer shall be liable for the higher of: (i) 25% of the purchase price; or (ii) any loss incurred by Seller, including, without limitation, costs of engineering, reconditioning, labor, materials, overhead and profit margin.

**APPROVALS, INSPECTION AND ACCEPTANCE.** **(a)** Buyer's approval, or failure to disapprove, of drawings submitted hereunder constitutes Buyer's acceptance of equipment design, specifications and other data contained therein. **(b)** Inspection of goods at our plant by Buyer, or Buyer's representatives, will be permitted insofar as such inspection does not interfere with Seller's production and provided that complete written details of such inspection are submitted to Seller ten (10) days in advance. **(c)** The goods shall be deemed accepted, and any claim of Buyer against Seller with respect to an order shall be waived and not enforceable, unless: (i) Buyer has promptly inspected the goods, and written notice from Buyer of any defect has been received by Seller within forty-eight (48) hours of rejection of any equipment inspected at Seller's factory or, if no factory inspection has taken place, within thirty (30) days following delivery of goods; and (ii) Seller has been given by Buyer reasonable advance notice and authorization to attend any tests designed to demonstrate that goods are defective, and the test conditions are mutually agreed to by Buyer and Seller. **(d)** Goods may not be returned without obtaining written authorization and shipping instructions from an authorized representative of Seller.

**PRICES, PAYMENT AND CREDIT.** **(a)** Unless other terms have been expressly stated by Seller in writing, Seller's prices: (i) are Ex-Works Seller's Premises (Incoterms 2020); (ii) do not include any goods and services tax, harmonized sales tax, provincial sales tax, Quebec sales tax, retail sales tax, value-added tax, excise tax, customs duties, tariffs, levies, charges or similar taxes, duties or assessments under existing or future laws (with Buyer to be charged for same, unless Buyer has provided Seller with an appropriate exemption certificate or other documentation satisfactory to Seller); (iii) are valid for sales for 45 days from the proposal date; and (iv) do not include costs for installation of goods. Unless otherwise expressly stated by Seller in writing, all quoted prices are in Canadian Dollars. If Seller expressly states that prices are quoted in another currency, Buyer shall pay in that currency. All quoted prices are subject to correction for clerical errors. **(b)** Unless otherwise agreed in writing and subject to credit approval, payment terms shall be net 30 days from the date of shipment. **(c)** Pro-rata payments shall become due with partial shipments of goods. Seller shall charge interest at 1.5% per month, calculated and compounded monthly, being 19.56% per annum, or such lower rate as may be required by applicable law, on the unpaid invoice balance, commencing 30 days following the shipment date. Any delay in delivery or performance of an installment shall not relieve Buyer of its obligation to accept and make payment for remaining installments. If Buyer is notified by Seller that the goods are ready for shipment and there is an unreasonable delay in shipment for reasons beyond Seller's control (including Buyer's failure to provide shipping instructions), the date of completion shall be treated as the date of shipment for payment purposes, and completed goods shall be held at Buyer's risk of loss or damage, with Buyer paying all storage and insurance expenses. **(d)** Seller may, at its option, decline to deliver goods, except for cash, or stop goods in transit whenever, for any reason, Seller doubts Buyer's financial responsibility.

**GOODS FOR EXPORT.** Seller's sales under these Terms are intended for delivery to and use by customers in Canada only, unless Seller expressly agrees otherwise in writing. Buyer shall not export, re-export, transfer, divert or otherwise dispose of any goods, technical data, software or related items purchased from Seller except in compliance with all applicable export control, import, sanctions, customs, anti-boycott and anti-corruption laws and regulations of Canada and any other applicable jurisdiction. If Buyer purchases goods for export, re-export or transfer outside Canada without Seller's prior written consent, Buyer shall have sole liability and shall defend, indemnify and hold harmless Seller from and against any loss, damage, claim, penalty, fine, cost or expense, including claims of governmental authorities, arising from or relating to such export, re-export, transfer or import into another jurisdiction, including those related to packaging, labelling, marking, warranty, contents, use or documentation of the goods. Buyer shall not take, nor solicit Seller to take, any action that would violate any applicable export control, import, sanctions, customs, anti-boycott or anti-corruption law or regulation.

**PROPRIETARY INFORMATION.** Seller retains title to all engineering and production prints, drawings, technical data, and other information and documents that relate to the goods sold to Buyer. Unless advised by Seller in writing to the contrary, all such information and documents disclosed or delivered by Seller to Buyer are to be deemed confidential and proprietary



to Seller and shall be used by Buyer solely for the purpose of inspection, installation, operation and maintenance of the goods and not used by Buyer for any other purpose. Buyer shall not disclose such information or documents to any third party without Seller's prior written consent, except to Buyer's employees, contractors or advisors who have a need to know for such permitted purpose and are bound by confidentiality obligations no less protective than those set out herein. Upon Seller's request, Buyer shall promptly return or destroy all such information and documents, including all copies thereof, except to the extent retention is required by applicable law.

**CHANGES, MISPRINTS AND ERRORS.** Seller reserves the right to correct any clerical, typographical or other error or omission in any quotation, order confirmation, invoice, price, specification, description, delivery estimate or other document or information issued by Seller. Seller may cancel, terminate or decline to process any order, including any accepted order, where the price, availability, specification, description, delivery estimate or other material information is inaccurate, incomplete or subject to error or omission. Seller may limit quantities sold or made available for sale and may discontinue or modify goods, specifications or availability at any time prior to acceptance of an order, without liability to Buyer. Seller shall not be liable to Buyer or any other person, under any theory of liability, for any error, omission, inaccuracy or incompleteness in any quotation, order confirmation, invoice, price, specification, description, delivery estimate or other document or information issued by Seller, or for Seller's correction

**ASSIGNMENT.** *These Terms and each order shall enure to the benefit of and be binding upon Seller and Buyer and their respective successors and permitted assigns. Seller may assign these Terms, any order, and any of its rights or obligations hereunder or thereunder without Buyer's consent. Buyer may not assign these Terms, any order, or any of its rights or obligations hereunder or thereunder without Seller's prior written consent, which may be withheld in Seller's sole discretion.*

**SEVERABILITY.** *If any provision, whether in whole or in part, of these Terms is, becomes, or is found to be unenforceable, invalid or inconsistent with applicable law, that provision shall be enforced to the maximum extent permissible so as to effect the intent of these Terms, and the remaining provisions shall continue in full force and effect.*

**WAIVER.** *No waiver of or consent to depart from any provision of these Terms shall be binding against Seller unless it is in writing and signed by Seller. Any failure by Seller to exercise or enforce, and any delay by Seller in exercising or enforcing, any right under these Terms or any order, in whole or in part, shall not constitute or be deemed a waiver or forfeiture of such right, whether in the specific instance or on a continuing basis. No single or partial exercise of any right shall preclude any other or further exercise of that right or the exercise of any other right.*

**INTERPRETATION.** *The division of these Terms into sections and the use of headings are for convenience of reference only and shall not affect the interpretation of these Terms.*

**SURVIVAL.** *Any provision of these Terms that by its nature is intended to survive completion, cancellation, termination or expiry of an order shall survive.*

**LANGUAGE.** *The parties have expressly requested and required that these Terms and all related documents be drawn up in the English language. Les parties ont expressément demandé et exigé que les présentes conditions et tous les documents qui s'y rapportent soient rédigés en anglais.*