

Express Radiant Ltd. Conditions of Sale (Canada & US)

UNLESS VARIED BY EXPRESS RADIANT LTD. IN WRITING, ALL GOODS ARE SOLD ONLY UPON THE FOLLOWING TERMS AND CONDITIONS:

1. **Quotations:** Are valid for acceptance for 28 days from the date shown unless withdrawn by us before that date and are subject to our written acceptance of the Buyer's order.
2. **Prices and Discounts:** Are subject to alteration without notice and are given as a guide only as all Goods, as hereinafter defined, are sold at prices ruling on date of dispatch. Prices are exclusive of applicable taxes which will be added to the Buyer's invoice where applicable.
3. **Delay and Cancellations:** Any delivery date indicated shall be regarded as an estimate only, although we shall make every effort to ensure prompt delivery. Whilst every effort will be made to carry out the contract, its due performance is subject to cancellation by us without compensation or to such variation as we may find necessary as a result of a scarcity of labour, materials or supplies, or because of any Act of God, war, strike, lockout or other labour dispute, fire, the elements, legislation, or (without prejudice to the generality of the foregoing) any other cause beyond our control.
4. **Delivery & Risk:** Delivery shall be when the goods set out in the applicable invoice (the "Goods") have been delivered to the Buyer's premises or to such other place as the Buyer may require. This risk shall pass to the Buyer when the Goods have been delivered.
5. **Transport:** Will be effected or arranged by us and Goods will be delivered to destinations in agreed areas carriage paid unless:
(a) value of order for Goods is less than \$100; or (b) we are informed by the Buyer in writing that the Goods are to be transported by other special delivery, the extra carriage charges for which will be added to the Buyer's invoice.
6. **Damage in Transit:** we will entertain no claim for Goods lost or damaged in transit unless notification of the nature and extent of such a claim is received by us and the Carrier either upon receipt of delivery of damaged Goods, or within 28 days of receipt of delivery of the damaged Goods. Our liability shall in no circumstances exceed the invoiced value of the Goods lost or damaged. Goods subject to claim, shall be stored free of charge for inspection. They shall not be returned to nor accepted by us without written consent.
7. **Exclusion of Warranties:**
 - (a) THE BUYER ACKNOWLEDGES THAT EXPRESS RADIANT LTD. ("EXPRESS") IS NOT THE MANUFACTURER OF THE GOODS. EXPRESS MAKES NO REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED OR STATUTORY AS TO THE CONDITION FOR FITNESS OF THE GOODS AND HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. EXPRESS WILL, HOWEVER, USE COMMERCIALY REASONABLE EFFORTS, AS REQUESTED BY THE BUYER, TO ASSIST THE BUYER IN ENFORCING ANY WARRANTY THAT THE MANUFACTURER OF THE GOODS MAY HAVE IN EFFECT. EXPRESS SHALL HAVE NO LIABILITY FOR ANY DAMAGES, INCLUDING CONSEQUENTIAL, INCIDENTAL, SPECIAL, COLLATERAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF GOODWILL, LOSS OF PROFITS OR REVENUES, LOSS OF SAVINGS, LOSS OF USE, INTERRUPTION OF BUSINESS AND CLAIMS OF BUYERS ARISING OUT OF THE USE OF THE GOODS OR OTHERWISE. EXPRESS SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE GOODS ARE IN COMPLIANCE WITH ANY APPLICABLE GOVERNMENTAL REQUIREMENTS OR REGULATIONS.
 - (b) Goods subject to claim shall not be returned to us and we will not accept them without our prior written consent.
 - (c) **Any returned Goods that we accept back after 30 days will be subject to a restocking fee of 20% on panel radiators, 50% on columns and style radiators, 20% on all valves.**
8. **Dimensions and Illustrations:** Our price lists and publicity brochures have been prepared with every care but their accuracy is not guaranteed and we reserve the right to vary such information without notice. Exact dimensions will be provided on application.
9. **Payment:** All invoices shall be due for payment on the terms set out therein which shall be **net 30 days**. Default in payment of any invoice shall entitle us to treat any outstanding contracts between us and the Buyer as repudiated by the Buyer, however such repudiation shall in no way relieve the Buyer of its obligations to pay amounts then outstanding to Express, including interest thereon.
10. **Ownership:**
 - (a) Notwithstanding any passing of risk to the Buyer we retain ownership of the Goods the subject matter of this contract the property in which shall not pass to the Buyer and the Buyer shall keep any Goods delivered to us as bailee for and on our behalf until we have received full payment of the price of all Goods (whether or not the Goods are delivered in installments and some have been paid for by the Buyer) and all other sums due at any time whatsoever from the Buyer to us.
 - (b) Until ownership of the Goods has been passed to the Buyer, the Buyer:
 - (i) shall insure the delivered Goods against any loss or damage with an insurance company of repute;
 - (ii) shall store the delivered Goods separately or in some other way ensure that they are readily identifiable as our property.
 - (iii) Irrevocably authorizes our representatives at any time and from time to time (whether or not payment is due) to repossess the Goods and for such purpose to enter any premises occupied by the Buyer or where the Goods are or are thought to be and to sever the Goods from anything to which they are attached without being responsible for any damage caused
 - (iv) Shall keep the delivered Goods free from any charge, lien or other encumbrance.
 - (A) If while under our ownership the Goods or any of them are processed or incorporated into other Goods (the "New Goods") then, provided the goods remain a readily identifiable and removable part of the New Goods, the provision of clauses (a) and (b) shall apply.
 - (B) We (acting on our own account not as agent for the Buyer) may sell or agree to sell any of the Goods or the New Goods in our possession on such terms as we may in our sole discretion consider appropriate.
 - (C) We shall be entitled to a general lien over all Goods and materials of the Buyer which are in our possession or control from time to time for any sums due at any time whatsoever from the Buyer to us.
 - (D) Nothing in this clause 10 shall affect any other of our rights or remedies.
 - (E) The provisions of this clause 10 shall survive termination of the contract for any reason.
11. **Limitation of Liability:**
 - (a) The rights conferred by these conditions shall so far as legally possible replace and exclude all common law, statutory or other warranties or conditions whether express or implied. Save as specifically mentioned above we do not accept liability, in tort or contract or otherwise, for any direct or indirect loss or damage, howsoever arising.
 - (b) In no event will Express be liable for any indirect, incidental, consequential, special, punitive or exemplary damages, or any other damages (including, without limitation, damages for loss of business profits, business interruption, personal injury, failure to meet any duty including acts of good faith or of reasonable care, lack of diligence, and for any other pecuniary or other loss whatsoever) arising out of or in any way connected with the use of the Goods, the delay in delivery of the Goods, even in the event of fault, tort (including negligence), strict liability, breach of contract, or breach of warranty of Express and even if Express has been advised of the possibility of such damages. These limitations and exclusions regarding damages apply even if any remedy fails.
 - (c) Notwithstanding the foregoing, in no event will Express be liable to the Buyer for any amount in excess of the price paid by the Buyer to Express for the Goods.
 - (d) Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, some of the above limitations may not apply to the Buyer.
12. **Waiver:** Our rights shall not be affected or restricted by any indulgence or forbearance to the Buyer. No waiver by us of any breach shall operate as a waiver of any later breach.
13. **Variation of Conditions:** No variation of these conditions or the particulars in our acceptances shall be valid unless agreed by us in writing.
14. **Law:** This agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. Any dispute regarding this agreement shall be referred to a single arbitrator appointed by a Judge of the Superior Court of Justice sitting in Toronto, which arbitration shall proceed in accordance with the provisions of the *Arbitration Act, 1991* (Ontario), as amended.

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