



SUPERCHUTE[®] Ltd.

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GENERAL TERMS AND CONDITIONS

GOVERNING THE SALE OF GOODS MARKETED BY SUPERCHUTE LTD.

February 22nd, 2008

1. Definitions

When used herein the following terms shall have the meaning set forth below:

- (a) **“Agreement”** means the Order Approval, these General Terms and Conditions incorporated by reference therein, together with all other Superchute-generated documentation incorporated by reference therein and/or in these General Terms and Conditions and any other schedule or addendum counter-signed for acceptance by Superchute for inclusion in and annexed to the said Order Approval.
- (b) **“Buyer”** means the person identified in the Order Approval who is to purchase the Products.
- (c) **“FOB Point”** shall have the meaning ascribed to that term in Section 4.1 below.
- (d) **“Force Majeure”** means extreme weather, fire, war, insurrection, government restrictions, government boycott or other governmental action, strike, lockout, shortage or non availability of raw materials, non availability, delay or failure of carriers or other causes beyond the control of and/or not due to the fault of Superchute or, as the case may be, the Buyer.
- (e) **“Manuals”** means the latest editions of manuals issued by Superchute that appear on Superchute’s Website and that pertain to the proper installation, use and maintenance of the Products.
- (f) **“Order Approval”** means a Superchute-generated document whereby Superchute confirms the Buyer’s purchase order for the Buyer’s purchase of the Products as therein clarified or modified by Superchute, and/or by these General Terms and by those Conditions included therein by reference.
- (g) **“Price”** means the purchase price payable by the Buyer for the Products, exclusive of applicable taxes and any other charges or amounts to be added thereto in virtue of and specified in the Order Approvals and/or in these General Terms and Conditions.
- (h) **“Products”** means the equipment, parts, merchandise and products of Superchute specifically identified as ordered for purchase by the Buyer in the Order Approval.
- (i) **“Shipping and Handling Costs”** means and includes the costs and fees of transporters and carriers, freight costs, packaging costs, brokerage fees (if any), and Superchute’s processing fees.

- (j) **“Specifications”** means Superchute’s specifications for the Products that appear on Superchute’s Website.
- (k) **“Superchute”** means Superchute Ltd.
- (l) **“Superchute’s Website”** means www.superchute.com.
- (m) **“Warranty Period”** shall have the meaning ascribed to that term in Section 8.1.

2. Agreement

2.1 Superchute may, in its discretion, for any reason that it may determine, refuse to issue an Order Approval. Should Superchute issue an Order Approval, this Agreement will be considered to have been concluded with the Buyer upon issuance of an Order Approval unless the Buyer notifies Superchute in writing within five (5) business days of receipt of the Order Approval of any opposition or disagreement thereto or therewith.

2.2 For greater clarity, these General Terms and Conditions shall govern and prevail notwithstanding any inconsistent or contradictory terms and conditions that may be contained in any purchase order or other document or written communication emanating from the Buyer.

3. Shipping and Handling Costs

3.1 Unless expressly specified otherwise in the Order Approval, where the transport is arranged by Superchute, the Shipping and Handling Costs shall be added to the Price.

3.2 There shall also be added to the Price, the costs of any transport insurance required by the Buyer and arranged by Superchute as well as the costs of any special packing requirements requested by the Buyer beyond the standard packing Specifications of Superchute.

4. Delivery Terms

4.1 Unless otherwise stated in the Order Approval, where transportation is arranged by Superchute, delivery terms shall be FOB (**“Incoterm 2002”**) the destination specified in the Order Approval. Where transportation is arranged by the Buyer, unless otherwise stated in the Order Approval, delivery terms shall be FOB Superchute’s plant in Montreal, Quebec. The relevant delivery point is referred to in these General Terms and Conditions as the “FOB Point”.

4.2 In no event shall Superchute be liable for delays in delivery caused by carriers utilized for transportation of the Products or for any other reason of Force Majeure.

5. Invoicing and Payment

5.1 Unless otherwise provided in the Order Approval, the Price and all amounts payable by the Buyer pursuant to the Order Approval and/or under the provisions of this Agreement are stated and payable in United States dollars.

5.2 The Price, and, as applicable, the Shipping and Handling Costs, and any other amount and/or applicable taxes and duties payable by the Buyer pursuant to the Order Approval and/or under the provisions of this Agreement shall be invoiced on the date of Superchute’s handing over the Products to carriers at its plant in Montreal, Quebec for shipment and delivery to the Buyer.

5.3 Unless otherwise specified in the Order Approval, all invoices issued by Superchute shall be payable within thirty (30) days of the date of issue.

5.4 If the Buyer fails to pay an invoice and any other amount payable under the terms of this Agreement as and when due, the Buyer shall be liable to pay interest on such amount from the due date up to and including the date when such amount and all interest thereon are paid in full at the rate of one percent (1%) per month (12% per annum). Such interest shall accrue daily and be payable on demand.

