

FRASERWOODS FABRICATION & MACHINING LTD. - STANDARD TERMS AND CONDITIONS OF SALE AND/OR REPAIR

(<http://www.fraserwoods.ca/upload/corp/terms&conditions.pdf>)

Fraserwoods Fabrication & Machining Ltd. (hereinafter called the Company) shall not be bound by any terms, conditions, representations or warranties other than as herein contained, unless same are in writing and signed by a duly authorized officer of the Company. Should the Company make any such agreement, the Standard Terms and Conditions of Sale and/or Repair of the Company shall take precedence unless otherwise agreed to in writing. These terms and conditions shall be construed in accordance with and governed by the laws of the province of Alberta:

1) PRICES

Prices quoted shall only be valid for orders placed within 30 days from the issue of quotation. Prices quoted are Ex-Works Company's plant and excluding federal and/or provincial, manufacturing or sales taxes, which will be added, if applicable. There will be no discounts to prices unless specifically agreed to in writing by the Company.

2) TERMS OF PAYMENT

- a) All invoices are due and payable upon receipt. Balances remaining unpaid thirty (30) days after the date of invoice shall bear interest at 2% per month (24 percent per year). Payments received from Customer may be applied by the Company against any obligation between Customer and the Company. Delays in transportation shall not extend the terms of payment.
- b) The Company at its option, may retain possession of any of the Customer's property repaired, on which it performs Services under the Agreement or any other contract until its charges for Services are paid.
- c) To secure the payment of all amounts and performance of all of its obligations hereunder, the Customer hereby grants the Company a security interest in all of its present and after-acquired personal property (the "Collateral"; acknowledges that it has rights in the Collateral, the security interest in the Collateral attaches forthwith, and that it has received a copy of these terms and conditions, which is a security agreement as defined under the Personal Property Security Act (Alberta); and waives the right to receiving a financing registration statement from the Company.

3) SHIPMENT

All orders shall be delivered to and/or picked up from Company's plant unless otherwise agreed to in writing. All costs of delivery shall be for account of Customer unless otherwise agreed to in writing. In case of inability of Customer to accept shipment in accordance with the terms of this order or contract, Customer shall be responsible for any additional transportation, storage or handling costs.

4) CANCELLATION, ALTERATIONS AND RETURNS

Orders placed may not be cancelled or altered except with the consent of the Company. If the Company agrees to cancellation or alteration, Customer shall indemnify the Company against all loss arising from such cancellation or alterations including but not limited to loss of profit. Company reserves the right to cancel any order if in its opinion Customer's financial condition places the payment in jeopardy. Goods may be returned to Company only upon written authorization by Company, and a restocking charge may apply. Returned goods must be securely packaged to reach Company without damage, and any cost incurred by Company to put goods in marketable condition will be charged to Customer. No credit will be allowed for returns unless specifically agreed to by Company in writing prior to return. Company reserves the right to make changes to its designs at its discretion.

5) WARRANTIES AND LIMITS OF LIABILITY

Subject to the terms and conditions a) to m) herein, the Company warrants its work as follows:

New parts of Company's manufacture – 6 months from date of shipment
Machinery, including assemblies and subassemblies – 6 months from date of shipment
Repair work – 6 months from date of shipment
Field work – 6 months from date of services provided

Rebuilt/Remanufactured Blowers & Pumps – 6 months from date in which the unit was entered into service or was installed. 12 months from date of shipment, if unit placed into storage and not installed or entered into service. The Company must be notified in writing when the unit is entered into service/installed, subsequent to being placed into storage. Failure to notify the Company of unit being entered into service or installed will result in 6-month warranty from original date of shipment.

The Company shall determine which of the above categories the work falls under.

