

## TERMS AND CONDITIONS OF PURCHASE AND SALE AND WARRANTY

These are the terms and conditions governing the purchase and sale of the Octaform™ products and training (collectively, “**Products**”) identified in the attached sales order (“**Sales Order**”) by Octaform to the Purchaser (each as identified in the Sales Order).

### 1. **Agreement.**

The Sales Order, these Terms and Conditions, the Drawings (as hereinafter defined) and the Octaform Construction Guide (“**Construction Guide**”) identified in the Sales Order constitute the entire agreement (“**Agreement**”) between Octaform and the Purchaser.

The Parties have not relied on any statement, representation, warranty or agreement of the other Party or of any other person on such Party's behalf, including any representations, warranties, or agreements arising from statute or otherwise in law, except for the representations, warranties, or agreements expressly contained in this Agreement.

### 2. **Orders.**

All Sales Orders placed with Octaform must be completed in writing and signed by an authorized signatory of the Purchaser. All orders must include a preferred arrival date, a delivery address (“**Destination**”) and a complete description of Products being purchased. No contract for sale will come into existence between Octaform and the Purchaser until Octaform has (i) received a copy of the Sales Order signed by an authorized signatory of the Purchaser; (ii) received the deposit (“**Deposit**”) indicated in the Sales Order; and (iii) provided the Purchaser with written confirmation of its acceptance of the Sales Order. No amendments or changes to a Sales Order will be permitted unless accepted in writing by an authorized signatory of Octaform. This Agreement covers only the Products specifically set out in the Sales Order.

### 3. **LIMITATION OF LIABILITY.**

Octaform will have no liability under any circumstances for any consequential, indirect, incidental, punitive or special damages arising from or connected in any way with this Agreement, the Products, performance of the Products, or use of the Products, or the structural design, engineering, construction, assembly, maintenance and repair of the Structure including damages, expenses, or losses incurred by reason of loss of use, loss of revenue, loss of anticipated profits, loss of materials or labour, loss of overhead or fixed costs, loss of wages, losses related to wages, damage to associated equipment or to facilities, costs of capital, costs of substitute products, facilities or plants, costs associated with down time, and any similar and dissimilar damages, expenses, or losses whether any such liability is based on contract, tort (including negligence, misrepresentation, and breach of statutory duty), or other legal or equitable principles.

In no event shall Octaform's liability arising from or connected in any way with this Agreement, in the aggregate, exceed the price of the Products in the attached Sales Order or the limits of the errors and omissions insurance policy carried by Octaform to the extent such insurance is applicable and available. This limitation clause shall survive any fundamental breach and/or failure of the essential purpose of the Agreement.

### 4. **Prices.**

The prices of the Products are those specified in the Sales Order. All prices specified in the Sales Order will automatically expire thirty (30) days from date of Sales Order unless Octaform is in receipt of the Deposit. Authorized changes to the Sales Order may result in changes to prices of Products and total contract price. The Purchaser agrees to pay for the Products in accordance with the Sales Order or as directed by Octaform, including any additional charges or changes to prices of Products or total contract price resulting from authorized changes to the Sales Order. All prices are in the currency indicated in the Sales Order. All prices quoted are exclusive of, and the Purchaser shall pay for, all concrete, rebar and labour costs and all applicable taxes, export, import and other duties, tariffs, customs levies and fees. Surcharges will apply where international shipping requirements impose additional packing criteria.

### 5. **Payment.**

- a. The Purchaser shall pay for the Products and all related costs, including Shipping and Handling and taxes, as indicated in the Sales Order.

