

TERMS AND CONDITIONS OF SALE

All products sold or distributed by Sika Canada Inc. (the “Sika Products”), including its subsidiaries or affiliates (collectively, “Sika”) shall be subject to the following terms and conditions of sale (“Terms and Conditions of Sale”):

- 1. ORDERS.** All orders (“Order”) shall be placed in writing by the purchaser (the “Purchaser”) through Sika’s Customer Services, either by email, fax or through a purchase order.
- 2. ORDER CONFIRMATION.** All Orders received by Sika shall be confirmed and accepted in writing by an order confirmation issued by Sika (“Order Confirmation”). Unless rejected by Purchaser within 24h following the reception of the Order Confirmation, the Order Confirmation is deemed to be accepted by Purchaser. Once deemed accepted by Purchaser, Order Confirmation cannot be cancelled or modified by Purchaser without the written consent of Sika.
- 3. SIKa QUOTATION.** Any Order received from a Purchaser for any Sika Products, whether relating to a quotation or offer by Sika (“Sika Quotation”), or otherwise, shall not constitute a binding agreement until such Order has been accepted by Sika in writing through an Order Confirmation accepted by Purchaser. Sika reserves the right to modify any Sika Quotation until an Order has been accepted and confirmed by Sika through an Order Confirmation.
- 4. CORRECTION.** Sika reserves the right to correct all typographical and clerical errors in any Sika Quotation, Order Confirmation, proposal, acknowledgment, or invoice.
- 5. MINIMUM ORDER VALUE.** Unless otherwise agreed in the Order Confirmation, the minimum Order value for any Sika Products is \$1,000 before sales tax. Sika reserves the right to accept or reject any Order placed under such minimum value.
- 6. PRICES.** Purchaser shall pay the price of the Sika Products described in the Order Confirmation issued by Sika. The price of the Sika Products listed in the Order Confirmation is based on a Sika Quotation, or where no price has been quoted or where the Sika Quotation has expired, the price in force at the date of the Order Confirmation. Unless otherwise agreed in the Order Confirmation, all prices of Sika Products shall be in Canadian Dollars (\$CAD). All prices do not include applicable federal and provincial taxes, freight, fuel surcharges, supply surcharge and custom fees.
- 7. VALIDITY PERIOD.** All prices stated in any Sika Quotation or Order Confirmation are valid for a period of thirty (30) days from the date of the Order Confirmation (“Validity Period”). Following the expiration of the Validity Period, Sika reserves the right to make adjustments to prices for any reasons including, but not limited to, Force Majeure, changing market conditions, raw material prices and their availability. All price modifications will be notified to Purchaser in writing and will be effective upon notification. Sika shall not modify prices stated in any Order Confirmation accepted by Purchaser during the Validity period.
- 8. INVOICE.** Unless otherwise agreed to in writing between Sika and Purchaser, Purchaser shall pay invoices within thirty (30) days from the date of the invoice. Purchaser’s obligation to make the payments provided for in these Terms and Conditions of Sale shall not be affected by any circumstances, including, without limitation, any set-off, counterclaim, recoupment, defense, or other right which the Purchaser may have against Sika. Sika may, at its sole discretion, suspend or terminate deliveries of any Sika Products until such payment default has been cured by Purchaser.
- 9. LATE CHARGE.** If a payment is not made by Purchaser when due, a late charge will be paid by Purchaser from the due date until the date of the actual collection by Sika, calculated according to the highest of: (i) one and one-half percent (1.5%) per month and (ii) highest interest rate permitted by law (“Late Charge”). Such Late Charge shall be in addition to, and not in lieu of, Sika’s other rights and remedies for Purchaser’s default or non-performance.
- 10. SHELF LIFE.** All Sika Products sold or distributed to Purchaser shall have a minimum of two (2) month shelf life.
- 11. WARNINGS.** Prior to each use of any Sika Products, the Purchaser or user must always read and follow the warnings and instructions on the Sika Product’s most current product label, Product Data Sheet (“PDS”), and Safety Data Sheet (“SDS”) which are available on Sika’s website (can.sika.com) or by contacting Sika’s Technical Service Department. Nothing contained in any Sika literature or materials relieve the user or the Purchaser of the obligation to read and follow the warnings and instructions for each Sika Products as set forth in the current Sika Product label, PDS and SDS prior to use of the Sika Products.
- 12. DELIVERY DATE AND DELIVERY POINT.** Unless otherwise agreed in the Order Confirmation (i) any delivery or shipment dates are estimates only and Sika is not liable for any loss, damage, cost or expense for any failure to deliver the Sika Products in accordance with the delivery or shipment date, and (ii) delivery terms for the Sika Products shall be Ex-Works (Incoterm 2020) from the applicable Sika facility (the “Delivery Point”).
