

GENERAL TERMS AND CONDITIONS OF SALE DARCOR LIMITED

These Terms and Conditions of Sale (“GTC”) govern the sale of all products and services (“Goods”) by Darcor Limited (“Darcor”) to a purchaser of Darcor’s Goods (“Buyer”).

1. Quotations / Order Confirmation / Prices

- 1.1 Unless otherwise stated, Darcor’s quotations shall be null and void unless accepted by Buyer within fourteen (14) days from the date of quotation.
- 1.2 An acceptance and official confirmation of Buyer’s order (in the form of Darcor’s issued order confirmation), together with these GTC, shall constitute the complete agreement, subject to the terms and conditions of sale set forth in these GTC, and shall supersede all previous quotations, orders or agreements. Any discrepancy in Darcor’s confirmation of Buyer’s order must be reported to Darcor by email to customerservice@darcor.com within forty-eight (48) hours of receipt of the order confirmation. In the event of any conflict or inconsistency between these GTC and the terms and conditions contained in Buyer’s order or in any other form issued by Buyer, whether or not any such form has been acknowledged or accepted by Darcor, these GTC shall prevail.
- 1.3 Prices are in the currency outlined in Darcor’s quotation (i.e. either United States or Canadian Dollars). Prices are quoted as follows:
 - (a) USA: Free Carrier Buffalo, New York (“FCA Buffalo”) per Incoterms 2010. Darcor is responsible for export clearance; Buyer assumes all risks and costs (transport, freight, insurance, and taxes) after the Goods have been delivered to Darcor’s depot in Buffalo, New York.
 - (b) CANADA/INTERNATIONAL: Ex Works Darcor, Toronto (“EXW Darcor”) per Incoterms 2010. Buyer assumes all risks and costs (transport, freight, insurance, GST/HST or taxes of any other kind) from Darcor’s factory in Toronto, Ontario.
 - (c) Additional costs resulting from special requests of Buyer, such as costs for special transport and similar costs, shall be borne by Buyer.
- 1.4 Prices for undelivered Goods may be increased without notice to Buyer in the event of any increase in Darcor’s cost, change in market conditions or any other causes beyond Darcor’s reasonable control.
- 1.5 On orders less than \$250, Buyer will be charged a handling charge of \$25.

2. Description of Goods

- 2.1 All data, images, drawings, descriptions and other information furnished by Darcor including verbal information and in or on its website, catalogues, brochures, CD’s, pamphlets, price lists or other documents or other promotional media are intended to be as accurate as possible but are given for general information only and are not binding on Darcor in respect of a particular order. All information, unless stated otherwise, is subject to reasonable variations. Darcor does not accept responsibility for errors or for information which is found to be misleading.
- 2.2 Before using Goods supplied or manufactured by Darcor, Buyer should satisfy itself of their suitability for any required purpose.

3. Payment

- 3.1 Payment terms will be stated in Darcor’s quotation. If no payment terms are provided for in the quotation, payment is required in full prior to shipment.

- 3.2 Payment by bank transfer shall be deemed to have been effected on the date upon which the amount paid is credited to Darcor’s bank account.
- 3.3 Buyer shall pay all amounts when due in full without any deduction or withholding except as required by law and shall not be entitled to assert any credit, setoff, deduction or counterclaim against Darcor in order to justify withholding payment of any such amount in whole or in part. Without limiting any other rights or remedies that may be available to it, Darcor may set off any amount owing to it by Buyer against any amount payable by Darcor to Buyer.
- 3.4 Overdue accounts are subject to interest charges at the rate of eighteen per cent (18%) per annum, but in no event shall such rate exceed the maximum rate permitted by law. Buyer is liable for all costs and expenses (including legal fees) that Darcor may incur for collection of overdue accounts and damages suffered with respect thereto. In the event of legal proceedings, all court and other costs may be added to the principal owing, and interest may be compounded until date of judgment at the statutory rate.
- 3.5 If, in its sole discretion, Darcor believes Buyer’s ability to meet its payment obligations may become impaired or threatened, or if Buyer fails to comply with payment terms, Darcor may require advance payment, and/or may suspend delivery or cancel any existing order or remaining balance thereof, without prejudice to any of its other rights and recourses. In the event of the cancellation of an order, all outstanding debts of Buyer will become due with immediate effect.
- 3.6 Darcor may apply any payment it receives from Buyer against any obligation owing to it by Buyer, regardless of any statements appearing thereon or with respect thereto, which will not discharge Buyer from any amounts Buyer owes.

