

TERMS AND CONDITIONS OF SALE (“Terms”)

1. **Parties.** All references in this document to “Seller” include White Cap Supply Canada Inc. and/or any parent, subsidiary or affiliate of White Cap Supply Canada Inc. (including any division of the foregoing) whether or not performing any or all of the scope hereunder or specifically identified herein. All references in this document to “Buyer” include all parent(s), subsidiaries, and affiliates of the entity placing the order. Buyer and Seller may be referred to herein individually as a “Party” and collectively as the “Parties”.
2. **General.** All sales to Buyer are subject to these Terms, which shall prevail over any additional or inconsistent terms of Buyer’s purchase order or other Buyer documents. Additional or different terms and conditions in any way altering or modifying these Terms are expressly rejected by Seller and shall not be binding upon Seller unless specifically accepted in writing by Seller’s authorized representative. No modification or alteration of these Terms shall result by Seller’s shipment of goods or provision of services (such goods and services hereinafter collectively referred to as “Goods”) following receipt of Buyer’s purchase order or other documents containing additional, conflicting or inconsistent terms. These Terms are binding on the Parties and their successors and permitted assigns. All agreements, notices, disclosures, and other communications Seller provides to Buyer electronically shall satisfy any legal requirements that such communications be in writing. No representations, inducements, promises, or agreements, oral or written, have been made by Seller, or anyone acting on behalf of Seller, that are not contained herein, and any prior agreements, promises, negotiations, or representations between the Parties are superseded by these Terms. Buyer acknowledges and agrees that it has not relied on any representations, inducements, promises, or agreements, oral or written, by Seller, or anyone acting on behalf of Seller, not contained in these Terms. All product information on Seller’s website or in Seller’s catalogue or other marketing materials is provided by the applicable manufacturer and/or supplier and shall not be deemed a representation, warranty, or claim of Seller. Seller reserves the right to accept or reject any order of Buyer.
3. **Prices.** Prices on Seller’s website, in Seller’s catalogues, or in Seller’s quotes are subject to change without notice, and all such prices expire and become invalid if not accepted within 10 calendar days from the date of issue, unless otherwise noted by Seller in writing. Price extensions, if made, are for Buyer’s convenience only, and they, as well as any mathematical, stenographic, or clerical errors, are not binding on Seller. Prices shown do not include any sales, excise, goods and services, or other governmental tax or charge payable by Seller to any federal, provincial, or local authority. Any taxes now or hereafter imposed upon sales or shipments will be added to the purchase price, and Buyer shall reimburse Seller for any such tax or provide Seller with an acceptable tax exemption certificate. All prices and other terms provided to Buyer shall be kept confidential except to the extent a Party is required by law to disclose the same.
4. **Grant of Security Interest.** To secure payment and performance of all obligations, Buyer hereby grants to Seller a continuing purchase money security interest in all Goods, whenever sold, consigned or delivered, directly or indirectly, sold to or for the benefit of Buyer by Seller, wherever located, and all proceeds from the sale thereof until Buyer pays Seller in full for such Goods. Seller’s purchase money security interest is explicitly limited to outstanding obligations between Buyer and Seller. Buyer authorizes Seller to file a financing statement describing the Goods. In addition, Buyer hereby authorizes Seller to have filed in any jurisdiction any financing statements or amendments thereto if filed prior to the date hereof. Buyer further authorizes Seller to file PPSA Financing Statements in the filing office of any jurisdiction(s) Seller deems to be appropriate. Buyer acknowledges receipt of a copy of these Terms. Buyer waives its right to receive a verification statement evidencing the registration of a PPSA Financing Statement or PPSA Financing Change Statement.
5. **Force Majeure.** Seller shall not be liable for delay or default in delivery resulting from any cause beyond Seller’s reasonable control, including, but not limited to, governmental action, strikes or other labor troubles, fire, damage or destruction of Goods, wars (declared or undeclared), acts of terrorism, disease, epidemic, or pandemic, manufacturers’ shortages, availability or timeliness of transportation, materials, fuels or supplies, and acts of God (each a “Force Majeure Event”). Upon the occurrence of a Force Majeure Event: (a) the time for Seller’s performance shall be extended reasonably and the Parties shall adjust all affected dates accordingly; (b) the purchase price shall be adjusted for any increased costs to Seller resulting from such Force Majeure Event; and (c) Buyer shall not be entitled to any other remedy.
6. **Warranty.** Seller is a reseller of Goods only, and as such does not provide any warranty for the Goods it supplies hereunder. Notwithstanding the foregoing limitation, Seller shall pass through to Buyer any transferable manufacturer’s standard warranties with respect to Goods purchased hereunder. EXCEPT AS SET FORTH HEREIN, NO WARRANTY OR AFFIRMATION OF FACT OR DESCRIPTION, EXPRESS OR IMPLIED, IS MADE BY SELLER. BUYER AND PERSONS CLAIMING THROUGH BUYER (COLLECTIVELY, “CLAIMANT”) SHALL SEEK RECOURSE EXCLUSIVELY FROM THE RELEVANT MANUFACTURER(S) IN CONNECTION WITH ANY DEFECTS IN OR FAILURES OF GOODS, AND THIS SHALL BE THE EXCLUSIVE RECOURSE OF CLAIMANT FOR DEFECTIVE GOODS, WHETHER THE CLAIM SHALL SOUND IN CONTRACT, TORT, STRICT LIABILITY, PURSUANT TO STATUTE, OR FOR NEGLIGENCE. BUYER SHALL PASS THESE TERMS TO SUBSEQUENT BUYERS AND USERS OF GOODS. SELLER EXCLUDES AND DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. SELLER ASSUMES NO RESPONSIBILITY WHATSOEVER FOR INSTALLATION OF GOODS, USE, MISUSE, ALTERATION OR MODIFICATION OF GOODS, OR SELLER’S INTERPRETATION OF PLANS OR SPECIFICATIONS PROVIDED BY BUYER. SELLER DOES NOT CERTIFY OR GUARANTEE THAT ANY GOODS COMPLY WITH ANY STATUTES, LAWS, CODES, ORDINANCES, OR REGULATIONS.
7. **Limitation of Liability.** TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT, WHETHER IN CONTRACT, WARRANTY, INDEMNITY, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, ARISING DIRECTLY OR INDIRECTLY OUT OF THE PERFORMANCE OR BREACH OF THESE TERMS, SHALL SELLER BE LIABLE FOR (a) ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL OR SIMILAR DAMAGES SUCH AS LOSS OF USE, LOST PROFITS, ATTORNEYS’ FEES OR DELAY DAMAGES, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR CAUSED BY SELLER’S BREACH OF THESE TERMS, (b) ANY CLAIM THAT PROPERLY IS A CLAIM AGAINST A MANUFACTURER, OR (c) ANY AMOUNT EXCEEDING THE AMOUNT PAID TO SELLER FOR GOODS FURNISHED TO BUYER THAT ARE THE SUBJECT OF SUCH CLAIM(S). ALL CLAIMS MUST BE BROUGHT WITHIN ONE YEAR OF ACCRUAL OF A CAUSE OF ACTION.
8. **Indemnification.** Buyer shall indemnify, defend, and hold Seller its officers, directors, employees and agents harmless from any and all costs (including attorneys’ and accountants’ fees and expenses), liabilities, and damages resulting from or related to any third party (including

