



Canada Commercial Terms & Conditions

1. **DEFINITIONS.** "Applus+" means RTD Quality Services, Inc. or any of its affiliated companies including, SKC Inspection and Non Destructive Testing, Inc.; SKC Engineering, Ltd.; and, Applus Velosi Canada, Ltd. "Company" means any entity from whom Applus received an order which Applus has accepted or to which Applus has extended an offer or quotation, which Company has accepted. "Work" means the performance of any services which are to be provided by Applus+ under these Standard Terms and Conditions (the "Terms").

2. **APPLICABILITY OF TERMS.** Applus+ only accepts orders for Work or extends quotations for Work subject to these Terms. Company accepts that the, unless a written contract executed by Applus and Company is entered into, these Terms shall govern relations between Company and Applus+ to the exclusion of any other terms including without limitation, conditions and warranties (written or oral, expressed or implied) contained in any of Company's documents. No variation or qualification of these Terms or of any quotation or order by Applus shall be valid unless agreed in a writing signed by Applus. **APPLUS+ HEREBY ADVISES COMPANY THAT APPLUS' PERFORMANCE OF THE WORK IS EXPRESSLY CONDITIONED ON COMPANY'S ASSENT TO THESE TERMS.**

3. **QUOTATION.** Any price quote made by Applus+ will remain open for a period of sixty (60) days from the date of issuance, unless extended in writing.

4. **PAYMENT.** Unless fixed prices have been specifically agreed by Applus in a quotation, work order or offer all prices are subject to alteration without notice and Work will be invoiced at Applus' prevailing prices for the area where the Work will be performed. All present and future taxes imposed by any federal, state or local authority of any country which Applus may be required to pay or collect, upon or with reference to the Work (except net income and equity franchise taxes) shall be for the account of Company.

(a) Applus+ will submit progress invoices to Company monthly and a final invoice upon completion of Work. Payment is due in full, without setoff or withholding, thirty (30) days from receipt of the invoice unless otherwise agreed to in writing. Past due amounts are subject to a late fee of one and one-half percent per month (18% per annum) or the highest amount allowed by applicable law on the outstanding balance, whichever is less. Attorney's fees and other costs incurred in collecting past due amounts shall be paid by Company.

(b) Applus+ shall maintain a complete and correct set of records pertaining to all aspects of the Work. Company shall have the right, at Company's sole expense, to inspect and audit any and all such records within a period of two (2) years after the termination of the Work; provided, however, that Applus has the right to exclude any trade secrets, formulae or confidential information from such inspection and audit.

5. **LIENS.** Company shall have the right to withhold final payment until Applus has furnished proof that all claims against Applus+ by Applus' suppliers, contractors and subcontractors for labor, material, equipment, or goods of any kind furnished in connection with the Work have been fully paid and satisfied and proof that all liens of Applus' suppliers, contractors and subcontractors arising out of services performed or goods, equipment or facilities furnished in connection with the Work have been fully released.

6. **WARRANTY.** CONTRACTOR WARRANTS THAT THE WORK FURNISHED HEREUNDER WILL BE FURNISHED IN ACCORDANCE WITH THE SPECIFICATIONS SET FORTH OR INCORPORATED BY EXPRESS REFERENCE ON THE FACE OF ANY OFFER, ACCEPTANCE OR ORDER ACKNOWLEDGEMENT ISSUED BY APPLUS. HOWEVER, NO WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE OR ANY OTHER REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, IS MADE RESPECTING SAID WORK.

As Company's sole remedy hereunder, if within twelve months of delivery of any Work the Company notifies Applus of any deficiency caused by the negligence of Applus+ or the Work to meet the Specifications referenced above, then Applus+ shall at its own expense re-analyze the inspection data in that part of the



inspection report containing the alleged deficiency in order to provide such information as is necessary to remedy any deficiency and provide the Company with a revised inspection report. Company understands that the inspection report and all other analyses, charts or reports delivered or recommendations or advice given by Applus+, its employees or agents in connection with the Work will not be received as a warranty of the quality, capacity or fitness for use of the object of the inspection.