4. Title / Security Interest

- 4.1 If any part of the purchase price for the Goods is to be paid at any future time or is to be paid in instalments, Darcor shall retain ownership right and title in and over the Goods, and Buyer hereby grants Darcor a security interest in the Goods, until such time as full payment of the Goods has been made by Buyer.
- 4.2 Buyer agrees to do all things and to execute and deliver any and all documents necessary (in Darcor’s sole discretion) for the creation, preservation, enforcement and protection of such security interest over the Goods. Buyer hereby appoints Darcor as its attorney to execute any documents or other instruments necessary to perfect and enforce its security interest.
- 4.3 In the event of non-payment by Buyer of any part of the purchase price or non-payment of any instalment due to Darcor, Darcor shall have all rights and remedies under the applicable personal property security legislation.
- 4.4 In the event of retention of title or security interest in and over the Goods, and if such Goods are assembled with or integrated into parts over which Darcor has no right or title, Darcor will acquire joint ownership over the new product in proportion to the value of the Goods and its right to retention or rights as secured party will extend to such new product.
- 4.5 In the event of resale by Buyer of the Goods or of the new product into which the Goods were assembled or integrated into, Darcor shall retain, and Buyer hereby assigns and grants to Darcor, a continuing security interest in all debts, proceeds, accounts, and claims which may be owned by Buyer or due or owing to Buyer by any third party purchaser, and also all documents relating to the Goods or their proceeds, up to the amount of Buyer’s outstanding payments, including interest and

