

# FLENDER

Flender Corporation, 105 Boxwood Drive, Unit 103, Cambridge, ON, N3E 0A4, Canada

## FLENDER STANDARD TERMS AND CONDITIONS OF SALE FOR PRODUCTS

**1. APPLICABLE TERMS.** This Agreement governs the sale of equipment, components, parts, and materials provided by Flender ("Products"). Any applicable addenda, these terms, Flender proposal, price quote, purchase order, or acknowledgement issued by Flender form the parties' final agreement ("Agreement"). In the event of a conflict between these documents, precedence shall apply in accordance with the order listed in the previous sentence. Flender's proposal, offer or acceptance is conditioned on Buyer's acceptance of this Agreement. Any additional or conflicting terms in Buyer's request for proposal, specifications, purchase order or any other written or oral communication are not binding on Flender unless separately signed by Flender. Flender's failure to object to Buyer's additional or conflicting terms does not operate as a waiver of any terms contained in this Agreement.

**2. PRICING & PAYMENT.** Prices and payment terms are: (i) as stated in Flender's proposal, or if none are stated; (ii) Flender's standard prices in effect when Flender receives Buyer's purchase order; or if neither (i) or (ii) apply, then Flender's standard prices in effect when the Products ship.

(a) *Payment.* Unless stated in Flender's proposal, all payments are due net thirty (30) days from the invoice date in United States Dollars.

(b) *Credit Approval.* All orders are subject to credit approval by Flender. Flender may modify, suspend or withdraw the credit amount or payment terms at any time. If there is doubt as to Buyer's financial condition, Flender may withhold manufacturing or shipment, require cash payments, or require other satisfactory security. Flender may recover shipped Products from the carrier pending such assurances.

(c) *Installment Shipment.* Where Products are delivered in shipments or only part of a shipment fails to comply with this Agreement, the Buyer may only reject the non-compliant portion. Buyer will separately pay for each shipment. If Flender holds or stores Products for Buyer, it shall do so at Buyer's sole risk and expense.

(d) *Taxes, Shipping, Packing, Handling.* Unless stated in writing by Flender, Flender's prices exclude charges for freight, unloading, storage, insurance, taxes, excises, fees, duties or other government charges related to the Products. Buyer will pay these amounts or reimburse Flender. If Buyer claims a tax or other exemption or direct payment permit, Buyer will provide a valid exemption certificate or permit and indemnify, defend and hold Flender harmless from any taxes, costs and penalties arising from same. Flender's prices include the costs of its standard domestic packing only. Any packing deviation, including U.S. Government sealed packing, will be charged to Buyer. Increases, changes (including in application), adjustments or surcharges which may be incurred are for Buyer's account.

(e) *Late Payments.* Late payments shall bear interest at an annual percentage rate of twelve percent (12%) or the highest rate allowed by law, whichever is lower.

(f) *Disputed Invoice.* If Buyer disputes all or any portion of an invoice, it must first deliver written notice to Flender of the disputed amount and the basis for the dispute within twenty-one (21) days of receiving the invoice. Failure of Buyer to timely notify Flender of any dispute constitutes a waiver of Buyer's claim. If Buyer only disputes a portion of the invoice, Buyer must pay the undisputed portion in accordance with Article 2(a). Upon resolution of the dispute, Buyer must pay the invoice or the remainder of the invoice, plus any accrued interest on the late payment.

(g) *Suspension/Termination Right.* Flender may suspend work if an undisputed invoice is more than thirty (30) days past due. Flender may terminate this Agreement if an undisputed invoice is more than sixty (60) days past due. Unless prohibited by law, Flender may also terminate this Agreement immediately in the event of a material adverse change in Buyer's financial condition including, but not limited to, bankruptcy, insolvency, liquidation or similar financial condition.

**3. DELIVERY; TITLE; RISK OF LOSS.** Products will be delivered F.O.B. Flender point of shipment with title and risk of loss or damage passing to Buyer at that point. Buyer is responsible for all transportation, insurance and related expenses. The related expenses shall include any taxes, duties or documentation fees. Flender may make partial shipments. Any shipping, delivery and installation dates are estimated dates only. Flender is not liable for any loss or expense incurred by Buyer or Buyer's customers if Flender fails to meet its delivery schedule.

