



## Wajax Standard Terms and Conditions of Sale

These Wajax Standard Terms and Conditions of Sale, including Schedule "A" (collectively, the "**Terms**") apply to all sales of products and services by any of Wajax Limited, Delom Services Inc., Tundra Process Solutions Ltd. and any of their affiliates or related entities. With respect to a sale of Work, the entity bound by these Terms ("**Wajax**") shall be the entity which is the party to the relevant Contract (as defined below).

### 1. Definitions

In these Terms:

- a. "**Applicable Laws**" means all applicable governmental laws, statutes, acts, rules, regulations, ordinances, decrees, judgments, decisions, orders, codes, standards, requirements, by-laws, permits, and licenses of any government branch, agency or regulatory body;
- b. "**Basic PO Terms**" means any of the following terms specified by Customer in an Order: (i) a list of the Products and Services to be purchased, including quantity and price for same; (ii) the requested delivery date and location; and (iii) the billing address. "Basic PO Terms" expressly excludes any of Customer's terms and conditions;
- c. "**Contract**" means the contract formed between Customer and Wajax with respect to the Work pursuant to (i) a written contract; (ii) an Order accepted by Wajax in writing (or, with respect to an over-the-counter order or request, accepted by Wajax orally or in writing), provided that only Basic PO Terms are incorporated in the Contract; and/or (iii) a Quote accepted by Customer orally or in writing. Each Contract shall be deemed to incorporate these Terms;
- d. "**Customer**" means the purchaser of the Work;
- e. "**Electrical Coordination Services**" means all studies, calculations, measurements, tests, schematics, mapping, work and services to ensure the proper and safe coordination of (i) the Electrical Products with (ii) the circuit breakers and other electrical protection of Customer's buildings, facilities, systems and equipment all in accordance with Applicable Laws, including in relation to ensuring the operation and adequate supply of electricity from the Electrical Products for prime or continuous operation and/or in the event of a power outage, blackout or emergency situation;
- f. "**Electrical Products**" means generators, generator circuit breakers, electrical panels, control panels, electrical motors, and transfer switches;
- g. "**Losses**" means all losses, damages, liabilities, demands, claims, actions, suits, proceedings, applications, causes of action, judgments, settlements, awards, penalties, fines, interest, costs, fees and expenses (including reasonable legal fees);
- h. "**Order**" means Customer's request to purchase Work from Wajax, whether written, oral, over-the-counter, or retail, or whether in the form of a purchase, work or service order, or any other form, and including all terms and conditions attached or incorporated therein;
- i. "**Parties**" means Customer and Wajax; each, a "**Party**";
- j. "**Products**" means the goods, materials, equipment, parts, accessories, supplies and/or products to be sold or supplied by Wajax to Customer, as specified in the Contract;
- k. "**Purchase Price**" means the price payable by Customer to Wajax pursuant to the Contract;
- l. "**Quote**" means a quotation or estimate issued by Wajax to Customer detailing the Work, which (unless otherwise stated by Wajax in writing) shall expire 30 days after its issuance date and may be withdrawn anytime before acceptance;
- m. "**Services**" means any work and services of any kind to be provided by Wajax to Customer as specified in the Contract; and
- n. "**Work**" means the Products and the Services, as applicable.

### 2. Entire Agreement

- a. By accepting the delivery of Products or performance of Services, Customer unconditionally and irrevocably accepts these Terms.
- b. The Contract, together with any Wajax credit application submitted by Customer, is the complete and entire agreement between the Parties, superseding all prior or contemporaneous agreements, understandings, negotiations, representations, communications, bid invitations, and proposals, whether written or oral, relating to the Work.
- c. These Terms prevail over any terms or conditions set out in any other document. Any additions or variations made to this Contract by Customer verbally or in writing are null and void. No conduct by either Party, including order fulfillment, shipment of Work, acceptance of payment, nor any Customer document, form, order, acknowledgment, invoice, or course of dealing can modify, supplement, or waive these Terms (in whole or in part), except to the extent expressly agreed in a writing signed by Wajax and Customer.
- d. Wajax's representative(s) may need access to Customer's facility or site. Such access may not depend on signing any agreement, waiver, indemnity or release, and if Wajax's representative signs any of same then it shall be null and void. Wajax's representatives will follow all reasonable site procedures.

