

Canada Commercial Terms & Conditions

1. **DEFINITIONS.** "**Company**" means RTD Quality Services, Inc. Applus Velosi Canada, Ltd, and SKC Engineering, Ltd. as applicable, depending on which has extended an estimate, offer, or quote that Customer has accepted. "**Customer**" means any entity from whom Company received an order which Company has accepted or to which Company has extended an estimate, offer, or quote, which Customer has accepted. "**Work**" means the performance of any services (including the provision of rental equipment) which are to be provided by Company under these Standard Terms and Conditions (the "**Terms**").

2. **APPLICABILITY OF TERMS.** If an existing written contract between Company and Customer incorporating these Terms exists, the relationship between Company and Customer (including all commercial transactions and Work performed by Company) shall be solely governed by such contract and these Terms, and any terms and conditions or similar documents purporting to apply thereto are null and void. Subject to the foregoing, to the extent that a request for quotation, acceptance or similar document issued by Customer is purportedly governed in whole or part by terms and conditions other than these Terms, and constitute an "offer" or "counter-offer" under applicable law, such offer or counter-offer is rejected in its entirety. In such event, these Terms are intended to constitute a "counteroffer" under applicable law, and Company's performance of any Work for Customer is expressly conditioned on Customer's acceptance of these Terms as the sole and exclusive terms and conditions governing the relationship between Company and Customer (including all commercial transactions and Work performed by Company). Customer's scheduling or allowing of any Work to be performed by Company, or taking of any other steps reasonably calculated to facilitate the provision of Work, shall constitute unconditional acceptance of these Terms.

3. **QUOTE.** Any price quote made by Company will remain open for a period of sixty (60) days from the date of issuance unless Company, in its sole discretion modifies such period in writing.

4. **PAYMENT & INVOICING.** Unless different prices have been specifically agreed to in a duly accepted quotation, work order or offer (collectively a "**Quote**"), all prices are subject to alteration without notice and Work shall be invoiced in accordance with Company's then-applicable rate sheet, including overtime rates as per the applicable Collective Bargaining Agreement. All present and future taxes imposed by any federal, state or local authority of any country which Company may be required to pay or collect, upon or with reference to the Work (except net income and equity franchise taxes) shall be for the account of Customer.

 Company will invoice Customer monthly. Payment is due in full, without setoff or withholding, thirty (30) days from receipt of the invoice unless otherwise agreed to in writing. Past due amounts are subject to a late fee of eight percent (8%) per annum. Attorney's fees and other costs incurred in collecting past due amounts shall be paid by Customer.

5. **RECORDS.** Company shall maintain a complete and correct set of records pertaining to all aspects of the Work for two (2) years, or longer as may be required by applicable law. Customer shall have the right, at Customer's sole expense and at reasonable times, to inspect and audit any and all such records within a period of two (2) years after the termination of the Work; provided, however, that Company has the right to exclude any trade secrets, formulae or confidential information from such inspection and audit.

6. **LIENS.** Customer shall have the right to withhold final payment until Company has furnished reasonable proof that any claims against Company by its suppliers, contractors and subcontractors for labor, material, equipment, or goods of any kind furnished in connection with the Work have been released.

7. **WARRANTY.** COMPANY WARRANTS THAT THE WORK FURNISHED HEREUNDER SHALL BE FURNISHED IN ACCORDANCE WITH THE SPECIFICATIONS SET FORTH IN A DULY EXECUTED QUOTE ISSUED BY COMPANY, AND PERFORMED IN A GOOD AND WORKMANLIKE MANNER BY QUALIFIED PERSONNEL IN ACCORDANCE WITH INDUSTRY STANDARDS. HOWEVER, NO WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE OR ANY OTHER REPRESENTATION OR WARRANTY, OR GUARANTEE, WHETHER EXPRESS OR IMPLIED, IS MADE RESPECTING SAID WORK, AND ANY SUCH WARRANTIES ARE WAIVED BY CUSTOMER.

As Customer's sole remedy hereunder, if within twelve months of delivery of any Work the Customer notifies Company in writing of any deficiency caused by the negligence of Company, then Company shall re-perform the Work as necessary to remedy any deficiency. Customer understands that the inspection report and all other analyses, charts or reports delivered or recommendations or advice given by Company, its employees, or agents in connection with the Work will not be received as a warranty of the quality, capacity or fitness for use of the object of the Work.

8. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, COMPANY'S AGGREGATE LIABILITY AND RESPONSIBILITY TO CUSTOMER WITH RESPECT TO ANY LIABILITY, BREACH, OR OBLIGATION RELATING TO OR ARISING OUT OF ANY WORK IS LIMITED TO THE COMPENSATION PAID TO COMPANY FOR SUCH WORK MULTIPLIED BY TWO (2) (THE "**LIMITATION OF LIABILITY**"). THIS LIMITATION OF LIABILITY APPLIES TO ALL LAWSUITS, CLAIMS OR ACTIONS, WHETHER IDENTIFIED AS ARISING IN TORT, INCLUDING NEGLIGENCE (WHETHER SOLE OR CONCURRENT), PROFESSIONAL ERROR OR OMISSIONS, BREACH OF WARRANTY (EXPRESS OR IMPLIED), NEGLIGENT MISREPRESENTATION, AND STRICT LIABILITY, CONTRACT, OR OTHER LEGAL THEORY, INCLUDING WITHOUT LIMITATION, COMPANY'S INDEMNITY OBLIGATIONS TO CUSTOMER RELATED TO THE WORK PROVIDED IN THIS AGREEMENT AND ANY CONTINUATION OR EXTENSION OF THE WORK, BUT DOES NOT APPLY TO LIABILITIES ARISING DUE TO GROSS NEGLIGENCE OR FRAUD ON THE PART OF COMPANY. Customer acknowledges that this LIMITATION OF LIABILITY provision has been reviewed, understood and is a material part of this Agreement, and that Customer has had an opportunity to seek legal advice regarding this provision.
9. **NO CONSEQUENTIAL DAMAGES.** NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, IN NO EVENT SHALL COMPANY OR CUSTOMER BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, DAMAGES FOR DELAY, OR LOSS OF USE ARISING FROM OR RELATED TO WORK PROVIDED BY COMPANY, EVEN IF NOTICE WAS GIVEN OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE. Customer acknowledges that this LIMITATION OF LIABILITY provision has been reviewed, understood and is a material part of this Agreement, and that Customer has had an opportunity to seek legal advice regarding this provision.
10. **SAFETY.** Company is solely responsible for the safety and health of Company's employees and lower tier subcontractors. Company shall take necessary precautions for the safety of its employees. Company specifically disclaims any authority or responsibility for general job safety and for the safety of persons who are not employed by Company. Should Customer, or third parties, be conducting activities on the site, then each shall have responsibility for their own safety and compliance with applicable safety requirements.
11. **INDEMNITY.** Company agrees to indemnify Customer, and its agents and employees, from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees) which Customer may incur, become responsible for, or pay out as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by the negligence or willful misconduct of Company, its subcontractors and their respective employees.

Customer agrees to indemnify Company, and its agents and employees, from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees), which Company, its agents, employees, and subcontractors may incur, become responsible for, or pay out as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by Customer's negligence or willful misconduct. Customer and Company shall, in the event of liability arising out of their joint negligence or willful misconduct, indemnify each other in proportion to their relative degree of fault.

12. **INSURANCE.** Company shall maintain at its own expense, during the term of this Agreement, the following insurance: (1) Workers' Compensation providing statutory coverages required by the state where Work are provided, (2) Employer's Liability with limits of \$1,000,000 each accident, (3) Commercial General Liability with limits of \$1,000,000 each occurrence/ \$2,000,000 aggregate, (4) Commercial Automobile with limits of \$1,000,000 each accident, (5) Umbrella Excess Liability with limits of \$5,000,000 each occurrence and (6) Professional Liability with limits of \$1,000,000 each claim. Upon receipt of written request, Customer shall be included as an additional insured under the General Liability and Automobile Liability policies on a primary and non-contributory basis for obligations and liabilities assumed hereunder by Company. The insurance requirements hereunder shall in no way modify the limitations of liability contained elsewhere.

13. **CUSTOMER OBLIGATIONS.** Customer warrants that all information provided to Company regarding the Work and Work location are complete and accurate to the best of Customer's knowledge.

Customer agrees to furnish Company, its agents, employees, and subcontractors a right-of-entry and any authorizations needed for Company to enter onto the Work site to perform the Work; Customer agrees to disclose the identity and location of all utilities serving the Work Site and the presence and accurate location of hidden or obscured man-made objects known to Customer that may be in Company's work area. Customer shall, before commencement of any work, and without cost to Company remove or make safe any condition at the job site or on the workplace which present a safety hazard, including but not limited to, electric wires, flames, smoke, flammable liquids or gasses, fumes, steam, poisons, asbestos, hazardous or toxic chemicals, and hazards from other contractors working above, below, or adjacent to the Company Work area. Customer shall supply adequate scaffolding, lighting, and handling facilities at each Work area.

