

# General Terms and Conditions on After-Sales Services and Spare Parts Delivery of DMG MORI Canada Inc.

## 1. General Provisions

**1.1 |** The following terms and conditions (the "General Terms and Conditions") shall apply to all after-sales services ("Services") and spare parts deliveries ("Parts") of DMG MORI Canada Inc. (referred to as the "Supplier" from this point forward) in relation to the repair and maintenance of, and any other services provided by Supplier to its customers ("Customers") on Supplier-supplied machine tools ("DMG MORI Machine Tools").

**1.2 |** These General Terms and Conditions shall apply to the provision of the Services without exception, and shall supersede any terms and conditions between any Customer and Supplier conflicting herewith unless such conflicting terms or conditions are expressly agreed to in writing by the Supplier.

**1.3 |** A contract with a Customer shall only be enforceable with the Supplier's written confirmation issued by letter, fax or email.

**1.4 |** All references to currency herein are to Canadian dollars unless otherwise specified.

## 2. Customer's Responsibilities

**2.1 |** The Customer shall provide (at its own risk and expense) any necessary assistance to the Supplier in its provision of the Services, including the assistance of support staff, tools, lifting devices (with qualified and professionally certified operating staff) any / all materials and equipment necessary for the due performance by the Supplier of the Services. The Customer shall also make available to the Supplier's staff a suitably-sized dry and lockable room for the storage of the Supplier's parts and tools. The Customer shall ensure that its staff providing assistance to the Supplier follow the Supplier's instructions. The Customer shall be liable to the Supplier for any damage caused by the Customer's staff to the Supplier's equipment or tools, unless such damage was solely the result of the Supplier's instructions; in which case, section 17 below shall apply with regard to the Supplier's liability.

**2.2 |** In the event that any of the Supplier's materials, tools or devices are damaged or destroyed at the Customer's work-site, the Customer shall be liable to the Supplier for the full amount of the damages suffered by the Supplier therefrom.

**2.3 |** The Customer shall use best efforts to ensure the safety of the Supplier and its staff at the work-site, including ensuring compliance with all applicable safety regulations and the maintenance of appropriate working conditions. In addition, the Customer shall ensure that all machines that are to be repaired by the Supplier are thoroughly cleaned prior to the Supplier providing such Services. The Customer shall also fully instruct the Supplier's staff of all safety regulations that apply to the Customer's work-site.

**2.4 |** In connection with the Supplier's provision of the Services at the Customer's work-site, the Customer shall ensure that any necessary internal work authorizations have been obtained, and shall provide the Supplier with any necessary guest ID cards and related items at its own expense.

## 3. Prices and terms of payment

**3.1 |** Unless expressly agreed otherwise in writing, the Customer shall make payments for the Services and any replacement parts in accordance with the Supplier's published schedule of prices applicable at the time the Services are rendered (the "Service Fees"). The Supplier may request payment from the Customer at any time prior to or after the Services have been rendered. The Supplier shall be entitled to claim advance payment of up to 100 % of the Service Fees and / or costs for parts at its discretion.

**3.2 |** Parts, materials and special services, as well as costs for travelling and accommodation of the Supplier's staff shall be itemized and charged separately from the Service Fees in the applicable invoice. If Services are carried out on the

basis of a fixed fee quoted to the Customer (a "Fixed Fee") reference to such Fixed Fee shall be made in the invoice; however, in the event of deviations from the Fixed Fee because of special circumstances, such deviations shall be listed separately. Only deviations from the Fixed Fee of 10 % or more will require customer authorization.

**3.3 |** Unless expressly agreed otherwise in writing, Supplier prices are Ex-Works Supplier and exclude the costs of packaging and statutory taxes / duties where applicable, all of which shall be charged to the Customer, and, to the extent known in advance, itemized in the applicable invoices.

**3.4 |** Unless expressly otherwise agreed in writing by Supplier, invoices will be due and payable by the Customer within 10 calendar days from Customer's receipt thereof.

