

Terms and Conditions

General Terms and Conditions of Sale

1. Offer and Acceptance

Unless specifically modified in writing and executed by an authorized officer of Silex, the Terms and Conditions of Sales contained herein shall be deemed a material part of any sale or proposed sale by Silex Innovations Inc. (Silex) to _____ ("Purchaser") and unless and only to the extent specifically excluded therein, shall be a material part of any subsequent letter of authorization, contract, purchase order, sales or other agreement between Silex and Purchaser with respect to all products, equipment, services and /or parts relating thereto (hereinafter referred to as the Product)

2. Title and Ownership

Title and risk of loss or damage to the product shall pass to Purchaser under tender of delivery F.O.B. Silex's manufacturing facility unless expressly stipulated otherwise, regardless of when partial or final payment is to be made by Purchaser. Notwithstanding the foregoing, the Purchaser hereby grants to Silex a security interest in each item of the Product sold pursuant to the terms hereof. Silex shall have the right to register the security interest granted herein under the *Personal Property Security Act* (Ontario), or any similar legislation in any applicable jurisdiction, including the right to cause such registration to perfect Purchase Money Security Interest in the Product. In the case of each item of Product sold such security interest shall remain in place until full payment has been made therefore and collected by Silex. The Purchaser acknowledges Silex's security interest regardless of mode of attachment of the Product to realty or other property. The Purchaser further acknowledges Silex's right to perfect a purchase money security interest in the Product or any replacement thereof.

3. Inspection of Goods

Purchaser shall have the right within ten (10) days after the date of delivery of any Product to its destination, to inspect the Product and make specific written objection as to all or any part of the Product, which in the Purchaser's opinion shall be deficient. Upon receipt of such written notification, Silex shall have a reasonable period of time to:

- (a) determine the validity of the objection;
- (b) at its sole option, correct the matter forming the basis of the Purchaser's objection or replace part or all of the Product.

Purchaser's failure to make an objection as herein stated or to enable Silex to cure any objection shall be deemed to conclusively establish acceptance of the Product by Purchaser. If Silex determines to replace all or part of the Product, Silex will provide Purchaser with a "CC Number" which shall be noted by Purchaser on any documentation accompanying the returned Product to Silex.

4. Delivery

Silex may from time-to-time quote delivery dates to Purchaser. Such dates shall be interpreted as estimates only and in no event shall such dates be construed as material to the purchase and sale of Product. Silex shall not be liable for loss, damage, detention or delay due to fire, flood, severe weather conditions, strikes, or other labour difficulties, major force or other causes beyond the reasonable control of Silex. In the event of delay in performance due to any such cause, the date of delivery or time of completion shall be adjusted to reflect the actual length of time necessary to properly accommodate the delay without change to the purchase price. In the event of such delay or default in delivery, Silex shall complete work in progress and /or make delivery as soon as reasonably practicable. The occurrence of any such delay shall not suspend the Purchaser to pay the full purchase price for the Product.

5. Pricing

- (a) Prices quoted by Silex do not include any federal, state, provincial or local property, license, privilege, sales, use excise, gross receipts or other like taxes which may now or hereafter be applicable to, measured by, or imposed upon any purchase and sale hereunder, the Product, its value, its use or any services performed in connection therewith. Such taxes shall be paid by Purchaser or if paid by Silex shall be itemized separately to Purchaser who shall make prompt payment thereof to Silex.
- (b) Unless indicated otherwise in writing in a price quotation executed by Silex, all quotes by Silex are valid for 30 days.

6. Warranty

- (a) Subject to the exclusions contained herein, Silex warrants that the Product shall be free of defects in material and workmanship as of the date of delivery F.O.B. the manufacturing facility. Such warranty shall survive for a period of twelve (12) months the date of shipment. Notice of warranty claim must be made within such period, in writing and shall be subject to the rights reserved by paragraph 3 hereof. If Silex determines in its sole discretion to furnish replacement of all or part of the Product, Purchaser shall restore the Product to its "as shipped" condition prior to installation. Such replacement shall be delivered F.O.B. Silex's point of shipment provided.
- (b) This warranty shall be void upon any improper installation, maintenance or operation of the Product other than in strict accordance with standard industry practices and compliance with the specific recommendations of Silex respecting the Product.

