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## SM CYCLO of CANADA, Ltd. STANDARD TERMS & CONDITIONS OF SALE

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**1. Entire Agreement:** These terms and conditions of sale, (the "Sale Confirmation") including the following terms and conditions and the terms on the reverse side hereof, together with any specifications attached hereto, constitute the entire and final agreement between Buyer and SM Cyclo of Canada, Ltd. ("Seller") with regard to the subject matter hereof. If any provision on the face of this Sale Confirmation (including any specification referred to on the face of this Sale Confirmation) is inconsistent with any of the terms and conditions set forth herein, the provisions on the face of this Sale Confirmation shall govern. No other agreement or understanding in any way purporting to modify the terms and conditions hereof shall be binding upon Seller unless otherwise agreed to by Seller in writing on or subsequent to the date of this Sale Confirmation. Seller hereby rejects any terms and conditions which may now or hereafter appear on Buyer's order or other forms, and any acceptance of Shipments, payments or other similar acts of Buyer shall be construed as Buyer's acceptance of these terms and conditions.

**2. Contract Acknowledgement:** Buyer shall be deemed to have accepted this Sale Confirmation in accordance with its terms and conditions and it shall become binding upon Buyer retaining the Sale Confirmation with no objection for three (3) days or by acceptance of all or any part of the goods or the rendering of services ordered herein (the "Goods").

**3. Delivery/Inspection/Insurance:** Delivery dates are approximate only, and are subject to the availability of the Goods, freight space and prompt receipt of all necessary documentation regarding the order. Seller shall not be responsible or liable for any loss or damage resulting from delay in delivery or non-delivery. Trans-shipment and partial shipment shall be allowed. Each delivery or shipment, hereunder, shall be considered a separate sale. Buyer shall select method of transportation, the carrier and routing and shall pay for all matters relating to carriage. Goods are sold EXW (Incoterms 2010) Seller's designated shipping point and pick up at the shipping point shall constitute delivery to buyer with risk passing at that time and place to the buyer. Until payment in full of that total purchase price, together with any applicable interest and other charges as provided for herein (the "Obligations"), is received by Seller, title to and ownership of the Goods shall remain with Seller. Buyer hereby grants Seller a security interest in the Goods and all insurance or other proceeds of disposition thereof until the Obligations have been fully satisfied. Buyer shall execute any documents and do such other things as Seller deems appropriate to establish and complete perfection of such title retention and security interest. Until payment in full of the Obligations is received by Seller, Buyer shall keep all of the Goods, at the premises to which they were delivered as

shown on the first page hereof and shall not remove any of the Goods from those premises nor transfer or assign its interest in the Goods without the prior written consent of Seller and shall advise Seller forthwith of any change of its name. Storage charges may be assessed on any Goods not accepted by Buyer within the usual time period after readiness for shipment. Buyer shall inspect and test the Goods within three (3) days after delivery of the Goods to Buyer and shall notify Seller in writing of any defects, damage or shortages on the Goods and failure to so notify Seller shall be proof that the Goods have been received without same. It shall be the responsibility of Buyer to file any appropriate claims with the carrier for reimbursement with respect to damage caused during shipment. Until the purchase price is paid in full, Buyer shall maintain appropriate and adequate insurance on the Goods, for full replacement value, against loss or damage.

**4. Export Control/Sanctions Laws and Related Regulations:** Buyer agrees to comply with the export control and sanctions laws of Canada and applicable United States export control laws with regard to the exportation of the Goods and any other products or technology of the Seller and any associated technical data. The Goods and any other products or technology of the Seller and any associated technical data may not be exported, re-exported, or re-transferred to entities or persons that are ineligible under Canadian law and any applicable U.S. law. BUYER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE CANADIAN AND U.S. EXPORT CONTROL AND SANCTIONS LAWS AND REGULATIONS.

