



www.tulmar.com

## Tulmar Safety Systems Inc. Terms and Conditions of Sale

### 1. INTENT AND REFERENCE

Unless there is a Contract between Tulmar and Customer (in which event the terms of the Contract shall apply), Customer acknowledges and agrees that Tulmar shall sell Product or Service to Customer and Customer shall purchase and take Delivery of Product or Service from Tulmar in accordance with these Terms.

CUSTOMER'S PURCHASE OF PRODUCT OR SERVICE SHALL CONSTITUTE ITS ACCEPTANCE OF THESE TERMS IN TOTAL, TO THE EXCLUSION OF ANY CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN ANY FORM WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ANY STATEMENT, INVOICE, SALES ORDER, PURCHASE ORDER, OR OTHER DOCUMENT OR RECORD PROVIDED BY CUSTOMER.

Any reference to Tulmar or Customer in these Terms shall include each of their respective Affiliates, directors, officers, employees, agents, subcontractors and representatives, but does not include the other Party in that reference.

In these Terms, as appropriate or as required in the context, words importing the singular shall include the plural and vice versa.

### 2. DEFINITIONS

- (i) "Affiliate": any person that directly or indirectly controls, is controlled by, or is under common control with Tulmar, or Customer, as applicable.
- (ii) "Charges": amounts, other than prices for Product or Service, Levies and Taxes, payable by Customer to Tulmar in connection with the sale or supply of Product, as agreed to by the Parties from time-to-time.
- (iii) "Contract": a written agreement signed by the Parties by which Tulmar agrees to sell, and Customer agrees to purchase, Product or Service in accordance with the terms and conditions of the Contract.
- (iv) "Corruption Laws": any anti-bribery law or international convention, as may apply now or in the future, including, but not limited to, the Canadian Corruption of Foreign Public Officials Act, the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act 2010 and the OECD Convention on Combating Bribery of Foreign Public Officials.
- (v) "Customer": a legal entity to which Tulmar delivers and sells Product or Service either pursuant to a Contract or to these Terms.
- (vi) "Days": calendar days, unless otherwise stated.
- (vii) "Delivered" and its variants: Product picked-up by or on behalf of Customer from Tulmar, or delivered by or on behalf of Tulmar to Customer.
- (viii) "Government": a recognized political division or entity including, but not limited to, national, provincial, territorial, municipal and local governments, and includes governmental agencies and authorities.
- (ix) "Party": Tulmar or Customer; "Parties": Tulmar and Customer.
- (x) "Tulmar": Tulmar Safety Systems Inc., a corporation incorporated under the laws of Canada, having an office at 1123 Cameron Street, Hawkesbury, ON, K6A 2B8.

- (xi) "Product": products sold or supplied by Tulmar to Customer and means a single Product or a collection thereof.
- (xii) "Service": service sold or supplied by Tulmar to Customer and means a single Service or a collection thereof.
- (xiii) "Reseller": a Customer purchasing Product for resale to its customers.
- (xiv) "Supplements": Charges, Levies and Taxes payable by Customer to Tulmar.
- (xv) "Taxes": any taxes including, but not limited to, sales and value-added taxes, but excluding income taxes, imposed by a Government, directly or indirectly, in connection with the sale or supply of Product by Tulmar to Customer.
- (xvi) "Terms": these Standard Terms and Conditions of Sale.

### **3. PRODUCT AND PRICES**

Tulmar may, from time-to-time, discontinue the sale of a Product; or change the manufacturing specifications, composition or packaging of a Product; or change, discontinue or replace a Product trademark or a service offered in connection with the Product.

Prices for Products and Services shall be provided to Customer upon demand and shall be subject to change upon notice.

Prices and Supplements referred to herein shall be in Canadian currency unless otherwise specified. Customer shall pay all Supplements directly to Tulmar in addition to the prices for Product, unless and to the extent Customer provides a valid exemption certificate to Tulmar or unless and to the extent a Supplement is payable by Customer, by law or contract, directly to a third party and Customer provides written evidence of such obligation to Tulmar.

