

Sales Terms & Conditions

1. THESE TERMS AND CONDITIONS APPLY TO YOUR (“BUYER”) PURCHASE AND SHIPMENT OF PRODUCTS OR RELATED SERVICES (“PRODUCT”) SOLD BY RONALD A. CHISHOLM LIMITED OR ANY OF ITS AFFILIATES OR SUBSIDIARIES (COLLECTIVELY, “CHISHOLM”), AS DESCRIBED IN THE SALES OR ORDER CONFIRMATION FOR PRODUCT (“SALES CONFIRMATION”) TO WHICH THESE TERMS AND CONDITIONS ARE ATTACHED. BY PROCEEDING WITH THE PURCHASE OF PRODUCT DESCRIBED IN THE SALES CONFIRMATION, BUYER IRREVOCABLY AGREES TO BE BOUND TO THESE TERMS AND CONDITIONS AND THE TERMS AND CONDITIONS SET OUT IN THE SALES CONFIRMATION (COLLECTIVELY, THE “AGREEMENT”).

2. THE PURCHASE OF PRODUCT HAS BEEN CONCLUDED IN THE ENGLISH LANGUAGE AND THIS AGREEMENT CONSTITUTES THE ENTIRE AND SOLE AGREEMENT BETWEEN CHISHOLM AND BUYER WITH RESPECT TO THE PURCHASE OF PRODUCT. NO AGREEMENT OR OTHER UNDERSTANDING IN ANY WAY MODIFYING THIS AGREEMENT SHALL BE BINDING UPON CHISHOLM UNLESS MADE IN WRITING AND ACCEPTED OVER THE SIGNATURE OF AN AUTHORIZED EXECUTIVE OF CHISHOLM.

PRODUCT USAGE

3. THE PRODUCT MAY NOT BE USED, DIRECTLY OR INDIRECTLY, TO SUPPLY OR BENEFIT ANY PERSON, COUNTRY OR TERRITORY THAT ARE SUBJECT TO ECONOMIC SANCTIONS PROGRAMS IMPOSED BY CANADA, THE UNITED STATES, UNITED NATIONS, UNITED KINGDOM OR THE EUROPEAN UNION.

4. THE BUYER WILL NOT, DIRECTLY OR INDIRECTLY, ALLOW OR PERMIT PRODUCTS PURCHASED FROM CHISHOLM TO BE USED TO SUPPLY, FUND OR FACILITATE ANY ACTIVITY OR BUSINESS OR BE DIVERTED FOR THE USE, SALE OR BENEFIT OF ANY PERSON, COUNTRY OR TERRITORY THAT, AT THE TIME OF USE, IS SUBJECT TO ECONOMIC SANCTIONS PROGRAMS BY CANADA, THE UNITED STATES, UNITED NATIONS, UNITED KINGDOM OR THE EUROPEAN UNION.

TITLE TO PRODUCT

5. TITLE TO PRODUCT SOLD BY CHISHOLM TO THE BUYER SHALL NOT PASS TO THE BUYER (OR A THIRD PARTY (INCLUDING A THIRD-PARTY CONSIGNEE) PURSUANT TO A DIRECTION PROVIDED BY BUYER PURSUANT TO SECTION 6) UNTIL CHISHOLM HAS RECEIVED PAYMENT FOR THE PRODUCT IN FULL AS SPECIFIED IN THE APPLICABLE SALES CONFIRMATION.