- a) Company's liability in respect of any defect or failure of goods supplied by it or loss, injury or damages shall be limited to making good by repair, replacement or refitting (Western Canada only) any goods or parts thereof which are shown to the Company's satisfaction to have proved defective in materials or workmanship, under proper use within the warranty period provided such defective parts are promptly returned to the Company's works, transportation charges are paid.
- b) Transportation on repaired or replacement parts returned to the Customer will be borne by the Customer.
- c) Company's guarantee on products of other manufacturers is limited to the guarantee extended to the Company by the original manufacturer and only to the extent such guarantee may be passed on to the Customer.
- d) The Company does not warrant any used goods which are sold and such used goods are sold as is.
- e) Where material is rejected on inspection by the Customer as defective, Customer shall notify the Company in writing within 10 days of receipt of such material. Company shall have the option of re-inspection at Customer premises or Company plant before allowing or rejecting Customer claim.
- f) Defects that do not impair service shall not be cause for rejection.
- g) No claim will be allowed for material altered by the Customer or damaged in transit.
- h) Expenses in connection with claims for which the Company is not liable shall be charged to the Customer.
- i) Where customer furnishes material which proves defective or involves expense not contemplated by the contract, Customer will be invoiced for all additional expenses incurred.
- j) Where a product is manufactured to the Customer's design, drawings or specifications, the Company accepts no responsibility for the product other than to provide materials and workmanship of the quality specified therein.
- k) Where prior to commencement of manufacture the Company provides drawings and/or specifications to the Customer or his engineer for approval, such approval shall be deemed to be acceptance by the Customer of all materials and of manufacture shown therein.
- l) The Company shall not be liable to the Customer for any failure or delay in performance due in whole or in part to any cause including, but not limited to, acts of God, acts or omissions or delays from any government or regulatory authority, labour disruptions, malfunctions of computer equipment or software, interruptions in telecommunication services, loss of utilities, vandalism, theft, default or delay of any third-party supplier, and/or any cause whatsoever beyond the Company's reasonable control. Any such cause shall extend the performance of the delayed obligation to the extent of the delay so incurred.
- m) The Company's liability shall be limited to the amount of the quoted price for the Company's work or the actual replacement cost of the material, whichever is less. The Company reserves the right to replace the material if the Company so desires. Except as provided for in this paragraph 5m, the Company shall not be liable for any claim, expense, cost, loss, or damage whatsoever including (but not limited to) those arising from or relating to personal injury, death, damage to property, or for any consequential loss or damage including (but not limited to) loss of profits, loss of revenue, loss of business opportunity, or any loss resulting from a shutdown, or the inability to operate any facility at full capacity. This limitation of the Company's liability applies regardless of how the claim, expense, cost, loss, or damage is caused or arises including (but not limited to) breach of contract, negligent acts, omissions, or representations, either by the Company or by any of its agents, employees, or representatives.

Customer assumes all risk and liability for loss and or damage resulting from the handling, use, storage, disposal or application of the goods delivered hereunder. Company's warranties shall not apply to materials or workmanship which have been subject to misuse, neglect, accident, or where parts are not original factory parts, or where parts have not been installed, maintained or operated in accordance with Company's recommendations or in conjunction with sound maintenance practices. This warranty does not apply to normal operating costs and adjustments, including but not limited to adjusting pressure settings, limit switches, timers, relays, fuses, loss of hydraulic oil, cable replacement or filter replacement. The warranties given herein shall be in lieu of all warranties, conditions or liabilities implied by law or expressed by statute including any warranties with respect to merchantable quality or fitness for a particular purpose. All warranties are for the benefit of the original purchaser only and are not transferable.

6) PATENT RIGHTS, PROPERTY RIGHTS AND RISK OF PROPERTY

If, through adhering to the Customer's design or specifications Company infringes any patent, design or similar rights, Customer shall indemnify and save Company harmless from any loss or damage resulting from such claim against Company.

Title and rights to all patents, inventions, designs, drawings, processes and software developed by the Company remain the property of the Company.

Title to and rights in relation to products sold under this contract shall remain with Company until such products are paid for, subject to risk on products sold passing to the Customer upon acceptance by a carrier, or otherwise, which shall constitute good delivery.

Customer's property at all times shall remain at the risk of the Customer while being worked on by Company personnel or on Company premises and Company shall not be responsible for any loss or damage to Customer's property resulting from any cause whatsoever. Items left at Company's site in excess of 30 days after completion or termination of contract and without payment received by Company shall be deemed abandoned and shall be disposed of at the Company's discretion.

7) NON-SOLICITATION

Customer shall not hire or make any offer of employment to any employee of the Company without first obtaining the written permission of the Company.

These terms and conditions of sale and/or repair shall not be, or deemed to be, waived or varied by any conditions contained in the Customer's order unless expressly stated and approved in writing by a duly authorized officer of the Company.