- b. All late payments will be charged interest computed on a daily basis from the due date until paid in full at the rate of eighteen (18%) percent per annum, both before and after judgment.
- c. Octaform will retain title to the Products until payment is made in full by the Purchaser or the Products are incorporated into the Structure (as hereinafter defined), notwithstanding that risk of loss or damage passes to the Purchaser upon the delivery of the Products to the Destination in accordance with paragraph 11 of this Agreement. The Purchaser hereby grants and Octaform retains a security interest in all the Products purchased pursuant to this Agreement. Such security interest is to secure the payment of the full purchase price and all other charges due and owing to Octaform by the Purchaser pursuant to this Agreement. This Agreement is a contract, security agreement and financing statement between the Purchaser and Octaform and constitutes a purchase money security interest pursuant to the applicable laws of British Columbia and Canada until the full purchase price has been paid by the Purchaser to Octaform. The Purchaser agrees that Octaform will have the right to file, register or record this Agreement or other financing statement pursuant to applicable law to evidence Octaform's security interest herein. The Purchaser will join Octaform in executing such financing statements or other instruments as Octaform may reasonably request to perfect such interest under any applicable law, failing which, the Purchaser hereby irrevocably appoints Octaform as its attorney to execute any documents or other instruments necessary to perfect and enforce Octaform's security interest herein.

## 6. Drawings.

The Purchaser acknowledges that it has provided Octaform with plans ("**Plans**") for use by Octaform in preparing the confirmation drawings ("**Confirmation Drawings**") indicated in the Sales Order.

If the Purchaser has made or will make engineering or other structural design drawings ("**Structural Drawings**") in respect of the structure ("**Structure**") to be constructed using the Products, it agrees to deliver to Octaform the Structural Drawings promptly once they are available, and thereafter until the Products are fully incorporated into the Structure to promptly deliver to Octaform updated versions of the Structural Drawings if such become available.

Provided that it has received the Deposit, Octaform will deliver to the Purchaser assembly drawings ("**Assembly Drawings**"), which are intended to provide the Purchaser with a general guideline for the assembly of the Product components when constructing the Structure in accordance with the Structural Drawings. The Structural Drawings and the Assembly Drawings are hereinafter defined as the "**Drawings**".

The Purchaser acknowledges and agrees that:

- a. the Purchaser will be solely responsible for the accuracy, costs and all consequences resulting from the Purchaser's use of the Plans and the Structural Drawings;
- b. the Product quantities specified in the Sales Order contain an allowance ("**Allowance**") calculated by Octaform to avoid delays in construction of the Structure caused by inadvertent shortages of Products;
- c. the Products and quantities specified in the Sales Order may need to be amended upon completion of the Assembly Drawings;
- d. Octaform will not order that the Products be manufactured until the Purchaser has provided Octaform with its written acceptance of the Assembly Drawings;
- e. The Purchaser will be solely responsible for any surplus or shortage of Products resulting from discrepancies in the Structural Drawings or changes to the Structure during construction;
- f. the Purchaser will promptly advise Octaform of any changes to the design of the Structure which could directly or indirectly result in amendments to the Assembly Drawings or quantities of Products required;
- g. the Construction Guide includes notes, information and instruction with respect to the construction of the Structure, including information regarding the size and composition of aggregate, concrete

pour and concrete vibration requirements, all of which are material to the successful construction of the Structure with the Products; and

- h. in the event of any conflict between the Structural Drawings and the Assembly Drawings or the Construction Guide, it will promptly notify Octaform and seek the advice of an engineer or other qualified individual before proceeding with construction of the Structure.

The Purchaser warrants and represents that any Structural Drawings provided to Octaform are accurate and correct. The Purchaser further acknowledges and agrees that Octaform has and will be relying on any such Structural Drawings to create the Confirmation Drawings and the Assembly Drawings, and that the Products and Product quantities specified in the Sales Order are based on the Plans and the Confirmation Drawings.

## 7. Construction

The Purchaser acknowledges and agrees that:

- a. the Purchaser will be solely responsible for all structural design, engineering, construction, assembly, maintenance and repair of the Structure and that Octaform will have no liability whatsoever for any claims, damages, actions or other losses arising directly or indirectly from the same or from the failure of the Purchaser or its contractors or agents to construct or assemble the Structure in accordance with the Drawings, the Construction Guide, any engineering advice obtained, or any relevant industry standards;
- b. the Purchaser will construct the Structure in accordance with the Drawings (and any amendments thereto), the Construction Guide, any engineering advice obtained and any relevant industry standards and applicable laws;
- c. the Purchaser will be solely responsible to ensure that the Structure is constructed in accordance with all applicable standards of good workmanship and that faulty workmanship (“**Faulty Workmanship**”), including inappropriate concrete mix design, failure to level or plumb walls, inaccurate foundations, excessive pouring, under- or over-vibrating, inadequate bracing, and foreign material in the forms, may result in bulges, out-of-tolerance walls, blow-outs, voids, sagging headers, and leaks;
- d. before the Structure is commissioned for use, the Purchaser will be solely responsible for conducting a post-construction inspection and test of the Structure to ensure that the Structure has not been compromised by Faulty Workmanship or other deficiencies, howsoever caused, that may have arisen in the course of construction and, where such Faulty Workmanship or deficiencies have been identified, will repair such workmanship or deficiencies and ensure that the Structure is capable of being successfully used for its intended purpose;
- e. in the case of biogas applications, notwithstanding that Octaform Products are designed to create an impermeable barrier protecting concrete and steel from leaks and corrosion, third party secondary seal products must be installed in the gas-zone in accordance with their manufacturers’ instructions or industry standards and the Construction Guide;
- f. in the event that the inter-panel joint in the liquid-zone has been compromised during the construction process, the Purchaser will be solely responsible for applying a third party secondary seal as required in the liquid-zone in order to repair such compromised inter-panel joint;
- g. the Purchaser will be solely responsible for the repair of and the sealing of the PVC membrane in the liquid-zone and, in the case of biogas applications, the gas-zone, and where the membrane has been penetrated, whether intentionally or unintentionally, with holes, pipes, brackets, braces, bolts, screws, fasteners or any other equipment or products; and
- h. the Purchaser will indemnify and save harmless Octaform from and against all losses, costs, charges and expenses arising from the Purchaser’s construction of the Structure or its breach of any of its obligations in this Section 7 (“**Losses**”), except insofar as such Losses are caused by Octaform’s gross negligence or wilful misconduct.

## 8. **Products.**

The Purchaser acknowledges and agrees that:

- a. standard Product wall colour is white and any other colours are subject to additional charges, as set out in the Sales Order;
- b. Octaform does not guarantee that beige, grey and custom-coloured Products will precisely match any colour matching standards, swatches, photographs or other representations provided to Octaform by the Purchaser, and all references to such colours by Octaform are intended only as approximations; and
- c. standard length of PVC parts are increments of even numbered feet, and additional increments of four inches. Non-standard cut lengths are subject to additional charges as set out in the Sales Order.

## 9. **Compliance.**

The Purchaser agrees that it will be solely responsible for ensuring that its Structure will meet all applicable building codes and regulations. The sale of Products to the Purchaser shall not be interpreted as an approval of the design, fitness for any particular purpose or function of the Structure by Octaform. The Purchaser will be solely responsible for all design elements of the Structure, including wall thickness. Octaform assumes no liability whatsoever with regard to the Purchaser's failure to comply or fulfill its obligations with respect to any statute, regulation, by-law or other governmental requirement prevailing at the location of the Structure.

## 10. **Training.**

Where the Sales Order so provides, this Agreement will include the services of an Octaform trainer (the "**Trainer**") for the period ("**Trainer Period**") set out in the Sales Order. The Trainer will provide advice to the Purchaser and its employees, agents and contractors in connection with the assembly of the Products as needed during the Trainer Period. The Purchaser acknowledges and agrees that:

- a. the Purchaser will provide a safe work site and be responsible for, and indemnify Octaform and the Trainer in respect of, the safety of the Trainer while on the work site;
- b. The Trainer may refuse to attend at the work site if he or she views the work site as unsafe and the Trainer's refusal will not relieve the Purchaser from any responsibilities in connection with this Agreement;
- c. designate a project manager to co-ordinate and authorize the assembly of the Products, and to work with and be the primary contact between the Trainer and the Purchaser;
- d. through its project manager, keep the Trainer advised of any changes in the design of the Structure;
- e. follow the advice of the Trainer in the assembly of the Products in accordance with the Construction Guide;
- f. provide the Trainer with copies of blueprints, contact information for key personnel, work site location, work schedules, local policies, standards or regulations, and such other information as the Trainer may reasonably require;
- g. advise Octaform promptly if the Purchaser wishes to extend the services of the Trainer beyond the Trainer Period, in which case, the Sales Order will be adjusted accordingly, and the Purchaser will pay for the additional services of the Trainer immediately upon receipt of an invoice from Octaform; and
- h. ensure that the assembly of the Products and construction of the Structure is undertaken with sufficient and well trained personnel.