### 3. Changes

Customer may request changes to the Work in writing, subject to Wajax's written acceptance. Changes may result in adjustments to the Purchase Price and delivery schedules, which must be agreed to in writing by the Parties. Subsurface or concealed conditions that materially affect the Work may result in adjustments to the Purchase Price and delivery schedules. Wajax may make substitutions and modifications that do not materially adversely affect the Work.

### 4. Delivery

- a. Any delivery date or schedule set out in the Contract is an estimate only, and Wajax is not liable for any Losses due to delays or failure to meet same. Wajax may revise pricing and schedule if delays occur that are not caused by Wajax's fault or negligence.
- b. Wajax will deliver the Products: FCA Wajax nominated facility (Incoterms 2020). From such point, all shipping will be at Customer's additional cost and risk; Wajax shall not be liable for any damages or loss in transit.
- c. Customer assumes care, custody and control of, and bears the risk of physical loss of, the Work upon any full or partial delivery.
- d. If Customer does not accept delivery of any Work at the scheduled time, Wajax may arrange storage of same at Customer's risk and expense, and Customer must pay the Purchase Price due on delivery, as if delivery had occurred.
- e. If testing, start-up, or commissioning are included in the Work, Customer must allow same to be completed within one month of delivery; otherwise, Wajax may invoice the remaining Purchase Price and credit Customer for any such unperformed Work. Customer may place a new Order for same, which may be subject to increased costs and altered warranty terms.

### 5. Acceptance of Work

Customer unconditionally and irrevocably accepts all Work upon Wajax's delivery of same. However, if Work involves Wajax delivering, installing or commissioning major capital equipment or systems, Wajax will notify Customer when same is complete, and Customer unconditionally and irrevocably accepts the Work (or such portion) upon the earlier of: (i) Customer's use of the Work (including putting it into operation); or (ii) 5 days following Customer's receipt of the Work or of Wajax's completion notice, as applicable, unless Customer has rejected same due to substantial non-conformity of the Work to the Contract requirements; or (iii) the Parties agreeing in writing to a final deficiency list of items to be remedied by Wajax, in which case the Work is deemed accepted except for such listed deficiency items.

### 6. Payments

- a. Invoices are deemed accepted and binding upon Customer unless questioned in good faith in writing within 15 days of the invoice date.
- b. All amounts are due and payable on the invoice date (or, for purchases of major equipment or systems, upon delivery), or within 30 days if Wajax extends credit. Late payments accrue interest at 2% per month compounded monthly (26.8% annually), until paid.
- c. All undisputed amounts must be paid without any deduction, set off, counterclaim or abatement. If the Contract includes holdbacks, all applicable taxes are due with the first invoice.
- d. All amounts are in Canadian currency, unless specified in the Contract.
- e. Prices exclude all taxes and government-imposed charges on the prices or any part of them, such as Harmonized Sales Tax, Goods and Services Tax, provincial sales tax and any other forms of sales, use, or value added tax, tariffs, duties, or surcharges (the "**Charges**"). Where applicable, Charges will be added to quoted prices and invoiced accordingly.
- f. Wajax may apply Customer's payments to any of Customer's invoices or accounts, and to principal or interest, at Wajax's sole discretion.
- g. Wajax's acceptance of a partial payment does not prejudice its right to claim the remaining balance or seek any other remedy.
- h. Cheques are recognized as payment only once honoured. If cheques are returned due to insufficient funds, Customer shall incur a \$50.00 handling fee.
- i. All credit notes issued by Wajax expire two years after issuance.

### 7. Title

Until Wajax receives the full Purchase Price: (i) title to the Work remains vested in Wajax (despite any enclosure or affixation to real or personal property); (ii) the Customer will ensure that the Work will: (a) not be altered, misused, abused or allowed to deteriorate; (b) be insured against all risks, including fire and theft; (c) not be sold, transferred or disposed of, either voluntarily or involuntarily; and (ii) Wajax may remove the Work at any time at its sole discretion. When title to Work passes to Customer, it will be free of all liens except those caused by Customer's nonpayment.

### 8. Returns

All returns are subject to Wajax's prior authorization and applicable return policy. For return policy details, please contact your Wajax representative.



