

Terms of Sale WINTERSTEIGER CAN

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Édition: 10/24/2017

- 1) All orders ("Order") are expressly limited to the terms and conditions set forth herein. No acknowledgement, purchase order or other document forwarded by Buyer to Wintersteiger Inc. ("Seller") containing terms or conditions other than those specified herein shall be binding on Seller. This Order constitutes the entire agreement between the parties and shall not be affected in any way for any reason (including without limitation trade usage, past practice and/or prior agreements or dealings) not expressly set forth herein. This Order shall only be binding upon Seller when executed by a properly designated officer of Seller in Laval, Province of Quebec. Sales representatives have no power or authority to bind Seller and no promises, agreement, representations or commitments of the Sales representatives, not expressly set forth herein, shall be binding upon Seller.
- 2) All equipment or other materials ("Goods") to be furnished by Seller pursuant to this Order are to be within the limits or sizes published by Seller and are subject to Seller's standard tolerances for variations. Illustrations, drawings, measures, weights and statements of performance contained in a price list, brochures or other printed materials distributed by Seller are deemed to be approximate descriptions only.
- 3) All drawings, plans, brochures, calculations or product samples are the sole property of Seller. Buyer shall not make any copies without the prior written consent of Seller. Except as required by law, Buyer shall not divulge, furnish or make accessible to any other party any of such materials or information.
- 4) Seller will not be liable for any delay in the performance of orders or in the delivery of or shipment of Goods or for any damages suffered by Buyer by reason of such delay. In the event Seller is unable to deliver the Goods on a timely basis, as determined by Seller, because of a delay caused by fire, flood, accident, civil unrest, acts of God, governmental interference or embargoes, labor difficulties, shortage of labor, fuel, power, materials or supplies, transportation delays or any other cause or causes (whether or not similar in nature to those hereinbefore specified) beyond its control, Seller shall have the right, at its option, to cancel this Order or any part thereof, without any resulting liability. Shipment of all or any portion of the Goods ordered hereunder within sixty days after the specified date of delivery shall constitute timely delivery with respect to that portion of the Goods ordered. Buyer shall have the right to refuse, to accept or terminate this Order with respect to any portion of the Goods ordered hereunder not shipped within sixty days of the delivery date.
- 5) If any Goods shall be specially manufactured and/or sold by Seller to meet Buyer's particular specifications or requirements and are not part of Seller's standard line offered to the trade generally in the usual course of Seller's business, Buyer agrees that Buyer shall be obligated to purchase such specially ordered Goods even if such Goods shall not be shipped to Buyer within sixty days of the delivery date specified in this Order. Further, Buyer agrees to defend, protect and save harmless Seller against all suits at law or in equity and from all damages, claims and demands for actual or alleged infringement of any Canadian or foreign patent or other property right and to defend any suit or actions which may be brought against Seller for any alleged infringement because of the manufacture and/or sale of the specially manufactured Goods covered hereby.
- 6) The method and route of shipment for all Goods are at Seller's discretion. All shipments are insured at Buyer's expense and are made at Buyer's risk. Identification of the Goods subject to the Order shall occur as each shipment is placed in the hands of the carrier selected by Seller and transfer of risks shall occur at that moment. All prices are F.O.B. Seller's place of business in Laval, Province of Quebec.
- 7) Any orders for Goods where the price is not designated on the reverse side hereof are charged at the list price, valid at the day of shipment. All invoices are payable in Canadian dollars. All invoices will be dated the day of shipment, and are to be paid by Buyer in full cash or certified funds upon receipt of the Goods unless other payment arrangements are agreed to by Seller in writing. Any payment not made by the due date shall bear interest from the date of invoice at the rate of 18% per annum (or the highest rate of interest allowed by applicable law, whichever is lower). Any payment which is not made when due, or any payment which is stopped, or if, in Seller's opinion, the financial condition of Buyer at any time does not justify continuance of production or shipment upon the terms of payment specified, Seller may require a full or partial payment