

## Ditech Paint Co. Ltd., d/b/a Ditech Testing Terms and Conditions of Sale and Service

**1. ENTIRE AGREEMENT.** Each party agrees that all sales of goods (“Goods”) and/or refurbishing and/or transportation services (“Services”) by Ditech Paint Co., Ltd., d/b/a Ditech Testing (“Seller”) to Buyer are governed by these Terms and Conditions of Sale and Service (“Terms and Conditions”) which supersede any other terms of Buyer or Seller. Items of Buyer that are provided to Seller for the Services are referred to in these Terms and Conditions as “Buyer Items”. Each party agrees that the Terms and Conditions will also govern all provision of Goods and/or Services to Buyer by any parent, affiliate, or division of Seller, in which case such parent, affiliate, or division will be the “Seller” under this Agreement (unless otherwise agreed in writing by such subsidiary, affiliate, or division). The Terms and Conditions and the order for Goods and/or Services from Buyer and agreed by Seller (“Order) or other contract documents to which they apply constitute the entire agreement between the parties with respect to Goods and/or Services (“Agreement”). All references by Seller to Buyer’s specifications and similar requirements are only to describe Goods and/or Services covered hereby and no warranties or other terms will be implied thereby or have any force or effect except as specifically provided in this Agreement or by law. No other terms of Buyer, no modification, amendment, or waiver to this Agreement, and no cancellation, change, or return of any Order under this Agreement will be binding on either party until agreed in writing by such party’s authorized representative. Buyer may not rely on any representation, promise, or term not set forth herein and Seller expressly objects to and rejects all terms not contained in this Agreement. Seller’s acceptance of Orders, whether oral or written, and/or its delivery of Goods to Buyer and/or performance of Services is based on the express condition that Buyer agrees to all these Terms and Conditions.

**2. QUOTATIONS.** Where this Agreement is used by Seller to place a bid or provide a quote, Seller’s quotation is for prompt acceptance and Seller may change and/or withdraw without notice. Buyer’s prompt acceptance of the quotation is a material term of the bid and any subsequent agreement. In cases where freight allowance is included in the quotation, Buyer is liable for any rate increase and/or additional expense over the calculated allowance resulting from compliance with Buyer’s shipping instructions.

**3. DELIVERY AND TRANSPORTATION.**

**(A)** Delivery terms for Goods (per Incoterms<sup>®</sup> 2020) are stated on each Order for Goods. All Orders must include Buyer’s address. All shipping dates are approximate. Tender of delivery is deemed to occur at the earliest of (1) allocation of Goods to Buyer at location other than Seller’s location, (2) delivery to Buyer’s representative or designee, or (3) mailing of an invoice to Buyer. Buyer agrees to provide Seller with defined shipping instructions as soon as reasonably possible. Title to Goods will pass to Buyer on tender of delivery, subject to Seller’s right to stop Goods in transit and to any interest of Seller reserved to secure Buyer’s payment or performance to Seller, even if freight is included or prepaid. If Seller holds Goods at Buyer’s instruction or because Buyer has failed to supply shipping instructions or because Seller, in its sole discretion, determines that any part of Goods should be held for Buyer’s account, or if Buyer is not able to accept delivery of the Goods as set forth in the Order, Seller may invoice Buyer for the Goods, as well as for all charges incidental to such delay and acceptance, including but not limited to demurrage, detention, storage and return freight on any such Goods. Storage fees will be at Seller’s standard rates. Goods invoiced and held at any location for whatever reason will be at Buyer’s risk and Seller may charge for (but is not obligated to carry) insurance. If Buyer fails to provide shipping instructions, Seller may, at its option, ship the Goods to Buyer at the address specified in the applicable Order and invoice Buyer for the Goods. Buyer agrees to make payment of such invoice when due under this Agreement. Buyer will accept and pay for partial deliveries at the Agreement prices and terms. If Buyer declares or indicates an intention to not accept delivery, Seller may, at its option, give written notice to Buyer that Seller is ready and willing to deliver, and such notice will constitute a valid tender of delivery. Buyer must report any shortages in shipments within three (3) calendar days of receipt of the initial shipment. Buyer may not make any deduction from any payment due because of loss or damage to Goods in transit.