Buyer's employees) claim, complaint, and/or judgment arising from Buyer's use of any Goods furnished hereunder, as well as any negligent, intentional or tortious act or omission of Buyer or any breach by Buyer of these Terms.

9. **Freight, Title and Risk of Loss.** If delivery occurs in Seller's own vehicles, shipments shall be delivered FCA (as defined in Incoterms 2020) Buyer's designated delivery site. In all other cases, the FCA point shall be Seller's store or warehouse, and all responsibility and costs of shipping and delivery beyond Seller's store or warehouse shall be borne by Buyer. Title and risk of loss shall pass to Buyer at the applicable FCA point. All claims for shortage of Goods or for loss or damage to Goods as to which Seller has the risk of loss shall be waived unless Buyer, within three business days after receipt of the short or damaged shipment, gives Seller written notice fully describing the alleged shortage or damage. Partial shipments are permitted at Seller's discretion.

10. **Changes and Returns.** Any change in product specifications, quantities, destination, shipping schedules, or any other aspect of the scope of Goods must be agreed to in writing by Seller and may result in a price and delivery adjustment by Seller. No credit for Goods returned by Buyer shall be given without Seller's written authorization. All returns are subject to a restocking charge. The following items are not returnable: (a) special/customized product, including fabricated and custom made-to-order direct items; (b) hazmat items; (c) items shipped outside of Canada; (d) non-catalogue items and volume purchases with the exception of defective or expired products; (e) warranty items; or (f) factory direct items.

11. **Payment.** Unless otherwise agreed in writing, payment terms are net 30 days from delivery, payable in Canadian dollars. Notwithstanding the foregoing, all orders are subject to Seller's continuing approval of Buyer's credit. Seller, in its sole discretion, may suspend or cancel performance, or require different payment terms, including, but not limited to, cash on delivery or in advance of shipment. In addition, Seller may, in its discretion, require an advance deposit of up to 100% of Seller's selling price for any specially-manufactured Goods ordered by Buyer hereunder. Payments due hereunder shall be made in the form of cash, cheque money order, ACH, or other tender approved in writing by Seller. Seller will not accept payments for credit accounts made by credit card or other fee-bearing payment methods. Seller may, in its sole discretion, apply Buyer's payment against any open charges. Past due accounts bear interest at the lesser of 1.5% per month (18% per annum) or the maximum rate permitted by applicable law, continuing after Seller obtains judgment against Buyer. Seller may exercise setoff or recoupment to apply to or satisfy Buyer's outstanding debt. Buyer shall have no right of setoff hereunder, the same being expressly waived hereby. Seller expressly reserves its right to file liens in the ordinary course of business per applicable law and expressly disclaims any request for a waiver of lien rights by Buyer. Seller reserves all rights to invoice and be paid for Goods provided to Buyer, and any terms contained in any of Buyer's purchase orders or other documents that purport to limit in any way the time or manner within which Seller may invoice Buyer are hereby waived by Buyer.