The application of new, or changes to existing, Supplements shall be reflected on Tulmar's invoices as of the effective date of the application or change.

### **4. PRODUCT QUALITY; WARRANTY DISCLAIMERS; CLAIMS; EXCLUSIVE REMEDIES**

Tulmar warrants to Customer that, upon Delivery, Product conforms to TULMAR's manufacturing specifications applicable to such Product at its date of manufacture. Tulmar reserves the right, at its sole discretion, to amend a specification in such manner and at such times as it deems appropriate and to maintain some or all of the manufacturing specifications confidential.

Any claims by Customer for defect (which term includes any breach of warranty, variance in quality or shortage in quantity) shall be made promptly by phone, and then by facsimile or electronic mail. Tulmar shall be given a reasonable opportunity to investigate the alleged defect. Failure by Customer to notify TULMAR of such claim within the time specified in the applicable TULMAR policy or procedure, as amended, and as provided or otherwise made available to Customer, or otherwise promptly upon Customer's initial knowledge of a possible defect, shall operate as a waiver of any and all such claims by Customer.

Tulmar's liability shall in no event exceed the purchase price of the particular Delivery of Product with respect to which claim is made and Tulmar shall have the option of replacing the Product rather than making payment of the purchase price of the particular Product. The remedies provided in this Section shall be Customer's exclusive remedies for any claims for defect.

Notwithstanding any of the other provisions of these Terms, Tulmar's liability shall be subject to Customer:

- (i) complying with Tulmar's statements about Product handling, storage and shelf life, as provided or otherwise made available to Customer;

- (ii) taking reasonable steps to identify any possible defect before putting Product into service (which must occur before the end of the Product's "shelf life");
- (iii) taking reasonable steps to prevent or mitigate any loss or damage incurred by Customer or Reseller's customer, as a result of any possible defect after Product is placed in-service.

Tulmar makes no representations or warranties (express, implied, statutory or otherwise) other than the express warranty set out above in this Section. Tulmar expressly disclaims all other warranties (express, implied, statutory or otherwise) including, without limitation, the implied warranties of merchantability and fitness for a particular purpose.

## **5. DISCLAIMER OF LIABILITIES**

Notwithstanding any of the other Terms, neither Party shall be liable for any incidental, consequential, indirect, and special or punitive damages, including, but not limited to, loss of profits, arising out of or in connection with these Terms. However, nothing in these Terms shall exclude or limit the liability of either Party for fraud, death, personal injury or property damage resulting from the negligence of that party.

## **6. RESALE OF PRODUCT**

Customer, excepting a Reseller, shall not resell Product under trademarks, trade names or brands affixed to Product or any other trademarks, trade names or brands owned, or used under license, by Tulmar ("Trademarks").

If Customer, excepting a Reseller, resells any Product, it does so entirely at its own risk and without benefit of any warranty or representation as to quality or specifications by Tulmar.

If Customer is a Reseller:

- (i) it must enter into a license agreement with Tulmar to use its Trademarks; and
- (ii) it shall defend, indemnify and hold harmless Tulmar from and against all claims, losses, damages, liabilities and expenses, including reasonable legal fees, resulting in each case from Reseller's transportation, loading, unloading, storage, handling, promotion, advertising, sale, supply, or recommended application, of Product, except to the extent caused, or contributed to, by Tulmar's negligence or misconduct.

## **7. PRODUCT TITLE AND RISK**

Risk of loss or damage to and control of Product, and title to Product, shall pass to Customer where Product is Delivered to Customer, within Canada, when Product passes, enters into, or is set upon or within, as the case may be, the receiving vehicle, loading or unloading dock, warehouse, other facility or equipment (without limitation), provided by, or on behalf of, Customer for Delivery of Product.