- 13. TITLE AND RISK OF LOSS.** Unless otherwise agreed in the Order Confirmation, title to Sika Products and risk of loss shall pass to Purchaser upon delivery of the Sika Products at the Delivery Point or upon delivery to Purchaser’s designated carrier. Upon Sika Products being delivered at Delivery Point, Purchaser shall be the sole responsible for all transport, storage, and use of the Sika Products. Purchaser shall refer to the PDS and SDS.
- 14. LIMITED WARRANTY.** Sika warrants for one (1) year from the date of delivery that each Sika Product shall be free from manufacturing defects and meet the technical specifications on the current Product Data Sheet if used as directed and within the Sika Product’s shelf life. Purchaser and/or user determines solely suitability of Sika Product for intended use and assumes all risks. Purchaser’s and/or user’s sole remedy shall be limited to the purchase price or replacement of the defective Sika product exclusive of any labour costs. The sole obligation of Sika under this warranty is to repair or replace the defective Sika Product, or at Sika’s sole discretion, refund the Purchaser the price of the Sika Products paid by Purchaser. Any claim based upon defect in the quality or condition of the Product, notice of which is not provided to Sika within ten (10) days from the date of delivery or, in the case of the Sika Products have been applied or used, within ten (10) days from discovery date of the defect of failure, will be rejected and no liability will be assumed by Sika.
- NO OTHER WARRANTIES EXPRESS OR IMPLIED SHALL APPLY INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SIKa SHALL NOT BE LIABLE UNDER ANY LEGAL THEORY FOR SPECIAL OR CONSEQUENTIAL DAMAGES. SIKa SHALL NOT BE RESPONSIBLE FOR THE USE OF THIS PRODUCT IN A MANNER TO INFRINGE ON ANY PATENT, OR ANY OTHER INTELLECTUAL PROPERTY RIGHTS HELD BY THIRD PARTY.**
- 15. MTO AND MTS SIKa PRODUCTS.** Sika Products are classified in two (2) distinct groups:
 - a) Sika Products Made to Stock (“MTS”). These Sika Products are maintained in inventory.
 - b) Sika Products Made to Order (“MTO”). These Sika Products made to order only.
- 16. PRODUCT AVAILABILITY.** All Orders are subject to Sika Product availability. Sika shall not be liable to the Purchaser or Purchaser’s customers for damages of any kind arising out of any delay in the performance of an Order. The *Order Processing Policy* for MTS Sika Products operates with the following timelines:

- Subject to Sika Product availability, (i) Order Confirmation accepted by Purchaser before 12:00 Noon (local time) and required Products to be shipped or picked up as soon as possible will be shipped on or made available to Purchaser the business day following the acceptance of the Order Confirmation, and (ii) Order Confirmation accepted by Purchaser after 12:00 Noon (local time) and required Products to be shipped or picked up as soon as possible, will be shipped or made available to Purchaser two (2) business days following the acceptance of the Order Confirmation. Subject to additional fees, same-day shipments or pick-ups may be authorized by Sika at its sole discretion and in exceptional circumstances only.
- 17. NO CANCELLATION.** Once deemed accepted by Purchaser, Order Confirmation for any MTO Sika Products cannot be cancelled or modified by Purchaser; all MTO Sika Products will be shipped and invoiced as agreed in the Order Confirmation. All Sika Products prepared for picking must be taken as is, with no partial pick-ups allowed. All MTS Sika Products prepared for shipment or pick-up on a specific date that are not shipped or picked up within ten (10) business days of the target date, Sika reserves the right to cancel the Order Confirmation, to charge the Purchaser a cancellation fee up to 25% of the Order Confirmation and to return the Products to inventory.
 - 18. RETURN OF SIKa PRODUCTS.** Purchaser shall not return for credit or refund any Sika Products without the prior written approval of Sika. MTO Sika Products cannot be returned under any circumstances. MTS Sika Products may be returned for credit or refund within thirty (30) days from the date of receipt by Purchaser and with the prior written approval of Sika. In any cases, all returns must be accompanied by a fully executed and approved Return of Goods Authorization (“RGA”) with freight and insurance prepaid by the Purchaser. The absence of an RGA will mean that returned Sika Products will not be accepted by Sika and will be returned to Purchaser. All Sika Products being returned for whatever reason must be in their original unopened packaging and in a readily saleable condition as determined by Sika at its sole discretion. All Sika Products returned will be subject to a restocking fee of 25% of the original invoice value of the Sika Products.
