



SILFAB SOLAR INC.
**STANDARD TERMS AND
CONDITIONS OF SALE**

SILFAB T&C

SILFAB SOLAR INC.
STANDARD TERMS AND CONDITIONS OF SALE

These standard terms and conditions of sale (the “**Standard Terms**”) govern the sale of goods, including solar panels, electrical devices and associated equipment (“**Goods**”) supplied by Silfab Solar Inc. (“**Silfab**”) to a third party distributor or reseller (the “**Customer**”). Except to the extent otherwise agreed in writing, all sales of Goods by Silfab to the Customer are subject to these Standard Terms.

1. Proposals

- 1.1 Proposal. Silfab may issue written proposals or quotations (each a “**Proposal**”) to the Customer. All Proposals are subject to these Standard Terms except to the extent otherwise expressly stated in the Proposal.
- 1.2 Expiry or Revocation. Each Proposal will expire on the date specified therein, or where no such expiry date is specified, on the date that is 15 days after the date of the Proposal. Unless otherwise indicated by Silfab in a Proposal, every Proposal is revocable by Silfab at any time on notice to the Customer.
- 1.3 Acceptance. The Customer may accept a Proposal at any time before it expires or is revoked by Silfab, after which time the Proposal ceases to be of any force or effect. A Proposal may be accepted only by issuing a written Sales Order (as defined below) in accordance with these Standard Terms that expressly references the Proposal.

2. Agreement of Purchase and Sale

2.1 Purchase Orders.

- (a) Where the Customer wishes to purchase Goods, it shall issue a purchase order to Silfab (a “**Customer PO**”).
- (b) Any such Customer PO shall be consistent with the unexpired Proposal provided by Silfab, if applicable, and with these Standard Terms. To the extent that a Customer PO includes any terms or conditions that are additional to, or inconsistent with, the Proposal (if applicable) and these Standard Terms, such additional or inconsistent terms shall be disregarded and not form part of the binding agreement of purchase and sale except to the extent expressly agreed by Silfab in a Sales Order.

2.2 Sales Order. Subject only to Section 1, Silfab shall have no obligations to provide Goods until a written sales order (a “**Sales Order**”) has been issued by Silfab and accepted by the Customer in accordance with this Section. Sales Orders must be authenticated by an authorized representative of the Customer (where such authentication may take the form of a manual signature, an electronic signature or such other form as Silfab may prescribe in its sole discretion from time to time). A Sales Order (including these Standard Terms and, if applicable, a Proposal and/or Customer PO that are/is incorporated by reference) that has been accepted by Silfab shall be a binding agreement of purchase and sale between Silfab and the Customer.

2.3 Incorporated Documents.

- (a) These Standard Terms are automatically incorporated into and form part of every Sales Order. Any reference to a Sales Order in these Standard Terms refers to the Sales Order

including these Standard Terms. Any modifications to these Standard Terms must be expressly stated in the applicable Sales Order as issued by Silfab and accepted by the Customer in accordance with Section 2.2. Any additional or different terms proposed by the Customer, whether in a Customer PO or otherwise, that are not expressly accepted by Silfab in accordance with the previous sentence are rejected by Silfab and will not become part of the Sales Order.

- (b) Where a Sales Order expressly references a Proposal, Customer PO or both, such Proposal, Customer PO (subject to Section 2.1(b)) or both shall be deemed to be incorporated by reference and form part of the Sales Order. Any reference to such a Sales Order in these Standard Terms refers to the Sales Order including the Proposal, Customer PO or both as incorporated therein.
- (c) In the event of any discrepancy between a Sales Order, these Standard Terms, and a Proposal or Customer PO that has been incorporated into a Sales Order, such discrepancy shall be resolved with reference to the highest ranking document in the following list, which is ranked from highest to lowest precedence: Sales Order, Standard Terms, Proposal and Customer PO (after having disregarded any additional or inconsistent terms pursuant to Section 2.1(b)).

2.4 Acceptance. All Sales Orders are subject to acceptance by the Customer in accordance with Section 2.2, provided that notwithstanding Section 2.2, if the Customer takes delivery of any Goods under a Sales Order, it will be deemed to have accepted that Sales.