5.5 In addition to Superchute's other rights and remedies should the Buyer fail to pay an invoice or other amount payable under the term of this Agreement as and when due, the Buyer shall be liable to pay all collection costs incurred by Superchute to recover such payment including, without limitation, reasonable lawyers' fees.

5.6 Amounts owing and payable by the Buyer under the terms of this Agreement are payable in full and the Buyer shall not have any right of setoff with respect to any amount that may be owing to the Buyer by Superchute under this Agreement or under any other agreement between the Buyer and Superchute.

6. Transfer of Risk and Title

6.1 Risk of damage to or loss of the Products shall pass to the Buyer upon delivery of the Products to the FOB Point.

6.2 Title to the Products shall pass to the Buyer only upon complete payment of all invoices pertaining to the Price, the Shipping and Handling Costs as applicable, and any other amounts payable by the Buyer under this Agreement.

7. Acceptance

7.1 The Buyer shall inspect the Products within a reasonable time upon delivery of the Products to the FOB Point and shall make any claims in writing for damaged Products or Products that do not correspond with the Products confirmed to be supplied in the Order Approval within no later than ten (10) business days after the delivery of the Products to the FOB Point.

7.2 Should the Buyer not make any claim within the said ten (10) business day period referred to in Section 7.1, the Buyer shall be deemed to have inspected and accepted the Products in which case the Buyer shall pay the full Price of the Products and any amount payable in respect thereof in accordance with this Agreement and the Buyer shall have no claim for damages or other compensation in respect of any discrepancy between the Products supplied and the Products confirmed to be supplied in the Order Approval.

7.3 Similarly, where the Buyer has submitted a claim within the said ten (10) business day period referred to in Section 7.1, but thereafter has taken any step with respect to the Products which is inconsistent with rejection, the Buyer shall be deemed to have accepted the Products and the provisions of Section 7.2 shall apply *mutatis mutandis*.

7.4 Where the Buyer submits a claim in writing within the aforesaid ten (10) business day period referred to in Section 7.1, and if the Buyer is not in default of its payment or performance of its obligations under this Agreement to Superchute, Superchute shall, at its option:

- (i) repair or replace the damaged or non conforming Products with Products which conform to the requisites of the Order Approval and of this Agreement; or

- (ii) provide a refund to the Buyer of any amount paid by the Buyer with respect to the Price on account for the said Products and otherwise issue a credit of any amount invoiced therefor.

The foregoing shall be the Buyer's sole and exclusive remedy with respect to damaged or non-conforming Products and Superchute's sole liability and obligation with respect to valid claims of damage or non-conformity of the Products to the requisites of the Order Approval determined upon inspection by the Buyer and claimed within the time period specified in Section 7.1.

7.5 Notice of any claim by the Buyer pursuant to this Article 7 shall be given in writing to Superchute together with all relevant supporting documentation in the Buyer's possession or control no later than the said period referred to in Section 7.1 of ten (10) business days following delivery to the FOB Point of the Products subject of the claim.

8. Warranties and Limitation of Liability

8.1 Products are warranted by Superchute as follows:

- (i) Superchute has good title to the Products sold hereunder;
- (ii) the Products are in compliance with the applicable provisions of the laws governing this Agreement specified in Section 10.1 below.
- (iii) the Products comply with the Specifications and are free of defect in material and workmanship.

This warranty is limited for a period of twelve (12) months from the date of delivery of the Products to the FOB Point (the "**Warranty Period**"). **The foregoing are the only warranties by Superchute with respect to the Products sold and delivered under this Agreement and without limiting the generality of the foregoing, there are no other representations, warranties or conditions of any kind and all other warranties and conditions, including, without limitation, warranties implied by law, statutory or otherwise, including, without limitation, any warranty of fitness for particular purpose of merchantability, are hereby expressly excluded.**

8.2 Without limiting the generality of the foregoing, the Products are not warranted for damage occurring after delivery to the FOB Point or for wear and tear.

8.3 Superchute's warranty herein provided shall be voided and nonextant should the Buyer:

- (i) fail to install, utilize or maintain the Products in accordance with the instructions and information as set out in Superchute's Manuals;
- (ii) remove any of the safety features, or any of the safety or instruction labels affixed to the Products;
- (iii) modify the Products in any way; or
- (iv) utilize the Products contrary to the Specifications, the Manuals and/or the use for which the Products are intended as set out in the Manuals, Superchute's Website and/or in the Order Approval.

8.4 Any Product warranty claim made by the Buyer shall be in writing to Superchute within the said Warranty Period together with supporting documentation. The Buyer shall provide to Superchute access and opportunity to inspect the Products with respect to which the claim is made and all returns of Products so affected must receive the prior written authorization of Superchute.