**5. Payment:** Seller shall be paid for the Goods in accordance with the terms set out on the front hereof. Unless terms have been agreed to in writing by Seller, payment terms are cash on delivery. If deliveries are made in installments, each delivery shall be paid for without regard to other scheduled shipments. Seller's prices do not include applicable sales, use, or other taxes, quotation fees and governmental impositions, however designated or levied on the sale, transportation or use of the Goods. Buyer shall pay such amounts in addition to Seller's prices. In case of any default in payment hereunder or under any other contract with Seller, all amounts owing under this and other contracts by Buyer to Seller shall become due, notwithstanding the terms of sale. On overdue accounts, Buyer shall pay to Seller, on demand, interest at the rate of twenty-four percent (24%) per annum, calculated and payable monthly, on the last day of each month, not in advance, with interest on overdue interest at the same rate upon the amount until paid. Buyer

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shall pay all costs of Seller's collecting overdue accounts on a solicitor and client basis.'

**6. Returns:** No goods shall be returned without first obtaining Seller's permission in writing. Buyer shall prepay transportation charges. Goods accepted for return are subject to Seller's applicable restocking charge in effect at such time.

**7. Force Majeure:** Seller shall not be liable for any loss or damage due to delayed delivery or non-delivery, in whole or in part, if such delayed delivery or non-delivery is caused by circumstances or events in the nature of Force Majeure, including, without limitation, acts of God, restrictions, prohibitions, priorities or allocations imposed by government authority, embargoes, floods or other natural catastrophes, unusually severe weather, strikes or labour disputes or any other cause reasonably beyond the direct control of Seller. The date of Seller's performance herein shall be extended for a period of time equal to the length of the delay so caused, or, at Seller's option, Seller may cancel Buyer's order with respect to any undelivered Goods. Notice of such cancellation will be given promptly to the Buyer.

**8. Cancellation:** Suspension or cancellation of this Sale Confirmation may be made by Buyer only upon written approval of an authorized officer of Seller. In the event of any cancellation by either party, Buyer shall pay to Seller the reasonable costs and expenses (including engineering and all commitments to suppliers and subcontractors) incurred by Seller prior to receipt of notice of such cancellation.

**9. Warranty and Limitation of Liability:**

**(a) Warranty** - Subject to the terms and conditions of this Section 9, Seller warrants to Buyer only, that all Goods sold by Seller hereunder are free, under normal use and maintenance, from defects in material and workmanship for the time period set out in the published catalogue describing the Goods available to Buyer. Such time period shall commence on the date of shipment. If, within the applicable warranty period, Seller receives from Buyer written notice of any alleged defect in the Goods, and when Seller acknowledges that such defect is due to faulty material or workmanship at the time of manufacture (Buyer having provided Seller a reasonable opportunity to perform any appropriate tests thereon), Seller shall, at its sole option and expense, either repair or replace the defective Goods. Seller shall have the right to require Buyer to deliver the Goods for such repair or replacement to a designated service centre and Buyer shall pay all charges for removal and reinstallation and all charges for inbound and outbound transportation and for services of any kind, diagnostic or otherwise, excepting only the direct and actual cost of the Goods' repair or replacement as provided above. Any Goods that are

repaired or replaced by Seller are warranted to be free from defects in material and workmanship for the time period originally applicable to the Goods. No separate or extended warranty shall apply to repaired Goods or to any part or parts thereof.