2.5 Non-Standard Goods. Where the Customer requires Goods that do not conform to Silfab's standard specifications and which must be modified as a result, the Customer will be responsible for all costs and expenses associated with the design and implementation of such modifications, unless otherwise indicated in a Sales Order. The scope and cost of such modifications shall be identified in the applicable Sales Order. Where the need for such modifications is identified after a Sales Order has been submitted, Silfab shall suspend production of the Goods while Silfab and the Customer agree on an amendment or supplement to the Sales Order to incorporate the costs of and expenses of such modifications.

2.6 Changes and Waivers. Subject to Section 10, any changes to a Sales Order are subject to agreement by both Silfab and the Customer. No waiver, alteration or modification of a Sales Order shall be binding upon Silfab unless made in writing and signed by a duly authorized representative of Silfab.

3. Price

3.1 Pricing. If applicable, any pricing provided in a Proposal is valid only until the Proposal expires or is revoked in accordance with Section 1.2. Pricing that is included in a Sales Order (including by accepting a Proposal in accordance with Section 1.3) applies only to that Sales Order unless otherwise agreed by Silfab.

3.2 Currency. All prices are given in Canadian dollars unless otherwise stated in a Sales Order (including in any Proposal incorporated therein).

3.3 Exclusions.

- (a) Unless otherwise stated in a Sales Order, Silfab's prices include only the cost of the Goods and, without limiting the generality of the foregoing, specifically exclude: (i) applicable federal, state, provincial or other taxes imposed on the sale or use of Goods (collectively, ("**Taxes**"); (ii) the cost of any testing or inspection other than the standard testing as provided under Section 6.1; (iii) all costs of delivering Goods, including freight, insurance and other shipping expenses (collectively, "**Delivery Charges**"); (iv) duties, import/export levies, Taxes, and any other fees charged in connection with the importation of Goods (collectively, "**Importation Charges**"); and (v) any storage of Goods for more than 14 days after an order or consignment is ready to be shipped.
- (b) Notwithstanding the foregoing, where a Sales Order stipulates "delivered pricing", Silfab's prices for that Sales Order include Delivery Charges and Importation Charges.

3.4 Taxes. Where Silfab is required to charge and collect Taxes, Silfab shall bill such taxes in accordance with applicable law, and Customer shall pay such Taxes to Silfab, unless and to the extent that the Customer demonstrates to the satisfaction of Silfab that the Customer is exempt from such Taxes.

4. **Payment**

4.1 Invoicing. Silfab shall invoice the Customer for all Goods provided under a Sales Order. Silfab is entitled to invoice the Customer separately for each consignment of Goods supplied under a Sales Order.

4.2 Terms. Except to the extent otherwise prescribed in a Sales Order (including in a Proposal incorporated by reference in such Sales Order), every invoice from Silfab will be due and payable 30 days after the date of such invoice. The Customer shall pay all amounts when due in full without any deduction or withholding except as required by applicable law and shall not be entitled to assert any credit, setoff, deduction, or counterclaim against Silfab in order to justify withholding payment of any such amount in whole or in part.

4.3 Application and Set Off. Silfab may apply any payment it receives from the Customer against any obligation owing to it by the Customer. Silfab may set off any amounts owed to it from the Customer against amounts owed by it to the Customer.

4.4 Interest. Client will pay interest at a rate equal to the lesser of: (a) 2 percent per month, calculated and compounded monthly (26.82 percent per year); and (b) the maximum amount permitted by applicable law, on all overdue amounts, calculated from the date payment was due until the date that payment for all outstanding amounts (including accrued interest) is paid in full.

4.5 Costs. The Customer shall pay all of Silfab's costs and expenses (including reasonable collection agency and legal fees) to enforce and preserve Silfab's right to collect all amounts payable by the Customer to Silfab and to exercise Silfab's rights and remedies as a secured creditor in respect of the Security Interest.

4.6 Suspension or Termination. If (a) the Customer does not pay any invoiced amounts due under a Sales Order, (b) Silfab believes that the Customer's ability to meet its payment obligations may become impaired or threatened, or (c) the Customer is in breach of its obligations under Section 5, then Silfab may, in its sole discretion and with notice to the Customer may: (i) suspend Silfab's

performance under any or all outstanding Sales Orders (and other agreements of purchase and sale) or remaining balance thereof until the Customer has paid all outstanding amounts, including all accrued interest, in full; or (ii) terminate the applicable Sales Order or remaining balance thereof and/or any other pending Sales Orders or agreements of purchase and sale between Silfab and the Customer. Silfab will have no liability for any loss or damage of any kind suffered by the Customer as a result of any such suspension or termination.