in advance prior to shipment or manufacture of the Goods ordered hereunder. Purchaser's failure to make satisfactory arrangements for payment within ten days after request by Seller shall entitle Seller to immediately terminate Seller's obligations under this Order. Prices on the specified Goods are exclusive of all city, provincial and federal taxes including without limitation, taxes on manufacture, sales, receipt, gross income, occupation, use and similar taxes. Whenever applicable, any tax or taxes will be added to the invoice as a separate charge to be paid by Buyer. If Buyer shall fail to make any payment to seller when due, Buyer shall be obligated to pay to Seller, in addition to all other amounts due from Buyer hereunder, all of Seller's costs of collection including reasonable attorney's fees and court costs.
- 8) Unless Buyer pays Seller for the Goods upon Seller's delivery thereof, Buyer hereby grants to Seller a Security interest in the Goods, which Security interest shall secure payment of the total purchase price of the Goods, and any interest that may accrue and any costs of collection that Seller may incur and shall continue to be effective until Buyer has fully paid Seller for the Goods, together with any interest or costs which have accrued hereunder.
- 9) LIMITED WARRANTY: Seller warrants to Buyer that the Goods are free from defects in materials and workmanship for a period of 1 year. Seller disclaims all other warranties, express or implied. All implied warranties, including, without limitation the implied warranty of merchantability and fitness for purpose are limited to 1 year from the date of purchase. Buyer sole remedy under the above warranty or under any implied warranty is limited to the repair or replacement at Seller's sole option, of any defective goods or parts thereof. Buyer should return any claimed defective Goods or parts to Seller for warranty service. This limited warranty will not apply to defects caused by excessive or improper use of the goods, modifications or damage resulting from a lack of or improper care. In no event shall Seller be liable for incidental, consequential, statutory or exemplary damages, whether the action is in contract, warranty, negligence or strict liability, including without limitation, loss to property other than the Goods, loss of use of Goods, loss of use of Goods or other property, or other economic losses. Seller shall not be liable for contribution or indemnification, whatever the cause.
- 10) This agreement shall be construed and interpreted in accordance with the laws of the Province of Québec. Buyer agrees that all disputes shall be settled in the provincial or federal courts located in the province of Québec and that this agreement shall be deemed to have been entered into in the province of Québec. Buyer consents to the exclusive jurisdiction of the courts of the province of Québec and to service of process by mail. Buyer may not assign its rights under this agreement without the prior written consent of Seller. Any notice required hereunder shall be sufficiently given if sent by registered or certified mail, postage prepaid, addressed or delivered to the parties as set forth on the reverse side of this agreement. A party hereto may change its address for notice purposes by furnishing the new address, in writing, to the other party. Any notice shall be deemed to have been given, if mailed to the last known address as provided herein, on the fifth day after the date on which the notice is mailed. In the event any provision of this agreement shall become or be unenforceable, invalid, void or voidable, the remainder of the agreement shall be limited, construed or, if necessary, eliminated to the extent necessary to remove such defect and the remaining provisions shall continue to bind the parties as though the unenforceable, invalid, void or voidable part were not a part of this agreement. Except for the indemnification provisions set forth in paragraph 11 below, whenever the term Buyer is used herein, it shall include Buyer, its officers, directors, partners, employees and agents.
- 11) Buyer shall indemnify Seller against any claim, or suit (including costs of investigation, costs of defense and any damage award or settlement) arising out of or relating to the service, operation and/or use of the Goods unless such claim or suit under any theory arises solely out of the negligence of Seller. Indemnification under this Order by Buyer to Seller shall apply to any claim or suit as described above that is the joint responsibility of Buyer and Seller, the joint and several liability of Buyer and Seller, the joint responsibility of Seller and any other person or the joint and several responsibility of Seller and any other person either for active negligence, passive negligence, breach of warranty or product's liability. It is agreed by the parties that this indemnification promise is an integral part of the agreement between the parties.