7. **LIMITATION OF LIABILITY.** Applus' aggregate liability and responsibility to Company is limited to one and one-half times the compensation paid to Applus for the Work (the "LIMITATION OF LIABILITY"). This LIMITATION OF LIABILITY applies to all lawsuits, claims or actions, whether identified as arising in tort, INCLUDING NEGLIGENCE (WHETHER SOLE OR CONCURRENT), PROFESSIONAL ERROR OR OMISSIONS, BREACH OF WARRANTY (EXPRESS OR IMPLIED), NEGLIGENT MISREPRESENTATION, AND STRICT LIABILITY, contract, or other legal theory, including without limitation, Applus' indemnity obligations to Company related to the Work provided in this Agreement and any continuation or extension of our Work. By entering into this Agreement, Company acknowledges that this LIMITATION OF LIABILITY provision has been reviewed, understood and is a material part of this Agreement, and that Company has had an opportunity to seek legal advice regarding this provision.

8. **NO CONSEQUENTIAL DAMAGES.** In no event shall Applus+ or Company be liable to the other for any special, indirect, incidental or consequential loss or damages, including, but not limited to, lost profits, damages for delay, or loss of use arising from or related to Work provided by Applus+.

9. **SAFETY.** Applus+ is solely responsible for the safety and health of Applus' employees and lower tier subcontractors. Applus+ shall take necessary precautions for the safety of its employees. Applus+ specifically disclaims any authority or responsibility for general job safety and for the safety of persons who are not employed by Applus+. Should Company, or third parties, be conducting activities on the site, then each shall have responsibility for their own safety and compliance with applicable safety requirements.

10. **INDEMNITY.**

(a) Applus+ agrees to indemnify Company from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees) which Company may incur, become responsible for, or pay out as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by the negligence or willful misconduct of Applus+, its subcontractors and their respective employees.

(b) Company agrees to indemnify Applus+, its agents, employees, and subcontractors from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees), which Applus+, its agents, employees, and subcontractors may incur, become responsible for, or pay out as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by Company's negligence or willful misconduct. Company and Applus shall, in the event of liability arising out of their joint negligence or willful misconduct, indemnify each other in proportion to their relative degree of fault.

11. **INSURANCE.** Applus+ shall maintain at its own expense, during the term of this Agreement, the following insurance: (1) Workers' Compensation providing statutory coverages required by the state where Work are provided, (2) Employer's Liability with limits of \$1,000,000 each accident, (3) Commercial General Liability with limits of \$1,000,000 each occurrence/ \$2,000,000 aggregate, (4) Commercial Automobile with limits of \$1,000,000 each accident, (5) Umbrella Excess Liability with limits of \$5,000,000 each occurrence and (6) Professional Liability with limits of \$1,000,000 each claim. Upon receipt of written request, Company shall be included as an additional insured under the General Liability and Automobile Liability policies on a primary and non-contributory basis for obligations and liabilities assumed hereunder by Applus+.

12. **COMPANY OBLIGATIONS.** Company warrants that all information provided to Applus+ regarding the Work and Work location are complete and accurate to the best of Company's knowledge.



Company agrees to furnish Applus+, its agents, employees, and subcontractors a right-of-entry and any authorizations needed for Applus+ to enter onto the Work site to perform the Work; Company agrees to disclose the identity and location of all utilities serving the Work Site and the presence and accurate location of hidden or obscured man-made objects known to Company that may be in Applus' work area. Company shall, before commencement of any work, and without cost to Applus+ remove or make safe any conditions at the job site or on the workplace which present a safety hazard, including, but not limited to, electric wires, flames, smoke, flammable liquids or gases, fumes, steam, poisons, asbestos, hazardous or toxic chemicals, and hazards from other contractors working above, below, or adjacent to the Applus+ Work area. Company shall supply adequate scaffolding, lighting, and handling facilities at each Work area. If Company fails to perform any of the foregoing, it shall indemnify, defend, and hold Applus harmless for any damages of any type whatsoever which result.

13. **TIME.** Any periods of time quoted or accepted by Applus+ for completion of the Work are to be treated as estimates only. Time is not of the essence.