## 4. Unfeasibility of Services

**4.1 |** In the event that it is not commercially reasonable for the Supplier to perform the Services for any reason ("Unfeasibility of Services"), any expenses incurred by the Supplier prior to such determination, including, in particular, expenses for fault diagnostics, shall be borne by the Customer. Without limiting any of the foregoing, this provision applies in any of the following circumstances:

- \_ no fault was revealed by the fault diagnostics,
- \_ Customer cancels booked Service without 24 hours written notice,
- \_ Customer terminates an order in process, and
- \_ Parts required cannot be obtained in due time or are no longer available.

**4.2 |** The Supplier hereby covenants to ensure that all DMG MORI Machine Tools being serviced by the Supplier are returned to their original state upon the Customer's express request and at the Customer's expense. Such covenant by the Supplier does not apply in the event of the Unfeasibility of Services in respect of a particular DMG MORI Machine Tool.

**4.3 |** In the event of an instance of the Unfeasibility of Services for any reason, the Supplier shall not, for any reason, be liable for any damages to the Customer including for direct or indirect damages, breach of contract, opportunity costs, or loss of profit.

**4.4 |** In the event of wilful intent or gross negligence of the Supplier, its directors, its employees or its subcontractors in the provision of the Services, or in the event of breach of a material contractual obligation to the Customer which the Supplier has failed to remedy within a reasonable period of time, the Supplier shall be liable to the Customer for direct damages up to the amount of the Service Fees (defined below) charged for such Services. All indirect damages, including loss of profits, are hereby specifically excluded.

## 5. Travel expenses

**5.1 |** All travel expenses, including rebooking charges or delays of the Supplier's staff, costs of transport and transport insurance, costs for necessary tools, costs for visa procurements, prescribed medical and sanitary checks and any further transactional costs or cross-border related costs shall be borne by the Customer.

**5.2 |** Travel expenses which the Customer shall be liable to the Supplier for include costs of the Supplier's staff for tariff-based journeys between home and the Customer's work-site during Service periods.

**5.3 |** Mileage allowances for use of Supplier's vehicles or personal vehicles of the Supplier's staff shall be charged according to the Supplier's schedule of prices and services at the time of the provision of the Services, which the Customer may request from the Supplier at any time. The Supplier has full discretion to choose the method and schedule of travel used in connection with the provision of the Services.

## 6. Service Fees

- 6.1** | The Supplier shall charge Service Fees to the Customer in accordance with the Supplier's then current schedule of prices and services ("Fee Schedule"). The time for travel to and from the Customer's worksite shall be included with the charges based on the duration of the on-site Services. The Customer may request the current Fee Schedule from the Supplier at any time.
- 6.2** | The Supplier may agree to a fixed fee for Services based on an expectation of the time required to perform the Services (a "Fixed Fee"). Any excess in time required to perform the Services not attributable to the Supplier shall be charged to the Customer in addition to the Fixed Fee in accordance with the Fee Schedule.
- 6.3** | The amount of time the Supplier's performance of the Services at the Work-site is interrupted for any reason not attributable to the fault of the Supplier, shall be included in the calculation of the time expended in the provision of the Services and charged to the Customer.
- 6.4** | Upon completion of Services, but not later than upon completion of each workweek, the Customer shall approve the working hours of the Supplier's staff on the Supplier's time sheet.

