



Sale Agreement Terms and Conditions

The sale of any Goods or Services offered by Us (“Tilt Wall Ontario Inc”, “Us”, “Seller”, “Our” or “We”), is expressly conditioned on the Buyer’s assent to these Terms and Conditions (“Terms and Conditions”). Any acceptance of Our offer is expressly limited to acceptance of these Terms and Conditions and We expressly object to any additional or different terms proposed by Buyer. No Buyer form shall modify these Terms and Conditions, nor shall any course of performance, course of dealing, or usage of trade operate as a modification or waiver of these Terms and Conditions. Any order to purchase Goods or receive Services shall constitute Buyer’s assent to these Terms and Conditions. These Terms and Conditions can be found on Our website at www.tiltwall.ca.

1. Definitions

- 1.1 “Agreement” means the agreement between Us and Buyer for the purchase and sale of Goods, Services, or both, to which these Terms and Conditions are attached, are incorporated by reference, or accepted by visiting tiltwall.ca.
- 1.2 “Buyer” means the party indicated on the face page of the Scope of Work/Quote that is contracting with Buyer for the purchase and sale of Goods, Services, or both.
- 1.3 “Crane” means cranes used in the construction or installation of Tilt Wall Tilt Up panels and includes equipment used for the assembly and operation of such cranes.
- 1.4 “Crane Operators” means the person hired to operate the Cranes in the construction or installation of Tilt Wall Tilt Up panels.
- 1.5 “Change Order” means an agreement between the Parties to modify any term or condition of this Agreement. A Change Order must be in writing and signed by both Parties.
- 1.6 “Delivery Date” means the date of delivery for Goods or performance of Services as specified in a Scope of Work/Quote.
- 1.7 “Delivery Point” means the location identified in the Scope of Work/Quote to which we are to deliver Goods, or perform the Services.
- 1.8 “Goods” means the goods that are required to be delivered by Seller pursuant to a Scope of Work/Quote, and include all materials, component parts, packaging and labelling of such goods.
- 1.9 “Material/Materials” means any materials sold directly to Buyer, and any materials used in the provision of any Services.
- 1.10 “Party/Parties” means the parties to this Agreement, as indicated on the face page of the Scope of Work/Quote.
- 1.11 “Purchase Price” means the price of the Goods or performance of Services as specified in a Scope of Work/Quote.



- 1.12 “Seller” means Tilt Wall Ontario Inc.
- 1.13 “Services” means any services to be provided by Us to Buyer pursuant to a Scope of Work/Quote.
- 1.14 “Specifications” means the requirements, attributes and specifications for the Goods or Services that are set out in the applicable Scope of Work/Quote. Specifications also include:
 - 1.14.1 documentation published by Seller relating to the Goods or Services;
 - 1.14.2 operational and technical features and functionality of the Goods or Services;
 - 1.14.3 standards or levels of service performance for Services; and
 - 1.14.4 Buyer business requirements that are expressly set out in a Scope of Work/Quote.
- 1.15 “Scope of Work/Quote” means the scope of work, quote, or sales agreement between Buyer and Seller for the purchase and sale of Goods, Services, or both, to which these Terms and Conditions are attached or are incorporated by reference.
2. **Sale of Goods and Services.**
 - 2.1 We shall sell, transfer and deliver to Buyer the Goods, and perform the Services as outlined in the Scope of Work/Quote all Goods and Services to be used in the design, approval, and construction of Tilt Up panels, walls, structures, and any ancillary activities associated with the sales and production activities of the company.
 - 2.2 For clarity, Buyer shall not furnish any material or do any work for Seller's account without prior written authorization from the Seller. Further, all requests for authorization must include a detailed account of the scope of services or materials, and a final price. Buyer acknowledges that Seller is not responsible for any amount to the Buyer if the aforementioned procedures are not followed.
3. **Price**
 - 3.1 Prices for the Goods, Services, or both, will be set out in the applicable Scope of Work/Quote (the “**Purchase Price**”). Buyer shall purchase the Goods and, if applicable, shall pay for the services provided, from Seller at the Purchase Price. Unless otherwise specified in Scope of Work/Quote, all prices shall be in Canadian Dollars. All prices shall be confidential and Buyer shall not disclose such prices to any unrelated party.
4. **Price Guarantee**
 - 4.1 Seller shall guarantee the Purchase Price for thirty (30) days, beginning on the Delivery Date (the “**Price Guarantee Period**”). Any Goods or Services delivered within the Price Guarantee Period shall not exceed the Purchase Price unless set out in a Change Order.



