

Standard Terms and Conditions of Sale

Date: 2022-03-23

- 1. ENTIRE AGREEMENT** – These Standard Terms and Conditions of Sale supersede any previous terms and conditions in any communications, representations, or agreements, whether oral or written. Save as set out in Clause 2 below, these Standard Terms and Conditions of Sale shall apply to any contract concluded (the “Contract”) with the person procuring product (which term shall include goods, parts and materials, etc., as appropriate) (the “Purchaser”), to the exclusion of all other terms and conditions inconsistent herewith.
- 2. SCOPE** – These Standard Terms and Conditions of Sale govern the sale of product by Dura Undercushions Ltd., or their divisions or subsidiaries, as the case may be, (the “Seller”) to the Purchaser, whether the Contract for such sale is concluded by acceptance by the Seller of the Purchaser’s purchase order or by acceptance by the Purchaser of the Seller’s proposal. Any additions to or modifications of these Standard Terms and Conditions of Sale, or any terms and conditions in a purchase order inconsistent herewith, shall not bind the Seller unless agreed to or accepted by the Seller in writing by an authorized representative of the Seller.
- 3. PRICE AND PAYMENT** – Unless otherwise agreed, the prices in the Contract (in aggregate the “Purchase Price”) are those specified in the Seller’s proposal. The Purchase Price(s) are firm, however, the Seller shall be entitled to increase such prices to take account of cost escalation in the event that delivery of the product is delayed beyond standard delivery schedules for reasons outside of the control of the Seller and/or to take account of foreign currency fluctuations where the same differ from currency exchange assumptions in the Seller’s proposal. Unless otherwise agreed, payment of the Purchase Price(s) shall be in accordance with the Seller’s proposal or, where the due date(s) for payment is not so specified, payment shall be due on shipment or offer to ship the product, whichever occurs first. When the value of a purchase order for products exceeds \$50,000, progress billings as detailed in Seller’s quotation, shall apply to the Contract. If the Purchaser defaults in any payment when due, the Seller, without incurring any liability to the Purchaser or any other party, may, at its option and in addition to other remedies available, declare all work complete with payment immediately due and payable with interest charges of 1% per month in excess of the Canadian prime bank rate on all outstanding amounts due therein; stop all further work and deliveries until all past due payments have been made and/or require that any further deliveries be paid for prior to shipment. If requested by the Seller, the Purchaser shall obtain a bond or other security to provide guarantees of payment to the Seller.



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4. **CREDIT** – All Contracts are subject to credit terms net 30 days from invoice date unless otherwise agreed by the Seller. The Seller reserves the right to stop all work and refuse delivery of product if, in its reasonable opinion, doubt exists as to the Purchaser's payment capability. The Seller shall not be liable in such event for delayed or non-delivery in whole or part, as the case may be.
5. **ITEMS INCLUDED** – The Contract includes only the product specified therein and, unless otherwise specified, does not include installation, assistance, or the provision of accessory or associate materials. The Seller assumes no liability or responsibility for products not installed and improperly stored.
6. **TAXES, DUTIES AND LICENSES** – Any federal, provincial/state or local sales tax or other taxes applicable to the Contract and imposed on or required to be collected by the Seller, if not stated as included in the Purchase Price, shall be added to the same and charged to the Purchaser's account. Unless otherwise stated, the Purchaser shall additionally pay all duties, tolls, and import taxes and provide any necessary import licenses and extensions thereof applicable to the Contract.
7. **SECURITY INTEREST** – The Seller shall retain ownership and title of any product sold until payment in full of the Purchase Price is received from the Purchaser. The Purchaser shall protect the Seller's title and right of possession to the product specified in the Contract until the full Purchase Price has been paid and will not permit the encumbrance of the product by any liens or security interest. The Purchaser acknowledges that as security for payment of the Purchase Price, the Purchaser grants, and the Seller shall retain, a security interest in all product sold by the Seller to the Purchaser and agrees to cooperate in any registration of that interest. The Seller shall also retain all of its rights and remedies as a seller and a secured party under the law. No waiver by the Seller of any default shall constitute a waiver of any subsequent default. The Seller may retain as liquidated damages for breach of the Contract any partial payments made and may peaceably repossess the product from the Purchaser's premises without prejudice to any further claims. In the event that legal action is necessary to enforce these provisions, the Seller shall be entitled to recover from the Purchaser the Seller's court costs and reasonable attorney's fees, if the Seller prevails.
8. **INSURANCE** – From date of delivery until the invoice is paid in full, the Purchaser agrees to provide and maintain at its expense for the Seller's benefit, insurance adequate to fully protect the Seller's interest in the product against any loss or damage thereof of any nature whatsoever. The Purchaser shall provide the Seller with proof of such insurance promptly upon request by the Seller.
9. **SHIPMENTS AND DELIVERY** – Performance of the Contract is contingent upon the Purchaser supplying to the Seller, when needed, all required commercial documents requested by the Seller. The Seller shall use reasonable effort to meet all delivery dates stated in the Contract but, unless otherwise agreed, any such dates are estimates only and are not guaranteed. Accordingly, the Seller shall have no liability to the Purchaser for damages or penalties, direct or indirect, of any delay in delivery, whether such delay is minor or substantial, nor shall the Purchaser have the right to declare a breach of the Contract because of any such delay. Unless otherwise agreed, the Seller shall have the right to make partial deliveries. Unless otherwise specified, delivery of the product shall be ex-works (EXW, Incoterms 2000) the point of delivery (which unless otherwise specified shall be the Seller's normal place of business) and risk of loss or damage is the responsibility of the Purchaser upon uplift by the carrier. All claims for damages, delay or shortage arising from any shipment shall be made directly against the carrier by the Purchaser. The Purchaser shall inspect the product at or

