

Terms & Conditions

These Terms and Conditions form part of the contract documents (together, the "**Agreement**") for any transaction between Ainsworth Inc (**Ainsworth**). And any customer with whom Ainsworth Inc agrees to do business (a "**Customer**"). These Terms and Conditions supersede any other contracts or agreements between Ainsworth and a Customer. Where a conflict exists between these Terms and Conditions and any other document these Terms and Conditions shall govern. This proposal may be withdrawn by Ainsworth any time prior to receipt of notice of Customer acceptance or if such acceptance is not approved by an authorized officer of Ainsworth. The Customer shall be entitled to purchase goods and services on credit from Ainsworth on the terms and conditions set out below.

- 1. Term:** This Agreement shall become effective on the Service Commencement Date (as defined in the Agreement) and continue for the term specified in the Agreement.
- 2. Terms of Payment:** Unless otherwise agreed in writing by Ainsworth, payment is due in full within thirty (30) days from the date of the invoice. If the invoice is not paid within thirty (30) days, Ainsworth reserves the right to suspend service immediately. Customer will be contacted by a representative from Ainsworth in order to resolve the outstanding invoice and secure payment of the undisputed portion of the invoice. Ainsworth may cancel this Agreement if an outstanding invoice is not paid or resolved, and any service performed by Ainsworth during the period the invoice(s) was outstanding will become billable at the applicable per call rates and terms then in effect. If a Customer whose Agreement has been canceled wishes to enter into a new agreement with Ainsworth, a pre-inspection may be required and payment will be due in advance for the new agreement. Customer also agrees to pay interest at a rate of 1% per month plus a penalty of 1% per month for any overdue payment and to pay reasonable legal costs for collection of any unpaid balances.
- 3. Title and Ownership of Goods:** Title and ownership of the goods purchased with the monies advanced by Ainsworth remains the property of Ainsworth **until** all applicable invoices are paid in full. In the event of non-payment, Customer grants Ainsworth an unhindered right of entry to the premises at which the work is being performed to remove all materials or supplies placed.
- 4. Scope, Changes and Substitutions:** Ainsworth will perform the scope of work as agreed in writing for the agreed upon price. Customer acknowledges that it has made the choice as to equipment size and specification and that Ainsworth has followed those instructions. Customer assumes liability for any recommendations made by Ainsworth not accepted by Customer. If Ainsworth has made the equipment size and specification determination, then the same is based upon the information provided by Customer to Ainsworth and is not an independent evaluation. Unless otherwise set forth herein, Ainsworth reserves the right to make substitutions of equal equipment, supplies, or materials, acting reasonably, without prior approval of Customer.
- 5. Change of Information:** Customer will promptly notify Ainsworth in writing of any changes to Customer's business name, address and/or ownership and will provide Ainsworth with such other information as may be reasonably required from time to time.
- 6. Errors in Your Statement:** Customer must notify Ainsworth of any errors in its statement within fifteen days of the date of the statement. After that time, the statement will be considered to be correct absent written evidence to the contrary.
- 7. Joint and Severable Liability:** If Customer refers to more than one entity (e.g. a partnership), each entity is bound by this agreement and is jointly and severally liable for performing all of the Customer obligations. Any Customer entity may give Ainsworth instructions regarding this agreement. This agreement is binding on any personal and legal representatives of Customer.
- 8. Amendment:** This Agreement may be amended only in writing signed by each of the parties.
- 9. Waiver:** A term or condition of this Agreement can be waived or modified only by written consent of the parties. Forbearance or indulgence by either party in any regard shall not constitute a waiver of the term or condition to be performed, and either party may invoke any remedy available thereunder or by law despite such forbearance or indulgence.
- 10. Exclusions:** Maintenance service is contingent upon the proper use of all equipment and does not cover equipment modified without Ainsworth's written approval, or which has been subjected to unusual physical or electrical stress. Ainsworth shall be under no obligation to perform preventive maintenance if: (1) adjustment, repair or parts replacement is required because of , Customer or operator error, or misuse of equipment; (2) the equipment is maintained or repaired or attempts are made to maintain or repair the equipment other than by authorized Ainsworth personnel, without Ainsworth's express prior approval in writing; or (3) the equipment is removed from its location of initial installation and/or reinstalled without the express prior approval of Ainsworth in writing. Maintenance service does not include repair of damage from act of God or force majeure, which include without limitation: electrical disturbances, fire, flood, lightning, earthquake or other natural disaster.

11. Ainsworth shall not be in breach of this Agreement for failure to provide maintenance service for reason of shortage of required supplies, parts, labour dispute or disruption, or act of God or force majeure.
12. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of the address where service is to be provided and materials furnished pursuant to the Agreement, and the laws of Canada applicable therein.
13. **Default:** Ainsworth may place a hold on the credit and/or require Customer to pay its total debt immediately without prior notice or demand, if Customer fails to carry out its obligations under this Agreement, including any of the following events:
 - i) Failure to make a payment when due;
 - ii) Any cheque issued by Customer or a guarantor become NSF or is returned;
 - iii) Customer or its guarantor dies, or becomes insolvent or bankrupt;
 - iv) Breach of any term of this Agreement; or
 - v) Anything else happens that Ainsworth, in its sole discretion, believes affects or is likely to affect Customer (or its guarantor's) ability to pay what is owed under this Agreement.
14. **Limitation of Liability:** Ainsworth is not the manufacturer of any equipment and/or hardware and make no representations, warranties or conditions, express or implied, as to the performance of the equipment and/or hardware, except for those which are given by statute and which cannot be waived. Ainsworth will not be liable for any loss, damage, injury or costs of any type arising out of or related to this Agreement or caused or contributed to in any way by the use and operation of the equipment and/or hardware or any indirect, incidental, special or consequential damages, even if reasonably foreseeable.
15. **Entire Agreement:** This Agreement constitutes the entire Agreement between the parties and supersedes all prior agreements, understandings, negotiations and representations, whether oral and written, relating to the subject matter discussed herein. It may not be modified or terminated orally and no claimed modification, termination or waiver shall be binding on either party without written agreement of both parties.