## **8. ORDERS AND DELIVERIES**

All Product orders, Deliveries and returns shall be subject to the terms and conditions of Tulmar's applicable policies and procedures, as amended, and as provided or otherwise made available to Customer. Tulmar shall use reasonable efforts to meet the Delivery schedule requested by Customer or proposed by Tulmar, but shall not be liable (in contract, negligence or otherwise) for any loss or damage resulting from its failure to do so, howsoever caused.

## **9. CREDIT AND PRODUCT PAYMENT**

- (a) Tulmar shall complete an appropriate credit review of Customer (which it may update from time-to-time), to which Customer consents by completing and signing a credit application. Tulmar shall thereby

determine whether credit shall be provided to Customer under the following terms, as amended from time-to-time. If Tulmar does not provide credit, payment terms shall be as per paragraph (d).

- (b) From time-to-time upon request by Tulmar, and within three (3) business days after such request, Customer shall provide such information as Tulmar may request to determine whether to continue extensions of credit to Customer. If Customer fails to provide proof of creditworthiness in a form acceptable to Tulmar, or if Tulmar determines it shall no longer extend credit to Customer in Tulmar's sole discretion, payment terms shall be as per paragraph (d).
- (c) Tulmar is entitled to withdraw or revise credit terms previously extended to Customer at any time, acting reasonably, if Tulmar determines that the financial condition of Customer or Customer's guarantor (if any) has become unsatisfactory. If credit terms are withdrawn by Tulmar, payment terms shall be as per paragraph (d).
- (d) If Tulmar does not provide credit, payment terms shall be prepaid Deliveries. Alternatively, or in addition, Tulmar, in its sole discretion, shall provide credit to Customer if Customer or Customer's guarantor (if any) provides Tulmar with satisfactory security for Customer's payment obligations. Customer shall be responsible for all costs related to the provision of such security.
- (e) Prepayment shall be by cheque, bank draft, and wire transfer or by credit card.
- (f) Credit card payments and wire transfers may be subject to an administration fee.
- (g) Any electronic payment information sent by Tulmar, including forms and applicable wire transfer information, is sent through an official @tulmar.com email address. It is the customer's responsibility to ensure to validate where the payment is being sent.
- (h) Tulmar is entitled to withdraw credit and insist on payment in advance if Customer places an order for Product or other goods or services with Tulmar or its Affiliates with a value that would put Customer's account in excess of the credit limit agreed to by Tulmar from time-to-time.
- (i) Customer agrees to pay for Product as per the credit terms and conditions notification provided to Customer from time-to-time by Tulmar's Credit department. Overdue amounts shall be subject to a late payment interest charge ("LPIC"), at the lesser of (i) 24% per annum (daily rate 0.06575%) or (ii) the maximum annual rate or percentage lawfully permitted by applicable law, from the due date until payment is made in full. The LPIC may be altered from time-to-time by Tulmar, but shall not exceed the maximum amount, nor exceed the maximum annual rate or percentage, lawfully permitted by applicable law. No LPIC shall apply if delay of payment is due to an incorrect Tulmar invoice, or otherwise if Customer, in good faith, disputes an invoice, provided Customer's delay of payment is limited to that part of an invoice which Customer reasonably believes is incorrect or to which Customer otherwise disputes, and provided Customer makes prompt payment of the full unpaid portion of the invoice upon its correction or resolution of the dispute.
  - i. If Customer fails to pay on the due date any amount payable to Tulmar, Tulmar is entitled to suspend Delivery of Product or Service until all outstanding amounts have been received by Tulmar from Customer. Tulmar is entitled to set off any amounts owing by Tulmar or its Affiliates to Customer under any agreement(s) between such Parties against any amounts owing by Customer to Tulmar under these Terms.

