



Version 2017.1.

Terms and Conditions of Sale NNZ Inc.

Please read these Terms carefully, as they set out our and your legal rights and obligations in relation to the Goods that we as NNZ Inc. sell.

1. Definitions and interpretation

1.1 In these Terms:

"Customer" means the customer for the Goods as specified in the Order;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including but not limited to power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Goods" means the products which may be or are purchased by the Customer from the Supplier under these Terms (details of which are set out on Quotation, price list(s) or other document(s) provided by the Supplier);

"Contract" means a contract between the parties for the sale and supply of Goods entered into in accordance with Clause 3 of the Terms;

"Order" means the order confirmation sent by Supplier to Customer upon agreement on volumes, Prices on Goods. Unless otherwise stated on the Order, the validity of the Order is 14 days;

"Prices" means the prices for the Goods as sent by the Supplier to the Customer for that specific Order;

"Quotation" means an official offer provided by Supplier to Customer in writing for the supply of Goods against certain Prices, volumes and other conditions. Unless otherwise stated on the Quotation, the validity of the Quotation is 14 days;

"Supplier" means NNZ Inc., a company incorporated in Ontario, Canada, with a legal representative branch in British Columbia, Canada at the address unit 107, 2076, 192 Street, Surrey, British Columbia V3S 3M3. The company is incorporated under registration number 2075677, having its registered office at 135 Main Street West, Norwich, Ontario NOJ 1P0; and

"Terms" means these terms and conditions of supply.

Supplier and Customer jointly being referred to as **"Parties"** and to each separate as **"Party"**.

2. These Terms

These Terms, Order and Quotation contain the only conditions upon which the Supplier will deal with the Customer, and they govern all Contracts to the exclusion of all other terms and conditions.

3. Contracts

3.1 Each written Quotation for the supply of Products given by the Supplier to the Customer will be deemed to be an offer by the Supplier to supply Products to the Customer subject to these Terms. The Customer agrees with this.

3.2 In order for a Contract to come into force either of the following options must happen:

(a) the Supplier must submit a Quotation to the Customer;

and the Customer must send to the Supplier its written acceptance of that Quotation, within 14 Business Days of the date of issue of the Quotation;

and upon the receipt by the Supplier of the written acceptance of the Quotation in accordance with this Clause 3.2 a Contract will come into force between the parties.

(b) the Supplier must submit an order to the Customer and the Customer must give to the Supplier its express written acceptance of this Order, within 14 days Business Days of the date of issue of the Order;

and upon the issue of a confirmation of the Order by the Customer a Contract will come into force between the parties.

If the Customer fails to provide confirmation through either options (a) or (b), above, within 14 Business Days, the Quotation and Order becomes null and void and erases all previous rights, duties, terms and agreements between Parties.

The cancellation of an Order as a result of the Customer failing to meet the above-mentioned term for the confirmation, can never lead to a legal ground for the Customer to demand compensation and/or any other form indemnity or fine from the Supplier.

4. Delivery

4.1 Unless otherwise agreed in writing on either Quotation or Order:

(a) all Goods will be collected by the Customer from its location at unit 107 – 2076, 192 Street, Surrey, British Columbia V3S 3M3, within 10 Business Days following the receipt by the Customer of a written notice from the Supplier that the Goods are available for collection;

(b) the Customer will be responsible for arranging loading, carriage, transport, unloading and insurance for the Goods and for clearing the Goods for export and import;

(c) the Customer will be responsible for paying all costs relating to loading, carriage, transport, unloading, insurance, export and import of the Goods; and

(d) risk in the Goods will pass from the Supplier to the Customer when the Goods are collected by the Customer.

4.2 If the Parties agree that collection of the Goods under a Contract will be by instalments, each instalment will constitute part of a single Contract, and not separate Contracts.

4.3 Any date or dates for the making available for collection of the Goods agreed by the Parties as part of a Contract will not be of the essence of the Contract.

4.4 If the Supplier would deliver the Goods on behalf of the Customer, according to this being explicitly mentioned on the Quotation or Order, the following applies:

(a) All Goods will be delivered by the Supplier to the Customer's premises on the date agreed on the Quotation, Order or otherwise communicated between Parties;

(b) The premises will be defined as the address mentioned on the Quotation or Order, unless explicitly mentioned otherwise by the Customer;

(c) the Supplier will be responsible for arranging loading, carriage, transport, unloading and insurance for the Goods and for clearing the Products for export and import;

(d) the Supplier will be responsible for paying all costs relating to loading, carriage, transport, unloading, insurance, export and import of the Goods; and

(e) risk in the Goods will pass from the Supplier to the Customer when the Products are delivered to the Customer.