- expenses. Buyer agrees to do all things and to execute all documents necessary to protect such security interest. The Buyer hereby appoints Darcor as its attorney for the purpose of executing any documents or other instruments necessary to perfect and enforce its continuing security interest.
- 4.6 As long as Buyer complies with payment terms, Buyer is entitled to collect all amounts owing to it and use such amounts to fulfill its payment obligations toward Darcor. All moneys collected or received by Buyer in respect of such claims shall be received as trustee for Darcor and shall be forthwith paid over to Darcor in fulfillment of its payment obligations towards Darcor. Buyer is entitled to collect such amounts until notice to the contrary, subsequent to which Darcor may collect all amounts due directly. Any expenses, including legal fees, incurred by Darcor in collecting same may be added to the indebtedness of the Buyer.
- 4.7 Buyer shall inform Darcor without delay of any seizure, notice, proceeding, action, claim or other occurrence that may adversely affect Darcor's right, title or ability to enforce its rights or its security interest hereunder.
- 4.8 If Buyer breaches its obligations (including, without limitation, fails to perform its payment obligations), Darcor shall be entitled to terminate its contractual obligations and/or take back any Goods previously delivered to Buyer. Darcor shall also be entitled to so terminate and recover previously delivered Goods if: (a) Buyer fails to comply with essential contractual obligations, (b) a material diminishment of Buyer's assets or property occurs, or any attachment or execution is levied against Buyer or any of its assets, or any bankruptcy or insolvency proceedings are instituted by or against Buyer or its assets, or Buyer makes any assignment for the benefit of creditors.
- 5. Delivery / Transfer of Risk**
- 5.1 Unless otherwise agreed upon in writing, all sales are either EXW Toronto or FCA Buffalo (see paragraph 1.3) and delivery will be deemed complete and all risk of loss, destruction and damage to Goods will pass to Buyer upon delivery of Goods to carrier at Darcor's delivering facility. If requested by Buyer, Darcor will arrange for transportation and insurance of Goods at Buyer's cost. Buyer shall reimburse Darcor for all transportation and insurance costs prepaid by Darcor. Buyer is solely and entirely responsible for all insurance costs and risks associated with the transport of the Goods, including loading of Goods onto carrier. In the event of any loss, destruction or damage, Buyer's claim shall be against carrier only and any such loss, destruction or damage shall not relieve Buyer of its obligations under this agreement.
- 5.2 In no case shall carrier be deemed as Darcor's agent, notwithstanding Darcor's prepayment of transportation costs, and Buyer undertakes to fulfill all obligations to carrier, financial or otherwise, in relation to the acceptance and transport of the Goods. Buyer shall indemnify, defend and hold Darcor harmless in the event any claim, action, proceeding, charge, damage or expense is brought against Darcor by any carrier.
- 5.3 Buyer shall, at its own cost and expense, keep all Goods fully insured against loss or damage until all sums owing to Darcor have been fully paid, with each insurance policy issued naming Darcor as an insured with loss payable to Darcor. Buyer will assign and deliver such insurance policy to Darcor as security.
- 5.4 Lead-times and delivery dates must be agreed in writing. Lead-times and delivery dates indicated by Darcor are estimates only unless they are expressly noted as binding. Fixed delivery dates must be expressly agreed to as such. Timely delivery by Darcor shall be contingent on the clarification of all business-related and technical issues between Buyer and Darcor and upon Buyer having complied with all of its obligations, such as the provision of all documents, approvals and payments. Darcor is not liable for delays in delivery or for failure to perform due to causes beyond Darcor's reasonable control. In the event of such delay, Darcor shall use its best efforts to extend the date of delivery for a period equal to the time lost. If delay is due to force majeure, Darcor may, at its option, extend delivery time or cancel order in whole or in part. Delay in delivery of one order shall not entitle Buyer to cancel another order. In no event shall Darcor be liable for any incidental, special or consequential damages or any loss of profit resulting from failure or delay in delivery, even if it has been advised as to the possibility of same.