**(b) Exclusions** - This warranty does not cover i) defects not reported within the applicable warranty period; ii) defects due to misapplication, abuse, improper installation or abnormal conditions of temperature, dirt or corrosive matter; iii) defects due to operation, either intentional or otherwise, above rated capacities, including shock load capability, or in an otherwise improper manner; iv) Goods which have been in any way tampered with or altered by anyone other than an authorized representative of Seller; v) Goods damaged by neglect, accident, in shipment or otherwise, without fault of the Seller; vi) expenses incurred by Buyer in an attempt to repair or rework the Goods; vii) equipment manufactured by a person other than Seller; and viii) components and parts, including bearings and seals, which are excluded from warranty. The specifications, descriptions and drawings contained in product catalogues issued or distributed by Seller may be of assistance in the selection of Goods; however, Seller makes no warranty whatsoever as to the technical accuracy of same, as Seller may modify such specifications, descriptions and drawings and other technical data without notice. For construction purposes, Seller recommends the Buyer obtain certified dimension sheets or drawings, which shall only be certified in respect of a specific purchase order and upon Buyer's request. Seller shall not be liable for any errors which arise as a result of Buyer not obtaining such dimension sheets or drawings. Any performance guarantees respecting Buyer's installation shall be requested in writing and full consideration will be given to such requests when complete details of the proposed installation are given.

**(c) Limitation of liability** - THE FOREGOING IS THE SOLE WARRANTY OF THE SELLER IN CONNECTION WITH THE GOODS AND IS IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS (EXPRESS AND IMPLIED AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE), INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO OTHER WARRANTIES OR

CONDITIONS EXPRESSED OR IMPLIED ARE GIVEN. SELLER AND BUYER AGREE THAT FOR ANY BREACH OR DEFAULT BY SELLER IN CONNECTION WITH THIS AGREEMENT, EVEN FOR A BREACH OF CONDITION OR FUNDAMENTAL TERM OR FOR A FUNDAMENTAL BREACH OR BREACHES, BUYER'S EXCLUSIVE REMEDY SHALL BE PAYMENT BY SELLER OF BUYER'S DAMAGES TO A MAXIMUM AMOUNT EQUAL TO

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THE AMOUNT PAID BY BUYER UNDER THIS AGREEMENT. In no event shall Seller have any liability for Buyer's loss of profits, loss of use of the Goods, failure to realize expected savings, other commercial or economic loss of any kind whatsoever or for any indirect, special, incidental or consequential damages even if advised of the possibility thereof.

Notwithstanding the foregoing, in no event shall Seller be liable for any liability whatsoever to Buyer or others, relating to or arising out of: a) fitness or otherwise for Buyer's purposes of the Goods; or b) the performance, non-performance, failure, efficacy, length of life of or any defect in the whole or any part or parts of any product or products incorporating or otherwise using the Goods. Buyer shall assume all such responsibility, risk and liability, whether or not the Goods were selected or used in accordance with the Seller's recommendations, assistance or instructions, and Buyer shall indemnify and save harmless Seller from and against all liability, loss, costs, damages, claims or expenses in respect thereof. Buyer's use of the Goods may require the Buyer to install safety features. Buyer is solely responsible for consulting with a qualified safety engineer and for furnishing and installing guards or other safety equipment needed to protect operating personnel. The foregoing limitation of liability is a condition of sale of the Goods at the price or prices quoted and shall apply notwithstanding any defect in or failure of, including total failure of, any of the Goods.

**10. Assignment:** Buyer may not assign this Sale Confirmation (except to an affiliate of Buyer with written consent of Seller, which consent shall not be unreasonably withheld).

**11. Amendment:** This Sale Confirmation may be amended only by a written agreement signed by each party.

**12. Termination:** Seller may, on written notice, effective immediately, terminate this sale confirmation if Buyer becomes insolvent or enters or is placed into receivership or bankruptcy or makes a proposal under any insolvency legislation for the benefit of its creditors. Any such termination shall not affect any liabilities incurred by either party prior to termination.

**13. Governing Law:** This Sale Confirmation constituted hereby shall be deemed to have been entered into in the Province of Ontario and shall be governed by and construed in accordance with the laws in effect in the Province of Ontario. The parties hereto hereby agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Sale Confirmation and is strictly excluded.

**14. Language of Content:** Les parties au présent contrat ont exigé que le présent contrat et les documents qui s'y rattachent soient rédigés en langue anglaise. The parties hereto have required that the present contract and the related documents be drawn up in English.