DELIVERY

6. SUBJECT TO ACCEPTANCE AND APPROVAL BY AN AUTHORIZED REPRESENTATIVE OF CHISHOLM, DETERMINED AT THE SOLE AND ABSOLUTE DISCRETION OF CHISHOLM, THE BUYER MAY DIRECT IN WRITING THAT CHISHOLM DELIVER THE PRODUCT THAT IS SUBJECT TO A SALES CONFIRMATION TO A THIRD PARTY (INCLUDING A THIRD PARTY CONSIGNEE) DIRECTLY OR ON BEHALF OF THE BUYER PROVIDED THAT THE APPLICABLE SHIPPING TERMS HAVE BEEN APPROVED BY AN AUTHORIZED REPRESENTATIVE OF CHISHOLM, DETERMINED AT THE SOLE AND ABSOLUTE DISCRETION OF CHISHOLM, AND PROVIDED THAT, FOR CERTAINTY, NOTWITHSTANDING THAT THE PRODUCT WAS DELIVERED TO A THIRD PARTY (INCLUDING A THIRD PARTY CONSIGNEE), THE BUYER REMAINS FULLY RESPONSIBLE TO CHISHOLM FOR PAYMENT OF THE PURCHASE PRICE OF THE PRODUCT, AND ANY OTHER CHARGES OR PAYMENTS DUE FROM THE BUYER TO CHISHOLM PURSUANT TO THIS AGREEMENT, IN FULL IN ACCORDANCE WITH THE PAYMENT TERMS SET OUT IN THIS AGREEMENT.

7. CHISHOLM WILL USE ITS COMMERCIALY REASONABLE EFFORTS TO COMPLY WITH THE SHIPPING TERMS SPECIFIED IN THE APPLICABLE SALES CONFIRMATION BUT DELIVERY DATES AND SUCH OTHER SHIPPING TERMS ARE ESTIMATES ONLY AND NO GUARANTEE BY CHISHOLM IS GIVEN WITH RESPECT TO COMPLIANCE WITH SUCH SHIPPING TERMS AND TIME SHALL NOT BE OF THE ESSENCE IN RESPECT THEREOF. CHISHOLM SHALL ACCEPT NO LIABILITY OF ANY NATURE WHATSOEVER TO THE BUYER OR ANY THIRD PARTY (INCLUDING A THIRD-PARTY CONSIGNEE) FOR FAILURE TO COMPLY WITH SHIPPING TERMS AND SUCH FAILURE SHALL NOT ENTITLE BUYER OR ANY THIRD PARTY (INCLUDING A THIRD PARTY CONSIGNEE) TO REPUDIATE OR CANCEL THE AGREEMENT OR ENTITLE THE BUYER OR ANY THIRD PARTY (INCLUDING A THIRD PARTY CONSIGNEE) TO ANY CREDIT, REFUND OR REIMBURSEMENT.

8. IF DEMURRAGE IS CHARGED BY A CHARTER PARTY OR OTHER PERSON WITH RESPECT TO THE SHIPMENT OF PRODUCT, AND ANY DEMURRAGE IS PAID BY CHISHOLM ON BEHALF OF THE BUYER OR ANY THIRD PARTY (INCLUDING A THIRD-PARTY CONSIGNEE), SUCH DEMURRAGE WILL BE PAID BY BUYER TO CHISHOLM WITHIN 2 DAYS OF DEMAND FOR PAYMENT BY CHISHOLM.

PAYMENT OF PURCHASE PRICE

9. SUBJECT TO ACCEPTANCE AND APPROVAL BY AN AUTHORIZED REPRESENTATIVE OF CHISHOLM, DETERMINED AT THE SOLE AND ABSOLUTE DISCRETION OF CHISHOLM, THE BUYER MAY DIRECT IN WRITING THAT CHISHOLM INVOICE AND/OR ACCEPT PAYMENT OF THE PURCHASE PRICE FOR PRODUCT FROM A THIRD PARTY (INCLUDING A THIRD PARTY CONSIGNEE) DIRECTLY OR ON BEHALF OF THE BUYER, PROVIDED THAT, FOR CERTAINTY AND NOTWITHSTANDING (A) ANY DOCUMENTATION THAT CHISHOLM MAY ISSUE OR PROVIDE TO SUCH THIRD PARTY (INCLUDING A THIRD PARTY CONSIGNEE) IN CONNECTION WITH SUCH PAYMENT DIRECTION, (B) THE DELIVERY OF PRODUCTS TO A THIRD PARTY (INCLUDING A THIRD PARTY CONSIGNEE) PURSUANT TO A DIRECTION PROVIDED BY BUYER UNDER SECTION 6 ABOVE, OR (C) ANY DOCUMENTATION THAT CHISHOLM MAY ISSUE OR PROVIDE IN CONNECTION WITH SUCH DELIVERY TO A THIRD PARTY (INCLUDING A THIRD PARTY CONSIGNEE), THE BUYER REMAINS FULLY RESPONSIBLE TO CHISHOLM FOR PAYMENT OF THE PURCHASE PRICE OF PRODUCT, AND ANY OTHER CHARGES OR PAYMENTS DUE FROM THE BUYER OR A THIRD PARTY PERMITTED PAYOR OR ASSIGNEE TO CHISHOLM PURSUANT TO THIS AGREEMENT, IN FULL AND IN ACCORDANCE WITH THE PRICE AND PAYMENT TERMS SET OUT ON THE SALES CONFIRMATION.