- 5.5 In the event that delivery is delayed due to fault of Buyer, for any reason, including, without limitation, (i) not providing Darcor with necessary information or documentation, (ii) not fulfilling payment obligations, or (iii) not accepting Darcor's delivery, Darcor may, in its sole discretion, extend date of delivery or cancel order, in which case Buyer will not be released of its obligations and will be remain liable for all costs incurred due to such delay, including but not limited to storage costs.
- 5.6 Darcor shall be deemed to have complied with its delivery obligation if the Goods have left the plant by the stipulated delivery date or Darcor has provided notification that the Goods are ready for shipment.
- 5.7 Darcor reserves the right to make partial shipments and to submit invoices for partial shipments.
- 6. Inspection and Acceptance**
- 6.1 Buyer shall perform whatever inspection or tests Buyer deems necessary as promptly as possible, but no later than thirty (30) days following delivery, after which time Buyer will be deemed to have irrevocably accepted the Goods in their condition received unless Darcor has received written notice to the contrary in that time period.
- 6.2 The foregoing shall also apply to all data, information and documentation Darcor may send to Buyer either with the Goods, or from time to time, such as, without limitation, any plans, certificates, part lists and bills of quantity.
- 6.3 Any discrepancy in quantity of Goods ordered and delivered must be reported to Darcor by email to customerservice@darcor.com within thirty (30) days of receipt of the Goods. Buyer may return any surplus at Darcor's expense or may elect to keep such subject to price adjustment. Returned Goods must be in their original condition and packaging.
- 7. Changes and Cancellation**
- 7.1 Orders accepted by Darcor are not subject to changes or cancellation by Buyer except with Darcor's written consent.
- 7.2 In such cases where Darcor authorize changes or cancellation, Buyer agrees that Darcor may charge Buyer an amount equal to the greater of fifty per cent (50%) of the total purchase price or fifty dollars (\$50) as liquidated damages, being a reasonable pre-estimate by the parties of Darcor's minimum costs, together with Darcor's reasonable costs based upon expenses already incurred and commitments made by Darcor, including, without limitation, material or Goods ordered, usual overhead and reasonable profit and cancellation charges from Darcor's suppliers.
- 8. Returned Goods**
- 8.1 No Goods may be returned to Darcor without its prior written permission.
- 8.2 Darcor reserves the right to decline all returns or to accept them subject to a handling/restocking charge of the greater of twenty-five per cent (25%) of the total purchase price or fifty dollars (\$50).
- 8.3 Even after Darcor has authorized the return of Goods for credit, Darcor reserves the right to adjust the amount of any credit given to Buyer on return of the Goods based on the condition of the Goods on arrival in Darcor's warehouse.
- 8.4 Credit for returned Goods will be issued to Buyer only where such Goods are returned by Buyer and not by any subsequent owner of the Goods.
- 8.5 Goods will be considered for return only if they are in their original condition and packaging.
- 9. Limited Warranty and Limitation of Liability**
- 9.1 Goods shall be regarded as conforming to Darcor's obligations if they are capable of being used or are in a condition usual for use as intended or expected considering the nature of such Goods. Samples, depictions in leaflets or brochures, or information contained in other advertising material are to be regarded as rough guidelines and shall not be binding. The information contained in the current version of the online product data sheet located at www.darcor.com that belongs to

