

ENGLISH VERSION APPLICABLE EXCEPT IN QUEBEC

**Dayton Superior Canada Limited / Dayton Superior Canada Ltee. (“Dayton”)  
Terms and Conditions of Rental/Sale (“Terms”)**

These Terms apply to all Dayton sales and rentals of products (“**Product(s)**”). If Dayton issues a quotation or proposal (“**Quotation**”) to its customer (“**Customer**”) that the Customer timely accepts by issuance of a purchase order or by acceptance of Products (or by other means acceptable to Dayton), the Quotation and these Terms will constitute the entire agreement between Dayton and Customer with respect to the Products (collectively, the “**Contract**”). Otherwise, the entire Contract shall consist of Dayton’s order acknowledgement and these Terms. By issuing a purchase order against a Quotation or accepting Products, Customer expressly agrees that these Terms govern and that no other terms shall apply unless in writing and signed by an authorized representative of Dayton. Dayton expressly rejects any additional, inconsistent or conflicting terms proposed by Customer. Clerical errors are subject to correction in all cases.

**1. Purchase Price or Rental Charge; Payment.** Quoted prices or rental charges are firm only for orders placed against the Quotation within 30 days after it is issued and are valid only if all items, quantities and sizes listed in the Quotation or order acknowledgement are purchased or rented and only if the Products are to be shipped within Dayton’s normal production and shipping schedule. Orders otherwise are subject to revised pricing. Quotation prices and rental charges do not include but are subject to taxes and all other governmental charges that may be imposed at any time, including sales, use and similar taxes. Dayton shall invoice and Customer shall pay or reimburse Dayton for any such amounts. Purchase charges shall be invoiced at the time of shipment. Rental charges shall be invoiced monthly, with charges beginning on the date of shipment and ending on the date the Products are returned to Dayton’s warehouse, as shown on shipping documents. Customer agrees to pay for a minimum of one month’s rental, with any additional partial months being pro-rated, with each week assumed to have seven days and each month assumed to have twenty-eight days. Except as expressly agreed otherwise in the Quotation or order acknowledgment, Customer shall pay each invoice within 30 days after the date of invoice. All payments shall be made without set-off, deduction or counterclaim. Interest at the rate 18 % per annum shall apply to unpaid balances on invoices from the date that is 31 days past the payment due date in the invoice and until paid in full, with interest calculated both before and after judgment at the same rate.

**2. Delivery; Risk of Loss; Inspection and Claims.** Unless expressly agreed in the Contract, Dayton does not guarantee or assume any liability for failure to meet any delivery date proposed by Customer or Dayton. For both sales and rentals, Customer shall pay all transportation charges from Dayton’s shipping point and all risk of loss or damage shall pass to Customer upon delivery to the carrier at Dayton’s shipping point. Customer shall inspect Products upon receipt at the destination and notify Dayton in writing of any shortages or readily ascertainable damaged or defective Products within 72 hours after delivery. Failure of Customer to timely notify Dayton shall relieve Dayton of any liability. All claims for loss or damage in transit must be made by Customer against the carrier.

**3. Ownership and Use of Rental Products.** Only if this is a sale will title to the Products pass to Customer upon delivery to the carrier at Dayton’s shipping point. Dayton shall retain title to rental Products. Customer shall have the option to purchase rental Products if and to the extent set forth in the Contract, subject to these Terms. Customer shall not make any alterations, additions or improvements to, and shall not deface, remove or cover any Dayton markings on, rental Products without Dayton’s prior written consent. Customer shall use the Products only in its own operations, and Customer shall not sublet or otherwise give possession or use of the Products to a third party. Upon request, Customer shall advise Dayton as to the exact location of rental Products and agrees not to move rental Products without Dayton’s prior written consent. Dayton shall have the right to enter Customer’s premises or other location of the rental Products at reasonable times and with reasonable notice to Customer, to inspect Dayton rental Products. Customer shall keep rental Products free and clear of all liens, levies and encumbrances (other than those of Dayton).

Customer irrevocably authorizes Dayton to execute and/or file a financing statement or other notice in any jurisdiction with respect to the lease created by the Contract. Rental Products do not include wood of any kind, except as part of a prefabricated panel or other prefabricated rental Product. Customer shall be responsible for unloading, cleaning, assembling and erection of rental Products and their ongoing maintenance. Customer shall cause rental Products to be used only by its own competent operators in a safe and proper manner in compliance with all applicable laws, rules, regulations and the manufacturer's instructions (including maintenance) and solely for the purposes for which they are intended.