## 9. Customer's Obligations

Customer must:

- a. comply with all Applicable Laws (including obtaining all permits and licenses) in connection with the design, purchase, shipment, installation, use and maintenance of the Work, as applicable;
- b. pay the Purchase Price when due. Wajax may adjust the Purchase Price to prevailing Wajax's price in effect at the time of delivery to Customer to reflect any cost increases due to factors beyond Wajax's control (including foreign exchange fluctuation, currency regulation, increased commodity costs, import duties variations, and regulatory changes), and any such adjustment is binding on Customer upon notice from Wajax;
- c. give Wajax comprehensive instructions and directions upon request, which Wajax may rely upon;
- d. if required for the Work, provide Wajax with access to Customer's site, and a safe working environment (compliant with Applicable Laws) on site. Wajax's representative may exercise the "right-to-refuse" if, in their sole discretion, Customer's site or facility is unsafe;
- e. indemnify, defend and hold harmless Wajax, its affiliates and related entities, and its and their respective officers, directors, employees, agents and representatives (collectively, "**Wajax Parties**"), for, from and against all Losses suffered or incurred by the Wajax Parties relating to any of: (i) Customer's negligence, willful misconduct or fraud; (ii) Customer's breach of Contract; (iii) design or specifications provided by Customer; and (iv) bodily injury, death, or property damage caused by Customer or a person acting on Customer's behalf;
- f. with respect to Electrical Products: (i) assume sole liability for the performance of the Electrical Coordination Services through qualified contractors or professionals, and ensure compliance of same with all Applicable Laws; and (ii) indemnify, defend and hold harmless the Wajax Parties for, from and against all Losses suffered or incurred by the Wajax Parties, Customer, or any other person, relating to or arising in any way from the Electrical Coordination Services or any lack thereof. Customer acknowledges that the Work does not include any Electrical Coordination Services;
- g. if applicable, have and maintain appropriate cybersecurity measures which comply with applicable industry standards and best practices, including the National Institute of Standards and Technology (NIST) Cybersecurity Framework 2.0, ISO/IEC 27001, or equivalent, and any Applicable Laws;
- h. ensure that, any inspections of the Work at Wajax facilities, if allowed by the Contract, occur during regular business hours upon reasonable prior notice, and must not interfere with Wajax's operations or contractual obligations; any disruption may result in additional charges to Customer.

## 10. Warranty

Notwithstanding any other provision of the Contract:

- a. Wajax's limited warranties with respect to the Work are set out in the attached Schedule "A"; such warranties are the only warranties applicable to the Work, and provide the only remedies for defective or deficient Work.
- b. The only warranties that apply to OEM Products are those provided by the respective OEM Warranty in effect at the time of purchase, if any (as such terms are defined in Schedule "A"). Wajax makes no warranties regarding OEM Products, but Wajax will assist Customer to secure the benefits of the applicable OEM Warranty when inspection proves the OEM Products to be defective, all subject to the terms and conditions of such OEM Warranty.
- c. No warranty by the manufacturer, Wajax, or any other person is extended to Customer or to any other person regarding Electrical Coordination Services.

The warranties provided in this section 10 are the only warranties applicable to the Work. Except as expressly provided in this section 10, all other representations, warranties, covenants, conditions, guarantees or similar obligations, express or implied, by fact, Applicable Laws, custom, trade usage, or any course of dealing (including any implied warranties of quality, merchantability, fitness for purpose or a particular purpose, or intended use) or otherwise, are excluded from the Contract and inapplicable.

## 11. Limit of Liability

Notwithstanding any other provision of the Contract, Wajax will in no event be liable to Customer or any other person with respect to any Work whether by way of indemnity, or any breach of contract, Applicable Laws, trade practice, warranty, statutory duty, tort, negligence, strict liability or otherwise, and whether or not the possibility of such Losses was or should have been known by Wajax: (i) for any indirect, special, incidental, punitive, aggravated, exemplary or consequential Losses, including: loss of production, revenues, profits, opportunities, contracts, data, market or use; economic loss; downtime; delay; increased cost of production, equipment, or services; reputational damages; any of which may be suffered by Customer or any other person; (ii) for any Losses suffered by Customer or any other person as a result of any suspension or cancellation of the Contract by Wajax in accordance with its terms; or (iii) in the aggregate, for any amount in excess of the

Purchase Price paid for such Product or Service. When the Contract is subject to the laws of the Province of Quebec, this section is subject to Article 1474 of the Civil Code of Quebec. This limitation of liability reflects the bargained-for allocation of risks between the Parties and is a material basis for the Contract, without which Wajax would not have agreed to provide the Work at the Purchase Price.

