

TOSHONT POWER PRODUCTS INC.
1175 CORPORATE DRIVE - UNIT 2, BURLINGTON, ON L7L 5V5
Phone: (905) 333-0650 • Fax: (905) 333-4243

TERMS AND CONDITIONS OF SALE **Toshont Power Products Inc.**

1. **EXCLUSIVE CONDITIONS OF SALE:** This Quotation or Order is subject to terms and conditions contained here-in and supersedes Buyer's Specification and/or Purchase Order. Seller will recognize no modifications or additions to these conditions unless specifically agreed to in writing by Seller. Failure of Seller to object to provisions contained in the Purchaser's Order or any other communication from Buyer shall not be construed as a waiver of these conditions or an acceptance of any such provisions. If Buyer places an Order with Seller based on Seller's Quotation, whether the Order is placed in writing or orally, then the Quotation (including Seller's terms and conditions) and the Seller's acceptance of the Order will constitute the entire contract between Buyer and Seller with respect to the subject matter thereof notwithstanding any terms and conditions inconsistent with these terms and conditions on any of Buyer's forms or correspondence. All orders, sales contracts and other documentation between Buyer and Seller shall become effective only when approved and accepted by the Seller.

2. **PRICES:** Prices quoted herein are based upon presently prevailing duties, rates of duties, taxes, special assessments, monetary exchange and freight as applied to materials and/or equipment purchased or imported by Seller. Seller reserves the right to amend the price(s) in this quotation where variations in regulated costs such as rate of duties, taxes, special assessments, monetary exchange and freight between the date of quotation and date of delivery are deemed significant by the Seller.

3. **TERMS OF PAYMENT:** The standard terms of payment are Net-15 Days from date of invoice, with a service and interest charge of 1% per month (12% per annum) on past due invoices applying. If Buyer defaults in any payment when due or refuses to accept delivery or becomes insolvent, the Seller at its option, without prejudice to other lawful remedies, may defer deliveries or cancel the remainder of the order. Equipment held for Buyer shall be at the risk and expense of Buyer and payment shall become due from the date of which Seller is prepared to make shipment. Printed terms on face of our Quotation will take precedence.

4. **TITLE:** Title to the goods covered by this Quotation and the right to immediate possession thereof shall remain with the Seller until the purchase price is paid in full and Buyer hereby grants to Seller a security interest in the equipment (and all proceeds thereof) to secure the Buyer's obligation to pay for the equipment.

5. **CERTIFICATIONS AND TAXES:** Prices do not include sales, use or other similar federal, state or local taxes. Any certification for special duty or tax rate must be supplied at time of order. A service charge will be applied on any credit notes necessitated by the Buyer not providing proper certification at time of order. Exception from taxes extended to the buyer does not prejudice our right to charge the buyer with taxes plus any penalties assessed at any subsequent date should the taxing authorities determine that the equipment is taxable.

6. **PENALTIES AND DELAYS:** No penalty clause of any kind, in any specification of order will be effective unless specifically approved in writing by Seller. Seller shall not be liable for any damage, expenses or consequential damages caused by delays beyond Seller's control including without limiting the generality of the foregoing; fire, strike, act of the Buyer, restriction by civil or military authority, Act of God, transportation failures or inability to obtain labour, materials or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

7. **CANCELLATION:** Orders once accepted are not subject to cancellation unless on terms that will indemnify Seller against loss and/or expenses incurred.

8. **SHIPMENT:** Unless otherwise specified in writing, all shipments are EX WORKS (Incoterms 2010) Seller's shop, in which case Seller is not responsible for damage, apparent or concealed, or loss in transit and all claims on "collect" shipments must be made by Buyer direct to the carrier. Seller will assist insofar as practical in securing satisfactory adjustment to reasonable claims.

9. **ACCEPTANCE, INSPECTION:** By virtue of Buyer issuing an order for equipment in accordance with this Quotation, Buyer also accepts Seller's Terms and Conditions as part of the order. Buyer shall inspect the goods immediately upon the receipt thereof. All claims by Buyer (including claims for shortages), except only those provided for under the WARRANTY clauses below, must be asserted in writing by Buyer within a 10 day period or they are waived. If this contract involves partial performances, all such claims must be asserted within a 10-day period for each partial performance.

10. **WARRANTY:** Seller warrants to the Buyer that its products are free from defects in workmanship and materials when operated under normal conditions and in accordance with nameplate characteristic limits.

This warranty will be in effect for the time period stated by the manufacturer of the product/service, in their literature, at the time of purchase. If the item is manufactured by Toshont Power Products, the product is warranted for a period of 12 months from the date of installation, but not more than 18 months from date of manufacture.

If any defects are claimed by the Buyer during the warranty period, Seller's sole obligation shall be limited to alteration, repair or replacement at Seller's expense, EX-WORKS (Incoterms 2000) Seller's shop, on parts or equipment which upon return to Buyer and upon Buyer's examination prove to be defective.