## **10. PERFORMANCE DEFAULT AND TERMINATION**

- (a) Tulmar may suspend or terminate Deliveries of Product or Service to Customer immediately and without notice if Customer:
  - i. commits a material breach of these Terms and fails to remedy such breach to Tulmar's satisfaction within fifteen (15) Days from notification in writing, or, as to any failure to pay amounts hereunder when due, fails to make such payment in full within five (5) days from written demand for payment; or
  - ii. becomes bankrupt or insolvent, seeks the benefits of, or is the subject of, any voluntary or involuntary petition for relief as a debtor under the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act or under any other act at the time in force regarding bankrupt or insolvent debtors, or makes any assignment for the benefit of its creditors or any proposal to its creditors for compromise or relief from debts; or

- iii. is a Reseller and directly or indirectly, offers, pays, promises, gives, receives or authorizes payment or receipt of any money or anything of value to or from any third party (including, but not limited to, any Government or public official) for the purpose of influencing any act or decision of a third party in the course of reselling Product, or conduct itself in a manner that is inconsistent with Corruption Laws; or
- iv. breaches, or fails to comply in any material respect with, any law or regulation applicable to it or its business or operations; or
- v. in Tulmar's judgment, engages or has engaged in a fraudulent, unsafe, or deceptive business practice; or
- vi. acts or has acted in a manner Tulmar determines, acting reasonably, to be detrimental to its image; or
- vii. Enters into any contract or obligation on behalf of, or that would obligate, Tulmar without its prior written authorization.

(b) The provisions of this Section are cumulative of other provisions of these Terms regarding rights of termination, and are not in limitation of, and are not limited by, such other provisions.

## **11. TERMINATION RIGHTS AND OBLIGATIONS**

The termination of Product sales and purchases between Tulmar and Customer ("Termination") shall be without prejudice to, and shall not relieve either Party of, any rights or obligations which may have arisen between the Parties before the date of Termination, including, without limitation, Tulmar's right to payment for Delivered Product, including applicable Supplements (collectively "Full Payment"), and to payment for or recovery of any other costs or expenses incurred by Tulmar to exercise its right to Full Payment. In case of Termination, Tulmar has the right to cancel any non-completed Deliveries of Product to Customer. Neither Party shall be liable for payment of goodwill or other compensation as a consequence of Termination. All of the rights and obligations of a Party which are capable of having effect after Termination shall survive and remain in full force and effect beyond Termination for any reason.

## **12. FORCE MAJEURE**

In these Terms, a "Force Majeure" event includes, but is not limited to, a strike; lock-out; work stoppage or slow down or other labour dispute; popular uprising; sabotage; riot; rebellion; seizure; insurrection; act of terrorism; act of God; fire; storm; flood; war; accident; embargo; hostilities; explosion; perils of navigation; breakdown, closure or loss of use of, or damage to, or an unsafe condition involving, any facilities, machinery or equipment (for any reason whatsoever) used to manufacture, obtain, store, distribute or receive Product; a reduced or inadequate supply of raw materials or services to Tulmar (for any reason whatsoever, including Tulmar's inability to acquire same on economically reasonable terms); an act of any Government or other authority (whether pretended or real); or any other event beyond the reasonable control of a Party. However, lack of finances shall not be considered an event beyond the reasonable control of a Party, and nothing herein shall relieve Customer of its obligation to pay for Product Delivered to Customer.

Excluding payment obligations, neither Party shall be liable, in damages or otherwise, for any non-performance, omission or delay (collectively, "Delay") in performing its obligations under these Terms to the extent and for the time its Delay is directly or indirectly attributable to a Force Majeure event as defined above. The Party claiming Force Majeure shall notify the other Party of the situation as soon as possible, shall communicate all reasonable details to the other Party, and shall, as soon as possible, remedy the cause and consequences of the Force Majeure event insofar as it is able to do so. However, terms of settlement of any strike, lock-out or other labour dispute (collectively, "Dispute") shall be at the discretion of the Party claiming Force Majeure and such Party shall not be bound to settle the Dispute merely to remedy the Force Majeure event.