## 7. Time of performance and delay of Services

- 7.1** | Any amount of time specified by the Supplier within which it intends to carry out the Services are estimates only and are, therefore, not binding. The amount of time necessary to complete the Services shall be determined by the Supplier when:
- (I) the extent of the works is precisely determined
  - (II) the Supplier is able to provide necessary Parts in time
  - (III) agreement on the extent of the Customer's duties of cooperation has been achieved
  - (IV) where necessary, the Customer has obtained permits from the relevant authorities
  - (V) the Supplier has free access to the Customer's site
  - (VI) the Customer has given written clearance for the Services to commence. The clearance protocol shall state the commencement date and be signed by the Supplier and the Customer.
- 7.2** | If the Customer requires an extension of the Services or additional Services become necessary (and the Supplier and Customer agree on such additional Services in writing), the time necessary to complete the Services shall be extended accordingly.
- 7.3** | If Services are ready for acceptance within a specified time period and a test run is scheduled and ready to commence within such time period, the time period shall be deemed met.
- 7.4** | If the provision of the Services is delayed due to Force Majeure (defined below), the Customer's own fault, or other events beyond the Supplier's control, the time period shall be extended accordingly.
- 7.5** | The Customer shall not be entitled to any compensation for a delay in the provision of Services or for any damage or loss that may result from such delay, except as contemplated under section 17 below.

## 8. Acceptance

- 8.1** | Upon signing the DSR (Digital Service Report), the Customer shall be obliged to accept the completed Services at that point in time.

## 9. Warranty for Services

- 9.1** | If Services are defective upon completion and / or acceptance, notwithstanding any other provision herein, the Supplier shall, to the exclusion of any further claims of the Customer, be obliged to remedy the defect, provided the Customer gives written notice detailing the defect to the Supplier without undue delay. The Customer shall not be entitled to demand cure if the defect is minor or attributable to the Customer, including if the defect arises from any material provided by the Customer. The Customer shall otherwise allow reasonable time for the Supplier to remedy any defect in the Services not minor and not attributable to the Customer. Replacement parts shall remain the property of the Supplier.
- 9.2** | The Supplier shall not be liable for the consequences of any alterations, repairs or maintenance works or handling of a DMG MORI Machine Tool by the Customer or third parties without the Supplier's prior written consent.

**9.3** | Any expenses for installation and removal arising from defective Services shall be borne by the Customer, unless the Supplier is liable for such expenses pursuant to section 17.

**9.4** | If the Supplier does not remedy a defect in the DMG MORI Machine Tool caused by the Services within a reasonable cure period and such delay is solely attributable to the Supplier, the Customer may terminate the contract with the Supplier.

**9.5** | If a defect in the DMG MORI Machine Tool is detected that does not result from the Supplier's Services, then, to the extent such defect has been remedied by the Supplier, the Customer shall reimburse the Supplier's expenses accordingly.

**9.6** | The Supplier shall not be liable for any defects in the Services if the defect is due to

- (I) willful damage, incorrect connections or incorrect operation of the DMG MORI Machine Tool by the Customer;
- (II) Force Majeure (defined below);
- (III) wear and tear due to overuse of mechanical and / or electronic components of the DMG MORI Machine Tool; or
- (IV) extraordinary mechanical, chemical or atmospheric influences.

**9.7** | Subject to the provisions of section 12, the Supplier shall not be liable for any defect in the Supplier's Services after twelve months from the completion of the relevant Service. This limitation period shall commence upon the earlier of acceptance of the Services or operation of the serviced DMG MORI Machine Tool by the Customer.

## 10. Maintenance, Repair and Overhaul at the Supplier's Work-site

- 10.1** | Any costs arising from transporting the DMG MORI Machine Tool to be serviced by the Supplier from the Customer's site to the Supplier's or to the Supplier's subcontractor's site shall be charged to and payable by the Customer.
- 10.2** | The risks of damage to items transported for servicing by the Supplier shall be borne by the Customer. At the Customer's request and costs, the Supplier will arrange insurance to cover the items being transported for servicing against loss or damages during transport.
- 10.3** | During the provision of the Services, the Customer shall obtain and maintain insurance for the serviced item against loss, or damage. Neither the Supplier nor any subcontractor of the Supplier shall be responsible for loss or damage to such items during Servicing.
- 10.4** | If the Customer does not accept the return of a serviced item from the Supplier upon completion of the Services by the Supplier, the Supplier shall charge the Customer for any storage of the item at its facilities. The Supplier may elect to store the serviced item at a third parties' storage site. All post-Services storage shall be at the risk and costs of the Customer.
- 10.5** | Non OEM supplied or authorized repaired parts installation is not supported by our service organizations due to the inherent safety and performance related risks. DMG MORI reserves the right to refuse the installation of any parts they feel unsuitable at any time.

