

TERMS AND CONDITIONS OF SALE

All sales, agreements for sale, offers to sell, proposals and contracts of sale for the grinding equipment, grinding cups or other products from C.M.E. Blasting & Mining Equipment Ltd. including but not limited to purchase orders, instalment sales, contracts, and licenses shall be subject to the following Terms and Conditions. Whenever the term CME is used it is understood to include the corporate entity C.M.E. Mining & Blasting Equipment Ltd. and its employees, agents and representatives.

1. **DEFINITIONS:** As used herein, the words and phrases hereinafter set out shall in each particular case, unless the context requires otherwise, have the meaning hereafter provided:

- (a) **"Authorized CME Dealer"** means a person as may, from time to time be authorized by CME to sell or distribute the CME Products and/or Distributed Products;
- (b) **"Customer"** means in relation to the CME Products and the Distributed Products any person who purchases or otherwise acquires any CME Products and/or Distributed Products from CME or an Authorized CME Dealer;
- (c) **"CME Products"** means the grinding equipment, Software, grinding cups and any other CME branded products sold or offered for sale from time to time by CME;
- (d) **"Distributed Products"** means non-CME branded products manufactured by others and distributed and sold or offered for sale from time to time by CME;
- (e) **"Documentation"** means any documentation relating to the Software;
- (f) **"Software"** means CME software and/or programming embedded into the control modules of the purchased CME Products and includes any and all elements of the Software including executable files and data files used in the Software and screen displays generated by the Software, and
- (g) **"Upgrade"** means an amendment, improvement, error correction or in any other way updated version of the Software.

2. **PRICES AND PAYMENT:** The price to be paid to CME for the CME Products and the Distributed Products shall be the list price of CME in effect from time to time, plus any sales tax, value added tax or excise taxes; transportation, delivery or insurance charges, or; import or custom duties. All prices are subject to change without notice except those in written purchase orders that have been accepted by CME. Software Upgrades are extra and are invoiced separately to the Customer as Upgrades are made available to the Customers from time to time.

Unless otherwise agreed to by CME in writing, the CME Products and/or the Distributed Products will be shipped from CME, F.O.B. Oakville, Ontario, Canada. Unless otherwise agreed to by CME in writing, payment is due within two weeks of confirmation of the acceptance by CME of the order and the CME Products and/or the Distributed Products will not be shipped until receipt of payment. On instalment sales or credit sales any delinquent payment shall bear interest at a rate of two (2%) percent compounded monthly. The Customer agrees to be responsible for all collection costs, court costs and legal fees in connection with the collection of delinquent payments. The Customer also agrees that the CME Products and/or the Distributed Products remain the property of CME until CME has received full payment from the Customer for the invoiced amount for the said CME Products and/or Distributed Products.

3. **ACCEPTANCE:** No order, sale, agreement for sale, offer to sell and/or contract of sale for the CME Products and the Distributed Products, shall be binding upon CME unless accepted by an Officer of CME at its office in Oakville, Ontario on CME's standard "Order Acknowledgement" form.

4. **TAXES:** Any taxes, including but not limited to sales taxes, goods and services taxes, duties, fees or other specific assessments which may be levied against the CME Products or the Distributed Products shall be borne by the Customer, unless agreed to by CME in writing. If CME is required to pay any of the above, the Customer shall reimburse CME upon notice, or furnish documents with the order which exempts such payment.

5. **DELIVERY:** Shipping dates submitted are approximate. CME will use its best efforts to meet the approximated shipping date provided the Customer supplies all necessary information, but CME shall not be held responsible for failure to do so. CME shall be subject to no penalty or liability for failure to meet a shipping date and shall in no event be held responsible for loss of profits or damages incurred by the Customer or other consequential damages that may result therefrom.

6. **DAMAGE OR LOSS IN SHIPMENT:** CME shall not be responsible for damage or loss in transit and all claims must be made by the Customer direct to the carrier. Claims for shortages or incorrect CME Products and/or Distributed Products must be made in writing within fifteen (15) days after receipt of the shipment by the Customer, and failure to give CME written notice within that period shall be unqualified acceptance of the CME Products and/or Distributed Products and a waiver of all claims.

7. **PATENT RIGHTS:** The Customer recognizes that the CME Products have been designed and built through expenditure of substantial time and money by CME and the Customer acknowledges and will respect CME's right, title and interest in and to the proprietary rights associated with the CME Products including without limiting the generality thereof all patents, copyrights, designs or trademarks or other like rights. Further, to the maximum extent permitted by Applicable Law, the Customer will not itself directly or indirectly use grinding cups and/or associated spare parts on CME grinding equipment from non-original CME sources and shall not reverse engineer, decompile or disassemble the CME Products or permit others to do so.