4.7 Cumulative Rights. Silfab's rights in respect of late payments under this Section 4 are in addition to any other rights or remedies it may have for late payment and will survive the termination of the applicable Sales Order.

5. Security for Payment

5.1 Deposits. Unless otherwise indicated in a Sales Order, any required deposits are non-refundable.

5.2 Security Interest.

- (a) The Customer hereby grants to Silfab a security interest (the "**Security Interest**") in: (i) all Goods that have been delivered under the Sales Order or under any other Sales Order or agreement of purchase and sale fulfilled by Silfab; and (ii) any proceeds of sale of the foregoing to a third party and, to the extent permitted by applicable law, any accounts receivable in respect of such sale (collectively, the "**Collateral**") as security for all of the Customer's payment obligations to Silfab in respect of that Sales Order and in respect of any other outstanding Sales Orders (and agreements of purchase and sale) and for payment by the Customer of Silfab's costs and expenses in collecting same and in enforcing the Security Interest (collectively, the "**Obligations**").
- (b) The Customer: (i) consents to Silfab filing financing statements or other documentation pursuant to applicable law to secure, evidence or perfect the Security Interest; (ii) shall do all things and execute and deliver any and all documents and instruments necessary, in Silfab's sole discretion, for the creation, preservation, enforcement and protection of the Security Interest; (iii) hereby appoints Silfab as its attorney to execute any documents or instruments necessary to perfect and enforce its security interest, and this power, being coupled with an interest, is irrevocable; (iv) shall maintain accurate records of the Collateral and, upon request by Silfab, furnish copies of such records to Silfab; (v) shall not damage, destroy or dispose of the Collateral excepted as permitted under these Standard Terms; (vi) shall keep the Collateral from any encumbrance except as set out in this Section 5.1; (vii) shall defend the Collateral against all claims and demands, except in respect of the security interest granted pursuant to this Section 5.1.
- (c) If Goods are assembled with or integrated into products over which Silfab has no security interest, Silfab's security interest will continue in the resulting products.
- (d) Where Goods that form part of the Collateral are held by the Customer as inventory for resale (either in original form or after having been assembled with or integrated into a product produced by the Customer) in the ordinary course of the Customer's business, the Customer may sell such Goods (or resulting products) to its customers on terms that are commercially reasonable for parties acting at arm's length, provided that: (i) the Goods will remain subject to the Security Interest until such time as the Customer's customer pays in full for such Goods (or resulting products); and (ii) all proceeds of the sale of such Goods (or resulting products) shall form part of the Collateral.

- (e) Where Goods that form part of the Collateral are equipment to be used by the Customer (whether in original form or after having been assembled with or integrated into another product or affixed to real property), the Customer shall not sell or transfer its interest in such Goods without first paying Silfab all amounts secured by the Security interest or otherwise with the prior written permission of Silfab.
- (f) In the event that the Customer fails to pay any Obligations when due, Silfab shall have all rights and remedies of a secured creditor under the applicable provincial or territorial personal property security statute or Uniform Commercial Code, including, without limitation, the right to enter upon the premises of the Customer to repossess and remove the Goods forming part of the Collateral without notice, wherever they are situated and by whatever means Silfab may deem appropriate. Where the Collateral includes accounts receivable, Silfab may notify any account debtor to make payment directly to Silfab and Silfab may take control of any proceeds to which it is entitled.
- (g) To the extent that the Collateral includes partially fabricated products into which Goods have been assembled or integrated, the Customer hereby grants to Silfab the right to complete the fabrication of such products in connection with the enforcement of the Security Interest and grants to Silfab a fully paid-up royalty-free license to use any intellectual property that is necessary to complete such fabrication and to exercise Silfab's rights and remedies hereunder. To the extent that the Collateral is labelled with or otherwise contains any trade-marks of the Seller or its Affiliates, the Seller hereby grants a fully paid-up, royalty-free license to use such trade-marks for the purposes of exercising Silfab's rights and remedies hereunder. The Seller represents and warrants that it has sufficient rights in the foregoing intellectual property and trade-marks to grant the licenses given hereunder.
- (h) The Customer shall inform Silfab without delay of any seizure, notice, proceeding, action, claim or other occurrence that may adversely affect Silfab's priority or ability to enforce its rights in respect of the Security Interest.