10. A CHANGE IN THE MARKET PRICE OF A PRODUCT SHALL NOT RELEASE THE BUYER FROM ITS OBLIGATION, OR MODIFY THE BUYER'S OBLIGATION, TO PAY THE ENTIRE AMOUNT OWING FOR THE PRODUCT IN ACCORDANCE WITH THE SALES CONFIRMATION.

11. ACCEPTANCE BY CHISHOLM OF PAYMENT FROM ANY PERSON IN ARREARS OR PARTIAL PAYMENT OF THE PURCHASE PRICE FOR PRODUCT SHALL NOT UNDER ANY CIRCUMSTANCES, AND NOTWITHSTANDING ANY REPRESENTATION OR ASSURANCES MADE BY CHISHOLM TO THE CONTRARY, BE DEEMED A WAIVER OF CHISHOLM'S RIGHT TO DEMAND PAYMENT IN FULL FROM BUYER OR A WAIVER OF ANY RIGHT OR REMEDY THAT CHISHOLM MAY HAVE AS AGAINST BUYER ON ANY FUTURE OCCASION.

12. WITHOUT LIMITING AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, ONCE CHISHOLM HAS FULFILLED ITS OBLIGATIONS REGARDING THE SHIPMENT OF PRODUCT TO BUYER OR A THIRD PARTY (INCLUDING A THIRD PARTY CONSIGNEE) AS CONTEMPLATED IN SECTION 6 ABOVE, AND REGARDLESS OF WHETHER THE BUYER HAS DIRECTED CHISHOLM TO ACCEPT PAYMENT FROM A THIRD PARTY (INCLUDING A THIRD PARTY CONSIGNEE) PURSUANT TO SECTION 9 ABOVE, THE BUYER REMAINS FULLY RESPONSIBLE TO CHISHOLM FOR PAYMENT OF THE PURCHASE PRICE OF PRODUCTS, AND ANY OTHER CHARGES OR PAYMENTS DUE FROM THE BUYER OR A THIRD PARTY PERMITTED PAYOR OR ASSIGNEE TO CHISHOLM PURSUANT TO THIS AGREEMENT, IN FULL AND IN ACCORDANCE WITH THE PRICE AND PAYMENT TERMS SET OUT ON THE SALES CONFIRMATION. BUYER AND ANY AFFILIATE OF THE BUYER THAT ENTERS INTO AN AGREEMENT WITH CHISHOLM WITH RESPECT TO PRODUCT SHALL BE JOINTLY AND SEVERALLY LIABLE FOR PAYMENT OF THE PURCHASE PRICE OF PRODUCTS, AND ANY OTHER CHARGES OR PAYMENTS DUE FROM THE BUYER OR A THIRD PARTY PERMITTED PAYOR OR ASSIGNEE TO CHISHOLM PURSUANT TO THIS AGREEMENT.