**(B)** Seller shall use commercially reasonable efforts to timely deliver the Goods and Buyer Items pursuant to the terms of the Order subject to compliance with all provincial hours of service regulations impacting the work schedule of the delivery drivers. Seller shall not be responsible for any claims, loss, or damage incurred by Buyer due to late deliveries. Seller does not take title to Buyer Items and title to Buyer Items remains with Buyer at all times during performance of Services. When tendering Buyer Items for transport to Seller, Buyer is responsible for tendering such Goods in compliance with all provincial and local laws and regulations including, but not limited to, (i) all provincial weight and dimensional requirements, (ii) rules and regulations governing the safety of the Buyer Items, and (iii) provincial laws and regulations governing the transportation of hazardous materials, where applicable (collectively the “Requirements”). Seller shall not be responsible for, and Buyer shall defend, indemnify and hold harmless Seller and any underlying transporter from any loss, cost, fines, penalties or other expenses and any claims which result from the non-compliance of the Buyer Items with the Requirements. Seller shall not be responsible for any rejection of the Buyer Items by the underlying transporters for any reason, including non-compliance with the Requirements. Buyer shall provide Seller with all information and certifications regarding the Buyer Items necessary for Seller to arrange transportation of the Buyer Items in compliance with the Requirements. Seller’s liability for loss or damage to Goods and/or Buyer Items in transit is limited to a maximum of \$210,000 per load and occurrence regardless as to the cause of such damage or loss. Buyer is solely responsible for securing any additional insurance or coverage it may need related to Goods and/or Buyer Items in transit.

**4. PRICES; PAYMENT.** Prices and payment terms are stated on the Order or invoice document. Seller may make partial shipments and payment for that portion will be due as indicated on the Order or invoice document based on time of shipment. Seller’s prices do

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not include sales, use, excise, value-added or other similar taxes and Buyer agrees to pay the amount of any present or future such tax in addition to the price specified in each Order, unless Buyer, prior to delivery, provides Seller with all tax-exemption certificates required by taxing authorities. If Seller has any cause to question Buyer's ability to perform, Seller may demand such assurances of Buyer's performance as Seller deems necessary in its discretion, including payment in advance for all shipments. If (A) Buyer fails to provide Seller with such assurance within ten (10) calendar days of Seller's demand, or (B) Buyer is declared bankrupt or insolvent or any proceeding is brought against Buyer, voluntarily or involuntarily, under any bankruptcy or insolvency laws, or (C) Buyer fails to make payment for Goods or Services when due, Seller may suspend its performance, cancel any Order then outstanding, receive reimbursement for its reasonable and proper cancellation charges and collect any sums due and owing, its reasonable cancellation charges and all damages resulting from Buyer's default. Additionally, if Buyer fails to make payment for Goods or Services when due, Buyer's account will be deemed delinquent and Buyer will be liable to Seller for a service charge of eighteen percent (18%) per annum or the maximum allowed by law, whichever is greater, on any unpaid amount. Buyer will be liable to Seller for all costs and expenses of collection, including court costs and reasonable attorneys' fees on a solicitor-client basis.

**5. CANCELLATION AND CHANGES.** If Buyer properly requests a cancellation or change after Seller has provided the Services, Seller may, at its option: (A) charge Buyer for any costs Seller reasonably incurred prior to or because of such cancellation or change; or (B) revise its prices and delivery dates to reflect such change.

**6. FORCE MAJEURE; DEFERRED DELIVERY.** Seller will not be liable for any expense, loss, or damage resulting from delay in delivery or prevention of performance caused by any event beyond Seller's reasonable control ("Force Majeure"), including but not limited to: fire; flood; storm; act of God; strike, labour dispute or labour shortage; lack of or inability to obtain materials, fuels, supplies, or equipment; civil unrest or riot; pandemic; accident; act or failure to act of Buyer or any government; or any other cause whatsoever, provided that such cause is beyond Seller's reasonable control. Seller will have such additional time for performance as reasonably necessary under the circumstances and may adjust the price to reflect increases caused by Force Majeure. Buyer's acceptance of any Goods or Services will constitute Buyer's waiver of any claim for damages for delay in delivery of such Goods or performance of Services. If delivery is delayed or interrupted by Force Majeure, Seller may store Goods and/or Buyer Items at Buyer's expense and risk and charge Buyer a reasonable storage rate. If Seller is delayed because it is awaiting Buyer's approval or acceptance of designs, drawings, prints, or engineering or technical data, or is awaiting Buyer's approval or acceptance of Goods or Services, Seller will be entitled to a price adjustment equal to increase in Seller's production costs and all other losses and expenses incurred by Seller because of such delays. If Buyer requests and Seller approves in writing a deferred delivery on any Order, Seller may charge Buyer for the completed portion of the Order and warehouse all completed Goods and Buyer Items at Buyer's expense and risk of loss. As to any uncompleted portion of the Order, Seller may, at its option, cancel the uncompleted portion under Section 5 above or revise its prices and delivery schedules on the uncompleted portion to reflect its increased costs and expenses attributable to the delay.

