

TERMS AND CONDITIONS OF SALE

1. **GENERAL:** These Terms and Conditions of Sale (“Terms and Conditions”) which are attached to the Order Confirmation (the “Order Confirmation”) issued to the purchaser identified therein (the “Purchaser”) pursuant to which the Purchaser has agreed to purchase from Bluewater Pipe Inc. (the “Seller”) the goods, material and merchandise (collectively, the “Goods”) specified therein, supplement, modify and amend the terms and conditions, if any, contained in or referenced by any document between the Seller and Purchaser. In the event of any inconsistency between the provisions of these Terms and Conditions and the provisions of the Order Confirmation, the provisions of these Terms and Conditions shall apply and shall supersede any inconsistent provisions of the Order Confirmation. These Terms and Conditions, together with the Order Confirmation, constitute the entire agreement (“Agreement” or “Contract”) pursuant to which the Purchaser shall purchase from the Seller and the Seller shall sell to the Purchaser the Goods, and no modifications or additions to the Contract will be recognized by the Seller unless specifically agreed to in writing by the Seller. There are no oral representations or warranties among the parties of any kind. The Seller reserves the right to correct clerical, arithmetical or stenographic errors or omissions in quotations, orders, acknowledgments, invoices or other documents.
2. **PRICES:** The attached Order Confirmation supersedes all previous order confirmations or quotes and is subject to change upon written notice being given by the Seller. The prices for the Goods shall be as stated in the Order Confirmation and shall be based on the prices in effect as of the date hereof. If prices change prior to the date of shipment, the purchase price for the Goods shall be amended accordingly. The prices herein apply only to the Order Confirmation acknowledged as stated herein and not to any other order confirmations that may be now or in the future issued by the Seller to the Purchaser. If for any reason, the Purchaser shall cause the shipment or delivery of the Goods to be delayed for any reason (which the Purchaser may not do without the Seller’s written consent) the price shall be increased if necessary to the extent that such delay causes the Seller to incur additional handling, storage or other costs and expenses. In addition, if due to the Purchaser’s delay after the date hereof, the Seller’s direct labor costs shall increase, then the Seller shall have the right to increase the price to cover the anticipated resulting increased cost of producing and shipping or delivering the Goods. The price stated on the Order Confirmation, as adjusted by these Terms and Conditions, is referred to as the Contract Price.
3. **TAXES:** Unless otherwise specified, the Seller's prices do not include any federal, state, provincial or local taxes or duty of any kind which may be applicable to the sale, use, importation or any other disposition of the Goods. Consequently, in addition to the prices specified herein, the amount of any present or future taxes or duties, as applicable, shall be paid by the Purchaser to the Seller or the relevant taxing authority as appropriate, or in lieu thereof the Purchaser shall provide the Seller with a tax-exemption certificate, acceptable to the applicable taxing authorities. In addition to the taxes as set out above, those amounts

equal to all increases in Federal and Provincial taxes payable in respect of the Goods or this transaction due to the imposition of new taxes or increases in applicable tax rates, between the date hereof and delivery of the Goods to the Purchaser shall be paid by the Purchaser.

4. **WARRANTIES:** Both parties agree that any warranty accompanying the purchase of the Goods will be supplied only by the original Goods manufacturer or the manufacturer of specific warranted components. The Seller makes no representation and gives no conditions or warranties with respect to the quality or fitness of purpose with respect to the Goods and in particular, both parties expressly disclaim the implied conditions and warranties as applicable to the sale of this Goods pursuant to the provisions of the *Sale of Goods Act*, R.S.O. 1990, c. S.1 and successor legislation.
5. **LIABILITY AND DAMAGES:** The Seller and/or any affiliate or related company will not be liable to the Purchaser under any circumstances for any consequential, incidental, special, punitive, exemplary or other damages of any nature (including, but not limited to, damages resulting from commercial or economic loss as a result of delays or defective Goods) or costs and expenses (including, but not limited to, for repairs, attorneys' fees and litigation costs), incurred as a result of any claim whether based on breach of warranty or otherwise.
6. **TITLE:** The title and right to the Goods shall not pass to the Purchaser until the entire purchase price is paid in full.
7. **DEFAULT IN PAYMENT, APPLICATION OF THE *PERSONAL PROPERTY SECURITY ACT* AND *CONSTRUCTION ACT*:** The Purchaser intends to give the Seller a purchase money security interest in the Goods purchased. It is agreed by both parties that the within Contract constitutes a security agreement within the meaning of the *Personal Property Security Act*, R.S.O. 1990, c. P.10 (hereinafter referred to as "the PPSA"). In the event that the Purchaser shall make default in any payment due hereunder then the entire purchase price shall become due and payable. The Seller shall have all rights and remedies available to it pursuant to the provisions of the PPSA and the *Construction Act*, R.S.O. 1990, c. C.30. The Seller or his assigns shall have the right to repossess and resell the Goods by private sale or by public auction or register a lien. The Purchaser will be liable for any shortfall in the Contract Price. Additionally, the Purchaser shall be liable for the cost of repossession, transport, storage and sale. Repossession and resale shall not affect the Seller's right to retain all payments made by the Purchaser as liquidated damages and not as a penalty.
8. **TIME AND PLACE OF DELIVERY:** Time of delivery shall not be of the essence in this Contract unless otherwise expressly agreed to by the parties in writing. The time of delivery of all Goods is approximate and estimated only, and are subject to change.