## 12. Force Majeure

Wajax will not be in default, or liable, for any delays or failures to perform any obligation under the Contract caused by any event beyond Wajax's reasonable control which prevents or delays its performance of the Contract, including: change in law, war, revolution, riots, insurrection, civil commotion, invasion, hostilities, terrorism, epidemics, pandemics, national emergencies, sabotage, theft, explosions, fires, earthquakes, floods, storms, contamination, acts of God, hazardous properties, delays of carriers and other transportation blockages or disruptions, electricity supply interruptions and power failures, strikes, labour actions, failure of government to issue permits or approvals, or any such event which affects Wajax's supply chain with respect to the Work.

## 13. Security Interests

The Work shall be subject to the following "**Security Interests**":

- a. The provision of Work is subject to Wajax's lien rights under Applicable Laws.
- b. Customer grants Wajax a lien and security interest over the Work, wherever located, including all additions, replacements, and modifications thereto, and all proceeds thereof, as security for the due payment and satisfaction of all of Customer's obligations and liabilities to Wajax, whether liquidated or unliquidated, present or future, direct or indirect, and however arising (collectively, the "**Secured Obligations**").
- c. If the Work is in the Province of Quebec then, as security for Customer's payment and performance of the Secured Obligations, Customer hypothecates in favour of Wajax, the universality of all of its movable property, present and future, corporeal and incorporeal, of whatever nature and wherever situated for an amount equal to 125% of the Purchase Price, with interest at the rate of 25% per annum from the date of the Contract, compounded annually.

Customer agrees to execute and deliver to and in Wajax's favour, within ten (10) days of request, a security agreement, mortgage, and/or deed of moveable hypothec in respect of such Security Interests and do and deliver such other deeds, acts, instruments, documents and other agreements as may be required in order to grant to Wajax valid and enforceable Security Interests, in each case upon such terms and conditions as are satisfactory to Wajax. Wajax may register financing statements or publish registrations with respect to all Security Interests, and Customer waives the right to be notified of same.

## 14. Customer Default

Any of the following constitutes a "**Customer Default**":

- a. A false or misleading representation by Customer;
- b. Customer breaches any term of the Contract, and does not remedy same within 10 days of Wajax's notice, or repeatedly breaches the Contract;
- c. Customer's credit position is in any manner insecure (as determined by Wajax at any time), including if: Customer becomes insolvent or bankrupt, ceases to conduct the normal course of its business, or makes an assignment for the benefit of creditors; any proceedings are initiated by or against Customer under bankruptcy, insolvency, reorganization or creditor moratorium laws; or a receiver, liquidator or trustee is appointed in respect of Customer or its property.

Upon Customer Default, Wajax may, notwithstanding any existing contracts or commitments to Customer including a commenced delivery or performance: (i) deem all outstanding amounts to Wajax as immediately due and payable; (ii) take possession of any Work, or otherwise enforce its Security Interests against Customer, including entering onto Customer's property for such removal; (iii) refuse, stop, cease or suspend Work; (iv) require advance payments or other forms of security as Wajax deems fit; and/or (v) terminate the Contract immediately without further notice. If Wajax suspends its performance under this section, the completion, delivery and other dates contemplated under the Contract will be adjusted as necessary to reflect the impact of the suspension, and Customer must pay Wajax any additional costs reasonably incurred by Wajax.

Upon any termination of the Contract pursuant to this section:

- a. Wajax may suspend the Work under any Contract;
- b. All outstanding amounts to Wajax under any Contract become immediately due and payable; and
- c. Customer must promptly pay Wajax the sum of: (A) the greater of payment for (i) Work actually performed in whole or in part prior to termination for which Wajax has not yet been paid (including: work in progress; Products and components procured or produced but not yet delivered to Customer; supplies and inventory; profit earned in relation to all of the foregoing items; and overhead costs), or (ii) the next milestone payment; plus (B) all other costs and expenses incurred by Wajax by reason of such termination of the Contract,



including demobilization costs, costs in connection with the disposition of work and material on hand, interest on overdue payments, and any subcontract cancellation payments or costs (all of (A) plus (B) being the “**Early Termination Costs**”).

#### 15. Cancellation for Convenience

Customer may not cancel the Contract or any Order without Wajax’s prior written consent, which Wajax may withhold in its sole discretion. If consent is given, such cancellation will be subject to Customer’s payment of the Early Termination Costs, or such other costs as the Parties agree upon.