**4. DEFERMENT AND CANCELLATION.** Buyer has no right to defer shipment but may cancel this Agreement on thirty (30) days written notice if Flender has not already performed. If Buyer cancels this Agreement, it shall pay all cancellation charges including, without limitation: (i) the full price for any finished Product; (ii) for partially completed product, the portion of the price determined to be due by Flender based on its percentage of completion of the Product; (iii) reasonable overhead and profit; and (iv) any payments due subcontractors and/or suppliers for any materials, components or products ordered which cannot be cancelled, refunded, or redirected for other beneficial use.

**5. TRANSPORTATION AND STORAGE.** (a) When Products are ready for shipment, Flender will: (i) inform Buyer, and Buyer will then promptly give shipping instructions to Flender; (ii) determine the method of transportation and shipment routing; and (iii) ship the Products with freight prepaid by normal transportation. If Buyer fails to provide timely shipping instructions, Flender will ship the Products by normal transportation means to Buyer or to a storage location selected by Flender. Buyer will pay or reimburse any excess transportation charges for special or expedited transportation.

(b) If Products are placed into storage, delivery occurs and risk of loss transfers to Buyer when the Products are placed on the carrier for shipment to the storage location. If the Products are to be stored in the facility where manufactured, delivery occurs and risk of loss transfers to Buyer when placed in the storage location.

Buyer will pay all Flender's storage expenses, including but not limited to, preparation for and placement into storage, handling, freight, storage, inspection, preservation, maintenance, taxes and insurance, upon receipt of an invoice(s) from Flender. When conditions permit and upon payment to Flender of all amounts due, Buyer must arrange, at its expense, to remove the Products from storage. Buyer bears the risk of loss, damage or destruction to Products in storage.

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**6. FORCE MAJEURE / DELAYS.** If Flender's performance is delayed by any cause beyond its reasonable control (regardless of whether the cause was foreseeable), including without limitation acts of God, strikes, labor shortage or disturbance, fire, accident, war or civil disturbance, delays of carriers, cyber-attacks, terrorist attacks, failure of normal sources of supply, or acts or inaction of government, Flender's time of performance will be extended by a period equal to the length of the delay plus any consequences of the delay. Flender will notify Buyer within a reasonable time after becoming aware of any such delay.

**7. BUYER'S REQUIREMENTS.** Flender's performance is contingent upon Buyer timely fulfilling all of its obligations under this Agreement. These obligations include the Buyer supplying all documents and approvals needed for Flender to perform, including but not limited to technical information and data, drawing and document approvals, and necessary commercial documentation. Flender may request a change order for an equitable adjustment in prices and times for performance, as well as for any additional costs or any delay resulting from the failure of Buyer or Buyer's contractors, successors or assigns to meet these obligations.

**8. INDEMNITY.** Flender and Buyer (each as an "Indemnitor") shall indemnify the other ("Indemnitee") from and against all third party claims alleging bodily injury, death or damage to a third party's tangible property, but only to the extent caused by the Indemnitor's negligent acts or omissions. If the injury or damage is caused by the parties' joint or contributory negligence, the loss and/or expenses shall be borne by each party in proportion to its degree of fault. No part of the Product(s) or Buyer's site is considered third party property.

Indemnitee shall provide the Indemnitor with prompt written notice of any third party claims covered by this Article. Indemnitor has the unrestricted right to select and hire counsel and the exclusive right to conduct the legal defense and/or settle the claim on the Indemnitee's behalf. The Indemnitee shall not make any admission(s) which might be prejudicial to the Indemnitor and shall not enter into a settlement without the express permission of the Indemnitor.

**9. WARRANTIES.** (a) *Warranties.* Flender warrants that: (i) each Product is free from defects in material and workmanship; (ii) each Product materially conforms to Flender's specifications that are attached to, or expressly incorporated into this Agreement; and (iii) at the time of delivery, Flender has title to each Product free and clear of liens and encumbrances (collectively, the "Warranties"). The Warranties do not apply to software furnished by Flender. The sole and exclusive warranties for any software are set forth in the applicable Software License/Warranty Addendum.