NOTICE OF DEFECT

13. WRITTEN NOTICE OF ANY DEFECT OF THE PRODUCT, AND SATISFACTORY PROOF OF DEFECT, MUST BE GIVEN BY THE BUYER TO CHISHOLM NO LATER THAN FIVE BUSINESS DAYS AFTER THE DATE THE PRODUCT IS RELEASED OR DISCHARGED TO BUYER (OR ANY THIRD PARTY AS MAY BE DIRECTED BY BUYER PURSUANT TO SECTION 6 ABOVE) FROM THE PORT OF DELIVERY OR DISCHARGE. IF THE BUYER DOES NOT PROVIDE NOTICE OF A DEFECT WITHIN SUCH FIVE-DAY PERIOD, THE PRODUCT SHALL BE DEEMED TO BE (I) FREE FROM DEFECT, (II) OF GOOD AND MERCHANTABLE QUALITY AND (III) FIT FOR THE PURPOSE FOR WHICH THE PRODUCT WOULD NORMALLY BE USED.

CARGO INSURANCE

14. IT IS UNDERSTOOD AND AGREED THAT IF CARGO INSURANCE IS PROVIDED BY CHISHOLM FOR SHIPMENT BY VESSEL TO A PORT OF DISCHARGE, THE INSURANCE WILL TERMINATE ON THE EXPIRY OF 15 DAYS FROM THE DATE OF ARRIVAL OF THE GOODS AT THE PORT OF DISCHARGE. IF AN EXTENSION TO THIS INSURANCE IS REQUIRED, CHISHOLM MUST BE NOTIFIED IN WRITING PRIOR TO THE END OF SUCH 15 DAY PERIOD.

RIGHTS OF CHISHOLM TO TERMINATE

15. CHISHOLM MAY IMMEDIATELY TERMINATE THE SALE OF PRODUCT TO THE BUYER OR A THIRD PARTY PERMITTED PAYOR OR ASSIGNEE BY GIVING NOTICE OF TERMINATION TO THE BUYER (WHICH NOTICE SHALL BE IMMEDIATELY EFFECTIVE):

(a) IF THE BUYER OR A THIRD PARTY PERMITTED PAYOR OR ASSIGNEE FAILS TO PAY, WHEN DUE, ANY AMOUNT PAYABLE TO CHISHOLM BY BUYER OR A THIRD PARTY PERMITTED PAYOR OR ASSIGNEE;

(b) IF THE BUYER OR A THIRD PARTY PERMITTED PAYOR OR ASSIGNEE FAILS TO OBSERVE OR COMPLY WITH ANYTHING REQUIRED TO BE DONE BY THE BUYER OR A THIRD PARTY PERMITTED PAYOR OR ASSIGNEE UNDER THIS AGREEMENT; OR

(c) IF THE BUYER OR A THIRD PARTY PERMITTED PAYOR OR ASSIGNEE BECOMES BANKRUPT, INSOLVENT OR MAKES AN ASSIGNMENT FOR THE BENEFIT OF CREDITORS OR SUCH PERSON IS UNABLE TO MEET ITS OBLIGATIONS AS THEY BECOME DUE.

16. ON THE TERMINATION OF THE SALE OF PRODUCT, ALL AMOUNTS PAYABLE TO CHISHOLM PURSUANT TO THIS AGREEMENT BY THE BUYER OR A THIRD PARTY PERMITTED PAYOR OR ASSIGNEE BECOME IMMEDIATELY DUE AND PAYABLE BY THE BUYER TO CHISHOLM.

INTEREST ON OVERDUE AMOUNTS

17. INTEREST CHARGES ON OVERDUE AMOUNTS PAYABLE TO CHISHOLM PURSUANT TO THIS AGREEMENT SHALL BE LEVIED AGAINST THE BUYER AND INVOICED AT CHISHOLM'S OPTION AT A RATE OF 2% PER MONTH FOR AN EFFECTIVE ANNUALIZED INTEREST RATE OF 27.125%.

FINAL AND BINDING ARBITRATION

18. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 19, ANY AND ALL DISPUTES, CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH, TERMINATION OR INVALIDITY THEREOF, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE, SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THE UNCITRAL ARBITRATION RULES AS AT PRESENT IN FORCE. THE FOLLOWING SHALL APPLY TO THE ARBITRATION AND PREVAIL IN THE EVENT OF A CONFLICT WITH THE UNCITRAL ARBITRATION RULES:

(a) THE PLACE OF THE ARBITRATION SHALL BE TORONTO, ONTARIO AND THE LANGUAGE OF THE ARBITRATION SHALL BE ENGLISH.