5.3 Required Payment Security. Where a Sales Order requires that the Customer must provide a deposit, advance payment, letter of credit, payment bond or other form of security for the payment of the Obligations (collectively, "**Payment Security**"), Silfab's obligations under such Sales Order shall be conditional on the Customer first delivering the required Payment Security.

5.4 Remedial Payment Security. If, in its sole discretion, Silfab believes that the Customer's ability to pay the Obligations may become impaired or threatened, or if the Customer has failed to comply with payment terms, Silfab may, in its sole discretion, require new or additional Payment Security and may suspend Silfab's performance under any outstanding Sales Orders (and other agreements of purchase and sale) until new or additional Payment Security is delivered by the Customer. Silfab will have no liability for any loss or damage of any kind suffered by the Customer as a result of any such suspension.

6. **Pre-delivery Inspections / Test**

6.1 Standard Testing. All Goods supplied pursuant to a Sales Order will be subjected to Silfab's standard inspection and test procedures prior to shipment, together with any additional tests or inspections identified in the Sales Order. Unless otherwise demonstrated by the Customer, the condition of Goods at the time of delivery will be presumed to be the same as the condition of such Goods at the time of such testing or inspection.

6.2 Additional Testing. Should the Customer require any additional testing or inspection (whether before or after delivery), or to be present at Silfab's standard testing, the scope of such additional testing or inspection or attendance must be agreed to in writing by Silfab and the Customer. Unless otherwise agreed, the Customer will be responsible for: (a) any additional costs or expenses associated with such testing, inspection or attendance; and (b) any damage to Goods caused by such testing, inspection or attendance.

7. **Delivery**

7.1 Point of Delivery. Silfab shall deliver Goods to the point of delivery specified in the Sales Order, provided that where no point of delivery is specified in a Sales Order, Silfab will make the Goods available for pick-up at Silfab's manufacturing facility.

7.2 Shipping and Handling. Unless otherwise stated in a Sales Order: (a) Silfab shall be responsible, at the cost of the Customer, for arranging shipping and obtaining appropriate insurance for the period during which the Goods are being transported to the point of delivery; (b) Silfab shall be entitled to deliver Goods in one or more consignments; and (c) the Customer shall be responsible for, and assumes all risk in connection with, unloading the Goods at the point of delivery.

7.3 Importation. Unless otherwise stated in a Sales Order, where the point of delivery is located outside of Canada, Silfab agrees to act as importer of record for any Goods that are exported from Canada. The Customer shall provide Silfab with any information or documentation as may be required by Silfab or by a carrier in connection with the importation of Goods.

7.4 Delivery Dates. All delivery dates are estimates unless otherwise specifically agreed by Silfab and the Customer in a Sales Order. All delivery dates are subject to the timely receipt by Silfab from the Customer of: (a) instructions to ship, where the Sales Order provides that Silfab will hold Goods until instructed by the Customer; (b) any financial or technical information requested by Silfab; and (c) payment. Silfab shall have no liability in respect of any delay or failure to deliver all or any part of any Sales Order as a result of any cause beyond Silfab's control.

7.5 Time of Delivery. Delivery shall be deemed to have occurred: (a) in the case of Goods to be delivered by Silfab, when Silfab or its shipping carrier shall have delivered the Goods to the point of delivery defined in the Sales Order; (b) in the case of Goods to be picked up by the Customer or its shipping carrier, when the Customer or its carrier takes possession of the Goods; or (c) at such earlier time as delivery may be deemed to occur pursuant to Section 7.6, as applicable.

7.6 Dispatch. Unless otherwise stated in a Sales Order, Silfab shall be entitled to deliver Goods once an order or part thereof is ready for shipping. Where a Sales Order requires that Silfab hold Goods until instructed by the Customer, and Silfab has notified the Customer that an order or part thereof is ready to ship, the Customer must instruct Silfab to ship the Goods within 14 days of the receipt of such notice. Similarly, where a Sales Order does not specify a point of delivery, and Silfab has notified the Customer that an order or part thereof is ready for pick-up, the Customer must pick up the Goods within 14 days of the receipt of such notice.