5. Title

5.1 Legal and equitable title to the Goods will pass from the Supplier to the Customer upon the later of:

- (a) Collection of the Goods; and
- (b) receipt by the Supplier of all amounts due from the Customer to the Supplier under any Contract or other agreement.

5.2 Until title to the Goods has passed to the Customer:

- (a) the Customer will hold the Goods as fiduciary agent and bailee of the Supplier;
- (b) the Customer will: (i) store the Goods in a secure, safe, dry and clean environment separately from other products and goods; (ii) ensure that the Goods are easily identifiable as belonging to the Supplier; (iii) not deface, destroy, alter or obscure any identifying mark on the Goods or their packaging; (iv) ensure that no charge, lien, claim or other encumbrance is created over the Goods; and (v) deliver up the Goods to the Supplier upon demand.

5.3 The Supplier shall be entitled without further notice to inspect or recover possession of any Goods to which it retains title; and the Customer grants to the Supplier and its employees and agents an irrevocable licence to enter at any time any premises where the Goods are or may be situated for the purpose of inspecting or removing any such Goods the title in which has remained with the Supplier. This license shall not in any way or form constitute a legal ground for the Customer to demand compensation and/or any other form indemnity or fine from the Supplier.

5.4 The Supplier may bring an action for the Prices of Goods, and any other amounts due under a Contract, notwithstanding that title to the Goods has not passed to Customer.

6. Customers obligations

6.1 The Customer will not without the Supplier's prior written consent make or give any promises, representations, warranties or guarantees:

- (a) on behalf of the Supplier; or
- (b) in relation to the Goods (other than those set out in a Contract in relation to the Products or otherwise mandatory under applicable law).

6.2 Without prejudice to the Supplier's obligations under Clause 8, the Customer must comply with all applicable laws, rules and regulations relating to, and must obtain all licences, permits and approvals required in relation to:

- (a) the marketing, promotion and advertising of the Goods; and
- (b) import, export, distribution, sale, supply and delivery of the Goods.

7. Prices and payment

7.1 The Supplier may issue an invoice for the Goods under a Contract to the Customer at any time after the Contract has come into force. An exception is made for Goods that are not present at the location of the Supplier at the time the contract came into force. In these instances, the Supplier may issue an invoice for the Goods under a Contract to the Customer at any time after the Goods have been made available for collection by the Supplier.

7.2 The Customer will pay the Prices to the Supplier within 30 days of the date of issue of an invoice issued in accordance with Clause 7.1.

7.3 All amounts payable under a Contract are exclusive of all value-added tax such as GST, PST and/or HST, but including all other taxes, unless agreed otherwise and written on the Quotation or Order.

- 7.4 If the Customer does not pay any amount properly due to the Supplier under or in connection with any Contract, the Supplier must submit a notification in writing to the Customer of the amount due and provide the Customer with the obligation to pay this outstanding amount within 10 Business Days after the notification was issued.
- 7.5 If the Customer fails to pay even within the timeframe given in clause 7.4, the Supplier may charge the Customer interest on the overdue amount at the rate of 8% per year above the base rate of RBC Canada. For clarification, the interest will accrue daily as from the first day of expiry of the original payment term set forth in clause 7.2. until the date of actual payment, be compounded quarterly, and be payable on demand.
- 7.6 The Supplier holds the right to assess the credit history and status of the Customer before allowing the Customer to be invoiced on the payment term set forth in 7.2, and such before and/or even after the Contract has been initiated.
- 7.7 In conjunction with Clause 7.6, the Supplier holds the right to demand other form of payment from the Customer, if the Supplier deems this to be necessary, even if the Quotation or Order state a method of payment corresponding to Clause 7.1 and 7.2.
- 7.8 If a situation such as described in clause 7.7 would occur and the Customer would not agree with an alternative method of payment, he may cancel the Contract, unless the Goods have been ordered for the Customer specifically and were not present at the location of the Supplier at the moment the Contract came into effect. For clarity, if Goods are ordered specifically for the Customer, he may not cancel the Contract. Any cancellation shall not in any way or form constitute a legal ground for the Customer to demand compensation and/or any other form indemnity or fine from the Supplier.
- 7.9 Other accepted methods of payment for the Customer are defined as such: paying the invoice directly per bank assignment, transfer or wire, with credit card or with cash before collection of the Goods, the latter only for Orders with a maximum value of \$5,000 Canadian dollars. For clarity, the Supplier does not accept any (banking) cheques, credit letters or other forms of money transfers other than the ones described above.