(b) THERE SHALL BE ONE ARBITRATOR. IF THE PARTIES CANNOT AGREE ON THE ARBITRATOR WITHIN 10 DAYS OF COMMENCEMENT OF ARBITRATION, EITHER PARTY MAY MAKE A REQUEST TO ADR CHAMBERS INTERNATIONAL (THE APPOINTING AUTHORITY UNDER THIS AGREEMENT) FOR THE APPOINTMENT OF A SINGLE ARBITRATOR IN ACCORDANCE WITH THE APPOINTMENT PROVISIONS OF THE UNCITRAL ARBITRATION RULES.

(c) UNLESS THE PARTIES CONSENT OR THE ARBITRATOR ORDERS OTHERWISE, THE FOLLOWING PROCEDURES AND TIMELINES SHALL BE ADHERED TO:

(i) THE CLAIMANT SHALL DELIVER A STATEMENT OF CLAIM WITHIN 10 DAYS OF THE ARBITRATOR BEING APPOINTED.

(ii) THE RESPONDENT SHALL DELIVER A STATEMENT OF DEFENCE WITHIN 15 DAYS OF RECEIVING THE CLAIMANT'S STATEMENT OF CLAIM.

(iii) THE PARTIES SHALL BE REQUIRED TO PRODUCE ALL DOCUMENTS THAT THEY INTEND TO RELY ON AT THE HEARING OF THE ARBITRATION WITHIN 10 DAYS OF THE DELIVERY OF THE RESPONDENT'S STATEMENT OF DEFENCE.

(iv) THE PARTIES SHALL BE LIMITED TO NO MORE THAN 7 HOURS OF PRE-TRIAL DISCOVERY EXAMINATION.

(v) THE ARBITRATION HEARING SHALL NOT BE ANY LONGER THAN THREE DAYS.

(vi) THERE SHALL BE NO APPEAL FROM THE DECISION OF THE ARBITRATOR.

19. Buyer and Chisholm agree that, despite SECTION 18, Chisholm shall have the sole and exclusive right to elect to forego arbitration under SECTION 18 and to instead bring any action, complaint or other proceeding against the Buyer in the courts of any jurisdiction which Chisholm deems necessary or appropriate to adjudicate ANY AND ALL DISPUTES, CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH, TERMINATION OR INVALIDITY THEREOF, or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise.

BUYER LIABLE FOR COSTS

20. ANY AND ALL LEGAL, ARBITRATION, AGENCY, COURT OR ATTORNEY FEES WHATSOEVER INCURRED BY CHISHOLM TO COLLECT ON ANY DEBT, FINANCIAL DISPUTE, RESOLUTION, ALLEGED INJURY, OR TRADE DISPUTES RELATED TO THIS AGREEMENT WILL BE PAYABLE BY THE BUYER.

21. BUYER AND ANY AFFILIATE OF BUYER WHO ENTERS INTO AN AGREEMENT WITH CHISHOLM SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ANY FEES REFERRED TO IN SECTION 20.

NOTICE AND SERVICE OF PROCESS

22. ANY NOTICE, INSTRUCTION OR DOCUMENT TO BE GIVEN BY EITHER THE BUYER OR CHISHOLM IN CONNECTION WITH THIS AGREEMENT SHALL BE GIVEN IN WRITING AND MAY BE DELIVERED PERSONALLY OR BY E-MAIL TO THE PLACE OF BUSINESS SET OUT IN THE SALES CONFIRMATION. ANY NOTICE SHALL BE DEEMED (IN THE ABSENCE OF EVIDENCE OF PRIOR RECEIPT) TO BE RECEIVED THE SAME DAY IF PERSONALLY DELIVERED AND THE NEXT BUSINESS DAY IF SENT BY E-MAIL.

23. THE BUYER AGREES TO AND SHALL ACCEPT SERVICE OF ANY LEGAL PROCESS (INCLUDING NOTICE OF ARBITRATION IN ACCORDANCE WITH SECTION 18) TO THE BUYER'S ADDRESS SET OUT ON THE SALES CONFIRMATION.

