

# BAYMAG PURCHASE ORDER TERMS AND CONDITIONS

**Acceptance and Entirety:** This order when accepted by Seller or Contractor shall constitute the entire contract with reference to its subject matter and shall not be altered, amended, supplemented or cancelled without Baymag's written approval. Either Seller's or Contractor's written acceptance of this order, shipment of any article, or commencement of performance hereunder shall constitute acceptance of this entire contract and no contrary or additional terms or conditions shall apply notwithstanding any oral or written statement by Seller or Contractor.

**Assignment:** No right, title, estate or interest in this order and no obligation or duty of liability of the Seller or Contractor shall be transferred, assigned, set over, conveyed, pledged, hypothecated or otherwise disposed of without the prior written consent of Baymag. Any attempt to so transfer, assign, set over, convey, pledge, hypothecate, delegate or any other method to avoid the provisions of this order shall be wholly void and totally ineffective for all purposes.

**Quality and Inspection:** Seller or Contractor warrants the quality and fitness for use of the goods. All goods are subject to inspection by Baymag within a reasonable time after actual delivery. Baymag at its option may return to Seller or Contractor goods rejected for failure to meet specifications or required quality of workmanship, or may perform such work as necessary to render them acceptable, and Seller or Contractor shall reimburse for expenses of inspection and return shipment or making goods acceptable and other costs in connection with rejected goods. No replacements shall be made without prior written Instructions. Failure by Baymag to make any inspection shall not relieve Seller or Contractor of any of its obligations hereunder or any of the terms and conditions hereof.

**Guarantee:** Seller or Contractor, in addition to but not in substitution for any terms or conditions hereof, acknowledges and agrees that Baymag is relying on Seller's or Contractor's judgement and opinion that goods and any work supplied hereunder are capable of performing the function for which they are being supplied or done. No payment or acceptance by Baymag shall constitute a waiver of the foregoing nor shall herein contained be construed to exclude or limit any warranties construed or implied hereunder or by law. All loss or damage to Baymag directly and naturally resulting in the ordinary course of events from breach of any express or implied warranty with respect to the goods supplied or work done hereunder shall be borne by Seller or Contractor.

**Patent Infringement:** Seller or Contractor shall indemnify Baymag and hold it harmless from and against any and all loss, liability or expense by reason of any claim or suit for alleged infringement of any copyright, trademark or patent, resulting from or arising in connection with the manufacture, sale, use or other disposition of any article or material furnished hereunder, or the performance of any work hereunder, and shall defend any such claim or suit and pay all costs and expenses incidental thereto, provided that Baymag shall have the right at its option to participate in the defence of any such claim or suit, without relieving Seller or Contractor of any obligation hereunder.

**Taxes:** Unless otherwise specifically provided, the Seller or Contractor assumes exclusive liability for and shall pay before delinquent, all sales, use, excise and other taxes, charges or contribution of any kind or with respect to or measured by the articles sold or material or work furnished hereunder for the wages, salary or other remuneration paid to persons employed in connection with the performance of this contract, and Seller or Contractor shall indemnify and hold Baymag harmless from any liability and expense by reason of Seller's or Contractor's failure to pay such taxes or contributions.

**Compliance with Laws:** In the performance of this contract and in every activity connected herewith, Seller or Contractor shall comply fully with all applicable laws, ordinances, rules and regulations, whether federal, provincial, or local. Seller or Contractor shall furnish Baymag such evidence of compliance as Baymag may require at any time.

**Default:** If Seller or Contractor or any sub-contractor shall breach any provision hereof or shall become Insolvent, enter voluntary or involuntary bankruptcy or receivership proceedings for the benefit of creditors, Baymag shall have the right, without limiting any other rights or remedies which it may have hereunder or by operation of law, to terminate this contract by written notice to the Contractor, whereupon Baymag shall be relieved of all further obligation hereunder. Baymag's right to require strict performance of any obligation hereunder shall not be affected by any previous waiver, forbearance or course of dealing.

**Excuses for Non-Performance:** Either party shall be absolved from its obligations under this contract when and to the extent that performance is delayed or prevented, and in Baymag's case, when and to the extent that its need for the articles, materials or work to be supplied hereunder is reduced or eliminated by any cause except financial, reasonably beyond its control, including but not limited to fire, explosion, war, riots, strikes, labor disputes, and governmental laws, orders or regulations.