- 4.2 If, at any time after the expiry of the Price Guarantee Period, the input costs used by the Seller to calculate the Purchase Price increase by more than 5%, Buyer shall pay any such increase in cost in excess of 5%.
- 4.3 All other changes to the Purchase Price shall be set out in a Change Order and shall be approved by both Parties.
- 4.4 Notwithstanding the aforementioned, Seller will have the right to increase prices as a result of any changes not due to Seller. For example, but not in any way limited to the following, price estimates may rise if: where extra bracing is required, the order of construction set out in the quote is not followed (order of construction is acknowledged by both Parties as an integral part of the price estimate by Seller), proper post installation maintenance is not followed, or lead time on materials is delayed.
5. **Payment**
- 5.1 Buyer shall pay all invoices within the time and under the conditions set out in the Scope of Work/Quote.
- 5.2 Buyer shall pay interest on all late payments at rate equal to 30% per annum, calculated monthly not in advance, commencing the day of the missed payment until full payment is received by Seller. If for any reason the interest rate hereto agreed is unenforceable, Buyer shall pay interest at the maximum rate enforceable under applicable legislation. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, legal fees and court costs.
- 5.3 In addition to all other remedies available under these Terms and Conditions or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods and performance of any Services if Buyer fails to pay any amounts when due.
- 5.4 Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Our breach, bankruptcy or otherwise.
- 5.5 If Buyer disputes any invoice or portion thereof, it shall notify Seller in writing within 10 days of receipt of said invoice, detail the reason for the dispute, and pay all undisputed amounts. All charges not timely disputed in writing shall be deemed to be undisputed and shall be due and payable as set forth above.
- 5.6 Notwithstanding anything in this Agreement, if Buyer defaults in the performance of any obligation under this Agreement, then Seller may declare the entire Purchase Price owing under this Agreement at that time to be immediately due and payable.
- 5.7 Seller may perform any credit checks on Buyer it deems required in its sole discretion, at anytime, with any frequency. Buyer will assist Seller, and furnish Seller with any reasonably requested financial records, and letters of comfort from bankers or accountants. Should, in the sole discretion of Seller, Buyer's credit rating or financial position become too risky for the Seller, Seller may suspend any work in progress or



delivery of material, until such time as Seller is satisfied with Buyer's credit or revised payment terms have been agreed to, without any fee or consequence.

- 5.8 Seller may, and it's sole discretion, determine the method of payment. For example, Seller may accept an irrevocable letter of credit, or demand payment in full in advance of delivery.
- 5.9 Buyer represents, warrants and covenants that it will abide by the Construction Act, including all prompt payment, and hold-back obligations therein.
- 5.10 Where Seller sells a "tilt-wall", to the Buyer, and Seller is not actively engaged in the installation of the wall, payment will be due within 60 days of delivery, and not until the project has reached substantial completion.
- 5.11 Seller may request an initial deposit, as Seller must invest in significant preparation leading up to installation. This deposit is acknowledged by Buyer as non-refundable.

6. **Taxes.**

- 6.1 Unless otherwise stated in a Scope of Work/Quote, all prices or other payments stated in the Scope of Work/Quote are exclusive of any taxes. Seller shall separately itemize all applicable taxes on each invoice and indicate on each invoice its applicable tax registration number(s). Buyer will pay all applicable taxes to Seller when the applicable invoice is due. Seller shall remit all applicable taxes to the applicable government authority as required by applicable laws.