LIMIT OF CHISHOLM'S LIABILITY

24. IN NO EVENT SHALL CHISHOLM BE RESPONSIBLE FOR ANY DIRECT, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF ANTICIPATED PROFITS, LOSS OF TIME, OR ANY OTHER LOSSES INCURRED BY THE BUYER IN RESPECT OF, RELATED TO, OR ARISING OUT OF THE PURCHASE OF THE PRODUCT.

RIGHT OF SET-OFF AND SECURITY

25. CHISHOLM IS AUTHORIZED TO THE FULLEST EXTENT PERMITTED BY LAW, TO SET-OFF AND APPLY ANY AMOUNT OWED TO IT FROM THE BUYER OR A THIRD PARTY PERMITTED PAYOR OR ASSIGNEE UNDER ANY AGREEMENT OR ARRANGEMENT, AGAINST ANY AMOUNT WHICH IT OWES TO THE BUYER.

26. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT CHISHOLM SHALL BE ENTITLED TO SEEK SECURITY FOR ANY CLAIMS THAT MAY ARISE OUT OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO *EX PARTE* ATTACHMENT APPLICATIONS OR ANY OTHER RIGHT OR REMEDY AVAILABLE AT LAW OR IN EQUITY.

FORCE MAJEURE

27. CHISHOLM SHALL NOT BE IN BREACH OF ANY OF ITS OBLIGATIONS UNDER OR RELATED TO THIS AGREEMENT AND CHISHOLM SHALL NOT BE LIABLE FOR ANY NON-PERFORMANCE OR DELAY IN PERFORMANCE UNDER OR RELATED TO THIS AGREEMENT, WHERE THE FAILURE TO PERFORM OR DELAY IN PERFORMING IS DUE, WHOLLY OR IN PART, DIRECTLY OR INDIRECTLY, TO THE OCCURRENCE OR APPREHENSION OF: AN ACT OF GOD, AN ACT OF PUBLIC ENEMY, ACTS OF GOVERNMENTAL BODIES OR AGENCIES (FOREIGN OR DOMESTIC), SABOTAGE, AN ACT OF WAR (WHETHER OR NOT DECLARED), TERRORISM, RIOT, FIRE, FLOODS, TYPHOONS, EXPLOSIONS OR OTHER CATASTROPHES, EPIDEMICS OR QUARANTINE RESTRICTIONS, LABOUR UNREST OR LABOUR SHORTAGES, ACCIDENT, FREIGHT EMBARGOES, DELAYS OCCASIONED BY CARRIERS, AN INABILITY TO PROCURE ANY LICENCE, PERMIT, PERMISSION OR AUTHORITY, AN INABILITY TO OBTAIN MATERIALS, GOODS, EQUIPMENT, SERVICES, UTILITIES OR LABOUR, OR BECAUSE OF ANY OTHER FORTUITOUS EVENT FOR THE PERIOD OF TIME OCCASIONED BY ANY SUCH OCCURRENCE.

ASSIGNMENT

28. ALL RIGHTS AND OBLIGATIONS OF CHISHOLM AND THE BUYER SET OUT IN THIS AGREEMENT SHALL ENURE TO THE BENEFIT OF AND BE BINDING UPON THEIR SUCCESSORS AND PERMITTED ASSIGNS. BUYER MAY NOT ASSIGN ANY OF ITS RIGHTS OR OBLIGATIONS SET OUT IN THIS AGREEMENT TO ANY PERSON WITHOUT THE PRIOR WRITTEN APPROVAL OF CHISHOLM. CHISHOLM MAY ASSIGN ALL OR PART OF ITS RIGHTS AND OBLIGATIONS SET OUT IN THIS AGREEMENT TO ITS AFFILIATES, SUBSIDIARIES, OR ANY OTHER LEGAL ENTITY THAT IT DESIGNATES.

GOVERNING LAW

29. THIS AGREEMENT IS SUBJECT TO AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF ONTARIO AND THE LAWS OF CANADA APPLICABLE THEREIN.

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