## **13. NO AGENCY / WARRANTIES**

Neither these Terms nor the relations between the Parties shall constitute or create the relationship of principal and agent or of partnership or of joint venture between the Parties. Neither Party shall have authority to create or incur

any obligation on behalf of the other Party and shall not make any representation, express or implied, that it has such authority. Neither Party, unless having given its express prior written authorization to the other Party, shall be responsible in any way for any debts, contracts or obligations incurred, made or entered into by or on behalf of the other Party.

Each Party covenants and warrants that it is an entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction, and has the power and capacity to enter into, execute and perform its obligations under these Terms, and that the execution of these Terms shall not result in a breach by such Party of any other agreement by which it is bound.

#### **14. COOPERATION AND ASSISTANCE**

Each Party agrees to execute and deliver, or cause to be executed and delivered, all documents, and do, or cause to be done, any further and other acts or things that may be necessary to implement and carry out the intent of these Terms.

#### **15. ENTIRE AGREEMENT**

These Terms and the credit and payment terms, as may be amended, that are provided by Tulmar to Customer, constitute the entire agreement between the Parties. All representations, conditions, understandings and warranties in respect of the subject matter of these Terms, whether past or contemporaneous, are merged herein or superseded hereby. Other than the credit and payment terms provided by Tulmar to Customer, no contrary or additional terms and conditions in any form whatsoever shall apply to these Terms, notwithstanding any oral or written statement made or provided by either Party, including, but not limited to, any statement, invoice, sales order, purchase order, or other document or record.

#### **16. SEVERABILITY AND WAIVER**

Should anything in these Terms be found to be illegal or unenforceable, it shall be severed from these Terms and shall not affect the enforceability of the balance of these Terms. The failure of a Party to take any action by reason of any breach, or to exercise any right, shall not constitute a waiver of such right, nor deprive such Party of the right to take any action, nor limit or otherwise impair the right of such Party to subsequently enforce such provision or exercise such right. The failure of a Party to insist in any one (1) instance or more on performance of any of these Terms, or to exercise any right or privilege herein conferred, shall not be construed as thereafter waiving any such Terms.

#### **17. GOVERNING LAW AND COMPLIANCE WITH APPLICABLE LAW**

These Terms shall be governed by and construed under the laws of the Province of Ontario, including the laws of Canada of general application therein, without regard to conflicts-of-laws principles that would require the application of any other law. The Parties agree that any action arising out of or relating to these Terms or its subject matter shall be brought in the appropriate Ontario court in the City of Ottawa and the Parties irrevocably submit to the exclusive jurisdiction of such court. Each Party shall comply with the laws and regulations applicable to it or to its business or operations. The Parties exclude application of the United Nations Convention on Contracts for the International Sale of Goods, or any local legislation implementing such Convention, if otherwise applicable.

#### **18. NOTICES**

Any notice given pursuant to these Terms shall be deemed properly given if in writing and (a) delivered by hand (including commercial delivery service), (b) sent by telecommunication (including facsimile and electronic mail), or (c) sent by mail, as follows:

- To Customer: To the address provided by Customer for receipt of invoices from Tulmar.

- To Tulmar: By hand or mail: Tulmar Safety Systems Inc, 1123 Cameron Street, Hawkesbury, ON, K6A 2B8. By facsimile: 613-632-2030.

Notice served by hand or by telecommunication shall be deemed to have been given one (1) Business Day following the date on which such notice is served, provided, if notice is by telecommunication, sender has proof of receipt by the other Party. Notice served by mail shall be deemed to have been given five (5) Business Days following the date on which such notice is postmarked. If there is an anticipated or actual postal disruption, notice shall only be given by hand delivery or by telecommunication. Either Party may at any time change its address for service by giving notice in accordance with this Section. "Business Day" means a Day which is not a Saturday, Sunday or public holiday in the jurisdiction where a Party receives a notice in accordance with this Section.

## **19. LANGUAGE**

The Parties confirm that it is their wish that these Terms be drawn up in English. Les parties aux présentes confirment que c'est leur volonté que les présentes conditions soient rédigées en anglais seulement.