7.7 Customer Delays. Where the Customer, does not instruct Silfab to ship or does not pick up goods, as applicable, within the period required under Section 7.6, Silfab may charge and the Customer shall pay an amount equal to 15% of the total purchase price for the Sales Order, plus any additional out-of-pocket expenses incurred by Silfab as a result of deferring delivery and any storage fees applicable under Section 7.8. Silfab may also, at its sole option, on notice to the Customer: (a) cancel the Sales Order or part thereof and use or resell the Goods as it sees fit; (b)

ship the order or consignment to the point of delivery; (c) make the Goods available for pick-up by the Customer; (d) where the Customer refuses delivery or fails to pick up the Goods within five days, dispose of the Goods as Silfab sees fit; (e) any combination of the foregoing. Where Silfab ships the Goods, makes them available for pick-up or otherwise disposes of them in accordance with (b), (c) and/or (d), the Goods will be deemed to have been delivered to the Customer for all purposes under these Standard Terms.

- 7.8 Storage. Unless otherwise stated in a Sales Order, any storage of Goods by Silfab for more than 14 days after an order or consignment is ready to ship shall be invoiced by Silfab at its then applicable storage rates and shall be due and payable by the Customer upon receipt of the invoice.

8. Inspection and Acceptance

- 8.1 Inspection. The Customer shall, at its own expense, inspect Goods immediately on receipt thereof. If the Customer reasonably believes that the Goods were damaged or defective at the time of delivery (as determined under Section 7.5), then the Customer will give Silfab written notice of the damage or defect within five days of the time of delivery. If the Customer fails to give such notice within the required period, the Goods shall be conclusively presumed to be in all respects in accordance with the Sales Order and free from any defect which would be apparent on reasonable examination of the Goods and the Customer shall be deemed to have irrevocably accepted the Goods accordingly. Where the Customer provides such notice, any Goods that are damaged or defective will be promptly repaired or replaced by Silfab at its expense.

- 8.2 Use. Notwithstanding the foregoing, any use of the Goods by the Customer for any purpose after the time of delivery, including without limitation the resale of Goods to a third party, the incorporation of Goods into any product or facility, or any other use of the Goods, shall constitute an irrevocable acceptance of the Goods by the Customer.

9. Title and Risk of Loss

- 9.1 Title. Title to Goods shall transfer from Silfab to the Customer free and clear of encumbrances except to the security interest granted under Section 5.1 when the Goods are delivered (or deemed to have been delivered) to the Customer pursuant to Section 7.5.

- 9.2 Risk of Loss. Risk of loss of or damage to Goods shall pass to the Customer when the Goods are delivered (or deemed to have been delivered) to the Customer pursuant to Section 7.5. Silfab shall not be liable for any loss of any kind to the Customer arising from any damage to the Goods occurring after the risk has passed to the Customer however caused, nor shall any liability or obligation of the Customer to Silfab be diminished or extinguished by reason of such loss.

10. Cancellation and Returns

- 10.1 Cancellation. If the Customer wishes to cancel a pending Sales Order or outstanding balance thereof, it may do so by providing at least 15 days' prior notice in writing to Silfab, provided that:

- (a) it may not cancel any portion of a Sales Order that relates to Goods that have already been delivered (or deemed to have been delivered) in accordance with these Standard Terms, and shall remain liable for paying for such delivered Goods;
- (b) any deposit paid in respect of a Sales Order shall be forfeited to Silfab; and

- (c) in addition to the amount of any forfeited deposit, Silfab may charge and the Customer shall pay to Silfab an amount equal to 15% of the purchase price of the cancelled portion of the Sales Order as liquidated damages.