The Purchaser acknowledges and agrees that the Trainer's services shall be limited only to providing advice pertaining to the interpretation of the Assembly Drawings and the Construction Guide and that the Purchaser shall not rely upon any other advice or instruction, whether oral or written, from the Trainer pertaining to the Structure or any other procedure, policy, product, standard or service not directly pertaining to the assembly of the Products and neither Octaform nor the Trainer shall be liable therefor.

## 11. **Shipment.**

The Purchaser acknowledges that (i) Product manufacturing lead time is at least six (6) to eight (8) weeks from the date Octaform has received the Deposit and confirmation that the Purchaser has accepted the Assembly Drawings in accordance with paragraph 6.d, and (ii) notwithstanding any provision of this Agreement, the Estimated Ship Date stated in the Sales Order is only an estimate and has been provided by Octaform as a matter of convenience only and is not meant to be legally binding upon Octaform.

Unless otherwise indicated in the Sales Order, Octaform will be responsible for shipping the Products to the Destination using the method of transportation indicated in the Sales Order and will bear all related costs, including freight fees and applicable taxes, customs charges and duties, and make all arrangements related to the same, including expediting customs clearance where applicable. The Purchaser will pay Octaform the Shipping and Handling fee indicated in the Sales Order. Delivery will be deemed complete and risk of loss or damage to the Products will pass to the Purchaser upon delivery at the Destination.

In no event will Octaform be liable for any delay in delivery, nor will carrier be deemed an agent of Octaform for any purposes whatsoever. Octaform will have no responsibility for entering into terms of carriage that protect the interest of the Purchaser, whether for insurance or otherwise. For greater certainty, Octaform will not have any liability to the Purchaser for carriage, but in the event of a claim relating to the carriage of the Products, Octaform will assign absolutely to the Purchaser, any right, or entitlement it has under such contract for carriage.

## 12. **Inspection and Returns.**

The Purchaser agrees to inspect the Products forthwith upon delivery in order to confirm that the Products are in good condition and conform to the Sales Order in respect of Product type and quality. The Purchaser will promptly notify Octaform in writing of any discrepancies or damaged Products and agrees that if it fails to so notify Octaform within a reasonable time after delivery, it will release Octaform from all liability in connection with such non-conforming Products. Other than Products delivered to the Destination in damaged condition or Products that contain a Manufacturing Defect (as hereinafter defined) validated by Octaform in accordance with paragraph 24.e, Products, including the Allowance, may not be returned for any reason.

## 13. **Insurance**

The Purchaser represents that it has, or, in the event that it does not, covenants that it will obtain, commercial general liability insurance against claims for personal injury, bodily injury, death or property damage arising directly or indirectly from the Purchaser's construction and operation of the Structure and property insurance insuring the Structure against all risks of loss or damage up to its full replacement value. Such insurance shall be on such commercially reasonable terms as a prudent owner of the Structure would obtain, shall be for the benefit of both the Purchaser and for Octaform, and shall respond as primary coverage in the event of any claim arising out of the Purchaser's construction or operation of the Structure.

## 14. **Notice.**

Any notice or other communication required or permitted to be given hereunder shall be in writing and may be validly given either if delivered personally, or sent by facsimile, or other electronic communication device, or mailed by prepaid registered mail addressed to the parties at their respective addresses set out in the Sales Order. Such notice shall be deemed to have been received if so delivered or transmitted, when delivered or transmitted if by facsimile or other electronic communication device, providing that the sender has not received in message indicating the failure of such delivery, or on the second business day (exclusive of Saturdays, Sundays and statutory holidays) after mailing if by prepaid registered mail.