7. **Delivery of Goods and Services**

- 7.1 Seller agrees to supply and deliver the Goods to Buyer and to perform the Services, as applicable, according to the terms set out in this Agreement.
- 7.2 We shall, or Our agents shall, pack, load, and deliver Goods to the Delivery Point in accordance with the invoicing, delivery terms, shipping, packing, and other instructions provided in the Scope of Work/Quote. Additional charges may be passed on for any freight, transportation, insurance, shipping, storage, handling, demurrage, cartage, packaging or similar charges unless provided for in the applicable Scope of Work/Quote or otherwise agreed to in writing.
- 7.3 Time is of the essence with respect to payment. We will take efforts to deliver Goods and Services to be performed by the applicable Delivery Date, however we cannot guarantee timeliness. Where we are unable to deliver Goods or perform Services on time, We will notify Buyer, but not be responsible for any delays beyond Our reasonable control.
- 7.4 Except as provided for in section 7.5, title and risk of loss or damage, regardless of the cause, shall remain with Seller until the Goods have been received by Buyer at the Delivery Point or, in the alternative, when Seller delivers a document of title or registrable bill of sale of the Goods, bearing any necessary endorsement, to Buyer, at which point title and risk of loss or damage will pass to Buyer.



7.5 Notwithstanding anything in this Agreement, Seller shall not be responsible for any risk of loss or damage to Cranes or for any loss or damage caused by the use or operation of Cranes. Buyer shall be responsible for hiring Cranes and Crane Operators. Risk of loss or damage to Cranes or caused by Cranes or Crane Operators shall be governed by Buyer's agreement with the Crane Operator.

7.6 Buyer shall maintain and carry insurance in full force and effect which includes, but is not limited to: commercial general liability (including product liability), Builder's Risk, and Wrap-Up insurance in a sum no less than \$5,000,000 Canadian Dollars with financially sound and reputable insurers., Said insurance will be paid at Buyer's at its own expense, and cover Seller's and Buyer's interests .. Furthermore, upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms and Conditions. The certificate of insurance shall name Seller as an additional insured. Buyer shall provide Seller with twenty days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

8. **Return of Equipment**

8.1 As a part of Seller's Services, Seller may need to leave tools, equipment, braces, machinery, and other materials("Equipment") in place, or on site. For example, as an erected wall sets, braces will need to set in place to enforce the structure. All Equipment will be returned to Seller on the date specified in Scope of Work/Quote. Failure to return said Equipment promptly, may result in additional fees. Buyer must take all reasonable steps to secure the workplace.

9. **Excuse for Delay or Failure to Perform.**

9.1 Notwithstanding anything else in this Agreement, Seller shall not be liable for any delay, non-delivery, or default in delivery of Goods or Services due to labour disputes , labour shortages, transportation shortages, delays in receipt of material, , fires, accidents, or any other reason beyond the control of Seller. If Seller, in its sole judgement, will be prevented directly or indirectly, on account of any cause beyond its control, from delivering the Goods or from performing the Services in a, at the time specified, then Seller will have 30 days to cure said delay. After which, Seller will have the right to terminate this Agreement by notice in writing to Buyer, in accordance with Section 15, which notice will be accompanied by pro-rata refund of all sums paid by Buyer pursuant to this Agreement.

9.2 Should there be any defect in the Goods or Services sold, we may cure said defect within 30 days. It is the Seller's sole discretion to either replacement, repair, or otherwise cure any defect.

10. **Inspection**

10.1 All shipments of Goods and performance of Services shall be subject to the terms and conditions of the inspection performed on site by a certified inspector.

11. **Warranties**



11.1 **Goods Warranties.**

11.1.1 Seller warrants that Goods manufactured by Seller shall comply with applicable Seller Specifications for a period of twelve (12) months (the “**Warranty Period**”). After the expiration of the Warranty Period, Seller makes no warranties with respect to the Goods. All Goods not manufactured by Seller are sold only with the warranties provided by the manufacturer of Goods, if any.

11.2 **Manufacturer Warranties.**

11.2.1 If permitted, Seller shall assign to Buyer all manufacturer’s warranties for Goods not manufactured by or for Seller, and shall take all necessary steps as required by such third-party manufacturers to effect assignment of such warranties to Buyer.

11.3 **Disclaimer of Warranties.**

11.3.1 EXCEPT FOR THE WARRANTIES SET OUT ABOVE, SELLER MAKES NO OTHER WARRANTY WITH RESPECT TO THE GOODS OR SERVICES, AND DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Seller personnel are not authorized to alter this disclaimer of warranty. All Goods are sold for commercial use only and are not intended for use by consumers. ACCORDINGLY, SELLER DISCLAIMS ALL WARRANTIES TO CONSUMERS.