Preventive Maintenance Agreement (PMA)

1. **Regular service visits:** will be provided during normal working hours, at current labour rates. Non-emergency repair service calls not covered by this agreement will also be performed during normal working hours at current rates for labour, and as a service Agreement holder you receive priority over call-in customers.
2. **Emergency calls:** Service requests after normal working hours are not covered by this Agreement and will be charged at the overtime rate. After hours service is a three (3) hour minimum charge.
3. **Renewals:** A non-tendered Agreement, excluding any FCA, will be auto-renewed by Ainsworth unless the Customer advises otherwise, in writing, 60 days prior to the expiry of the Agreement. The PMA price is for the first year only and a 3% price increase will be applied to each subsequent year.
4. **Warranty Limitation:** any parts and materials not covered by warranty or by this Agreement will be charged at regular rates.
5. **General Liability:** Ainsworth shall **not** be liable for damages in the event of delays in furnishing materials or service.
6. **Warranty:** Ainsworth guarantees all service labour for a period of thirty (30) days, except compressor replacements, which carry a sixty (60) day labour warranty
7. **Maintenance:** Customers are responsible to employ only Ainsworth certified personnel for work on equipment.
8. **Assignment:** Ainsworth may assign this Agreement in its sole discretion. Customer may assign this Agreement with Ainsworth's prior written consent, not to be unreasonably withheld.
9. **Termination:** This Agreement may be terminated by Ainsworth upon default by Customer as outlined in clause 12 of the terms and conditions above. In the event that Customer wishes to terminate this agreement prior to the stated date of termination, Customer agrees to (a) provide Ainsworth with sixty (60) days written notice, and (b) pay Ainsworth in full for all scheduled service and materials up to the time of cancellation at (i) regular rates as they would apply to the Customer, or (ii) the agreed-to monthly rate to the date of cancellation; whichever is the greater.

Full Coverage Agreement (FCA)

1. **Equipment Condition:** It is assumed the equipment is in good mechanical condition at the date of acceptance. If repairs or improvements are deemed necessary to bring the equipment to proper operating condition (as recommended after Ainsworth's first inspection), such actions must occur at the expense of the Customer within thirty (30) days of such notice, or an agreement must be made between Ainsworth and the Customer prior to proceeding. This term is not applicable to any Agreement renewal.
2. **Equipment Change:** In the event of a change in the equipment, an addendum to this Agreement must be agreed to in writing by Ainsworth showing the change in equipment and any change in price.
3. **Additional Provisions:** PMA sections 4 through 9 (inclusive) are incorporated here by reference.

Projects

1. One unaltered copy of this Agreement must be signed by an authorized representative of the Customer in the place indicated for acceptance and returned to Ainsworth within 30 days from its date of issue, failing which the terms contained herein are subject to revision by Ainsworth.
2. The current Canadian Standard Construction Sub-contract Agreement ("**CSCSA**") as between an owner and contractor for a stipulated price contract as authorized by the Canadian Construction Association is incorporated by reference and forms part of this Agreement, so that the Customer in this Agreement shall be the "Owner" and Ainsworth shall be the "Contractor" for the purposes of the CSCSA.
3. Normal working hours (Monday to Friday, between 7 AM and 5 PM, local time) will apply to all work quoted, unless otherwise stated.
4. It is agreed that the customer will provide reasonable means of access to all facility equipment associated with this Agreement. Ainsworth shall be permitted to start, stop or adjust facility equipment as required to verify the operation of the mechanical/electrical systems associated with the scope work covered by this Agreement.
5. Ainsworth shall not, under any circumstances, be liable for injury to persons or damage to property unless such injury or damage is caused by a negligent act or omission by Ainsworth or its agents, employees or subcontractors.
6. Ainsworth and Customer assume the non-occurrence of the following contingencies which, without limitation, might render performance by Ainsworth impractical: strikes, fires, war, late or non-delivery by suppliers of Ainsworth, and all other contingencies beyond the reasonable control of Ainsworth. Under no circumstances shall Ainsworth be liable for any special or consequential damages whether based upon lost goodwill, lost resale profits, work stoppage, except only in the case of personal injury where applicable law requires such liability. But in no event shall Ainsworth' liability exceed ten times the purchase price paid under this Agreement.
7. The Customer shall pay Ainsworth, in addition to the contract price, the amount of all taxes applicable to the work associated with this Agreement.
8. Prices in this Agreement may not be changed unless agreed to by the Purchaser in writing, not to be unreasonably withheld.

By signing below, Customer authorizes Ainsworth to obtain credit and other personal information as required at any time in connection with Customer's credit account with Ainsworth. Customer also authorizes Ainsworth to share such information with any credit reporting agency or to any person with whom Customer has or proposes to have financial relations. The information Customer provides is warranted to be true and accurate and is provided for the purpose of obtaining credit from Ainsworth. Customer acknowledges that it has read, understands and agrees to above Terms and Conditions.

Customer Name	
Customer Representative (Print Name / Title)	
Signature / Date	