(b) *Conditions to the Warranties.* The Warranties are conditioned on: (i) no repairs, modifications or alterations being made to the Product other than by Flender or its authorized representatives; (ii) Buyer handling, using, storing, installing, operating and maintaining the Product in compliance with any parameters or instructions in any specifications attached to, or incorporated into this Agreement; (iii) compliance with all generally accepted industry standards; (iv) Buyer discontinuing use of the Product after it has, or should have had, knowledge of any defect; (v) Buyer providing prompt written notice of any warranty claims within the warranty period described below; (vi) at Flender's discretion, Buyer either removing and shipping the Product or non-conforming part thereof to Flender, at Buyer's expense, or granting Flender reasonable access to the Products to assess the warranty claims; (vii) Product not having been subjected to accident (including force majeure), alteration, abuse or misuse; and (viii) Buyer not being in default of any payment obligation.

(c) *Exclusions from Warranty Coverage.* The Warranties do not apply to any equipment not provided by Flender under this Agreement.

Any Product that is described as being experimental, developmental, prototype, or pilot is specifically excluded from the Warranties and is provided to Buyer "as is" with no warranties of any kind. Normal wear and tear is excluded, including any expendable items that comprise part of the Product (such as fuses, light bulbs and lamps). Flender does not warrant or guarantee that any Product will be secure from cyber threats, hacking or similar malicious activity. Products that are networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by Buyer and/or end user against unauthorized access.

(d) *Warranty Period.* Buyer must provide written notice of any claims for breach of Warranties by the earlier of twelve (12) months from initial operation of the Product or eighteen (18) months from shipment. Additionally, absent written notice within the warranty period, any use or possession of the Product after expiration of the warranty period is conclusive evidence that the Warranties have been satisfied.

(e) *Remedies.* Buyer's sole and exclusive remedies for breach of the Warranties are limited, at Flender's discretion, to repair or replacement of the Product, or its non-conforming parts, within a reasonable time period, or refund of all or part of the purchase price. The warranty on repaired or replaced parts is limited to the remainder of the original warranty period. Unless Flender agrees otherwise in writing, Buyer will be responsible for any costs associated with: (i) gaining access to the Product; (ii) removal, disassembly, replacement, installation, or reinstallation of any equipment, materials or structures to permit Flender to perform its warranty obligations; (iii) transportation to and from the Flender factory or repair facility; and (iv) damage to equipment components or parts resulting in whole or in part from non-compliance by the Buyer with Article 9(b) or from their deteriorated condition. All exchanged Products replaced under this Warranty will become the property of Flender.

(f) *Transferability.* The Warranties are only transferable during the warranty period and only to the Product's initial end-user.

(g) THE WARRANTIES IN THIS ARTICLE 9 ARE FLENDER' SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITS OF LIABILITY IN ARTICLE 10 BELOW. FLENDER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

**10. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, FLENDER IS NOT LIABLE, WHETHER BASED IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, FOR: LOSS OF USE, REVENUE, SAVINGS, PROFIT, INTEREST, GOODWILL OR OPPORTUNITY, COSTS OF CAPITAL, COSTS OF REPLACEMENT OR SUBSTITUTE USE OR PERFORMANCE, LOSS OF INFORMATION AND DATA, LOSS OF POWER, VOLTAGE IRREGULARITIES OR FREQUENCY FLUCTUATION, CLAIMS ARISING FROM BUYER'S THIRD PARTY CONTRACTS, OR FOR ANY TYPE OF INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE.

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FLENDER'S MAXIMUM LIABILITY UNDER THIS AGREEMENT IS THE ACTUAL PURCHASE PRICE RECEIVED BY FLENDER FOR THE PRODUCT THAT GAVE RISE TO THE CLAIM.

