

# Heinemann Canada Corporation

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## Terms and Conditions of Sale

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The terms and conditions set forth herein constitute the full and final expression of the contract between Heinemann Canada Corporation (hereinafter referred to as Seller) and Buyer and supersedes all prior quotations, purchase orders, correspondence and other communications, whether written or oral, between Seller and Buyer. No quotation, order or acknowledgement and no provision of the seller's terms and conditions of same shall be subject to change in any respect except as agreed to in writing by an officer or other authorized representative of seller. No statement, representation or warranty not contained herein shall be binding on Seller unless made in writing by an officer or other authorized representative of Seller. Prior dealings, usage of the trade or a course of performance shall not be relevant to determine the meaning of the Agreement even though the accepting or acquiescing party had knowledge of nature of the performance and opportunity for objection.

### 1. ORDERS

All orders are received subject to acceptance by an authorized representative of Seller and may be accepted on Seller's acknowledgement forms. All orders must be firm commitments giving either complete item description and/or functional description (catalogue number, where applicable), including prices, quantity and shipping requirements. Typographical and clerical errors in quotations, orders and acknowledgements are subject to correction.

If Buyer's order is other than an acceptance of a written proposal on Seller's regular quotations form, then this document is not intended as an acceptance by Seller, but an offer to provide the goods ordered solely in accordance with the following terms and conditions of sale. Buyer shall demonstrate its acceptance of these terms and conditions of sale either (a), by signing the face hereof or (b) by accepting the goods shipped by Seller on this order. Seller shall ship the goods in accordance herewith and Buyer hereby undertakes to accept such shipment.

Any conditions emanating from the Buyer's documents are sent by the Buyer and received by the Seller on the understanding that they appear on the Buyer's documents because they are printed thereon but have no legal effect whatsoever and the Buyer waives any right which the Buyer might have to rely on such conditions.

### 2. PRICES

PRICES AND DISCOUNTS ARE SUBJECT TO CHANGE WITHOUT NOTICE. Written quotations are valid for 30 calendar days from the date of the quotation unless withdrawn sooner. Seller reserves the right to revise prices of work in process the production of which is delayed for a period in excess of 30 days due to any act of Buyer. Unless otherwise specified, all quotations are F.O.B. point of shipment. All prices are quoted exclusive of all taxes and delivery charges, which may be added to the invoice. Seller assumes no liability for import duties or other taxes.

### 3. PRICE PROTECTION

Prices will be those in effect at time of shipment. Any firm prices must be negotiated.

### 4. TERMS OF PAYMENT

The net price is payable within 30 days of the date of shipment. Seller may open accounts for firms or individuals with approved credit. Seller reserves the right of declining to make deliveries except for cash whenever Seller, for any reason, has doubts regarding Buyer's financial responsibility. In such event, Seller shall not be liable for nonperformance of the contract and shall not make further delivery until it has received adequate assurance that Buyer's performance will be duly forthcoming.

### 5. SHIPMENT

In ordering, Buyer shall state explicitly the method of shipping preferred. In the absence of shipping instructions from Buyer before date of shipment, Seller shall ship the goods by whatever shipping method Seller deems appropriate. Goods are at the risk of Buyer from and after delivery to carrier, and Buyer assumes all responsibility for shortage, loss, delay or damage in transit. All claims for loss, breakage and damage (obvious or concealed) should be made to carriers. Seller will render Buyer reasonable assistance in securing satisfactory adjustments of such claims.

**6. TRANSPORTATION ALLOWANCES**

- 6.1 Buyer will assume and pay the freight charges, shipments will be freight collect, F.O.B. point of shipment.
- 6.2 Claims for shortages or other errors must be made in writing to Seller within thirty (30) days after receipt of shipment.

**7. TITLE TRANSFER**

The legal and beneficial title and all property rights to goods specified in the purchase order shall transfer at point of shipment.

**8. SHIPPING DATES**

- 8.1 Shipment dates are estimates only. No contract will be made to ship within a specified time unless in writing signed by an officer of Seller. Absent such contract, Seller shall not be liable for damages of any kind, occasioned by Seller's failure to meet shipping dates.
- 8.2 Should shipment be held beyond scheduled date for the convenience of Buyer, Seller reserves the right to bill for goods and charges for warehousing, insurance, trucking and other expenses incident to such delay.