prior to uplift from the point of delivery, failing which, within one working day of receipt, and immediately notify the Seller of any visual damage to or shortage of the product. Failure to notify the Seller as stated, shall constitute acceptance by the Purchaser of the product and relieve Seller of any liability for any such alleged damage or shortage. If the Seller has agreed to deliver the product other than EXW and shipment is postponed by or due to the Purchaser's delay or request, the Seller may tender delivery and store the product at the Purchaser's expense and risk. Such tender shall constitute delivery and the full Purchase Price for the product tendered shall be immediately due and payable

- 10. CANCELLATION, SUSPENSION, DELAY** – In the event that the Purchaser instructs, issues, requests or causes a cancellation, suspension, or delay in any of the Seller's work under the Contract, the Purchaser shall pay to the Seller by way of compensation, all charges incurred by the Seller as a result of such instruction, issuance, request or cause, including but not limited to any costs, liabilities and expenses incurred as a result of the same and with respect to commitments incurred by the Seller up to the date of receipt of notice of such cancellation, suspension, or delay, plus the Seller's overhead and reasonable profit. If shipment is delayed as a result of any action or inaction of the Purchaser, the Purchase Price shall be due and payable as if delivery had been made. Additionally, all charges related to storage, disposition and/or resumption of work, at the Seller's plant or elsewhere, shall be for the Purchaser's sole account and all risks incidental thereto shall be assumed by the Purchaser. A minimum fee of 2% of the Purchase contract a week will apply if the goods are not picked up with 5 business days of the confirmation date.
- 11. RUSH ORDERS:** The SELLER reserves the right to apply a minimum of 500\$ expediting fee if the production schedule permits it. A rush order is considered as an earlier shipped date to what the agreed Purchase Order confirmation date.
- 12. RETURN POLICY:** Returns or refunds are accepted only if there is a product failure due to defective manufacturing. Proof of purchase is necessary. Returns are accepted upon written authorization only. Customers are responsible for any return shipping charges. Products must be returned within 30 days of the shipped date, in the original shelf condition. There are no refunds on special stock or custom manufactured orders. Dura Undercushions Ltd. reserve the right to charge a minimum 15% restocking fee which will be deducted from the refund.
- 13. FORCE MAJEURE** – If the occurrence of an event of Force Majeure causes (a) shortages, (b) significant increases in the price of commodities, (c) an unavailability of materials or components used by the Seller in the provision of the product or (d) delays, the Seller shall be at liberty to extend the delivery schedule to such extent as the Seller in its absolute discretion sees fit. The Purchase Price may be adjusted at the Seller's discretion to compensate for the changes in the Seller's costs and expenses as a direct result of such Force Majeure. For purposes of this Section, "Force Majeure" means any cause beyond the reasonable control of the Seller, including, but not limited to, elements of nature, acts of God, strikes, lock-outs or other labour or industrial disturbances, accidents, fires, floods, earthquakes, explosions, extreme weather conditions, delays in transportation, war, embargo, civil commotions or disturbances, riots, sabotage, acts of terrorism and interruptions by government or court orders and future orders of any regulatory body of competent jurisdiction.

14. LIMITATION OF LIABILITY – THE SELLER SHALL NOT BE LIABLE IN CONTRACT, TORT, STRICT LIABILITY, WARRANTY, OR OTHERWISE TO PURCHASER FOR PUNITIVE DAMAGES OR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES FOR ANY REASON WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR REVENUES, LOSS OF USE, LOSS OF PRODUCTION, NON-OPERATION OF OTHER PRODUCT, COST OF CAPITAL, COST OF PURCHASED OR REPLACEMENT POWER AND/OR FACILITIES, DAMAGE TO ENVIRONMENT, OR CLAIMS OF CUSTOMERS OF THE PURCHASER FOR DAMAGES.

- a. The liability of the Seller with respect to any and all claims arising out of the performance or non- performance of the product supplied under the Contract whether in contract, tort, warranty, strict liability or otherwise, shall not exceed the Purchase Price.
- b. Users of these products are entirely responsible for determining the suitability for their installation, application, and compliance with any legal provisions, including, but not limited to, those relating to health & safety. Dura Undercushions assumes no liability whatsoever in connection with the purchase, installation, use or misuse of those products.