#### 16. Intellectual Property

Wajax retains all ownership of its intellectual property of every nature and kind and of all materials conceived, prepared or developed by or on behalf of Wajax, including all trademarks, patents, copyright, industrial design, specifications, plans, designs, concepts, and other intellectual property rights and proprietary information related to the Work (collectively, “**Intellectual Property**”). Unless expressly permitted in writing by Wajax, Customer must never reverse engineer the Work or use the Intellectual Property.

#### 17. Confidential Information

“**Confidential Information**” means all information that is designated as confidential or should reasonably be understood to be confidential, including business, financial or technical information or data, reports, photographs, specifications, drawings, tools, dies, patterns, plans, methods or other Intellectual Property, disclosed by or on behalf of the disclosing Party, whether orally, in writing, in electronic or other form. The receiving Party must: (i) protect and safeguard the confidentiality of the Confidential Information with at least the same degree of care as it would protect its own Confidential Information, and no less than a commercially reasonable degree of care; (ii) not use the Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Contract; and (iii) not disclose any such Confidential Information to any person, except to the receiving Party’s employees, professional advisors, agents, and subcontractors (“**Representatives**”) on a “need-to-know” basis in connection with this Contract. The receiving Party is liable for unauthorized disclosures by its Representatives. If a receiving Party must disclose Confidential Information under Applicable Laws, it must (if legally permissible) give prior notice to the disclosing Party. Either Party may retain copies of Confidential Information to the extent necessary to comply with Applicable Laws or as automatically retained through its electronic back-up procedures provided that such data is periodically and systematically overwritten or destroyed. Confidential Information does not include any information that: (i) is or becomes generally available to the public other than as a result of receiving Party’s breach of this section; (ii) is or becomes available to the receiving Party on a non-confidential basis from a third-party source who was not prohibited from disclosing it; (iii) was in receiving Party’s possession prior to disclosing Party’s disclosure; or (iv) was or is independently developed by receiving Party without using any Confidential Information.

#### 18. Assignment

The Contract is binding on and enures to the benefit of the Parties and their successors and permitted assigns. Customer must not assign the Contract, in whole or in part, without Wajax’s prior written consent, and if such consent is granted, Customer shall be jointly and severally liable with the assignee for Customer’s obligations under the Contract. Wajax may assign the Contract to any of its affiliates or related entities or to any purchaser of all or substantially all of the assets of Wajax. Wajax may subcontract its rights or any portion of its responsibility under the Contract to any third party.

#### 19. Export Compliance

The Work may be subject to Applicable Laws governing export. Customer must not ship or divert any of the Work, or any information relating to it, to any country outside of Canada in violation of any Applicable Laws.

#### 20. Governing Law

The Contract is governed by and interpreted in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada (but without giving consideration to any conflict of law rules). The Parties irrevocably consent and attorn to the non-exclusive jurisdiction of the courts of Ontario over any legal proceedings in respect of the Contract. Wajax may take proceedings for enforcement in any jurisdiction. The International Sale of Goods Act and the United Nations Convention on Contracts for The International Sale of Goods, and, to the extent permissible by law, any other provincial or federal sale of goods legislation, do not apply to the Contract.

If the Contract is interpreted under the laws of the Province of Quebec (including if any assets are located there), then: (i) “personal property” includes “movable property”; (ii) “real property” includes “immovable property”; (iii) “security interest”,

“mortgage” and “lien” includes an “hypothec”, “right of retention”, “prior claim” and a resolatory clause; (iv) “goods” includes “corporeal movable property” other than chattel paper, documents of title, instruments, money and securities; and (v) “accounts” includes “claims”.