12. **Destination Control Statement.** Export sales of Goods are subject to the following: THESE ITEMS ARE CONTROLLED BY THE U.S. GOVERNMENT AND AUTHORIZED FOR EXPORT ONLY TO THE COUNTRY OF ULTIMATE DESTINATION FOR USE BY THE ULTIMATE CONSIGNEE OR END-USER(S) HEREIN IDENTIFIED. THEY MAY NOT BE RESOLD, TRANSFERRED OR OTHERWISE DISPOSED OF TO ANY OTHER COUNTRY OR ANY PERSON OTHER THAN THE AUTHORIZED ULTIMATE CONSIGNEE OR END-USER(S), EITHER IN THEIR ORIGINAL FORM OR AFTER BEING INCORPORATED INTO OTHER ITEMS, WITHOUT FIRST OBTAINING APPROVAL FROM THE U.S. GOVERNMENT OR AS OTHERWISE AUTHORIZED BY U.S. LAW AND REGULATIONS. In addition, to the extent applicable, any export sale of Goods shall be in accordance with the [Export Act, R.S.C. 1985, c. E-18](#), the [Export and Import Permits Act, R.S.C. 1985, c. E-19 \(EIPA\)](#), and any other similar laws or regulations relating to the export of Goods hereunder.

13. **Collection Costs.** Buyer shall pay Seller all costs and expenses of collection, suit, or other legal action brought as a result of the commercial relationship between them, including, but not limited to, all actual attorneys' and paralegals' fees and expenses, and collection costs, incurred pre-suit, through trial, on appeal, and in any administrative or bankruptcy proceedings. Any cause of action that Seller has against Buyer may be assigned without Buyer's consent to any affiliate, parent or subsidiary of White Cap Supply Canada Inc.

14. **Disputes.** This Agreement, Buyer's account, and the business relationship between Buyer and Seller shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein without regard to conflicts of law rules, and specifically excluding the UN Convention on Contracts for the International Sale of Goods. The Parties agree that any legal action arising under or related to these Terms shall be brought in Toronto, Ontario, and any right to object to such venue or to assert the inconvenience of such forum is hereby waived. At Seller's election, Seller may bring legal action under these Terms in the province in which the sale of the Goods from Seller to Buyer occurred. THE PARTIES WAIVE ALL RIGHTS TO JURY TRIALS.

15. **Termination.** If Buyer fails to comply with these Terms, Seller may terminate or restrict any order immediately upon notice to Buyer. Buyer certifies that it is solvent and that it will advise Seller immediately if it becomes insolvent. Buyer agrees to send Seller written notice of any changes in the form of ownership of Buyer's business within five business days of such changes. Buyer and Seller are the only intended beneficiaries of this document, and there are no third-party beneficiaries.

16. **Severability.** The invalidity or unenforceability of all or part of these Terms will not affect the validity or enforceability of the other terms. The Parties agree to replace any void or unenforceable term with a new term that achieves substantially the same practical and economic effect and is valid and enforceable.

17. **Safety Data Sheets.** Safety Data Sheets ("SDS") are prepared and supplied by the manufacturers of Goods. SELLER MAKES NO WARRANTIES AND EXPRESSLY DISCLAIMS ALL LIABILITY TO BUYER WITH RESPECT TO THE ACCURACY OF THE INFORMATION OR THE SUITABILITY OF THE RECOMMENDATIONS IN ANY SDS. BUYER IS SOLELY RESPONSIBLE FOR ANY RELIANCE ON OR USE OF ANY SUCH INFORMATION, AND FOR USE OR APPLICATION OF ANY GOODS. Any SDS for Goods can be located and printed free of charge from Seller's website.

18. **Privacy.** Seller's Privacy Policy is published at [Privacy Policy](#) and is incorporated herein by this reference.

19. **Survival.** These Terms survive termination, cancellation, or completed performance of any sale as long as necessary to allow the aggrieved Party to fully enforce its rights.

20. **Non-Waiver.** The failure of Seller to enforce any provision herein at any time or to require performance by Buyer of any provision of these Terms at any time shall in no way affect Seller's right thereafter to enforce such provision. No waiver by Seller of any breach by Buyer of any provision hereof shall constitute a waiver of any further breach by Buyer.