- (c) This warranty shall be void upon any modification of the Product by any person other than Silex.
- (d) Silex makes no warranty with respect to any accessories or other parts of the Product sold by Silex but furnished to Silex by other manufacturers or suppliers. Such parts or accessories shall carry whatever warranty, if any, the manufacturers thereof have given to Silex and which can be assigned to Purchaser. Purchaser agrees to look solely to such other manufacturers or suppliers of such accessories or parts for any warranty, repair or product liability claim arising out of the performance, condition or use of such accessories or parts. Silex agrees to use its reasonable best efforts to assign to Purchaser its rights under any such warranty.
- (e) Silex shall not be liable for any repairs, replacements or adjustments to the Product or any costs of labour performed by Purchaser without Silex's prior written approval. Silex's warranty shall expire in the event the Product is modified, misused, neglected or operated other than for its intended purpose
- (f) SILEX MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED, EXCEPT THAT OF GOOD TITLE TO THE PRODUCT AND ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.
- (g) The total liability of Silex with respect to performance of its obligations hereunder and all matters related to the manufacture, sale, delivery, installation, or repair of any item of Product supplied hereunder, whether such liability is based on contract, warranty, negligence, indemnity, strict liability or otherwise, shall in no event exceed the purchase price of the particular item of Product upon which such liability is based. For greater clarity such limit of liability does not refer to the aggregate of all Product supplied to the Purchaser hereunder.
- (h) By acceptance of the Product, Purchaser warrants that the Product is purchased for and will be used for, business purposes only by qualified and properly trained personnel.

7. Damages

Purchaser shall not have the right to retain, back charge, or set off against any amount which may be or become payable by it to Silex or otherwise, for amounts which Silex may allegedly or in fact owe Purchaser whether arising hereunder or otherwise.

8. Right and Obligations

The rights and obligations of Purchaser and Silex shall be construed in accordance with and governed by the laws of the Province of Ontario, notwithstanding any conflict of law provisions which would have the effect of making the law of another jurisdiction applicable. Silex and Purchaser agree that venue respecting any and all disputes between Purchaser and Silex with regard to the Product shall be Ontario.

9. Waiver or Breach

No waiver by Silex of any breach of any obligation of Purchaser set forth in these Terms and Conditions shall be construed as a waiver of any succeeding breach of the same or of any covenant or condition hereof, and in no event shall this provision itself be waived.

10. Payment

- (a) Payment of the full purchase price shall be due within 30 days after the date of invoice;
- (b) Purchaser shall be entitled to a discount of 1% of the purchase price if payment is received by Silex within 10 days of the date of invoice;
- (c) All accounts outstanding over terms of sale are subject to the addition of a monthly service charge of two percent (2%) per month (24% per annum).

11. Credit and Returns

Credits will only be granted to Purchaser for returned product if the Purchaser has complied with the provisions of paragraph 3. Credits will NOT be granted for any other reason.

12. Cancellation

An order may not be cancelled or suspended, except with the prior written consent of Silex. Restocking charges will apply.

13. Specifications and Conditions

In case of any conflict, the Terms and Conditions contained herein shall replace and supersede any and all specifications or other terms and condition previously supplied by Purchaser in connection with or upon a letter of authorization, purchase order or other agreement, or any custom, prior conduct or course of dealing.

14. Jurisdiction

Any dispute between the parties arising out of or related to the Product or these Terms and Conditions and any amendments hereto, shall be referred to and settled by a single arbitrator in Toronto, Ontario appointed pursuant to the legislation governing submissions to arbitration in Ontario. The decision of the arbitrator shall be final and binding upon the parties without right of appeal. Each party shall bear its own costs of any arbitration.