14. **INSPECTION REPORTS.** Company shall not require that Applus+ execute any inspection report with regard to Work performed, tested or observed under this Agreement unless: 1) Applus+ believes that it has performed sufficient work to provide a sufficient basis to issue the inspection report; 2) Applus+ believes that the work performed, tested or observed meets the criteria of the inspection report; and 3) Applus+ has reviewed and approved in writing the exact form of such inspection report prior to execution of this Agreement. Any inspection report by Applus+ is limited to an expression of professional opinion based upon the Work performed by the Applus+, and does not constitute a warranty or guarantee, either expressed or implied.

15. **TERMINATION.**

(a) For Convenience-Upon written notice, Company or Applus+ may terminate the performance of any further Work included in this Agreement. Upon receipt of a termination notice, Applus shall stop all Work included in this Agreement and Company shall pay Applus+ within thirty (30) days for all Work performed up to the receipt of the termination notice.

(b) For Cause-In the event of material breach of this Agreement, the party not breaching the Agreement may terminate it upon five (5) business day's written notice delivered or mailed to the other party, which notice must identify the material breach. The Agreement may not be terminated for cause if the breaching party cures the breach within five (5) business days of receipt of the written notice. Upon Termination for Cause, Applus+ shall stop work on all Work included in this Agreement and Company shall pay Applus+ within thirty (30) days for all Work performed up to the termination.

16. **FORCE MAJEURE.** Applus+ shall not be deemed to be in default of this Agreement to the extent that any delay or failure in the performance of the Work results from any causes beyond its reasonable control. For this purpose, such acts or events shall include, but are not limited to, storms, floods, unusually severe weather, epidemics, civil disturbances, war, riot, strikes, lockouts or other industrial disturbances, and the inability within reasonable diligence to supply personnel, equipment, information or material to the Work. In the event that such acts or events occur, it is agreed that Applus+ shall attempt to overcome all difficulties arising and to resume as soon as reasonably possible the normal pursuit of the Work covered by these Terms.

17. **ASSIGNMENT AND SUBCONTRACTS.** Neither party may assign these Terms or the Work, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. Applus+ may subcontract for the work of others without obtaining Company's consent if contractor deems it necessary or desirable to have others perform work.

18. **CONFIDENTIALITY.** All information relating to the Work or the business of Company including, but not limited to, drawings and specifications relating to the Work, and Company information, shall be



held in confidence by Applus+ and shall not be used by Applus+ for any purpose other than for the performance of the Work or as authorized in writing by Company. Confidential information shall not include information that (i) has become part of the public domain through no fault of Applus+; (ii) is possessed by Applus, before receipt thereof from Company; (iii) is acquired independently and without any confidentiality obligation by Applus+ from a third party that has the right to disseminate such information; (iv) is developed by Applus+ independently; (v) is required to be disclosed by Applus+ due to applicable laws and regulations, government order or court order.

19. **NO WAIVER.** No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or different in character.

20. **MISCELLANEOUS.** These Terms supersede all earlier warranties, representations or statements (whether oral or in writing) and may only be varied or amended in a signed writing between the parties. The validity, interpretation, and performance of these Terms and the underlying Work shall be governed by and construed in accordance with the laws of the province of Alberta. The United Nations Convention on Contracts for the International Sale of Goods is excluded. No amendment or modification to these Terms or any waiver of any provisions hereof shall be effective unless in writing, signed by both Parties. If any part of these Terms is found to be unenforceable, then the parties' intent is to have such part rewritten to attain as close as possible the original intent of the unenforceable provisions.

21. **ENGLISH LANGUAGE.** The parties hereby confirm their express wish that this Purchase Order and all related documents be drafted in the English language, but without prejudice to any such documents which may from time to time be drawn up in French only or in both French and English. Les parties aux présentes confirment leur volonté que cet ordre d'achat et tout document accessoire soient rédigés en langue anglaise, mais sans préjudice cependant à tous tels documents qui pourront à l'occasion être rédigés en français seulement ou à la fois en français et en anglais.

22. **CANCELLATIONS.** If Company cancels the Work with less than forty-eight (48) hours written Notice to Applus+, Applus+, at its sole option, may charge Company, and Company shall pay, for all hours requested for each employee assigned to perform work at the requested inspection rate and all charges incurred such as rentals, 3rd party charges or any other costs.