## 11. Delivery of Spare or Replacement Parts with or without Installation

The following provisions on delivery time, delay in delivery, warranties and passing of risk shall apply to any delivery of Parts not subject to a repair or service order:

- 11.1** | Notwithstanding any discussions between the Customer and the Supplier, the Customer shall be responsible for the correct specification of the Part to be delivered by the Supplier. Any advice of the Supplier on the suitability of the ordered Part shall not be binding and the Supplier's liability to that effect shall be excluded because the Supplier accepts orders for delivery of Parts without prior inspection of the machine in which the Part is to be installed.
- 11.2** | Delivery times are for information purposes only and are therefore non-binding. Delivery times will also be automatically extended if:
- (I) not all commercial and technical matters have been settled between the Supplier and the Customer,
  - (II) the Customer has not fulfilled all contractual obligations,

- (III) where applicable, the Supplier's pre-suppliers fail to deliver a necessary Part to the Supplier in due time, provided such circumstances are not attributable to the Supplier; and
- (IV) delivery times shall also be extended in the event of Force Majeure (defined below),

The Supplier shall notify the Customer of the beginning and the end of any of foregoing circumstances as soon as reasonably possible.

11.3 | The Customer shall not be entitled to demand any compensation for failure of the Supplier to deliver any Parts needed in the provision of the Services in due time or for any damage or loss that may result from such delay, except as foreseen under section 17 below.

11.4 | The Supplier shall be entitled to make partial deliveries of Services and any Parts related to such Services.

11.5 | The Parts will be delivered Ex Works to the Customer from the premises of the Supplier, and the risk of loss or damage will pass to the Customer when the Part is made available by the Supplier at the Supplier's own premises. The liability of the Customer Ex Works shall also apply in case of partial delivery of Parts or if the Supplier transports the Part to the Customer and / or bears the costs for the transport.

## 12. Warranty for Parts

12.1 | If Parts delivered to the Customer are defective, the Supplier, at its discretion, shall either remedy the defect, deliver a new Part free of defects or issue a credit note for the price of the Part in question, provided the Customer has given written notice of the defect to the Supplier without undue delay. Parts that are replaced shall become the property of the Supplier.

12.2 | The Customer shall allow reasonable time for the Supplier to remedy any defective Part or to deliver a replacement Part free of defects.

12.3 | Subject to the provisions of section 17 below, any expenses for installation and / or removal of a Part at the Customer's site shall be borne by the Customer.

12.4 | The Supplier shall not be liable for the consequences of unsuitable or improper use of a DMG MORI Machine Tool, or defective assembly, installation or operation of a DMG MORI Machine Tool or any Part thereof by the Customer or third parties, wear and tear, negligent handling, improper maintenance, unsuitable operating material, defective structural work, improper foundation, chemical, or any electro-chemical or electronic influences on or of a DMG MORI Machine Tool or any Part thereof, provided these circumstances are not attributable to the Supplier.

12.5 | If the Customer or a third party modifies or repairs the Part or any function of the DMG MORI Machine Tool without the Supplier's written consent, no warranty or guarantee of the Supplier herein provided shall apply to such DMG MORI Machine Tool and the Supplier shall not have any liability to the Customer in respect of such DMG MORI Machine Tool affected thereby. Modifications made that change the OEM (Original Equipment Manufacturer) functionality of the DMG MORI Machine Tool will allow the Supplier the right to refuse to service such DMG Machine Tool until it has been returned to an acceptable OEM standard at the Customer's expense.