**4. Limited Warranty.** Dayton warrants, for a period of 60 days from the date of shipment (three years from the date of shipment in the case of formwork, excluding any consumable Products included with such formwork), that Products and any associated application drawings and engineering services provided by Dayton ("**Ancillary Services**") will be free from defects in material and workmanship and, in the case of custom designed formwork, that the formwork will meet the specifications set forth in the design drawings approved by Dayton and Customer. Any claim under this warranty must be made in writing within such warranty period. If any Product and/or Ancillary Service covered by a timely claim are found to be defective, Dayton will, within a reasonable time, make any necessary repairs or corrections or, at Dayton's option, replace the Product. Unless pre-authorized by Dayton in writing, Dayton will not accept any charges for correcting defects or accept the return of any Product. This warranty will not apply to any Products that have been subjected to misuse, neglect, storage damage, misapplication, accident or any other damage caused by any person other than Dayton, or that have not been maintained in accordance with Dayton's specifications. **THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AS TO THE PRODUCTS AND ANCILLARY SERVICES. DAYTON MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. THE REMEDIES SET FORTH IN THIS SECTION ARE CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY.**

**5. Limitation of Liability.** Dayton's liability under any Contract and at all times with respect to the Products and the Ancillary Services shall in any event be limited to direct damages and then only to the purchase/rental price of the relevant Products paid by Customer. Dayton shall have no other liability to or through Customer whatsoever, whether based on breach of contract, negligence, gross negligence, strict liability or otherwise. **IN NO EVENT SHALL DAYTON BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, REVENUES, LOST INCENTIVES OR BACK CHARGES) ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT, THE PRODUCTS OR THE ANCILLARY SERVICES.**

**6. Contingencies.** Dayton shall not be responsible for delays in performance caused, directly or indirectly, by any act of God, accident, war, force of arms, fire, elements, riot, labor dispute, strike, sabotage, civil commotion, act of terrorism, government action, transportation interruption, inability to obtain materials or labor, Customer's failure or delay in approving any design or other drawings or any other contingencies beyond Dayton's reasonable control.

**7. Risk of Loss and Insurance.** From the date rental Products are shipped until returned to Dayton, Customer shall bear the risk of loss/damage to Products, whether or not insured. Customer shall, at its expense, maintain rental Products in good repair, condition and working order, normal wear and tear excepted. In the event of any loss/damage to rental Products, Customer shall place the same in good repair, condition and working order, or, if Customer fails to do so, shall, at Dayton's election, pay to Dayton the full, un-depreciated replacement cost of the Products plus all unpaid rent through the date of payment. Customer shall keep rental Products insured against all risk of loss/damage by customary property and casualty insurance for the full un-depreciated replacement value (new) and shall carry public liability insurance, both personal injury and property damage, covering the rental Products and their use. All such insurance shall name Dayton as an additional insured, shall provide Dayton not less than 30 days' written notice of

cancellation and shall be of a type and form, with terms and in amounts, and with insurance companies reasonably satisfactory to Dayton.

**8. Indemnification by Customer.** Customer shall be responsible for all damages, including for personal injury, death, property or otherwise, arising out of the use by Customer of the Products and/or the Ancillary Services and any other act, or omission by Customer or any subcontractor, agent, employee of, or purchaser from, Customer with respect to the Products or the Ancillary Services, and Customer shall indemnify, defend and hold Dayton harmless from and against all liabilities, judgments, costs, damages and expenses (including reasonable legal fees and expenses on a full indemnity basis) that Dayton may incur relating to or arising out of any such damages, unless resulting from the gross negligence or willful misconduct of Dayton.