 - 19. PURCHASER’S DEFAULT.** To the extent applicable, Sika reserves a security interest in, and Purchaser hereby grants to Sika, a security interest in the Sika Products sold pursuant to Purchaser and the proceeds thereof, with the right of Sika to take possession and dispose of the Sika Products and such proceeds until full payment has been made by Purchaser. Purchaser agrees to execute and deliver, upon Sika’s request and at Purchaser’s expense, any and all instruments which Sika may deem necessary or desirable in order to evidence record or perfect such title and security interest, and Purchaser specifically authorizes Sika to file such instruments in any jurisdiction deemed necessary by Sika without the signature or any authorization of Purchaser, to the extent permitted by law. With each Order, Purchaser represents to Sika that Purchaser is solvent.
 - 20. INDEMNIFICATION.** Purchaser shall indemnify, defend, and hold harmless Sika, its parent, subsidiaries, and affiliates, and its and their officers, directors, employees, agents, successors and assigns from and against, any and all losses, lawsuits, judgments, liabilities, damages, injuries, fines, costs or expenses (including reasonable attorney’s fees and expenses) (collectively, “Losses”), including but not limited to, Losses incurred in connection with or alleged with regard to, or otherwise relating to any claim, demand, proceeding, action, or suit by any third party (collectively, “Claims”), in each case arising from Purchaser’s use, application, or installation of Sika Products, or otherwise relating to Purchaser’s obligations under these Terms and Conditions of Sale.
 - 21. FORCE MAJEURE.** Notwithstanding anything to the contrary, Sika shall not be liable for any failure to perform or delay to the extent caused by any event or circumstance which is beyond the control of Sika, including without limitation, Acts of God, fires, floods, hurricanes, earthquakes, accidents, explosions, wars, acts of terrorism, embargoes, delays of carriers, sabotage, strikes, labour disturbances, act of governmental authority, state of emergency, pandemics, epidemics, shortages of power, or lack of, or inability to obtain, sources of materials, fuel, supplies, or equipment.
 - 22. FRAUDULENT ACTIVITIES.** Detection of fraud is critical in preventing business losses. To prevent losses from fraudulent activities, including unauthorized communications and/or unauthorized access to financial, account, or other sensitive information (“Fraudulent Activities”), Sika encourages Purchaser to implement measures within its systems and processes to detect Fraudulent Activities. For any investigation relating to Fraudulent Activities, Purchaser shall cooperate in such investigation and take all appropriate corrective measures. To the extent that Purchaser incurs any losses relating to Fraudulent Activities, Purchaser assumes responsibility and Sika shall not be liable for any such losses, including financial or reputational.
 - 23. ENTIRE AGREEMENT.** These Terms and Conditions of Sale constitute the entire agreement between Sika and Purchaser relating to the sale or distribution of Sika Products.
 - 24. NO ASSIGNMENT.** These Terms and Conditions of Sale and the obligations of Purchaser hereunder shall not be assigned, delegated, or transferred, by operation of law or otherwise, without the prior written consent of Sika.
 - 25. ENFORCEABILITY.** If any provision of these Terms and Conditions of Sale is held by a court of competent jurisdiction to be void or unenforceable, such provision shall have no effect upon the enforceability of any other provision of these Terms and Conditions of Sale.
 - 26. CONFLICT OF TERMS.** These Terms and Conditions of Sale shall be applicable to, and incorporated by reference into, any sale and distribution, or documentation relating to the sale or distribution, of any Sika Products. To the extent there is an ambiguity, inconsistency or a conflict between these Terms and Conditions of Sale, and the terms and conditions of any other documentation, including without limitation, a purchase order or a request for quotation, these Terms and Conditions of Sale shall control and supersede any such inconsistency, conflict, or ambiguity.
 - 27. MODIFICATIONS BY SIKa.** Sika reserves the right to revise or otherwise modify these Terms and Conditions of Sale from time to time. Any revised Terms and Conditions of Sale will be posted on Sika’s website (can.sika.com) and will thereafter be immediately effective for sales of Sika Products.
 - 28. CHOICE OF LAW AND JURISDICTION.** These Terms and Conditions of Sale, and all matters relating to the sale of Sika Products, shall be governed by and construed in accordance with the laws in force in the Province of Quebec and the laws of Canada applicable therein without regard to principles of conflict of law. Any dispute relating to these Terms and Conditions of Sale, and all matters relating to the sale of Sika Products, shall be subject to the exclusive jurisdiction of the courts of the Province of Quebec, judicial district of Montreal.