10.2 Returns.

- (a) Subject to the Applicable Warranties, no Goods that have been delivered (or deemed to have been delivered) may be returned to Silfab without Silfab's prior written permission, which may be granted, conditioned or withheld in Silfab's sole discretion.
- (b) Where Silfab permits the Customer to return Goods, the Customer agrees to comply with Silfab's return material authorization ("**RMA**") process as may be prescribed by Silfab from time to time. Without limiting the foregoing, the Owner will return Goods to Silfab at the Customer's expense and in accordance with a written RMA authorization from Silfab. The Owner will bear all risk of loss for returned Goods until they are received and accepted by Silfab. The return of any module will not be accepted by Silfab unless prior written authorization has been given by Silfab and the Customer has complied with the packaging and shipping instructions provided by Silfab.
- (c) Silfab may charge and the Customer shall pay to Silfab a restocking fee equal to 15% of the purchase price of the Goods that are returned.
- (d) Where the Customer returns Goods as permitted hereunder, Silfab shall grant a credit note to the Customer in an amount equal to: (x) the amount paid by the Customer for Goods that are returned undamaged, in their original packaging, and otherwise in marketable condition, minus (y) the applicable restocking fee. Credit notes will not be issued for any returns by subsequent owners of the Goods (including by any customers of the Customer). Credit notes granted under this Section 10.2(d) have no cash value and expire one year after they are issued.

11. **Intellectual Property**

- 11.1 Ownership. Silfab retains for itself all of its intellectual property rights in all Goods and in any supporting documentation supplied hereunder, including but not limited to all designs, engineering details, manufacturing processes, thermal processes, furnace and manufacturing fixtures, testing, installation and maintenance procedures, and other data or information pertaining to any Goods.
- 11.2 No Transfer. No title to or ownership of any of Silfab's intellectual property rights is transferred to the Customer under any Sales Order or as a result of any deliveries made pursuant to a Purchase.

12. **Limited Warranties**

- 12.1 Standard Warranties. Subject to Section 12.2, the standard limited warranties available at [<http://www.silfab.ca/wp-content/uploads/2014/11/CS0010C-Silfab-Linear-Warranty.pdf>] to these Standard Terms (the "**Standard Limited Warranties**") will apply to all Sales Orders.
- 12.2 Special Warranties. Where Silfab and the Customer agree in writing to warranties that are different from the Standard Limited Warranties ("**Special Warranties**"), those Special Warranties shall supersede and replace (and not be additional to) the Standard Limited Warranties

with respect to the each Sales Order that expressly references the Special Warranties. For the purposes of these Standard Terms, “**Applicable Warranties**” will mean the Standard Limited Warranties or Special Warranties, as may be applicable to a given Sales Order.

13. Indemnification

- 13.1 By Silfab - general. Subject to Section 15, and provided that no breach of the Customer has occurred and is continuing under any Sales Order, Silfab shall indemnify and hold the Customer harmless from and against any and all claims, actions, judgments, costs, damages, expenses (including actual legal expenses), losses or liabilities (collectively “**Losses**”) suffered or incurred by the Customer arising out of or in connection with personal injury, including death, or property damage sustained by the Customer, its employees or agents, or a third party, as a result of the gross negligence or willful misconduct of Silfab, its agents or employees in fulfillment of a Sales Order.
- 13.2 By Silfab - IP. Silfab will at its own expense, defend any suits and claims instituted against the Customer resulting from claims that any of the Goods provided by Silfab infringes or misappropriates any intellectual property rights (“**IP Claims**”), and will indemnify the Customer against any final judgment of a court of competent jurisdiction or any final settlements entered into in respect of such IP Claim; provided however that if any Goods, in Silfab’s opinion, are likely to or do become the subject of any IP Claim, then with the exception of Silfab’s defence obligations above, the Customer’s exclusive remedy and Silfab’s entire liability and obligation in respect of the IP Claim will be, at Silfab’s sole option and expense, to: (a) modify the Goods to be non-infringing; (b) obtain for the Customer a license to continue using the Goods; or (c) if neither (a) nor (b) is commercially reasonable, terminate the applicable Sales Order and, if applicable, accept return of the Goods and refund an amount equal to the sum of any amounts that have been pre-paid by the Customer for such Goods, less a reasonable amount for depreciation.
- 13.3 Exclusions. Exclusions. Notwithstanding anything to the contrary in Section 13.1 or 13.2, Silfab will have no liability for any claim to the extent that:
- (a) Goods are not used by the Customer in accordance with the Sales Order or any product documentations provided by Silfab;
 - (b) Goods are used in combination with other equipment, products, software or data not supplied by Silfab and not contemplated by the Sales Order or any product documentation;
 - (c) Goods are modified, other than in accordance with product documentation, by any Person or entity other than Silfab or its agents authorized to make such modifications;
 - (d) the claim relates to or arises out of information or works, including without limitation written instructions, specifications or designs, provided by the Customer for incorporation into or in respect of the Goods; or
 - (e) the claim is caused by an act or omission of the indemnified party or its Affiliates, or their respective officers, directors, employees and agents.
- 13.4 By the Customer. The Customer shall indemnify and hold Silfab harmless from and against any and all Losses suffered or incurred by Silfab arising out of or in connect with: (a) a breach of Silfab’s confidentiality or intellectual property rights; (b) a breach by the Customer of any terms