UNLESS OTHERWISE SPECIFIED IN WRITING HEREIN, THERE ARE NO REPRESENTATION, WARRANTIES OR CONDITIONS, EXPRESSED OR IMPLIED STATUTORY OR OTHERWISE, EXCEPT FOR THE FOREGOING AND WITHOUT LIMITING THE GENERALITY OF THE ABOVE, THERE ARE NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES CONCERNING THE QUALITY OF THE EQUIPMENT OR THAT ANY SUCH EQUIPMENT WILL BE FIT FOR ANY PARTICULAR PURPOSE OF THE PURCHASER. THE SELLER SHALL HAVE NO OBLIGATION TO REPAIR OR REPLACE SUCH PRODUCTS OR PARTS UNLESS IT RECEIVES AT ITS OFFICES IN CANADA WRITTEN NOTICE OF SUCH DEFECT WITHIN THE ABOVE-MENTIONED WARRANTY PERIOD.

TOSHONT POWER PRODUCTS INC.
1175 CORPORATE DRIVE - UNIT 2, BURLINGTON, ON L7L 5V5
Phone: (905) 333-0650 • Fax: (905) 333-4243

This warranty does not cover the cost of transportation, labour, removal, installation, or re-testing of the new or repaired goods or parts, or any other direct or incidental expenses incurred in shipping the product to or from Seller. Replacement goods or parts are warranted for the remainder of the warranty period applicable to the goods originally supplied by the seller. No warranty shall apply to any equipment upon which repairs or alterations have been made unless authorized by Seller, nor to equipment which has been subjected to misuse, negligence or mishandling.

11. **DAMAGES:** Subject to the balance of the provisions of this clause, Seller shall only be liable for the cost of replacement of any defective Equipment provided hereunder. Seller shall not be liable to the Buyer in any circumstances for any incidental, special, consequential or indirect damages, including but not limited to loss of profits or revenue, loss of use of equipment and facilities, and claims by or payments to customers, suppliers or other parties who have a relationship with the Buyer. This disclaimer applies to consequential damages based upon any cause of action whatever asserted against Seller including causes of action arising out of any breach of warranty, express or implied, guarantee, product liability, negligence, tort, or any other cause pertaining to the performance or non-performance of this Quotation or contract by Seller and the Buyer hereby waives any right to claim punitive, aggravated or exemplary damages with respect to a breach of this Quotation or the performance or non-performance of the Equipment, and whether such claim is founded in contract, tort or otherwise. Seller shall not be responsible for losses or damages arising out of the negligence of the Buyer, its' employees, agents or third-party contractors. In no event will Sellers maximum liability to the Purchaser in connection with the Equipment, including without limitation resulting from breach of contract or any other performance or non-performance of this Quotation or contract, exceed the amount of the purchase price paid to Seller hereunder.

12. **RETURNING EQUIPMENT:** No equipment is to be returned without first obtaining from Seller shipping instructions and a return material identification number and agreement in writing as to terms. Returned equipment, which Seller elects to accept for credit is subject to reasonable handling and restocking charge commensurate with the policy of the manufacturer plus all charges incurred by Seller. Seller is not responsible for equipment that is returned without complying with the foregoing. Equipment is returned at the expense and risk of the Buyer. Returned equipment must be in the original packaging and unused.

13. **PRIVILEGE AND LIEN RIGHTS:** Seller retains all lien rights with regard to the equipment in accordance with any Builder's Lien Act, Mechanic's Lien Act, Builder and Works Act or other legislation passed pursuant to or in replacement thereof.

14. **BACK CHARGES:** Seller will accept no back charges for any reason without Seller's written permission to incur such back charges.

15. **TECHNICAL ADVICE:** Any technical advice furnished or recommendation made by Seller or any representative of Seller concerning any use or application of any of the goods is believed to be reliable, but SELLER MAKES NO WARRANTY, EXPRESSED OR IMPLIED, ON RESULTS TO BE OBTAINED. BUYER ASSUMES ALL RESPONSIBILITY FOR LOSS OR DAMAGE RESULTING FROM THE HANDLING OR USE OF ANY OF THE GOODS.

16. **INVALIDITY:** If any provision of this contract shall be found to be invalid or illegal by reason of any determination made by a court of competent jurisdiction or any governmental authority having jurisdiction in the circumstances, such provisions shall be severed from this contract to the extent of such invalidity or illegality and the validity, legality or enforceability of the remaining provisions of this contract shall not in way be affected or impaired thereby. Waiver of any default shall not be a waiver of any other or subsequent default.

17. **GST NUMBER:** Toshont Power Products Inc. **GST Number** is 137164588

18. **APPLICABLE LAWS AND FORUM:** This contract shall be interpreted in accordance with and shall be governed by the laws of the Province of Ontario, and the parties agree that any disputes hereunder or with respect to this quotation or the resulting contract between the parties shall be determined exclusively by the Courts in the Province of Ontario, and the parties hereby expressly attorn to the exclusive jurisdiction of the Courts in the Province of Ontario.

19. **LIABILITY:** Notwithstanding anything to the contrary herein contained, the Liability of the Seller under any circumstances whatsoever and without exception shall be limited to the Purchase Price of the particular item forming part of the goods.

Since 1993