BUYER AGREES THAT THE EXCLUSIONS AND LIMITATIONS IN THIS ARTICLE 10 WILL PREVAIL OVER ANY CONFLICTING TERMS AND CONDITIONS IN THIS AGREEMENT AND MUST BE GIVEN FULL FORCE AND EFFECT, WHETHER OR NOT ANY OR ALL SUCH REMEDIES ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OF LIABILITY ARE EFFECTIVE EVEN IF FLENDER HAS BEEN ADVISED BY BUYER OF THE POSSIBILITY OF SUCH DAMAGES. THE WAIVERS AND DISCLAIMERS OF LIABILITY, RELEASES FROM LIABILITY AND LIMITATIONS ON LIABILITY EXPRESSED IN THIS ARTICLE 10 EXTEND TO FLENDER'S AFFILIATES, PARTNERS, PRINCIPALS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, SUPPLIERS, AGENTS, AND SUCCESSORS AND ASSIGNS.

**11. PATENT AND COPYRIGHT INFRINGEMENT.** Flender will, at its option and expense, defend or settle any suit or proceeding brought against Buyer based on an allegation that any Product or use thereof for its intended purpose constitutes an infringement of any Patent Cooperation Treaty country member's patent or misappropriation of a third party's trade secret or copyright in the country where the Product is delivered by Flender. Buyer will promptly give Flender written notice of the suit or proceeding and the authority, information, and assistance needed to defend the claims. Flender shall have the full and exclusive authority to defend and settle such claim(s) and will pay the damages and costs awarded in any suit or proceeding so defended. Buyer shall not make any admission(s) which might be prejudicial to Flender and shall not enter into a settlement without Flender's consent. Flender is not responsible for any settlement made without its prior written consent. If the Product, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer is enjoined, Flender will, at its option and expense, either: (i) procure for Buyer the right to continue using said Product; (ii) replace it with substantially equivalent non-infringing Product; or (iii) modify the Product so it is non-infringing.

Flender will have no duty or obligation under this Article 11 if the Product is: (i) supplied according to Buyer's design or instructions and compliance therewith has caused Flender to deviate from its normal course of performance; (ii) modified by Buyer or its contractors after delivery; or (iii) combined by Buyer or its contractors with devices, methods, systems or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Flender, Buyer must protect Flender in the same manner and to the same extent that Flender has agreed to protect Buyer under this Article 11.

THIS ARTICLE 11 IS AN EXCLUSIVE STATEMENT OF FLENDER'S DUTIES AND BUYER'S REMEDIES RELATING TO PATENTS, TRADE SECRETS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF.

**12. CONFIDENTIALITY.** (a) Both during and after the term of this Agreement, the parties will treat as confidential all information obtained from the disclosing party and all information compiled or generated by the disclosing party under this Agreement for the receiving party, including but not limited to business information, manufacturing information, technical data, drawings, flow charts, program listings, software code, and other software, plans and projections. Neither party may disclose or refer to the work to be performed under this Agreement in any manner that identifies the other party without advance written permission. However, Flender has the right to share confidential information with its affiliates and subcontractors, provided those recipients are subject to the same confidentiality obligations set forth herein.

(b) Nothing in this Agreement requires a party to treat as confidential any information which: (i) is or becomes generally known to the public, without the fault of the receiving party; (ii) is disclosed to the receiving party, without obligation of confidentiality, by a third party having the right to make such disclosure; (iii) was previously known to the receiving party, without obligation of confidentiality, which fact can be demonstrated by means of documents which are in the possession of the receiving party upon the date of this Agreement; (iv) was independently developed by receiving party or its representatives, as evidenced by written records, without the use of discloser's confidential information; or (v) is required to be disclosed by law, except to the extent eligible for special treatment under an appropriate protective order, provided that the party required to disclose by law will promptly advise the originating party of any requirement to make such disclosure to allow the originating party the opportunity to obtain a protective order and assist the originating party in so doing.

(c) It is Flender's policy not to unlawfully or improperly receive or use confidential information, including trade secrets, belonging to others. This policy precludes Flender from obtaining, directly or indirectly from any employee, contractor, or other individual rendering services to Flender confidential information of a prior employer, client or any other person which such employee, contractor, or individual is under an obligation not to disclose. Buyer agrees to abide by this policy.