## 15. **Force Majeure.**

Except for the payment of money, neither party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent that delay or failure is caused by any strike, lock-out, civil commotion, invasion, rebellion, hostilities, sabotage, governmental regulations or controls, acts of God, or other similar causes beyond the control of the parties ("**Force Majeure Condition**"). If any Force Majeure Condition occurs, the party delayed or

unable to perform (“**Delayed Party**”) will give immediate notice to the other party (“**Affected Party**”), and the Affected Party, upon giving prompt notice to the Delayed Party will be excused from performance under this Agreement for the duration of the Force Majeure Condition, provided that the Affected Party will take all reasonable steps and cooperate with the Delayed Party to avoid or remove the cause of non-performance and will resume performance hereunder without delay when the cause is removed.

16. **Assignment.**

This Agreement is not assignable by the Purchaser without the prior written consent of Octaform and any attempt to assign the rights, duties, or obligations under this Agreement without consent will be of no effect.

17. **Governing Law.**

The construction, interpretation and performance of this Agreement and all transactions, legal rights and obligations under it will be governed by the laws of British Columbia, Canada.

18. **Exclusive Jurisdiction.**

The parties agree that all proceedings arising out of or in connection with any dispute concerning this Agreement, the above-referenced rights and obligations, or in connection with any matter directly or indirectly related to this Agreement, or any cause of action related thereto, shall only be instituted, heard and determined by a court of competent jurisdiction in British Columbia, and all parties irrevocably attorn to the jurisdiction of the courts of British Columbia and waive any objection which they may now or hereafter have regarding the venue of such suit, action or proceedings.

19. **Non-Waiver.**

No condoning, excusing, overlooking or waiver by any party of any default, breach, or non-observance by any other party at any time or times in respect of any covenant, agreement, condition or shall operate as a waiver of that party’s rights hereunder in respect of any continuing or subsequent default, breach, or non-observance or so as to defeat or affect in any way the rights of that party in respect of that continuing or subsequent default, breach, or non-observance and no waiver shall be inferred from or implied by anything done or omitted to be done by the party having those rights except by an express waiver in writing by an authorized signatory of that party.

20. **Extended Meanings.**

In this Agreement words importing the singular number only include the plural and vice versa, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”.

21. **Entire Agreement.**

The documents set out in paragraph 1 constitute the entire agreement between the parties and supersede all previous communications, oral and written quotations, representations, expectations, understandings, and agreements whether verbal or written between the parties with respect to the subject matter of this Agreement. This Agreement may not be amended or modified in any respect except by written instrument signed by both parties.

22. **Enurement.**

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective permitted assigns.

23. **Time.**

Time is of the essence in this Agreement.

24. **WARRANTY.**

a. **Warranty Coverage**

Octaform warrants (“**Warranty**”) that for a period of 5 years from the date of purchase of its white Products, and for a period of 2 years from the date of purchase of its coloured Products (“**Warranty Period**”), its Products will be free of manufacturing defects when handled, stored, installed and maintained in accordance with the Construction Guide. FOR GREATER CERTAINTY, “FREE OF MANUFACTURING DEFECTS” IS RESTRICTED TO MEAN THAT A PRODUCT WILL NOT CONTAIN A MANUFACTURING DEFECT (a “**Manufacturing Defect**”) THAT CAUSES ANY

PEELING, ROTTING, BLISTERING, FLAKING, CHIPPING, CRACKING OR CORROSION (each, a “**Non-conformance**”) OF THE PRODUCT.

b. Claim Period

Subject to the Warranty Period described in paragraph 24.a above, the Purchaser may only make a claim under the Warranty during the Warranty Period from the date on which the Purchaser purchased the Product until the sixtieth (60th) day after the Purchaser discovers a Non-conformance of the Product that is the subject of the claim.

c. Exclusions from Warranty Coverage

This Warranty does not provide a remedy for:

- i. damage to the Products caused wholly or partially by:
  1. wear and tear arising from the ordinary use of the Products;
  2. misuse, abuse, neglect or improper handling, storage, installation or maintenance thereof;
  3. exposure to heat in excess of fifty-five (55° C) degrees Celsius or any substance known to be deleterious to PVC;
  4. alterations to the Structure after original installation of the Products;
  5. settlement of the Structure or failure of the foundation of the Structure;
  6. acts of God such as lightning, wind storm, hurricane, tornado, hail, ice storm, earthquake, flood or other similar severe weather or natural phenomena;
  7. accident, negligence or gross negligence occasioned by the Purchaser or a third party;
  8. inaccurate or incorrect Structural Drawings; or
  9. transport, storage or handling of the Products prior to installation;
- ii. Products not installed in compliance with the Construction Guide, including failure to vibrate concrete as specified or failure to use aggregate of the size specified in the Construction Guide;
- iii. Products which have been painted or whose surfaces have been altered in any way without written authorization from Octaform;
- iv. Products which have been altered, modified or repaired by any person not authorized by Octaform or without written authorization from Octaform;
- v. damage resulting from Purchaser's failure to comply with the maintenance requirements established under paragraph 24.g; or
- vi. damage resulting from Purchaser's failure to construct the Structure in accordance with the Drawings and the Construction Guide as required by paragraph 6.

d. Exclusion of Implied Warranties and Conditions; No Other Express Warranties or Conditions

This Warranty is the only warranty applicable to the Products and excludes all other express or implied warranties, including any implied warranty of merchantability or fitness for a particular purpose, or any warranties otherwise arising from the course of dealing or usage of trade. No other express warranty has been made or will be made on behalf of Octaform with respect to the Products. No representative or other person is authorized to offer any other warranty or assume any other liabilities on behalf of Octaform.

Additionally, this Agreement excludes all other express or implied conditions other than those, if any, set out in this Agreement. For greater certainty, this Agreement excludes any implied condition of fitness for a particular purpose and any implied condition of merchantability, including those implied by any *Sale of Goods* act.

e. Remedies

Purchaser will provide Octaform with written notification of any Non-conformance during the Warranty Period. Such notification will include a full description of the Non-conformance and will be accompanied by photographs and samples of the non-conforming Products. If, following laboratory analysis, such Non-conformance is confirmed by Octaform to be caused by a Manufacturing Defect, then Octaform will, at its discretion repair or replace the Product(s) containing the Non-conformance, or parts thereof. Octaform reserves the right to discontinue or modify any Products, and Purchaser will have no claim against Octaform if the replacement Products differ in colour, gloss, or fit from the original. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE FOREGOING IS THE PURCHASER'S SOLE AND EXCLUSIVE REMEDY BY OCTAFORM WITH RESPECT TO THE PRODUCTS CONTAINING A MANUFACTURING DEFECT.

f. Exclusion of Other Remedies

Octaform's liability arising from or in any way connected with this Agreement is limited as provided in paragraph 3 of this Agreement. For greater certainty and without limiting paragraph 3, the Purchaser agrees that Octaform shall not be liable or responsible in any way to the Purchaser or any other person for removal, installation or re-installation of the Products, or any injury arising from or out of the Purchaser's use or installation of the Product, or any loss or damage to property (including loss of use thereof) of the Purchaser or any other person from any cause whatsoever whether or not any such injury, loss or damage results from any fault, default, negligence, act or omission of Octaform, or its agents, servants, employees or any other person for whom Octaform is in law responsible.

g. Responsibility of Purchaser

The Purchaser shall comply strictly with each of the items set out below, which compliance shall be a condition to Octaform's obligations under this Warranty, and the Purchaser's failure to comply strictly with any one or more of the items will void any rights the Purchaser may have against Octaform.

i. Installation/Maintenance

1. Product installation must be completed by a properly licensed contractor, in accordance with the Drawings and the Construction Guide.
2. The Purchaser shall fully comply with the maintenance instructions set out in the Construction Guide.

ii. Claims

1. Any Purchaser who is claiming a remedy under this Warranty and who is eligible in accordance with the Warranty period set out in paragraph 24.a must notify Octaform in writing of such claim on or before the sixtieth (60th) day after the Purchaser discovered a Non-conformance of the Product that is the subject of the claim, and the Purchaser shall obtain Octaform's prior written consent before beginning any repair on the Product.
2. The Purchaser shall be responsible for establishing the date of purchase and all other facts required to establish a right of relief under this Warranty. The Purchaser shall retain any records, which could prove when and how the Products were installed and maintained.
3. Upon reasonable notice, the Purchaser must allow Octaform's agents to enter the property on which the Products are installed to inspect such Products.