**Indemnity:** Seller or Contractor shall hold Baymag harmless from any and all loss, cost, damage, expense, claims, suits, and liability on account of any and all damage to or loss or destruction of any property, including without limitation property of Seller or Contractor and Baymag, or injury to or death of any persons, including without limitation, employees of Seller or Contractor, any sub-contractor and Baymag, arising directly or indirectly out of or in connection

with the negligent performance of this contract. Seller or Contractor shall defend any such claim or suit and pay all costs and expenses incidental thereto, but Baymag shall have the right at its option, to participate in the defence of any such claim or suit, without relieving Seller or Contractor of any obligation hereunder.

**Cancellation:** Baymag reserves the right to cancel this order or part thereof and reject delivery of goods or performance or work if such delivery or performance is not undertaken and completed when specified, or within reasonable time if date not specified and in accordance with specifications, charging Seller or Contractor for loss sustained by reason of such delay or failure, excepting delay for reasons beyond its reasonable control.

**Work Contract Conditions:** When this contract provides for performance of any work, the following conditions in addition to the foregoing general conditions shall apply unless otherwise specified on the face hereof:

**Performance:** Contractor shall diligently and carefully perform all work required hereunder in a good and workmanlike manner, shall furnish all: labour, supervision, machinery, materials, equipment and supplies necessary therefor and if permitted to subcontract, shall be fully responsible for all work and services performed by subcontractors. Contractor shall conduct all operations in Contractor's own name as an independent contractor and not in the name of or as agent for, Baymag. No person whose services are supplied by Contractor hereunder shall be deemed an employee of Baymag and Contractor will indemnify Baymag against all claims arising out of or in connection with the existence or termination of any such person's contract of employment with Contractor.

**Title and Responsibility:** Title to all machinery materials, equipment and supplies to be furnished to Baymag by Contractor hereunder will pass to Baymag upon arrival of the same at the work site, but until the project is completed to Baymag's satisfaction, and replacement of items so lost, damaged or destroyed shall be accomplished promptly by Contractor at his sole expense.

**Insurance:** The Contractor shall throughout the term of this contract carry, and cause its sub-contractors to carry, the following insurance:

- a) Worker's Compensation Insurance in compliance with laws of the applicable jurisdiction.
- b) Employers Liability Insurance covering each employee engaged in the operations herein to the extent of \$500,000.00 where such employees are not covered by Workers' Compensation.
- c) Automobile Liability Insurance covering all motor vehicles owned or non-owned, operated and/or licensed in the names of the Contractor with minimum bodily injury and property damage limits of \$2,000,000.00 inclusive,
- d) Comprehensive General Liability Insurance including products and completed operations coverage with a minimum bodily injury and property damage limit of \$2,000,000.00 inclusive.
- e) 100% Performance Bond in the amount of \$\_\_\_\_\_

All such insurance shall include waivers of the insurer's right of subrogation against Baymag.

**Permits:** Contractor shall secure and keep in effect all building permits and licenses required by public bodies in connection with performance of the work covered hereby, unless specified otherwise.

**Payment of Bill and Liens:** Contractor shall pay promptly all indebtedness for labour, material, tools and equipment used in the performance of the contract. Before Contractor shall be entitled to receive final payment, Contractor shall furnish evidence satisfactory to Baymag of the full payment of such indebtedness. Contractor shall not permit any lien or charge to attach to the work of the premises upon which the work is being performed but if any shall so attach, Contractor shall promptly procure its release and hold Baymag harmless from all loss, cost, damage or expense incidental hereto.

**Option to terminate:** Baymag shall have the right to terminate this contract at any time by giving written notice to Contractor and in the event of any such termination, Contractor shall receive as payment for the materials and work finished and installed by Contractor and accepted by Baymag hereunder, such Proportion as mutually determined of the total contract price as the portion of the job which is completed and accepted bears to the entire job covered by: this contract less any monies theretofore paid to Contractor. Contractor shall not, in any event be entitled to any prospective profits or damages because of such termination.