**13. COMPLIANCE WITH LAWS.** The parties agree to comply with all applicable laws and regulations, including but not limited to those relating to the manufacture, purchase, resale, exportation, transfer, assignment or use of the Products.

**14. CHANGES IN WORK.** No change will be made to the scope of work unless Buyer and Flender agree in writing to the change and any resulting price, schedule or other contractual modifications. If any change to any law, rule, regulation, order, code, standard or requirement impacts Flender's obligations or performance under this Agreement, Flender may request a change order for an equitable adjustment in the price and time of performance.

**15. NON-WAIVER.** Any waiver by a party of strict compliance with this Agreement must be in writing, and any failure by the parties to require strict compliance in one instance will not waive its right to insist on strict compliance thereafter.

**16. MODIFICATION OF TERMS.** This Agreement may only be modified by a written instrument signed by authorized representatives of both parties.

**17. ASSIGNMENT.** Neither party may assign all or part of this Agreement, or any rights or obligations under this Agreement, without the prior written consent of the other; but either party may assign its rights and obligations, without recourse or consent, to any parent, wholly owned subsidiary, or affiliate or affiliate's successor organization (whether as a result of reorganization, restructuring or sale of substantially all of a party's assets). However, Buyer shall not assign this Agreement to: a competitor of Flender; an entity in litigation with Flender; or an entity lacking the financial capability to satisfy Buyer's obligations. Any assignee expressly assumes the performance of any obligation assigned. Flender may grant a security interest in this Agreement and/or assign proceeds of this Agreement without Buyer's consent.

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**18. APPLICABLE LAW AND JURISDICTION.** This Agreement is governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded. BOTH FLENDER AND BUYER KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ALL RIGHTS TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATED IN ANY WAY TO THIS AGREEMENT. Each party agrees that claims and disputes arising out of this Agreement must be decided exclusively in a federal or state court of competent jurisdiction located in a state in which either Buyer or Flender maintains its principal place of business. Each party submits to the personal jurisdiction of such courts for the purpose of litigating any claims or disputes.

**19. SEVERABILITY.** If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not in any way be affected or impaired. A court may modify the invalid, illegal or unenforceable provision to reflect, as closely as possible, the parties' original intent.

**20. EXPORT / IMPORT COMPLIANCE.** Buyer acknowledges that Flender is required to comply with applicable export / import laws and regulations relating to the sale, export, import, transfer, assignment, disposal and use of the Products, including any export / import license requirements. Buyer agrees that Products will not at any time directly or indirectly be used, exported, imported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with any export / import laws and regulations. Flender's continuing performance hereunder is conditioned on compliance with such export / import laws and regulations at all times.

**21. PRODUCT RETURNS.** Prior to the return of any Product to Flender, Buyer must identify the Product or portion thereof and obtain written authorization and shipping instructions from Flender. Flender has the right, in its sole discretion, to permit or reject any such return. Flender's authorization to return any Product to Flender does not relieve Buyer of its obligation to pay for such Product. Upon receipt, inspection, and acceptance of the Product by Flender, Flender will issue a credit memo to Buyer, less applicable re-stocking fees. Flender reserves the right to reject any hazardous material.

**22. NUCLEAR.** Unless expressly authorized in writing by Flender, the Products must not be used in or in connection with a nuclear facility or application. If Buyer uses any Product in connection with any nuclear facility or activity, it does so at its own risk and Buyer will indemnify, defend and hold Flender harmless, and waives and will require its insurers to waive all right of recovery against Flender for any damage, loss, destruction, injury or death resulting from a #nuclear incident,# as defined in the Atomic Energy Act of 1954, as amended, whether or not due to Flender's negligence. Flender's consent to Buyer's use of the Product in connection with any nuclear facility or application will be subject to additional terms and conditions that Flender deems necessary to protect its interests.

**23. SURVIVAL.** The articles titled "Patent and Copyright Infringement", "Limitation of Liability", "Confidentiality", "Delivery; Title; Risk of Loss", "Export / Import Compliance," and "Nuclear" survive termination, expiration or cancellation of this Agreement.