**7. WARRANTY; INTELLECTUAL PROPERTY.**

(A) Goods Warranty. Seller warrants that Goods will be of the kind described in this Agreement and free from defects in material and workmanship under conditions of normal use for a period of one (1) year, measured from the earlier of the date represented by the code marked on the Goods, if applicable, or the date of purchase. Seller reserves the right to make any modifications required by production conditions to information set forth in Seller's catalogues and advertising literature. Seller will not be liable or responsible for (A) any defects attributed to normal wear and tear, erosion or corrosion, improper storage, use, or maintenance, or use of Goods with incompatible products, or (B) defects in any part of Goods manufactured by others. If (B) above is applicable, Seller will, as an accommodation to Buyer, assign to Buyer any warranties given to it by any such other manufacturers; provided, however, that the foregoing will not extend Seller's warranty to any accessory products unless Seller specifically agrees in writing. All warranties are void if Goods are modified or used in conjunction with products or accessories not manufactured or approved by Seller or which are incompatible with Goods or if the Goods are not installed or maintained according to applicable codes and Seller's instructions. This warranty does not cover failure of any part manufactured by others, failure of any part from external forces, including but not limited to corrosive soils, earthquake, installation, vandalism, vehicular or other impact, application of excessive torque to the operating mechanism, frost heave, or other Force Majeure. Buyer will give Seller an opportunity to investigate. If Buyer gives prompt notice to Seller of any defect and an opportunity to inspect the alleged defect as provided above, Seller will, in its sole discretion, either: (i) repair the defective or nonconforming Goods; (ii) replace nonconforming Goods, or part thereof, which are sent to Seller by Buyer within sixty (60) calendar days after receipt of the Goods at Buyer's plant or storage facilities; or (iii) if Seller is unable or chooses not to repair or replace, return the purchase price paid and cancel any obligation to pay unpaid portions of the purchase price of nonconforming Goods. In no event will any obligation to pay or refund exceed the purchase price paid. Repair and/or replacement as provided above will be shipped EXW (Ex-Works) Seller's facility (Incoterms® 2020) unless otherwise agreed in writing by Seller. Buyer will prepay all transportation charges for return of all or part of Goods to Seller, unless otherwise agreed in writing by Seller. Seller will not be responsible for any labour, removal, or installation charges that may result from repair and/or replacement of any Goods. Buyer's exclusive remedy and Seller's sole liability for any loss, damage, injury, or expense of any kind arising from manufacture, delivery, sale, installation, use, or shipment

of Goods will be, at Seller's option, the remedies described above, whether based on contract, warranty, tort, or any other basis of recovery.

(B) Intellectual Property. If any claim is made against Buyer based on a claim that any Goods constitute an infringement of any intellectual property rights of a third party, including Canadian-issued patents and registered industrial designs (collectively "IP Rights"), Buyer will notify Seller immediately. Seller may, with Buyer's assistance, if required, but at Seller's expense, conduct settlement negotiations or defense of any litigation. If any Goods are held to infringe any IP Rights, and their use is enjoined, or, if as a result of a settlement, Seller deems their continued use unadvisable and provided that Buyer has given Seller the immediate notice required above and has used Goods only in accordance with the provisions of this Agreement and has not altered or changed them in any material way, Seller will, at its option and expense, procure for Buyer the right to continue using Goods, modify Goods so that they become non-infringing, replace Goods with non-infringing Goods of substantially equal quality, or accept Goods for return and refund the purchase price, less reasonable depreciation. The above is intended as a complete allocation of risks between the parties, including without limitation liability for infringement of IP Rights. Buyer understands that its rights to bring claims against Seller and its ability to recover damages under this Agreement are limited by Section 8 below.