8. **SOFTWARE:** For the purposes of this section 8, "use" means to use the Software, Documentation or Upgrades to process data relating to the use of the CME Products by the Customer and not for any other purpose. CME hereby grants to the Customer a non-exclusive, non-transferable license to use the Software and Documentation subject to the following terms. The Software is copyrighted and CME claims all exclusive rights to such Software except as licensed to the Customer hereunder and subject to strict compliance with these Terms and Conditions. The Customer does not acquire any ownership right or proprietary right, title or interest in or to the Software or the copyright, trademarks, or other rights related thereto as the Software is licensed not sold under these Terms and Conditions.

CME shall, from time to time, inform the Customer that an Upgrade which incorporates correction of known errors or improvements is available and any such Upgrades shall be installed by an authorized representative of CME unless agreed to otherwise in writing. The Customer does not acquire any ownership right or proprietary right, title or interest in or to any Upgrades.

The Customer may not: (a) permit other individuals to use the Software; (b) modify, translate, reverse engineer, decompile, disassemble (except to the extent that this restriction is expressly prohibited by law) or create derivative works based upon the Software or Documentation; (c) copy the Software or Documentation; (d) sell, rent, lease, bargain, convey, pledge, transfer, or otherwise transfer rights to the Software or Documentation to a third party; (e) remove any proprietary notices or labels on the Software or Documentation; or (f) distribute the Software by any means, including, but not limited to, Internet or other electronic distribution, direct mail, retail mail or other means to a third party.

The Customer shall only use the Software and Documentation in a manner that complies with all applicable laws in the jurisdictions in which the Customer uses the Software and Documentation, including, but not limited to, applicable restrictions concerning copyright and other intellectual property rights.

Any such forbidden use shall immediately terminate the Customer's license to the Software and the Customer shall immediately return any disc or other media the Software may be incorporated on and all Documentation, the Customer shall also let CME remove the Software from any media not possible to deliver to CME.

The Customer acknowledges that this license is assignable by CME.

9. **WARRANTY:** Subject to compliance with terms and conditions herein, CME warrants that the CME Products will be free from defects in material and workmanship for a period of one (1) year from the date of purchase. CME agrees to repair or replace, free of charge, any CME Products which fail, through defect in material or workmanship, within such period if the Customer within the warranty period gives CME written notice within a reasonable period from when the Customer noticed or should have noticed the defect, CME will, at its sole discretion, repair or replace the same free of charge. CME Products repaired or replaced under the warranty shall have the same warranty as new products, but does not extend the warranty of the original purchased CME Products. No warranty is made with respect to: (a) the failure to report to CME within the warranty period, (b) the failure to report to CME within a reasonable period from when the Customer noticed or should have noticed the defect, (c) failures or damage due to misapplication, lack of proper maintenance, abuse, improper installation or abnormal conditions of temperature, moisture, dirt or corrosive matter, etc., (d) failures due to operation, either intentional or otherwise in an improper manner, (e) failures or damage due to the use of grinding cups or associated spare parts not made available by CME being used on CME Products or (f) any CME Products which have been altered by anyone other than an authorized representative of CME. CME shall not be liable for any expenses incurred by the Customer in an attempt to correct any allegedly defective CME Products.

It is understood that CME has no special knowledge of the Customer's operation or requirements and the Customer agrees that the CME Products and/or the Distributed Products are purchased because of the independent determination by the Customer of its suitability for intended use.

EXCEPT AS SPECIFICALLY SET OUT ABOVE, CME PRODUCTS AND/OR DISTRIBUTED PRODUCTS ARE PROVIDED AS IS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CME FURTHER DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SOFTWARE AND THE CME PRODUCTS AND/OR THE DISTRIBUTED PRODUCTS REMAINS WITH THE CUSTOMER.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CME OR ITS SUPPLIERS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER OF ANY KIND OR NATURE (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE CME PRODUCTS AND/OR THE DISTRIBUTED PRODUCTS, EVEN IF CME HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CME'S TOTAL LIABILITY FOR ANY DIRECT DAMAGES SHALL NOT EXCEED FIVE DOLLARS (\$5.00). BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

10. **LAW:** This Agreement shall be governed by the laws of the province of Ontario, Canada, without regard to conflicts of law provisions, and the Customer hereby consents to the exclusive jurisdiction of the provincial courts of the Province of Ontario and the Federal Court of Canada with respect to any disputes.

11. **ENTIRE AGREEMENT:** This document, CME's standard "Order Acknowledgement" form and Dealer Agreement, if applicable, constitute the entire agreement between the Customer and CME for the CME Products and/or the Distributed Products.