**9. Documentation; Product Data.** Any specifications, plans, drawings or application recommendations furnished by Dayton to Customer ("**Documentation**") are provided only as a service to Customer to conceptually illustrate the assembly and use of Products. Such Documentation is not intended to be fully directive nor to cover all engineering details on Products, on products or materials not furnished by Dayton, or on their interconnection. Inasmuch as Dayton does not control jobsite assembly or procedures, grade or quality of materials, or equipment supplied by others, it is the responsibility of Customer to integrate Documentation into composite drawings and information suitably complete for construction purposes. In the case of custom designed formwork, design drawings will be furnished by Dayton for Customer's approval prior to any fabrication by Dayton. Dayton shall not be responsible for any deviations, changes or alterations to the recommended assembly details described in forming layout drawings unless such deviations, changes or alterations are illustrated in a revised design drawing provided by Dayton or are approved in writing by Dayton. Dayton shall at all times retain ownership of all Documentation and other technical data ("**Product Data**") with respect to the Products and the Ancillary Services, and unless duly authorized by Dayton, Customer shall not disclose any such Product Data to any other person. Upon Dayton's request, Customer promptly shall return to Dayton all copies of Product Data.

**10. Default; Termination.** Customer shall be in default of this Contract upon the happening of any of the following events: (i) if Customer fails to pay any invoice when due; if Customer fails to keep the insurance required in this Contract in full force and effect; if Customer fails to perform any other obligation under the Contract; if a third party creditor, government or its agency, or any one else seizes or takes possession of the rental Products; if Customer ceases to operate, makes a sale in bulk of its assets, or becomes insolvent, or makes a proposal or arrangement with its creditors; or if the Customer is an individual or partnership with individuals, and he/she becomes incapacitated or dies; or if Dayton deems itself insecure or determines that any rental Products are at risk of being damaged, lost or removed from Customer's control. Upon default, Customer shall promptly return the rental Products, at Customer's expense and at Dayton's instruction, and pay for any damage to the Products, ordinary wear and tear excepted. Customer shall also immediately upon notice from Dayton, pay an amount equal to the sum of (a) any unpaid invoices, (b) all remaining rent for the remaining term of the Contract, (c) the purchase option price, (d) any other un-invoiced and unpaid amounts, including excess wear and tear charges, plus (e) rent charges through the to the date the rental Products are actually returned to Dayton. Upon default, all rights of Customer in the rental Products shall terminate absolutely and, upon any termination (whether by expiration of the rental period or Customer's default obligation under the Contract or otherwise), Dayton shall have the right, without notice or demand, to take possession of the rental Products, wherever located, at the expense of Customer. In addition, Dayton shall have all the rights and remedies of a secured party under the *Personal Property Security Act* (Ontario). Dayton shall be entitled to sell the returned Products and Customer shall be liable for Dayton's reasonable enforcement and sale costs, including costs to bailiffs for recovering the Products, any reasonable repairs to the Products, and receiver's fees, if applicable. Customer shall remain liable for any deficiency balance remaining owing to Dayton after application of the net sale proceeds. All unpaid amounts under this Contract shall bear interest at the rate of 18% per annum, both before an after default and judgment at the same rate, until payment in full.

**11. Expenses.** Customer shall reimburse Dayton's expenses (including, but not limited to, court costs, interest and reasonable legal fees and expenses on a full indemnity basis) in collecting any amounts owed by Customer arising out of the Contract, including but not limited to expenses incurred by Dayton in protecting its rights under the Contract and/or recovering and/or repairing any rental Products.

**12. Compliance with Governmental Requirements.** To apply, any standards or requirements of law or governmental regulations must be expressly and specifically set forth in writing in the Contract. Otherwise, Dayton shall have no liability or obligation to Customer with respect to the failure of the Products to comply with any such standards or requirements.

**13. Notices.** Any notice required under this Contract shall be given by private prepaid courier service to the address of the recipient set out on the front page of this Contract. Notices sent by courier shall be deemed to be received on the next business day, Saturdays, Sundays and holidays on which banks are not open for business in Ontario, excepted.

**14. Miscellaneous.** The Contract may not be amended except in writing and signed by an authorized representative of Dayton. Customer may not cancel orders under this Contract for customized Products without Dayton's written consent. Customer shall not assign the Contract or sublease any rental Products. Any provision of the Contract that is invalid under applicable law or court order shall not in any way invalidate or affect the remaining provisions of the Contract. The Contract shall be governed by, and construed in accordance with, the laws of the Province of Ontario without giving effect to the conflict of law principles. The parties agree to attorn to the courts of the Province of Ontario, which shall have non-exclusive jurisdiction to hear disputes under this Contract. This Contract shall be binding upon any and all successors and assigns of Dayton.