- the delivered Goods shall conclusively define the specifications and properties of those Goods.
- 9.2 The warranty period applicable to Goods ("Warranty Period") shall begin on the date of delivery from Darcor's delivery facility or factory and shall run for a period of twelve (12) months. With respect to any replacement or repaired parts provided by Darcor pursuant to this Section 9, the Warranty Period shall be the original Warranty Period applicable to the Goods that were the subject of such replacement or repair.
- 9.3 During the Warranty Period, Darcor warrants that the Goods will be free from defects in materials and workmanship and will substantially conform to any Darcor specifications referenced in Darcor's order confirmation, subject to the terms and limitations set out in this limited warranty.
- 9.4 Prototypes of Goods sold by Darcor are intended to be test samples only and are not warranted or guaranteed by Darcor unless specifically confirmed by Darcor in writing.
- 9.5 All warranty claims must be submitted in writing to Darcor within the applicable Warranty Period according to the following procedures.
- (a) Any defect in the Goods ordered and delivered must be reported to Darcor within thirty (30) days of receipt of the Goods by e-mail to Darcor at customerservice@darcor.com. Buyer will then receive from Darcor a Returned Material Authorization number ("RMA") and shipping documentation.
- (b) The defective Goods, together with a copy of the RMA, must be sent to Darcor's Toronto facility (see address in paragraph 20.3) for examination by Darcor. All defective Goods must be shipped to Darcor in their original packaging or in packaging of the same quality, with shipping costs paid by Darcor.
- (c) In order to qualify for warranty coverage: (i) Goods cannot have been altered from their original condition at delivery, and (ii) there cannot have been any mechanical or physical damage to the Goods.
- (d) Buyer may request advance delivery of part(s) intended to replace allegedly defective Goods. The decision to provide such advance delivery shall be at Darcor's sole discretion and subject to Buyer's compliance with these terms. If Darcor provides Buyer with replacement part(s) in advance, Buyer must return all defective parts to Darcor within thirty (30) days of receiving the replacement part(s). If Buyer fails to return the defective part to Darcor within this thirty (30) day period, Darcor shall be invoiced and liable for payment of the full cost of the replacement part(s) delivered to Buyer.
- 9.6 Darcor will examine all defective Goods received from Buyer in accordance with this Section 9 in order to determine if such Goods qualify for warranty coverage. The decision as to whether Goods are subject to warranty coverage shall be at Darcor's full discretion. If Darcor determines that Buyer is entitled to warranty coverage for defective Goods, Darcor shall, at its sole option, either replace or repair the Goods. Such remedy shall be Darcor's sole liability and Buyer's sole remedy for breach of any warranty set forth in this Section. Buyer agrees to cooperate with Darcor in any effort it makes to supply the foregoing remedy and to allow Darcor a reasonable period of time to perform the selected remedy.
- 9.7 Darcor shall not be liable for any damage that arises as a consequence of improper operation of Goods by Buyer.
- 9.8 The Warranty Period will be deemed ended, and Darcor shall have neither liability nor obligation to provide any remedy if:
- (a) Buyer or a third party performs any repairs or modifications to the Goods without Darcor's prior written authorization;
- (b) Buyer fails to mitigate any damage resulting from a failure of any Goods to conform to this warranty; or
- (c) Buyer fails to give Darcor timely notice of a failure of the Goods to conform to this warranty according to the procedures set out in this warranty or fails to give Darcor the opportunity to remedy any breach of warranty.
- 9.9 The warranties set forth in this Section 9 do not cover any condition(s) or defect(s): (a) that cannot be proved to have its/their origin in defective materials or workmanship; or (b) that arise(s) or result(s) from:
- (a) failure to assemble, install or operate the Goods in strict conformity with the assembly instructions and operating instructions provided by Darcor,
- (b) misuse or use of Goods for unintended purposes,
- (c) unauthorized repair or modification of Goods and/or use of third party parts, components or materials,
- (d) improper maintenance or repair, neglect, excessive loading, influence of other products or services,
- (e) normal wear and tear, or
- (f) acts of God or force majeure.
- 9.10 THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES, EXPRESS OR IMPLIED, BY STATUTE OR COMMON LAW THAT DARCOR GIVES IN CONNECTION WITH THE GOODS. DARCOR DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND WARRANTIES AGAINST LATENT DEFECTS. NO COURSE OF DEALING AND NO PRODUCT DESCRIPTION SHALL BE DEEMED A WARRANTY OF ANY GOODS DELIVERABLE BY DARCOR.
- 9.11 The warranty rights and remedies set forth herein apply only to claims made by Buyer and cannot be assigned to any third party without the prior written approval of Darcor.
- 9.12 BUYER SHALL NOT IN ANY EVENT BE ENTITLED TO, AND DARCOR SHALL NOT BE LIABLE FOR, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING WITHOUT LIMITATION, BUSINESS INTERRUPTION COSTS, REMOVAL AND / OR REINSTALLATION COSTS, REPROCUREMENT COSTS, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION OR LOSS OF CUSTOMERS, EVEN IF DARCOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BUYER'S RECOVERY FROM DARCOR FOR ANY CLAIM SHALL NOT EXCEED BUYER'S PURCHASE PRICE FOR THE GOODS GIVING RISE TO SUCH CLAIM, IRRESPECTIVE OF THE NATURE OF THE CLAIM, WHETHER IN CONTRACT, TORT, WARRANTY, OR OTHERWISE. DARCOR SHALL NOT BE LIABLE FOR AND BUYER SHALL INDEMNIFY, DEFEND AND HOLD DARCOR HARMLESS FROM ANY CLAIMS BASED ON DARCOR'S COMPLIANCE WITH BUYER'S DESIGNS, SPECIFICATIONS OR INSTRUCTIONS, OR MODIFICATION OF ANY GOODS BY PARTIES OTHER THAN DARCOR, OR USE IN COMBINATION WITH OTHER GOODS.
- 10. Compliance**
- 10.1 Buyer will comply with all applicable and current import and export rules and regulations of the countries from which the Goods originate, transit and arrive and shall take all steps to keep itself advised of any changes to all such rules and regulations. Darcor shall not be responsible to notify Buyer of any changes to any such rules and regulations which may affect the transport of Goods. Buyer shall be responsible to procure and furnish any and all documentation, permits, approvals and/or licenses required for the international transit of the Goods.
- 10.2 The Goods have been designated to remain in the delivery country that has been agreed with Buyer. Buyer may not export deliveries of Goods that are subject to embargo provisions. It is Buyer's responsibility to obtain information regarding the relevant export and/or import provisions or restrictions, and to obtain the corresponding approvals where necessary.
- 10.3 Darcor does not guarantee compliance with any federal, provincial or municipal fire, building, health, or other safety codes. Buyer shall satisfy itself that the Goods comply with any regulations as to safety, packaging, marking, etc.
- 11. Product Liability**
- 11.1 Buyer expressly acknowledges that the nature of Goods is known to it, including any potential danger or risk associated with Goods. Buyer acknowledges that the information, warnings and notices given with