#### 21. General

- a. In this Contract: (i) “include,” “includes” and “including” means “without limitation”; (ii) “or” is not exclusive; (iii) singular terms include plural, and vice versa, where applicable; (iv) headings are for reference only, and do not affect the interpretation, nor define nor limit any provision; (v) references to sections, schedules, and exhibits refer to those in this Contract; (vi) references to agreements, instruments, or other documents include all amendments, supplements, and modifications thereto; and (vii) references to statutes include any amendments thereto, successor legislation, and related regulations.
- b. If these Terms contain any ambiguity or uncertainty, the Contract shall not be interpreted in favour either Party based on authorship.
- c. Any notice, request, or document given under the Contract must be in writing and sent to the other Party at its address in the Contract.
- d. No waiver, addition, or modification of the Contract is binding on either Party unless made in writing and signed by both Parties. A delay, partial enforcement, or failure to exercise a right or remedy under the Contract is not a waiver of, and does not prevent subsequent exercise of same.
- e. If there is a conflict, inconsistency or discrepancy between these Terms or other Contract documents, the priority is: (i) Terms; (ii) Quote; (iii) other documents forming part of the Contract.
- f. The Parties are independent contractors; no partnership, agency, joint venture or other relationship arises pursuant to the Contract.
- g. Unless otherwise stated in the Contract, all remedies set out in the Contract are cumulative and in addition to all other statutory, common law and equitable remedies available to the parties.
- h. If any provision of the Contract is invalid or unenforceable, such provision will be severed and replaced with a valid enforceable provision that accomplishes the same intent to the greatest extent possible, and no other provision of the Contract shall be affected or impaired.
- i. Provisions that expressly or by their nature survive completion, cancellation, or termination of the Contract (including confidentiality and payment obligations, indemnities, and limitations and exclusions of liability) remain in effect.
- j. Each Party agrees to execute and deliver (or cause same to occur) after the date of the Contract all instruments or further assurances reasonably required by the other Party pursuant to the terms of Contract.
- k. Electronic execution is permitted, and electronic copies are deemed original copies.
- l. The Parties confirm their wish that this Contract and any other document relating to same be drawn up in the English language only. *Les parties aux présentes ont expressément convenu que la présente convention et tous les autres contrats, documents ou avis qui y sont afférents soient rédigés en langue anglaise.*



## Schedule "A" – Products & Services Warranty

This warranty (the "**Warranty Document**") applies to the sale of all goods, materials, equipment, parts, accessories, supplies and products (the "**Products**") and performance of all work and services of any kind (the "**Services**", collectively with the Products, the "**Work**") by any of Wajax Limited, Delom Services Inc., Tundra Process Solutions Ltd. and any of their respective affiliates or related entities; the entity bound by this Warranty Document ("**Wajax**") with respect to the Work is the entity which is a party to the relevant contract or order with the customer ("**Customer**"). In this Warranty Document: (1) "**Applicable Laws**" means: all applicable governmental laws, statutes, acts, rules, regulations, ordinances, decrees, judgments, decisions, orders, codes, standards, requirements, by-laws, permits, and licenses of any government branch, agency or regulatory body; (2) "**Electrical Coordination Services**" means all studies, calculations, measurements, tests, schematics, mapping, work and services to ensure the proper and safe coordination of (i) the Electrical Products with (ii) the circuit breakers and other electrical protection of Customer's buildings, facilities, systems and equipment all in accordance with Applicable Laws, including in relation to ensuring the operation and adequate supply of electricity from the Electrical Products for prime or continuous operation and/or in the event of a power outage, blackout or emergency situation; (3) "**Electrical Products**" means generators, generator circuit breakers, electrical panels, control panels, electrical motors, and transfer switches; (4) "**Equipment**" means any items, equipment, components or Products upon which any Services are performed; (5) "**Wajax Products**" means Products which are systems or parts manufactured by Wajax; (6) "includes" and "including" means "without limitation"; (7) "or" is not exclusive; (8) singular terms include plural, and vice versa, where applicable; and (9) headings are for reference only, and do not affect the interpretation, nor define nor limit any provision.

**WARRANTY FOR WAJAX PRODUCTS & SERVICES:** Subject to the terms of this Warranty Document, Wajax warrants as follows (the "**Warranty**"): (1) the Services will be performed in a good and workmanlike manner in accordance with a standard of care and skill exercised by competent service providers who would ordinarily provide services of the nature and type of the Services under similar conditions in the locality in which the Services are performed on projects of equivalent type, size and complexity as the project in respect of which the Services are being performed; (2) Wajax Products are free of defects in manufacture and material, conform to Wajax's specifications as expressly stated in the relevant contract or purchase or service order, subject to Wajax's standard tolerances for specifications.

**Warranty Period:** The Warranty is restricted to defects in the Work which were present at the time of performance (for Services) or at the time of delivery to Customer (for Wajax Products), which become manifest during the applicable warranty period as follows:

- for Services, six (6) months from the date that the applicable parts of the Services were completed (in Wajax's sole opinion);
- for Wajax Products which are parts manufactured by Wajax, twelve (12) months from the date of delivery to Customer; and
- for Wajax Products which are systems manufactured by Wajax, the lesser of (i) twelve (12) months from the date of Customer's acceptance or deemed acceptance of such Wajax Products; or (ii) eighteen (18) months from the date of delivery to Customer.