12. **Indemnification.**

12.1 Except to the extent paid in settlement from any applicable insurance policies, and to the extent permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party, and its respective directors, shareholders, affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying party, its respective directors, shareholders, affiliates, officers, agents, employees, and permitted successors and assigns that occurs in connection with this Contract. This indemnification will survive the termination of this Contract.

12.2 Further, Buyer agrees to indemnify and hold Seller harmless from all claims, demands, and costs, including reasonable attorney fees, made by third parties against Seller relating to Buyer’s use or installation of materials, and to pay any costs and expenses incurred by Seller to enforce Buyer’s obligations, including, without limitation, the costs of collection for any unpaid amounts owed to Seller by Buyer.

13. **Security interest.**

13.1 As collateral security for the full payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance



proceeds) of the foregoing. Seller shall have the right to file any and all documents and take any action it deems necessary to fully establish protection of its security interest in the Goods; however, the failure of Seller to file any such document shall not in any way act as a waiver of Our right to such security interest.

14. Limitation of Liability

14.1 IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14.2 IN NO EVENT SHALL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS CONTRACT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LESSER OF: (A)THE AMOUNT OF INSURANCE PROCEEDS RECEIVED BY THE SELLER, OR (B)THE COST TO REPLACE OR REPAIR WHAT HAS BEEN SOLD.

14.3 This limitation of liability is a material basis for the parties' bargain and reflects the bargained-for allocation of risks between Seller and Buyer, without which Seller would not have agreed to provide the Goods or Services at the price charged.

14.4 Where Seller is able to "pass-through" insurance coverage of a third-party to Buyer, Seller may take commercially reasonable efforts to do so.

15. Notices.

15.1 Any notice to be given or document to be delivered to either Seller or Buyer pursuant to this Agreement shall be sufficient if delivered personally or sent by prepaid registered mail to the respective addresses laid out in the Scope of Work/Quote. Any written notice or delivery of documents shall be deemed to have been given, made, and received on the day of delivery if delivered personally, or on the third consecutive business day next following the date of mailing if sent by prepaid registered mail.

16. Paramountcy of Terms and Conditions.

16.1 In the event of any inconsistency, deviation, discrepancy, or ambiguity in or between any of these Terms and Conditions and the Scope of Work/Quote, or any other documents pertaining to the transaction, these Terms and Conditions shall prevail.

17. Cancellation.

17.1 Seller reserves the right to cancel this Agreement without fee:



17.1.1 if Buyer fails to pay for any Goods or Services when payment is due according to the Scope of Work/Quote;

17.1.2 in the event of Buyer's insolvency or bankruptcy; or

17.1.3 if Seller deems that its prospect of payment is impaired.

18. Interpretation.

18.1 The headings used in this Agreement and its division into articles, sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation. Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders.

19. Survival.

19.1 Any provision of this Agreement which expressly or by implication from its nature is intended to survive the termination or completion of the Agreement will continue in full force and effect after any termination, expiry, or completion of this Agreement.

20. Assignment.

20.1 Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement. We may assign or subcontract this agreement at Our sole discretion.

21. Modification.

21.1 This Agreement shall not be modified in any way except in writing signed by all the Parties to this Agreement.

22. Governing Law and Applicable Law.

22.1 This Agreement shall be governed by the laws of the Province of Ontario. The courts of London Ontario will have exclusive jurisdiction over any matter arising out of this Agreement.

23. Severability.

23.1 If any provision of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part thereof and all other provisions shall continue in full force and effect.

24. Execution.

24.1 This Agreement may be executed in counterparts. Facsimile and digital signatures are binding and are considered to be original signatures.



25. **Language.**

25.1 It is the express wish of the parties that this Agreement and any related documentation 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.

26. **Entire Agreement.**

26.1 Except as may be expressly agreed in writing by authorized representatives of the Parties, this Agreement includes the Scope of Work/Quote, these Terms and Conditions, any agreed upon specifications required for the Goods or Services, and constitutes the entire agreement between the Parties and replaces any earlier agreements, whether oral or written. The Scope of Work/Quote, and these Terms and Conditions are paramount to any invoice related thereto. The parties agree that there are no other agreements, representations, or warranties other than those expressed herein.