respect to Goods are sufficient to fully understand such danger and risks and undertakes to forward such information upon resale of Goods and products into which Goods are assembled with or integrated into. Buyer undertakes to impose the same obligation on its buyers in order to ensure such information is transmitted down the contractual chain.

- 11.2 Failure to comply with the above obligation shall entail full and complete liability unto Buyer for all losses and damages that may arise from such failure, whether directly or indirectly, and notwithstanding nature of loss or damage and notwithstanding identity or relation, or lack thereof with claimant. Buyer shall defend, indemnify and hold Darcor harmless of all claims, actions and legal proceedings that may be introduced against Darcor due to such failure, and for all losses and damages that it may suffer as a consequence thereof.

12. Confidentiality / Intellectual Property

- 12.1 Buyer shall keep confidential any information and document that Darcor has indicated to be of a confidential nature and will not directly or indirectly disclose such information or document to any third party or use it for its own benefit and shall not cause or permit disclosure thereof in any form without Darcor's prior written consent. Buyer agrees to use reasonable care and its best efforts to protect such confidential information.
- 12.2 Darcor reserves all rights, in particular ownership rights and copyrights, to all offer and contract documents, particularly drafts, drawings, illustrations, etc. (including those in electronic form), as well as all samples, models and prototypes. Buyer shall not provide or disclose such documents to third parties without Darcor's prior written consent. Buyer shall return all such documents to Darcor promptly on Darcor's request.

13. Force Majeure

- 13.1 Darcor shall not be responsible or liable for any delay or failure to perform its obligations arising from causes beyond Darcor's reasonable control, including, without limitation, acts of God, war, invasion, insurrection, riot, the order of any civil or military authority, fire, flood, weather, acts of the elements, delays in transportation, unavailability of equipment or materials, breakdown, sabotage, lock-outs, strikes or labour disputes, or the failure of suppliers to meet their delivery promises. The acceptance of delivery of the Goods by Buyer shall constitute a waiver of all claims for loss or damage due to any delay whatsoever.

14. Non-Waiver

- 14.1 No failure on Darcor's part to strictly enforce any of these terms and conditions or any of its rights shall be construed as a waiver of such term, condition or right and Darcor's acceptance of an order shall not be deemed an acceptance of any terms and conditions that may be contained therein.

15. Severability

- 15.1 In the event that any provision of these terms and conditions or any part thereof should be held to be invalid, illegal or unenforceable, the remainder of these terms and conditions shall remain valid and enforceable.

16. Assignment

- 16.1 The contract for the purchase and sale of Goods of which these GTC form part, and Buyer's obligations thereunder, may not be assigned by Buyer without Darcor's prior written consent.

17. Applicable Law and Jurisdiction

- 17.1 These GTC are governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein (save and except to the extent that local laws governing security interests and rights of repossession may apply to Goods delivered outside of Ontario), without giving effect to conflict of law principles. Any dispute with respect thereto shall be submitted to the courts in the Judicial District of Toronto, Province of Ontario, and the parties submit to the non-exclusive jurisdiction of the courts in that judicial district for the adjudication of any and all disputes hereunder and waive any claim of

forum non conviens. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any transaction between Buyer and Darcor.

18. Notices

- 18.1 Unless otherwise provided in these GTC, all notices hereunder must be given in writing either by registered mail or by courier delivery, addressed to Darcor at the Canadian address set out in subsection 20.3 below, or to Buyer at the address contained on Buyer's order. Any such notice given by mail shall be deemed to have been received on the third day after the date of mailing, and, if delivered by courier, shall be deemed to have been received on the day after it was consigned to the courier.

19. Language

- 19.1 It is the express wish of the parties that this agreement and all related documents, including notices and other communications, be drawn up in the English language only. Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant, y compris les avis et les autres communications, soient rédigés et signés en anglais seulement.

20. Darcor Addresses

- 20.1 United States lockbox address, for those US-based customers who prefer payment by cheque, please send your cheque to:

Darcor Limited
3802 Momentum Place
PO Box 233802
Chicago, IL 60689-5338
USA

- 20.2 United States:
UPS SCS C/O Darcor Limited
60 Industrial Parkway
Cheektowaga, NY 14227
USA
+1-716-608-7714 Ext. 245

- 20.3 Canada:
Darcor Limited
7 Staffordshire Place
Toronto, ON M8W 1T1
CANADA
+1-800-387-7206