**9. CHANGES**

Buyer will be billed for any expense due to changes requested by Buyer after order is placed and is processed. An expedite fee could be applied if so deemed necessary by the Seller to recoup costs incurred.

**10. ORDER ADDITIONS**

Seller will treat any additions to orders already entered as a new order.

**11. CANCELLATION AND ALTERATION**

- 11.1 An order may be cancelled or reduced by Buyer only upon payment of reasonable charges based upon expenses already incurred and commitments made by Seller. Reduction in order quantity may result in selling price adjustments. Cancellation charges on completed items will be 100% of the selling price.
- 11.2 Buyer may by timely written notice, request alteration of an order in any one or more of the following which will be accepted by Seller where feasible: (1) drawings, designs or specifications, where the order calls for items to be specially manufactured for Buyer, (2) method of shipment or packing; and (3) place and delivery. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this contract, whether altered or not altered by Buyer's notice, an equitable adjustment shall be made in the contract price or delivery schedule or both, and the contract shall be modified in writing accordingly.
- 11.3 Seller reserves the right to manufacture ahead of its estimated shipping schedule whenever it deems necessary, and such advance manufacture shall not void Buyer's responsibility for termination or alteration as herein provided.

**12. SEPARABILITY**

Any quotation by Seller shall be deemed separable and divisible as to all goods offered for sale and Buyer may not refuse to receive any lot or portion of the goods shipped hereunder for failure of any other lot or portion to be delivered in compliance with the quotation, unless the right so to refuse is expressly provided for on the face of the quotation.

**13. WARRANTY**

Seller warrants the goods covered by this Agreement to be free from defects in material and workmanship for the period specified below from date of shipment to Buyer. This warranty is valid only if the goods are stored in a manner acceptable to Seller. This is a limited warranty limited to its terms. This warranty is void if the goods have been altered, misused, taken apart or otherwise abused. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE FOR GOODS COVERED BY THIS AGREEMENT.

13.1 All goods sold hereunder are warranted for two (2) years from the date of shipment to Buyer.

**14. LIMITATION OF DAMAGE**

Seller's obligations and liabilities under the forgoing warranty are limited exclusively to repair or replacement of the non-conforming goods without charge F.O.B. point of shipment. A charge is made for repairs after the expiration of the warranty. IN NO EVENT SHALL SELLER BE LIABLE FOR CLAIMS BASED ON BREACH OF EXPRESS OR IMPLIED WARRANTY OR NEGLIGENCE OR ANY OTHER DAMAGES WHETHER DIRECT, IMMEDIATE, FORESEEABLE, CONSEQUENTIAL, OR SPECIAL OR FOR ANY EXPENSES INCURRED BY REASON OF THE USE OR MISUSE, SALE OR FABRICATION OF GOODS WHICH DO NOT CONFORM TO THE TERMS AND CONDITIONS OF THIS CONTRACT.

**15. FORCE MAJEURE**

Seller will not be responsible for any losses or damages to Buyer (or any third person), whether occasioned by deviations in performance or the nonperformance of any of Seller's obligations under this contract, or loss of or damage to goods when caused directly or indirectly by or in any manner arising from any casualty, revolution, Act of God, Act (including delay or failure to act) of any Government authority (de jure or de facto), war (declared or undeclared), riot, act of Buyer, strikes or other labor difficulties, shortage of labor, supplies and transportation facilities or any other cause or causes beyond its control or the control of its supplier.

**16. INDEMNIFICATION**

Buyer agrees to hold Seller harmless from, defend, and indemnify Seller against damages, claims and expenses arising out of subsequent sales of Seller's goods or products containing components manufactured by Seller.

**17. WEIGHT AND DIMENSIONS**

Published weights are actual or are careful estimates but are not guaranteed. The dimensions in catalogs are normally accurate but not guaranteed.

**18. CHOICE OF LAW**

This Agreement shall be construed and interpreted in accordance with the laws of the Province of Quebec, in the country of Canada.

**19. COMPLIANCE WITH LAW OF CANADA**

Buyer certifies that it will not knowingly do anything which by reason of this Agreement would cause Seller to be in violation of the laws of the Province of Quebec, in the country of Canada.

**20. LANGUAGE**

The parties have required that these terms and conditions of sale be drawn up in English.