12.6 | The Supplier shall only warrant the proper performance of Parts for twelve months following delivery and installation of Parts, and six months for refurbished or exchange Parts based on one shift usage. Spindles carry specific hour limitations identified on the quote, if nothing is mentioned then the default is 3,500 hours. This limitation period on the warranty of the Supplier for such Parts shall begin at the earlier of (a) the delivery of such Part to the Customer; and (b) at the operation of the DMG MORI Machine Tool in which the Part was installed. The foregoing provisions shall not apply in the event of fraudulent concealment of a defect or in the event an alternative written warranty was provided by the Supplier.

12.7 | Written purchase orders are required for Parts when FARs (failure analysis report) are pending. Adjustments will be made pending outcome of the report.

12.8 | Core return credits will only be issued pending completed analysis from the factory. Cores that are tampered with or do not meet the return criteria will not be eligible for credit.

12.9 | Basic charges for Parts will be charged to the Customer in advance and any payments thereof will be credited to the Customer's account once adjustments are made from the OEM side.

## 13. Infringement of intellectual property rights of third parties

The Supplier shall indemnify, defend and hold harmless the Customer from any claims upheld by a court of competent jurisdiction (a "Substantiated Claims") that a Part infringes the intellectual property rights of third parties. And, without limiting the foregoing the Supplier shall indemnify, defend and hold harmless the Customer from any alleged or actual infringement, violation or misappropriation of any intellectual property rights of any third party by the use of the Part by the Customer.

Notwithstanding the foregoing, in the event of any Substantiated Claim by a third party, the Supplier shall, at its own expense, either provide the Customer with the right to use the Part by acquiring such right from the relevant third party, or modify the Part to the extent necessary so that the infringement claim no longer has any basis.

In the event that neither of the foregoing courses of action is commercially reasonable, the Customer and the Supplier shall each be entitled to terminate the relevant contract with immediate effect, without indemnity from the other party.

Without prejudice to the provisions of section 17, the Supplier's foregoing obligations in the event of an infringement of third party intellectual property rights shall be subject to the following conditions:

- the Customer notifies the Supplier without undue delay of any intellectual property right claim made by a third party, and
- does all things reasonably necessary or desirable to support the Supplier in defending against such claims; and
- permits access of the Supplier to the impugned Part to modify such Part, if the Supplier so elects; and
- the alleged infringement of third parties' intellectual property rights is not due to an instruction, unauthorized modification or use of the Part contrary to the written directions of the Supplier.

## 14. Retention of Title

14.1 | The Supplier retains title to all deliveries to the Customer, including all Parts, until of all invoices from the Supplier applicable thereto have been paid by the Customer.

14.2 | In the event of a breach by the Customer of any material term or condition of its written agreement with the Supplier regarding the DMG MORI Machine Tool and any Parts or Services applicable thereto, including, but not limited to, any failure to pay an invoice when due, the Supplier shall be entitled to repossess the item subject of the agreement in respect of which the Customer is in breach, and the Customer shall be obliged to surrender such item. The exercise by the Supplier of its rights to repossess the DMG MORI Machine Tool or a Part thereof as set forth hereinabove will be in addition to all other rights of the Supplier provided for in the Online Term and Conditions and in the relevant written agreement with the Customer, which shall survive any such repossession by the Supplier.

14.3 | The Customer remains liable to the Supplier in respect of all amounts owing to the Supplier pursuant to any invoice issued. Notwithstanding the foregoing, in the event of any damages to the DMG MORI Machine Tool or any Part thereof by a third party while such item is at the premises of the Customer and amounts are still owed and payable in respect thereof by the Customer to the Supplier, the Customer hereby assigns to the Supplier a direct right of action against such third party in connection with such damages as a means of obtaining payment for any arrears in payments by the Customer. In the event the value of such action exceeds the value of the arrears by more than 20 %, the Supplier may, at its option, return a portion of the claim to the Customer.

14.4 | In the event of the bankruptcy, insolvency, liquidation, dissolution or winding up of the Customer, or in the event of the commencement of any proceedings in connection thereto, any contract between the Supplier and Customer shall terminate immediately, the Supplier shall repossess any DMG MORI Machine Tool or Part supplied to the Customer, and the Supplier shall be entitled to claim as a creditor against the assets of the Customer for any amounts owed to it by the Customer at the time of the termination of the contract.