or conditions of the Sales Order or Applicable Warranties; (c) the use of the Goods in or with any nuclear installation or activity, or aircraft and any associated activity, or any transportation installation and any associated activity, or medical application and any associated activity, whatsoever; or (d) personal injury, including death, or property damage sustained by Silfab, its employees or agents, or a third party, as a result of an error or omission of the Customer, its agents or employees in taking delivery of an order.

14. Change of Law and Force Majeure

- 14.1 Change in Law. For the purposes of these Standard Terms, a “**Change of Law**” means the coming into force of any new Law, or amendment to or change in interpretation of any Law, after the date of a Proposal (if applicable) or a Sales Order, that has a material adverse effect on the ability of Silfab to perform its obligations under a Sales Order or that materially increases the cost to Silfab of performing its obligations, and includes without limitation the imposition of any new or increased duties on Goods to be imported pursuant to a Sales Order where Silfab is responsible for paying such duties. Upon the occurrence of a Change of Law, Silfab may, at its option and upon delivering notice of the Change of Law to the Customer: (a) terminate the applicable Sales Order or pending portion thereof; or (b) attempt to negotiate equitable amendments to such Sales Order to address the Change of Law failing which it may terminate the applicable Sales Order or pending portion thereof. If Silfab terminates all or part of a Sales Order as a result of a Change of Law, Silfab and the Customer shall be released of all obligations and liability with respect to the terminated Sales Order or part thereof except with respect to Goods that had been delivered (or deemed to have been delivered) prior to the effective date of the Change of Law. Silfab will have no liability for any loss or damage of any kind suffered by the Customer as a result of any such termination.
- 14.2 Force Majeure. Silfab shall not be responsible or liable for any delay or failure to perform its obligations arising from causes beyond Silfab’s reasonable control, including, without limitation, acts of God, war, invasion, insurrection, riot, the order of any civil or military authority, fire, flood, weather, acts of the elements, delays in transportation, unavailability of equipment, materials, labour or fuel, breakdown, sabotage, lock-outs, strikes or labour disputes, the failure of suppliers to meet their delivery promises, any Change of Law, or any technological or physical event or condition which is not reasonably known or understood at the time of the sale of the Goods.

15. Limitations of Liability

- 15.1 Exclusion of Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR THE INDEMNITY PROVISIONS IN SECTION 13, SILFAB HEREBY DISCLAIMS, AND SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR, DAMAGE OR INJURY TO PERSONS OR PROPERTY OR FOR OTHER LOSS OR INJURY RESULTING FROM ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATED TO ANY OF ITS PRODUCTS OR THEIR USE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL SILFAB BE LIABLE TO THE SELLER, OR TO ANY THIRD PARTY CLAIMING THROUGH OR UNDER THE SELLER, OR TO ANY ASSIGNEE OF THE SELLER FOR ANY LOSS OF USE, LOSS OF PRODUCTION, LOSS OF REVENUES, LOSS OF PROFITS OR LOSS OF OPPORTUNITY, OR FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND, HOWSOEVER ARISING, RELATED TO THE PRODUCTS, EVEN IF SILFAB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15.2 Limitation. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SILFAB' AGGREGATE LIABILITY, IF ANY, IN DAMAGES OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE PAID TO SILFAB BY THE SELLER FOR THE GOODS FURNISHED THAT GAVE RISE TO A CLAIM.