14. **TIME.** Any periods of time quoted or accepted by Company for completion of the Work are to be treated as estimates only. Time is not of the essence.
15. **TERMINATION.** For Convenience-Upon written notice, Customer or Company may terminate the performance of any further Work included in this Agreement. Upon receipt of a termination notice, Company shall stop all Work included in this Agreement and Customer shall pay Company within thirty (30) days for all Work performed up to the receipt of the termination notice, as well as reasonable mobilization and demobilization costs.

For Cause-In the event of material breach of this Agreement, the party not breaching the Agreement may terminate it upon five (5) business day's written notice delivered or mailed to the other party, which notice must identify the material breach. The Agreement may not be terminated for cause if the breaching party cures the breach within five (5) business days of receipt of the written notice. Upon Termination for Cause, Company shall stop work on all Work included in this Agreement and Customer shall pay Company within thirty (30) days for all Work performed up to the termination.

All provisions of these Terms containing representations, warranties, payment obligations, releases, indemnities, and all provisions relating to Confidential Information, construction and interpretation, insurance, disclaimer of certain remedies and damages, limitations of liability, dispute resolution and governing law, shall survive termination until limited by an applicable statute of limitations.

16. **FORCE MAJEURE.** Company shall not be deemed to be in default of this Agreement to the extent that any delay or failure in the performance of the Work results from any causes beyond its reasonable control. For this purpose, such acts or events shall include, but are not limited to, storms, floods, unusually severe weather, epidemics, civil disturbances, war, riot, strikes, lockouts or other industrial disturbances, and the inability within reasonable diligence to supply personnel, equipment, information or material to the Work. In the event that such acts or events occur, it is agreed that Company shall attempt to overcome all difficulties arising and to resume as soon as reasonably possible the normal pursuit of the Work covered by these Terms.
17. **ASSIGNMENT AND SUBCONTRACTS.** Company may subcontract, without written permission of Customer, all or any portion of the Work to any qualified affiliate.
18. **CONFIDENTIALITY.** All information relating to the Work or the business of Customer including, but not limited to, drawings and specifications relating to the Work, and Customer information, shall be held in confidence by Company and shall not be used by Company for any purpose other than for the performance of the Work or as authorized in writing by Customer. Confidential information shall not include information that (i) has become part of the public domain through no fault of Company; (ii) is possessed by Company, before receipt thereof from Customer; (iii) is acquired independently and without any confidentiality obligation by Company from a third party that has the right to disseminate such information; (iv) is developed by Company independently; (v) is required to be disclosed by Company due to applicable laws and regulations, government order or court order.
19. **NO WAIVER.** No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether of like or different in character.

20. **MISCELLANEOUS.** These Terms supersede all earlier warranties, representations, or statements (whether oral or in writing) and may only be varied or amended in a signed writing between the parties. No amendment or modification to these Terms, or any waiver of any provisions hereof, shall be effective unless in writing signed by both Parties, and under no circumstances shall any such amendment or modification be deemed to have retroactive effect. To the extent Company performs any other work for Customer not contemplated by the quotation in connection hereof then these Terms shall govern the performance of such other work notwithstanding the absence of a quote by Company, or other written agreement in respect to such other work. If any part of these Terms is found to be unenforceable, then the parties' intent is to have such part rewritten to attain as close as possible the original intent of the unenforceable provisions.
21. **CHOICE OF LAW, FORUM.** The validity, construction, and performance of, and any dispute arising under, these Terms shall be governed by Texas law, conflicts of laws principles notwithstanding, and any suit related to or arising out of the Work shall be brought exclusively in the state or federal courts located in Harris County, Texas, and each party consents to the personal jurisdiction of such courts. In the event of any controversy, claim or dispute between the parties arising out of or relating to the Work, these Terms or the breach thereof, the prevailing party shall be entitled to recover from the other party reasonable expenses, attorney's fees, and costs.
22. **WAIVER OF JURY TRIAL.** TO THE GREATEST EXTENT PERMITTED BY LAW, THE PARTIES WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY PROCEEDING ARISING OUT OF OR RELATING TO THESE TERMS OR THE WORK.
23. **GOVERNMENT CONTRACTING.** To the extent any portion of the Work is subject to any prevailing wage, skilled and trained workforce, or any other federal, state, or local labor laws that operate to impose additional or heightened labor requirements, including but not limited to wages or workforce composition, then Customer represents that it has disclosed the applicability of such laws to the Work. Customer shall defend, indemnify, and hold harmless Company from and against any all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees) which Company may incur, become responsible for, or pay out as a result of Customer's breach of the foregoing representation.