Partial delivery installments by the Seller is permitted. All installments may be separately invoiced by the Seller and shall be paid by the Purchaser as billed without regard to subsequent deliveries. Failure to pay for any installment when due shall excuse the Seller from making further deliveries. Delay in delivery of any installment shall not relieve the Purchaser of its obligations to accept the remaining installments.

The risk for the Goods passes to the Purchaser when they are entrusted to the Purchaser or the carrier. In the event the Purchaser is unable or unwilling to accept delivery on the date the Goods are ready for shipment, whether on or after the date estimated in this Contract or agreed to by the parties in writing, the Goods will be invoiced to the Purchaser and stored at a place designated by the Purchaser or at a place chosen by the Seller in the absence of such designation and the Goods shall from that point onward be at the risk and expense of the Purchaser. Unless otherwise specifically agreed to by the parties, in writing, all contracts shall provide for the Goods to be available on an ex-works basis at the Seller's facility, or such other place as the Seller may designate.

The Seller shall not be liable or held responsible for any delay loss or damage resulting in the shipment, delivery or from the choice of carrier or means of shipment or routing used or for any other losses or damages arising while in transit and the Purchaser agrees to make any claim therefore directly against the carrier and save the Seller harmless therefrom. The Purchaser shall be solely responsible for all insurance and risk of loss upon the Purchaser's carrier assuming control of the Goods.

9. **FORCE MAJEURE:** If the performance of the Seller's obligations under the Contract is delayed or becomes impossible or impractical by reason of any act of God, fire, earthquake, strike, labour disturbance, civil commotion, acts of government, its agencies or officers or delays in the delivery of materials and supplies, the Seller may upon notice to the Purchaser suspend the obligations under the Contract for the duration of such delay, impossibility or impracticability as the case may be, and the Seller will not be responsible or liable for same.
10. **CANCELLATION AND CHANGES:** The Purchaser shall not be permitted to cancel or change the Agreement without the Seller's written approval.
11. **SAFETY:** The Seller assumes no responsibility for accidents due to faulty installation, handling or storage of the Goods, nor for improper or unsafe work practices on the part of the Purchaser, its employees or designates. The Purchaser shall be responsible for ensuring that the Goods comply with any relevant governmental or legislated safety requirements applicable in the jurisdiction of use.
12. **TERMS OF PAYMENT:** Payment is due to the Seller upon delivery of the invoice. If payment is not received within thirty (30) days of delivery of the invoice. The Contract

Price and Taxes, or the portion thereof remaining unpaid, as the case may be, shall bear interest at the lesser of the rate of 2.00% per month (26.82% per annum) and the maximum rate permitted by law, until payment has been received in full.

If in the opinion of the Seller, the Purchaser's financial condition does not justify continuance of the Contract to be performed by the Seller, then the Seller may require full or partial payment in order to continue the Contract.

13. **BANKRUPTCY OR INSOLVENCY:** In the event of bankruptcy or insolvency, either voluntarily or involuntarily, of the Purchaser or in the event any proceeding is brought by or against the Purchaser, pursuant to bankruptcy or insolvency, the Seller shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its reasonable cancellation charges. This remedy is in addition to the Seller's rights under the PPSA or the *Construction Act*.
14. **SUCCESSORS AND ASSIGNS:** The Confirmation Order, as amended and superseded by these Terms and Conditions shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto, but it shall not be assigned in whole or part by either party without written consent of the other.
15. **LEGAL FEES AND DISBURSEMENTS:** The Purchaser shall be liable to the Seller for legal fees and disbursements incurred as a result of exercising any of the Seller's rights pursuant to the PPSA or the *Construction Act*. In addition, the Purchaser shall be liable for all legal fees and disbursements incurred in enforcing any breach of this Contract including the legal costs incurred in pursuing any damages arising from the breach of this Contract.
16. **NOTICE:** Any notice to be provided between the Seller and the Purchaser herein shall be in writing and delivered to the Seller's and Purchaser's respective specified address on the Order Confirmation.
17. **SEVERABILITY:** The invalidity or unenforceability of any provision or term of this Contract will not affect the validity or enforceability of any other provision or term, and any invalid provision or term will be severable.
18. **GOVERNING LAW AND JURISDICTION:** This Agreement shall be governed by the laws of the Province of Ontario, and those of Canada applicable therein. The Purchaser attorns to the Province of Ontario and agrees that all matters related to the interpretation of this Contract or any disputes arising from this Contract will be exclusively resolved by the courts of the Province of Ontario.