Such warranty period is not extended by any subsequent re-performance, repairs or other remedial work; any repaired or replaced parts are warranted hereunder until the expiration of the original warranty period.

**Remedies:** If Wajax determines in its sole discretion that any Work (or any part thereof) fails to conform with the applicable Warranty during the applicable warranty period, and that the terms and conditions of this Warranty Document have been satisfied, then Wajax, in its sole discretion and at its expense, will promptly re-perform such Services (or part thereof), or repair or replace such Wajax Product (or part thereof) and deliver same FCA Wajax facilities, or refund the purchase price (or applicable part thereof). The obligations of Wajax under this Warranty Document are strictly limited to the re-performance, repair, or replacement (as set out above) of any Work which in Wajax's sole opinion was defective at the time of performance (if Services) or delivery to Customer (if Wajax Products), or to the refund of the purchase price (or applicable part thereof). The Warranty applies only to Work for which Wajax has been paid in full.

**Other:** If Wajax elects to re-perform or to repair the Work (or part thereof) which is subject to the warranty claim, Customer is responsible for removing and transporting the Work to Wajax's designated facility. If Customer requests that such re-performance or repair be done at Customer's site, Customer is responsible for the removal of the Work (or, if it is not possible to remove same then it can remain in place) and Wajax will only cover the re-performance or repair time spent on the site.

All other expenses are Customer's responsibility. Any such re-performance or repairs will be completed during Wajax's regular business hours; if Customer requires same outside of these hours, overtime rates will apply and Customer must pay Wajax's cost differential for same. The Warranty is subject to all of the limitations, warranty period, exclusions and other terms and conditions set out in this Warranty Document.

**Exclusion for Components of Wajax Products which are OEM Products:** The Warranty applicable to Wajax Products does not alter, replace or supplement any OEM Warranties applicable to any OEM Products (as defined below) incorporated in Wajax Products. The terms and conditions of OEM Warranties, including as to warranty length, applicable to any portion of any Wajax Products prevails over the terms of the Warranty, and the Warranty is limited by and subject to the terms and conditions of any applicable OEM Warranty.

**WARRANTY FOR OEM / DISTRIBUTED PRODUCTS:** Notwithstanding any other provision of this Warranty Document, with respect to any Products which are supplied or sourced from, or manufactured by, either in whole or in part, third party manufacturers (the "**OEM Products**", and the "**OEM**", respectively), the respective OEM's warranty (the "**OEM Warranty**") for such OEM Product in effect at the time of purchase, if any, will apply, and respective OEM Warranties are the only warranties applicable to the OEM Products; all other warranties, conditions, guarantees or similar obligations, express or implied, by fact, Applicable Laws, custom, trade usage, or any course of dealing (including any implied warranties of quality, merchantability, fitness for a purpose, fitness for a particular purpose or fitness for an intended use) or otherwise, are excluded from this Warranty Document and from any contract or order with Customer, and are inapplicable. The respective OEM Warranties provide the only remedies arising out of the defective or deficient OEM Products (including any breach of any intellectual property rights). Under no circumstances will Wajax be liable to Customer or to any other person for any damages, corrections, repairs, replacements or other remedies regarding the OEM Products, including with respect to any claims concerning infringement of intellectual property rights, or negligence or wrongful acts or omissions of the OEM. Wajax will assist Customer to secure the benefits of any applicable OEM Warranty when inspection proves the OEM Products to be defective, subject to the terms and conditions, including as to warranty length, that are contained in the applicable OEM Warranty. For details regarding the terms and conditions of an OEM Warranty for a particular OEM Product, please contact your Wajax representative.