## 15. Processing of Replacement Parts

15.1 | A discounted price for a new Part that is replacing a used Part (a "Replacement Part") is only available to the Customer if the Customer delivers to the Supplier's work-site carriage insurance paid, the corresponding used Part (the

"Replaced Part") which the Replacement Part is replacing, and provided that such Replaced Part is repairable and the Customer has included a note specifying the defect of the Replaced Part. If the Replaced Part is not repairable and not received by the Supplier with carriage insurance paid within two weeks after the Customer has received the Replacement Part from the Supplier, the Supplier will charge the Customer the price for a new Part and not a Replacement Part.

15.2 | If the Customer does not include a fully completed note with a Replaced Part pending receipt of the Replacement Part identifying the defect in the Replaced Part a minimum inspection fee of \$ 250.00 will be charged. If a return delivery note is not included with the Replaced Part when delivered to the Supplier, it will be returned unidentified to the Customer at the Customer's expense.

## 16. Return of Unused Spare Parts

16.1 | If the Customer orders several alternative spare Parts in order to select one of them after delivery, the Customer shall, at its own risk and expense (including in respect of government duties, insurance costs, excise taxes and delivery charges applicable thereto) and subject to the written consent of the Supplier, return to the Supplier the Parts not required, within two weeks of receipt of the delivery thereof. Notwithstanding the foregoing, it is at the Supplier's discretion to authorize the return of said Parts. Supplier will not accept any shipments that do not have a valid Return Merchandise Authorization.

16.2 | The Supplier will charge the Customer a fee equivalent to 25 % of the invoiced price for a returned Part for the costs of inspection and restocking of the returned Part provided that Supplier has determined that the Part is suitable to be returned. Parts with a value of less than \$ 250.00 shall not be returned to the Supplier. Custom and customer-specific Parts cannot be returned.

## 17. Supplier's liability and limitation of liability

17.1 | If, based on reasonable evidence, the Supplier is determined to be responsible for any damage to the Parts, the Supplier shall, at its option and its own expense, either repair the Part or deliver a new Part to the Customer. In such event, the Supplier's liability to the Customer shall be limited to the price agreed for the Services.

17.2 | Subject to the provisions of section 12 above, the Supplier shall not be liable to the Customer for any defects in Parts or Services after twelve months from delivery of the Parts or completion of Services, as the case may be.

17.3 | The statutory period of limitation in respect of defects in construction in Ontario (being two years from discovery of a defect) shall apply in relation to defects in the construction of a building that resulted from a defect in Parts or Services delivered by the Supplier.

17.4 | The Supplier shall not be liable for any reason for any direct or indirect losses or damages suffered by the Customer in connection with: any breach of the Customer's data security, any corruption or loss of Customer data, or any other information technology malfunction affecting the Customer.

17.5 | The Supplier shall not be liable for any reason for any damages or losses suffered by the Customer in connection with or resulting from the use by the Customer of any third party hardware or software or any incompatibility thereof to DMG MORI Machine Tools or Parts thereof, or any software or hardware updates thereto.

## 18. Personal Data

18.1 | As used in these General Terms and Conditions, "Personal Information" shall have the meaning ascribed thereto in the Personal Information Protection and Electronic Documents Act ("PIPEDA" or the "Privacy Act"). Any Personal Information of the Customer, or employees or agents of the Customer that is communicated to the Supplier shall be handled in accordance with PIPEDA, used only for purposes of customer management and never disclosed to any third party without the affected employee's or agent's prior written consent.

18.2 | The Customer further acknowledges and consents to the disclosure and retention of its Personal Information to the Supplier; and has acquired the consent of its employees and agents to disclose their respective Personal Information to the Supplier in connection with the Supplier's provision of Services to the Customer.