8. Warranties

- 8.1 The Supplier warrants that:
- (a) the Supplier has the right to sell the Goods;
 - (b) the Goods are free from any charge or encumbrance, subject to Clause 5 and subject to any other charge or encumbrance disclosed or known to the Customer before the relevant Contract is made;
 - (c) the Customer shall enjoy quiet possession of the Goods, subject to the rights referred to in Clause 8.1b;
 - (d) the Goods correspond to any description of the Goods supplied by the Supplier to the Customer;
 - (e) the Goods are of satisfactory quality;
 - (f) the Goods are fit for any purpose expressly [or impliedly] [(but not merely impliedly)] made known by the Customer to the Supplier before the relevant Contract is made;
 - (g) the Goods correspond to any sample of the Goods supplied by the Supplier to the Customer, and will be free from any defect making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample;
 - (h) the Goods will comply with all laws, rules, regulations applicable to the marketing and sale of the Products in Canada [and all standards agreed between the Parties];
 - (i) the Goods will bear all mandatory marks and signs associated with the laws, rules, regulations and standards referred to in Clause 8.1h; and
 - (j) the Goods will be accompanied with a declaration of conformity (DOC) if the Customer wishes such, as well as (where applicable) the necessary quality certification documents.

8.2 All of the Parties' warranties, liabilities and obligations in respect of the subject matter of each Contract are expressly contained in these Terms or elsewhere in the relevant Contract. Subject to Clause 10.1 and to the maximum extent permitted by applicable law, no other terms concerning the subject matter of a Contract will be implied into that Contract or any related contract.

9. Complaints, credits and replacements

9.1 The Supplier will promptly and in any event within 15 Business Days, fully respond to all reasonable enquiries and complaints by the Customer relating to the quality, performance and durability of the Goods.

9.2 If Goods do not comply with any warranty given by the Supplier under a Contract, the Customer may with the prior agreement of the Supplier return those Goods for either (at the option of the Supplier):

- (a) a full credit of the amount paid to the Supplier for such Goods [(excluding invoiced delivery and other related charges)];
- (b) replacement of Goods for Goods that are the same to the Goods bought by the Customer; or
- (c) a credit note in respect of the Price of the Goods (to be offset against future purchases from the Supplier and/or amounts due by the Customer).

9.3 Products returned under Clause 9.2 must be properly packed and returned to the location of the Supplier, unit 107 - 2076, 192 Street, Surrey, British Columbia V3S 3M3, within 30 Business Days of receipt of the Products by the Customer. Any Products returned in contravention of this Clause will not be the subject of any credits or replacements and the Customer will continue to be liable for payment of the Price in respect of such Products.

9.4 Goods will be declared as returned to the Supplier, only after the Supplier collected these Goods at its location. Liability for the Goods will reside at the Customer until the Goods have been collected by the Supplier.

9.5 Goods that are not received back by the Supplier within the term provided in Clause 9.3. may, according to the discretion of the Supplier, not qualify as a return set forth under Clause 9.2.

9.6 If Goods are only partly received back under Clause 9.3, the return set forth under Clause 9.2, will be calculated on a pro-rata base according to the amount of the shipment that qualifies for return.

9.7 The Supplier has the right to refuse a complaint set forth in Clause 9.1. if it deems that this complaint is unwarranted. For clarity, wrongly ordered items by the Customer do not qualify for a complaint or a return, unless the Supplier explicitly agrees with this.

9.8 Before the Customer returns the Goods, the Supplier has the right to assess the complaint. The Supplier has the right to ask for additional information, reports, tests and/or visual material from the Customer with regard to the complaint. Failure of the Customer to deliver this information within 15 Business Days upon request of the Supplier, entails the right of Supplier to refuse the complaint.