15. WARRANTY – The Seller warrants that the product manufactured by it shall be free of defects in materials under its lifetime warranty (25 years), provided that the Purchaser forwards to the Seller, within six (6) months of its purchase of the product, a written notice with proof of purchase (the “**Notice**”) requiring that it benefits from such 25 years warranty. Failure by the Purchaser to provide the Notice within 6 months from its purchase of the product will have the effect of reducing the warranty to a period of 5 years from date of purchase. Should any failure to conform to this warranty be reported to the Seller within the said period, upon prompt notification with proof of purchase and provided the product has been stored and installed in accordance with the Seller's specifications and instructions and good industry practice, the Seller shall replace EXW (Incoterms 2000) its factories or other designated location, product that fails to conform to this warranty. The product replacement shall be free of charge except for those that are worn through normal use or replacement shall be subject to pro-rata charges based upon the Seller's estimate of the percentage of normal service realized. The obligation of the Seller to replace the product shall not include any other costs such as removing or reinstalling the product, repairs to the floors, etc., which costs shall be assumed by the Purchaser.

- a. In the event other vendor furnished apparatus included, the Seller shall be responsible for their proper selection and specification requirements to the suppliers. Warranties for such items are limited to those extended to the Seller by the manufacturers.
- b. **THIS WARRANTY IS EXPRESSLY MADE BY THE SELLER AND ACCEPTED BY THE PURCHASER IN LIEU OF ALL OTHER WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, WHETHER WRITTEN, ORAL, EXPRESSED, IMPLIED, OR STATUTORY. THE SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME ANY OTHER LIABILITIES WITH RESPECT TO ITS PRODUCT ON ITS BEHALF.**

- c. **This Warranty shall not apply to product which have been altered or repaired outside of the Seller's authorized facility, or installed or manipulated other than in accordance with the Seller's instructions, or subjected to misuse, abuse, neglect, or accident.**

- 16. INDEMNIFICATION** – The Purchaser hereby indemnifies and shall defend and hold harmless, the Seller, its employees, subsidiaries, affiliates, and authorized representatives from and against all suits, actions, legal or administration proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatever kind or nature including injury to or death of the Purchaser's employees arising from or due to the Purchaser's negligence or out of any negligent act or operation of the Seller's product including the failure to follow proper manipulation instructions and/or warnings relating to the Seller's product.
- 17. CHANGES** – Any extra costs or expenses associated with changes in or additions to the scope of work which are initiated by the Purchaser or by circumstances beyond the Seller's control shall be borne by the Purchaser.
- 18. PROPRIETARY INFORMATION** – All information forwarded by the Seller is confidential and proprietary to the Seller and is submitted solely for the Purchaser's consideration. The Purchaser and its servants, agents, representatives, advisers, associates, and contractors shall not copy or disclose such information to any third party without the Seller's prior written consent.
- 19. CHANGES IN DESIGN** – The Seller reserves the right to change or modify the design and construction of any product in order to incorporate improvements or to substitute material equal or superior to that originally specified. The design change will be clearly defined to the Purchaser.
- 20. BANKRUPTCY** – In the event of any proceedings in bankruptcy or insolvency, or if the Purchaser assigns assets for the benefit of creditors or undergoes a substantial deterioration of its financial condition, the Seller may, at its sole option, declare a breach of the Contract, stop all work under the Contract, or demand payments in advance as security for its performance under the Contract.
- 21. REMEDIES** – The remedies of the Purchaser set forth herein are exclusive.
- 22. BACK CHARGES** – The Seller will not approve or accept returns or back charges for labour, material, transportation, in and out, or other costs incurred by the Purchaser, or others, in modification, adjustment, service or repair of product furnished by the Seller unless such returns or costs have been previously agreed to by the Seller in writing. In no event shall the remedy for alleged costs or replacement of item(s) irrespective of whether such defects are discoverable or latent, exceed the Purchase Price of the particular item(s).
- 23. GOVERNING LAW** – These Standard Terms and Conditions of Sale and the Contract (including any amendments to or variations of the Contract) shall be governed by and construed in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable. Any litigation between the parties shall be brought and maintained exclusively in the Courts of the Province of Quebec and all Courts competent to hear appeals therefrom.

- 24. WAIVER** – Any delay, neglect, indulgence, forbearance, or other non-exercise of rights on the part of the Seller in enforcing any terms or conditions of the Contract shall not constitute a waiver of such rights and shall not prejudice the rights of the Seller under the Contract.
- 25. ENGLISH LANGUAGE** – Both the Seller and the Purchaser acknowledge that these Standard Terms and Conditions and all other related documents are to be drawn up in the English language. Le Vendeur et L'Acheteur reconnaissent que les présentes conditions générales et tous les autres documents s'y rapportant doivent être rédigés dans la langue anglaise.
- 26. HEADINGS** – The headings to the sections of these Standard Terms and Conditions of Sale are inserted for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.
- 27. SEVERABILITY** - If any provision of these Standard Terms and Conditions of Sale is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability attaches only to such provision and everything else in these Standard Terms and Conditions of Sale continues in full force and effect.