(C) Services Warranty. If Seller is providing Services, Seller warrants that such Services will be performed in accordance with generally accepted industry standards and practices by competent personnel. If any Services fail to comply with this standard and Buyer provides notice of such non-compliance within thirty (30) days from the date the Services were performed, Seller will, at its option, either re-perform such Services at no additional charge or refund to Buyer all fees paid by Buyer with respect to such non-complying Services. The foregoing remedies are the exclusive remedies for any breach of Seller's warranty of Services.

**8. LIMITATION OF LIABILITY**. THE WARRANTIES IN SECTION 7 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED BY LAW OR STATUTE OR ARISING FROM TRADE USAGE OR COURSE OF DEALING. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR STRICT LIABILITY, WILL SELLER BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, LOSS OF USE OF GOODS OR OTHER PROPERTY OR EQUIPMENT, DAMAGE TO OTHER PROPERTY, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, DOWNTIME, OR CLAIMS OF BUYER'S CUSTOMERS FOR ANY OF THE AFORESAID DAMAGES (COLLECTIVELY "CONSEQUENTIAL DAMAGES"), EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BUYER UNDERSTANDS THAT IT WILL NOT BE ABLE TO RECOVER CONSEQUENTIAL DAMAGES EVEN THOUGH IT MAY SUFFER SUCH DAMAGES IN SUBSTANTIAL AMOUNTS. SELLER WILL NOT BE LIABLE, AND BUYER AGREES TO INDEMNIFY SELLER, FOR ALL PERSONAL INJURY, PROPERTY DAMAGE, AND OTHER LIABILITY RESULTING IN WHOLE OR PART FROM BUYER'S NEGLIGENCE OR WILLFUL MISCONDUCT. PURSUANT TO SECTION 22(5) OF THE LIMITATIONS ACT (ONTARIO), THE PARTIES AGREE THAT THE LIMITATION PERIOD PROVIDED FOR IN THE LIMITATIONS ACT (ONTARIO) (ALLOWING PROCEEDINGS BASED ON CLAIMS MADE UP TO THE FIFTEENTH ANNIVERSARY OF THE DAY ON WHICH THE ACT OR OMISSION ON WHICH THE CLAIM IS BASED TOOK PLACE) IS SHORTENED TO THE EFFECT THAT (i) SELLER WILL NOT BE LIABLE FOR ANY CLAIM BY BUYER WITH REFERENCE TO GOODS OR SERVICES FOR ANY CAUSE UNLESS SUBMITTED TO SELLER IN WRITING WITHIN TEN (10) DAYS FROM THE DATE BUYER DISCOVERED, OR SHOULD HAVE DISCOVERED, ANY CLAIMED BREACH AND, (ii) EXCEPT AS PROVIDED IN SECTION 7, NO CLAIMS OF ANY KIND, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, MAY BE BROUGHT AGAINST SELLER MORE THAN SIX (6) YEARS AFTER DELIVERY OF GOODS TO BUYER OR PERFORMANCE OF SERVICES. In any contract by Buyer for resale of Goods, Buyer will effectively disclaim, as against Seller, any implied warranty of merchantability and all liability for property damage or personal injury resulting from handling, possession, or use of Goods, and will exclude, as against Seller, any liability for Consequential Damages.

**9. CONTROLLING LAW; CONSENT TO VENUE; DISPUTE RESOLUTION**. This Agreement and all rights and obligations hereunder will be governed by, construed and enforced in accordance with, the laws of the province of Ontario, Canada, without regard to its conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. All disputes, claims, and controversies ("Dispute") between the parties arising out of or relating to this Agreement, including but not limited to Disputes based on or arising from an alleged tort, will be finally resolved by binding arbitration in accordance with the Arbitration Act (Ontario) and the National Arbitration Rules of the ADR Institute of Canada, Inc. ("Institute"). Disputes will be arbitrated in Toronto, Ontario, Canada in the English language. Defenses based on statutes of limitation and similar doctrines will be applicable in any such proceeding, and commencement of an arbitration proceeding under this Agreement will be deemed commencement of an action for such purposes. The Dispute will be arbitrated before three (3) arbitrators. In accordance with the National Arbitration Rules of the Institute, each party will appoint an arbitrator and the two (2) arbitrators will jointly appoint the third arbitrator who will act as chair of the tribunal. If a party fails to make a required appointment, or the arbitrators appointed by the parties are unable to agree on appointment of a third arbitrator, then a party may request the Institute to make the required appointment. Notwithstanding the foregoing, Seller reserves the right to resolve or bring any action for temporary restraining order, preliminary injunctive relief or permanent injunctive relief in a court of competent jurisdiction in Toronto, Ontario, Canada, and the parties agree that, except when the Dispute is arbitrated, the exclusive venue for all such actions will be the appropriate provincial or federal court in the judicial