**EXCLUSIONS:** The Warranty does not cover, and Wajax is not liable under this Warranty Document or otherwise for, any Losses (as defined below) incurred by Customer or any person that arise, in whole or in part, from any defects caused by or related in any way to:

- Any event or circumstance which arises through no fault of Wajax including: any labour not performed by Wajax; disaster, force majeure, accidents, abuse, or neglect; chemical, electro-chemical or electrical influences; overload, or any abnormal physical stress or environmental conditions; any materials, substances, or other contamination processed by or entering into the Work, including debris, moisture, dust, or grease; any specifications, instructions or designs specified or provided by or on behalf of Customer; any negligent or wrongful acts or omissions of by or on behalf of Customer; normal wear and tear; or Products (or any part thereof) that may experience premature wear due to their inherent material properties or specified use;
- Any incorrect, improper or inadequate installation, connection, commissioning, assembly, use, operation, storage, inspection, service, maintenance, handling, removal or transportation of the Work contrary to (i) either the OEM's or Wajax's recommendations or instructions regarding the Work or any part or component thereof, (ii) standard industry practices, or (iii) Applicable Laws. This includes any failure of Customer to service or maintain the Work (in whole or in part) according to the recommended service or maintenance intervals and procedures specified by Wajax or the OEM, or any use of fuels, oils, additives or other consumables that do not meet the specified standards; or
- Any Electrical Coordination Services or lack thereof.

If any incident occurs that could lead to a claim under the Warranty, and Customer fails to mitigate or prevent further damage to the Work, Wajax is not liable for any further damage to the Work until Wajax has repaired, replaced, re-performed or refunded the Work to the satisfaction of Wajax.

Except for the repair, replacement, re-performance or refund obligation as expressly provided in this Warranty Document, Wajax will in no event be liable to Customer or to any other person for any losses, damages, liabilities, deficiencies, demands, claims (including any third-party claims), actions, suits, proceedings, applications, causes of action, judgments, settlements, awards, penalties, fines, interest, costs, fees or expenses, or reasonable legal fees (collectively, "**Losses**") of any kind, whether or not caused by the defective Work or its removal. This limitation applies



to all Losses, whether direct, indirect, special, incidental, punitive, aggravated, exemplary or consequential, including: loss of production, revenues, profits, opportunities, contracts, data, market or use; economic loss; downtime; delay; increased cost of production, equipment, or services; reputational damages; and pain, suffering, personal injury, death, or emotional distress; each whether suffered by Customer or any other person.

**WARRANTY INVALIDITY:** The Warranty will be automatically invalidated, null and void if Customer:

- Fails to comply with all requirements set out in this Warranty Document, and any applicable contract or purchase or service order, and related terms and conditions with respect to the Work.
- Allows any reconstruction, repair, alteration or modification of the Work by any person not authorized by Wajax, or with any parts or components not supplied by Wajax.
- At any time transfers title to, or possession of, the Work to a third party, whether voluntary or involuntary, or becomes bankrupt or placed in receivership.
- Whether before or after a loss, has willfully concealed or misrepresented any material fact or circumstance concerning the Warranty or the Work, or has committed fraud or made false statements relating to either.

**NOTICES:** Claims under this Warranty Document must be received in writing by the Wajax branch where the Work was purchased within ten (10) days of Customer's discovery of the defect and within the applicable warranty period.

**ADDITIONAL LIMITATIONS:**

The remedies set out in this Warranty Document are Customer's sole remedies, and are Wajax's only obligations (whether based on breach of contract, warranty, indemnity, Applicable Laws, statutory duty, tort, or otherwise), in any way arising out of or in connection with defective or deficient Work. Notwithstanding any provision in this Warranty Document or in any document or agreement to the contrary, Wajax's total aggregate liability under this Warranty Document with respect to any Work is limited to the amount of the purchase price actually received by Wajax from Customer for the defective Work.

The Warranty is the only warranty applicable to the Work. TO THE MAXIMUM EXTENT PERMITTED BY LAW, WAJAX EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES, COVENANTS, CONDITIONS, GUARANTEES OR SIMILAR OBLIGATIONS, EXPRESS OR IMPLIED, BY FACT, APPLICABLE LAWS, CUSTOM, TRADE USAGE, OR BY ANY COURSE OF DEALING (INCLUDING ANY IMPLIED WARRANTIES OF OR RELATING TO QUALITY, MERCHANTABILITY, FITNESS FOR PURPOSE OR A PARTICULAR PURPOSE OR INTENDED USE, NON-INFRINGEMENT, OR ELECTRICAL COORDINATION SERVICES) OR OTHERWISE, ALL OF WHICH ARE EXCLUDED FROM THE WARRANTY DOCUMENT AND ARE INAPPLICABLE.

No legal proceeding under the Warranty and the recovery of any claim may be sustained in any court of law or equity unless Customer has complied with all the requirements of this Warranty Document and initiates such proceeding within three (3) months from the date the original claim was submitted under the Warranty.

This Warranty Document is governed by the laws of the Province of Ontario.