18.3 | The Supplier agrees to provide access to the Personal Information of Customer and any employee or agent of the Customer by such person to verify the

accuracy thereof and correct any inaccuracies. The Supplier may be contacted for such purposes at the following coordinates: DMG MORI Canada Inc. 395 Ambassador Drive, Mississauga, ON L5T 2J3, Canada, Phone +1 (905) 795 – 2891 Fax: +1 (905) 795 – 0393.

18.4 | The Supplier hereby covenants and agrees not to use any Personal Information for direct marketing without the prior written consent of the Customer and, as applicable, its agents and employees.

## 19. Miscellaneous

19.1 | **Entire Agreement:** This Agreement constitutes the entire agreement between the parties relating to its subject matter. This agreement supersedes all previous agreements and discussions between the parties. There are no representations, covenants, or other terms other than those set forth in this agreement.

19.2 | **Conflict of Terms:** If there is any inconsistency between the terms of this agreement and those in any policy of the Customer, the terms of this agreement will prevail.

19.3 | **Binding Effect:** This agreement ensures to the benefit of and binds the parties and their respective heirs, executors, administrators and other legally appointed representatives, successors, and permitted assigns.

19.4 | **No Partnership:** Nothing contained in this agreement will create a partnership, joint venture, principal-and-agent relationship, or any similar relationship between the parties.

19.5 | **Third Party Beneficiaries:** Other than the Customer's authorized users, this agreement does not confer any rights or remedies upon any person other than the parties and their respective heirs, executors, administrators, and other legally appointed representatives, successors and permitted assigns.

19.6 | **Remedies Cumulative:** The rights, remedies, and powers provided in this agreement to a party are cumulative and in addition to, and are not exclusive of or in substitution for, any rights, remedies, and powers otherwise available to that party.

19.7 | **Severability:** The invalidity or unenforceability of any particular term of this agreement will not affect or limit the validity or enforceability of the remaining terms.

19.8 | **Waiver:** No waiver of satisfaction of a condition or non-performance of an obligation under this agreement is effective unless it is in writing and signed by the party granting the waiver. No waiver under this section affects the exercise of any other rights or remedies under this agreement. Any failure or delay in exercising any right or remedy will not constitute, or be deemed to constitute, a waiver of that right or remedy. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

19.9 | **Force Majeure:** As used herein, "Force Majeure" means any act, occurrence, condition, or event beyond the control of a party that materially affects the performance of that party's obligations under this agreement that could not reasonably have been foreseen or provided against (including strikes, riots, insurrections, wars, terrorism, military or national emergencies, acts of Governmental Body, catastrophes, natural disasters, power outages and interruptions, brownouts and fire), but does not include general economic or other conditions affecting financial markets generally.

- (a) **Responsibility for damages:** Neither party is responsible for damages caused by the delay or failure to perform any of its obligations under this agreement when the delay or failure is the result of Force Majeure.
- (b) **Notice Required:** If a party contends that any of its obligations is suspended by reason of Force Majeure, that party shall give notice to each other party, providing all necessary details. That party shall give a similar notice as promptly as reasonably practicable when Force Majeure has ended.
- (c) **Extension:** The dates and times by which that party is required by this agreement to perform the obligations that it is prevented from performing will be extended for this same period.

19.10 | **Payment of Costs:** Each party is responsible for all costs (including legal fees) that it incurs in connection with the drafting and negotiation of the transactions contemplated by this agreement.

19.11 | **Governing Law:** The laws of Ontario and the laws of Canada applicable in Ontario, excluding any rule or principle of conflicts of law that may provide otherwise, govern this agreement.

**19.12 | Submission to Jurisdiction:** The parties irrevocably attorn to the jurisdiction of the courts of Ontario, which will have exclusive jurisdiction over any dispute arising out of this agreement.

**19.13 | Choice of English Language:** It is the express wish of the parties that this agreement and any related documents be drawn up in English. Il est de la volonté expresse des parties que cette convention ainsi que tout document connexe soient rédigés en langue anglaise.