15.3 Acknowledgement. THE SELLER ACKNOWLEDGES THAT THE FOREGOING EXCLUSIONS AND LIMITATIONS ON LIABILITY ARE AN ESSENTIAL ELEMENT OF THE AGREEMENT BETWEEN THE PARTIES AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE PURCHASE PRICE OF THE PRODUCTS WOULD BE SUBSTANTIALLY DIFFERENT. FOR CERTAINTY, THE SELLER ACKNOWLEDGES THAT THE FOREGOING EXCLUSIONS AND LIMITATIONS ON LIABILITY APPLY TO WARRANTY AND INDEMNITY CLAIMS.

16. General

16.1 Entire Agreement. An accepted Sales Order (including any Proposal incorporated therein, these Standard Terms and the Applicable Warranties) constitutes the entire agreement between Silfab and the Customer with respect to the subject matter of the Sales Order and supersedes all prior Proposals (except to the extent expressly incorporated in the Sales Order), quotations, representations, arrangements, negotiations, understandings and agreements between the parties, both written and oral, relating to the subject matter thereof. Without limiting the foregoing, all descriptions and illustrations contained in Silfab's brochures, price lists, website, and advertisements, and all specifications, drawings and any other documents submitted with any Proposal or otherwise communicated to the Customer, are intended merely to present a general idea of the Goods described therein and nothing contained in any of them shall form any part of the agreement of purchase and sale unless otherwise stated in the Sales Order.

16.2 Non-Waiver. No failure on Silfab's part to strictly enforce any of these terms and conditions or any of its rights shall be construed as a waiver of such term, condition or right. Silfab's acceptance of a Sales Order shall not be deemed an acceptance of any terms and conditions that may be contained therein that are inconsistent with these Standard Terms except to the extent expressly agreed in writing by Silfab.

16.3 Severability. In the event that any provision of these terms and conditions or any part thereof should be held to be invalid, illegal or unenforceable, the remainder of these terms and conditions shall remain valid and enforceable.

16.4 Amendment. These Standard Terms, and any Sales Order that is subject to these Standard Terms, may not be modified except by an agreement in writing signed by authorized representatives of Silfab and the Customer.

16.5 Relationship of Parties. The parties are independent contractors and no Sales Order or other agreement creates any partnership, joint venture, employer/employee, principal/agent or any other relationship between Silfab and the Customer. The parties acknowledge and agree that neither party is granted any right or authority to assume, create or enter into any contracts, agreements, employment relationships, obligations or responsibilities, express or implied, on behalf of or in the name of the other party without express prior written authorization.

16.6 Assignment. The Customer may not assign any Sales Order that is subject to these Standard Terms, provided however that the benefit of the Applicable Warranties for Goods delivered

pursuant to a Sales Order shall transfer to any third party that lawfully acquires title to the Goods to which such Applicable Warranties apply.

- 16.7 Applicable law and jurisdiction. These terms and conditions are governed by the laws of the Province of Ontario and the federal laws applicable therein save and except to the extent that local provincial or state laws governing security interests and rights of repossession may apply to Goods delivered outside of Ontario. Any dispute with respect thereto shall be submitted to the courts in the judicial district of Toronto, Ontario, and the parties submit to the jurisdiction of the courts in that judicial district as the exclusive venue for the adjudication of any and all disputes hereunder and waive any claim of *forum non conveniens*. If any dispute falls under the jurisdiction of the Federal Court of Canada, then the parties agree to submit the dispute to the exclusive jurisdiction of the Federal Court sitting in the judicial district of Toronto, Ontario. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 16.8 Notices. All notices hereunder must be given to Silfab in writing at its principal place of business for receipt within the time specified herein, provided that notices of warranty claims shall be given in accordance with the terms and conditions of the Applicable Warranties.
- 16.9 Assignment. The Customer shall not assign any Sales Order or any part thereof without the consent in writing of Silfab, which will not be unreasonably withheld, provided that the rights and obligations of third parties with respect to Applicable Warranties are set out in the terms and conditions of such Applicable Warranties.
- 16.10 Headings. The division of these Standard Terms into parts, sections, paragraphs, subparagraphs and clauses and the insertion of headings are for reference purposes only and will not affect the construction or interpretation of these Standard Terms.
- 16.11 Counterparts. Any Sales Order, and any amendment or supplement thereto, may be executed in any number of counterparts and by different parties on separate counterparts (which may be facsimile copies) but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original but all the counterparts together shall constitute a single agreement.

END