8.5 The sole obligation and liability of Superchute with respect to a Product warranty claim determined to be valid shall be, at Superchute's option, either to replace the Products so affected or to reimburse the Price therefore if paid and otherwise to credit the amount of any invoice therefor of an amount equivalent to the amount of the Price of the affected Products.

8.6 Subject to Section 8.7 below, Superchute shall, at its option, defend and shall reimburse the Buyer for claims for property damage or personal injuries directly and proximately caused by and arising from failure of the Products to conform to the Specifications or a defect in the material or workmanship of the Products.

8.7 The liability of Superchute for any reason under this Agreement including, without limitation under Section 8.6, shall be limited strictly to the amount of the Price of the Products object of the delivery in question and in no event shall Superchute be liable for any loss of profit, loss of business or savings, or other economic losses, or for any indirect, special or consequential damages or punitive or exemplary damages of any kind whatsoever.

9. Proprietary Rights

9.1 The Buyer agrees that any use by the Buyer of Superchute's name, trade name, trade mark or logo in any catalogue, advertising brochures or other literature or documentation in any media must be approved in advance in writing in each instance by Superchute in its sole discretion. Notwithstanding any such consent by Superchute, the Buyer's use of Superchute name, trade name, trademark or logo must comply with Superchute's usage requirements and must be submitted in advance for approval by Superchute in its sole discretion.

9.2 The Buyer agrees and undertakes that it shall not use or permit the use of Superchute's name, trade name, trade mark or logo otherwise than in connection with the Products nor after the expiration or termination of the time specified by Superchute for such use. If no time has been specified by Superchute, then the Buyer shall cease to utilize and to permit the use of Superchute's name, trade-name, trade mark or logo upon the expiration of twelve (12) months of the date of this Agreement or such earlier date as Superchute may demand in writing.

10. Governing Law and Jurisdiction

10.1 This Agreement shall be interpreted, construed and performed thereof shall be governed by and enforced in accordance with the laws of the Province of Quebec and of Canada as applicable therein, without giving effect to the principles of conflicts of laws.

10.2 The provisions at the UN Convention on contracts for the international sale of goods are expressly excluded and not applicable to this Agreement.

10.3 The Courts of the Province of Quebec shall, at the option of Superchute, have exclusive jurisdiction, and should Superchute exercise such option, the Buyer consents and submits to such exclusive jurisdiction.

11. Force Majeure

11.1 Neither party hereto shall be liable to the other for default of delay in performing its obligations hereunder, including, without limitation, Superchute's obligation to manufacture, supply or ship all or any part of Products but excluding the Buyer's obligation to make any payment, if such default is caused by an occurrence of an event of Force Majeure affecting the party so defaulting or delaying.

11.2 The party invoking an event of Force Majeure shall immediately following commencement thereof, notify the other party in writing of such occurrence.

12. Non-Assign Ability and Permitted Successors and Assigns

12.1 This Agreement and the rights and obligations of the Buyer hereunder, shall not be assigned by the Buyer without the prior written consent of Superchute and any purported assignment not made in observance hereof shall be null and void and have no legal effect.

12.2 This Agreement shall enure to the benefit of the binding upon the parties and the respective successors and permitted assigns.

13. Notices

13.1 All notices, consents, approvals or other directions required or permitted to be given hereunder shall be in writing and given by courier delivery, fax or other electronic transmission to the receiving party at such party's address, fax or e-mail address set forth in the Order Approval. Either party may change its address upon written notice to the other party. All notices, consents, approvals or directions shall be deemed to have been effectively given and received on the date of delivery if sent by courier or, if sent by fax or other electronic communications, shall be deemed to have been received on the next business day following transmission.

14. Remedies

14.1 In addition to and without prejudice to any other remedies available to Superchute under this Agreement or at law, Superchute shall be entitled to cease to perform any of its obligations under this Agreement if the Buyer shall be in default of any of its obligations under this Agreement.

14.2 Without limiting the generality of the foregoing or of any other provisions of this Agreement, the Buyer shall be considered to be in default of this Agreement if the Buyer makes an assignment for the benefit of creditors, if a trustee or receiver or liquidator is appointed to the Buyer for all or substantial part of its property or if bankruptcy, reorganization, arrangement, insolvency or similar proceedings by or against the Buyer are instituted under the laws of any jurisdiction.

15. Miscellaneous

15.1 This Agreement constitutes an entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties and there are no oral understandings, representations or warranties that affect or shall affect it. Any modifications to this Agreement must be in writing and signed by both parties. No course of performance, course of dealing or usage of trade shall be used to interpret, construe, qualify, explain or supplement any of the terms of this Agreement.

15.2 The division of this Agreement into Articles, Sections and other subdivisions and insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation hereof.

15.3 No waiver of any of the provisions of this Agreement shall be deemed to cause to the waiver of any other provisions, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing duly executed by the party to be bound thereby.

15.4 The parties have required and agreed that this Agreement be in the English language. Les parties ont exigé et consenti à ce que cette convention soit rédigée en anglais.