9.9 If there are costs associated for the Customer with delivery of the information required by the Supplier, the Parties will share these costs 50/50, unless the Supplier agrees explicitly to fully reimburse the Customer for these costs.

10. Limitations and exclusions of liability

10.1 Nothing in the Contract will:

- (a) limit or exclude the liability of a Party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a Party for fraud or fraudulent misrepresentation by that Party;
- (c) limit any liability of a Party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a Party that may not be excluded under applicable law.

10.2 The limitations and exclusions of liability set out in this Clause 10 [and elsewhere in the Contract]:

- (a) are subject to Clause 10.1;
 - (b) govern all liabilities arising under the Contract or in relation to the subject matter of the Contract, including all liabilities arising [in contract and/or in tort]; and
 - (c) will not limit or exclude the liability of the parties under the express indemnities set out the Contract.
- 10.3 The Supplier will not be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.
- 10.4 The Supplier will not be liable for any loss of business, contracts or commercial opportunities.
- 10.5 The Supplier will not be liable for any loss of or damage to goodwill or reputation.
- 10.6 The Supplier will not be liable in respect of any loss or corruption of any data, database or software.
- 10.7 The Supplier will not be liable in respect of any special, indirect or consequential loss or damage.
- 10.8 The Supplier will not be liable for any losses arising out of a Force Majeure Event.
- 10.9 The Supplier's aggregate liability under the Contract will not exceed the greater of:
- (a) \$ 5,000,000 Canadian dollar; and
 - (b) the total amount paid and payable by the Customer to the Supplier under the Contract.

11. Contract term and termination

- 11.1 Each Contract will come into force in accordance with Clause 3, and will continue in force until the earlier of:
- (a) the later of completion of either delivery or collection of all Goods; and (ii) the receipt by the Supplier of all amounts due to the Supplier under the Contract; and
 - (b) the termination of the Contract in accordance with the provisions of this Clause.
- 11.2 A Contract may be terminated in the following circumstances:
- (a) either Party may terminate a Contract immediately by giving written notice to the other Party if the other Party commits any material breach of any term of the Contract;
 - (b) the Supplier may terminate any Contract immediately by giving written notice to the Customer if the Customer fails to pay to the Supplier any amount due under any Contract by the due date for payment; and
 - (c) the Supplier may terminate any Contract immediately by giving written notice to the Customer if the Customer fails to either accept delivery of the Products or fails to collect the Products on the date agreed in the relevant Contract.
- 11.3 Either Party may terminate any Contract immediately by giving written notice to the other party if:
- (a) the other Party: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other Party;

- (c) an enforced order is made for the winding up of the other Party, or the other Party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Contract);
- (d) where that other party is a company represented by a single individual, that other Party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

12. Effects of termination

- 12.1 Upon termination of a Contract, all the provisions of that Contract will cease to have effect, save that the following provisions of these Terms will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 5, 6, 7.4, 9, 10, 12 and 13.
- 12.2 Termination of a Contract will not affect either Party's accrued rights (including accrued rights to be paid and accrued rights to a remedy for breach of condition or warranty) as at the date of termination.

13. General

- 13.1 No breach of any provision of a Contract will be waived except with the express written consent of the Party not in breach.
- 13.2 If any provision of a Contract is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Contract will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 13.3 Contracts may not be varied except by a written document signed by or on behalf of each of the Parties.
- 13.4 The Supplier may freely assign its rights and obligations under a Contract without the Customer's consent. Save as expressly provided in this Clause or elsewhere in a Contract, neither Party may without the prior written consent of the other Party assign, transfer, charge, license or otherwise dispose of or deal in a Contract or any rights or obligations under a Contract.
- 13.5 Each Contract is made for the benefit of the Parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to a Contract are not subject to the consent of any third party.
- 13.6 The governing context of this agreement is one of business to business (professional setting) solely.
- 13.7 Subject to Clause 10.1:
 - (a) these Terms, Quotation and Order will constitute the entire agreement between the parties in relation to the subject matter of the Contract, and supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and
 - (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into a Contract.
- 13.8 Contracts will be governed by and construed in accordance with the laws of British Columbia and all federal laws applicable therein, and the courts of British Columbia will have an exclusive jurisdiction to adjudicate any dispute arising under or in connection with a Contract on these Terms.