**Ditech Paint Co. Ltd., d/b/a Ditech Testing Terms and Conditions of Sale and Service**

district of Toronto, Ontario, Canada, to which jurisdiction each party hereby irrevocably submits. EACH PARTY EXPRESSLY WAIVES ALL RIGHTS IT MAY HAVE TO A TRIAL BY JURY.

**10. COMPLIANCE WITH LAWS.** Each party represents and warrants, in connection with transactions contemplated by this Agreement, and any other agreement contemplated by or entered into pursuant to this Agreement, that it will comply with all applicable federal, provincial and local laws, codes, regulations, orders, and ordinances, including but not limited to all applicable: (A) laws and regulations regarding export controls, economic sanctions, trade embargoes, anti-boycott restrictions and anti-corruption laws, including but not limited to the United States Foreign Corrupt Practices Act (as amended), and the United Kingdom Bribery Act (“Applicable International Trade and Anti-Corruption Laws”); (B) laws and regulations addressing human trafficking and slavery; and (C) equal employment opportunity laws, regulations, and requirements and laws and regulations prohibiting discrimination against any person because of veteran status, disability, race, creed, color, national origin, religion, age or sex in any term or condition of employment. Each party acknowledges and confirms that it and its officers, directors, employees, agents, contractors, designees, and/or any other party acting on its behalf (“Related Parties”) are familiar with the provisions of Applicable International Trade and Anti-Corruption Laws. Each party agrees to indemnify, defend, and hold harmless the other party and its employees from and against all claims, demands, costs, penalties, and fines arising in connection with any alleged breach by the indemnifying party or any of its Related Parties of this Section. Seller may terminate this Agreement entirely, without liability to Buyer, if Seller believes in good faith that Buyer or any of its Related Parties has violated or intends to violate this Section.

**11. MISCELLANEOUS.**

**(A)** No waiver of any provision, right or remedy contained in this Agreement, including the terms of this Section 11(A), is binding on or effective against a party unless expressly stated in writing and signed by such party’s authorized representative. Each party agrees that no right or remedy provided for in this Agreement can be waived through course of dealing, course of performance, or trade usage and that reliance on any waiver without the other party’s written consent is unreasonable. Waiver of any breach will be limited to the specific breach so waived and will not be construed as a waiver of any subsequent breach. A party’s approval or consent to any action proposed by the other will not be considered an agreement to the propriety, fitness, or usefulness of the proposed action, and will not affect the proposing party’s obligation to strictly comply with this Agreement and all related Orders.

**(B)** Buyer may not assign this Agreement or any rights or obligations hereunder without Seller’s prior written consent. Any attempted assignment in violation of this Section is void; however, this Agreement and the Terms and Conditions of Sale contained herein are enforceable against Buyer’s successors and permitted assigns.

**(C)** Seller’s remedies in this Agreement are cumulative and in addition to any other remedies available to Seller, whether at law, equity, or otherwise.

**(D)** If any provision or part of a provision contained in this Agreement is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the Agreement will remain in full force and effect.

**(E)** Each party is an independent contractor with respect to this Agreement and not an agent or employee of the other party.

**(F)** Any notice, request, demand, or other communication from one party to the other required or permitted to be given under this Agreement will be sent to the address for each party indicated on the applicable Order and (i) delivered in person; (ii) sent by overnight service (signature required); or (iii) sent via email with confirmation of delivery. All notices will be effect on the date of receipt. Parties may change such notice addresses upon written notice to the other party. In the case of notice to Seller, please also send a copy to:

Ditech Paint Co., Ltd.  
4 Addison Avenue  
Scoudouc, NB E4P 3N4  
Attn: Jacques Lirette

**(G)** No provision of this Agreement may be construed against either party as the drafting party. The parties have expressly agreed that this Agreement, and all correspondence relating to this Agreement, be drafted in English. The English language version of this Agreement will govern over any translations. Les parties ont expressément convenu que l’entente, ainsi que toute correspondance s’y rapportant, soient rédigées en anglais.