

TERMS AND CONDITIONS OF SALE

Effective Date: 09 November 2024

PLEASE READ THESE TERMS (DEFINED BELOW) CAREFULLY BEFORE PURCHASING ANY GOODS (DEFINED BELOW) FROM THE SELLER. BY PURCHASING GOODS FROM THE SELLER, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE WITH THESE TERMS, PLEASE DO NOT PURCHASE ANY GOODS FROM THE SELLER.

YOU SHOULD PRINT A COPY OF THESE TERMS FOR FUTURE REFERENCE.

1. DEFINITIONS

1.1 In these Terms:

- (a) **“Buyer”** means a person who purchases a product through the Service. From time to time, the Buyer is referred to in these Terms as “you”.
- (b) **“Confirmation Email”** has the meaning assigned to it in Subsection 2.3.
- (c) **“Delivery Point”** has the meaning assigned to it in Subsection 4.1.
- (d) **“Goods”** means goods and or services which are sold by the Seller to the Buyer through the Service.
- (e) **“includes”** and **“including”** means including without limiting the generality of the foregoing.
- (f) **“Inspection Period”** has the meaning assigned to it in Subsection 6.2.
- (g) **“Non-Conforming Goods”** means only the following: (i) Goods shipped are different than identified in your Confirmation Email; (ii) Goods’ label or packaging incorrectly identifies its contents; or (iii) Goods were damaged during shipping.
- (h) **“person”** includes natural persons and any type of incorporated or unincorporated entity.
- (i) **“Purchase Data”** has the meaning assigned to it in Subsection 9.2.
- (j) **“Seller”** means LHIFT GOLF, a partnership, including all of its partners, members, officers, agents, users, representatives, contractors, suppliers, customers, licensors, licensees, affiliates, and employees. From time to time, the Seller is referred to in these Terms as “we” or “us”.
- (k) **“Service”** means this website, having the URL <https://www.lhiftgolf.ca/>, and any online services offered on the said website by the Seller as defined in the Terms of Use, available at https://www.lhiftgolf.ca/_files/ugd/4c9625_a533b8d772f2494c8b376d177d4fde67.pdf.
- (l) **“Terms”** means these Terms and Conditions of Sale, and includes the Terms of Use, Privacy Policy on the Service and any other policies, operating rules and procedures referenced herein and/or available by hyperlink in these Terms, and any additional terms, conditions or future modifications as described herein.
- (m) **“Third Party Product”** has the meaning assigned to it in Subsection 7.3.

(n) **“Warranty Period”** has the meaning assigned to it in Subsection 7.1.

2. TERMS AND ACCEPTANCE OF ORDERS

2.1 **Acceptance of Terms.** This is a legal agreement between you and the Seller. These Terms apply to your purchase of Goods through the Service. Each time you purchase Goods through the Service, you

- (a) signify your acceptance and agreement, and the acceptance and agreement of any person you purport to represent, to be bound by these Terms. The Seller reserves the right, at its sole discretion, to change, amend, modify, add or remove terms and conditions contained in these Terms, at any time, without further notice by posting any changes on the Service. Any new terms or conditions will be effective as soon as they are posted and will apply to any purchases made after that date. It is your responsibility to check these Terms every time you make a purchase on the Service; and
- (b) represent and warrant that you have the legal authority to agree to and accept these Terms on behalf of yourself and any person you purport to represent. IF YOU DO NOT AGREE WITH EACH PROVISION OF THESE TERMS, YOU MUST IMMEDIATELY NOTIFY SELLER OF YOUR OBJECTIONS AND YOUR FAILURE TO SO OBJECT AND YOUR ACCEPTANCE OF THE TERMS UPON PURCHASE OF THE GOODS SHALL CONSTITUTE YOUR CONSENT TO THE TERMS HEREOF. IF YOU ARE NOT AUTHORIZED TO AGREE TO AND ACCEPT THESE TERMS ON BEHALF OF THE PERSON YOU PURPORT TO REPRESENT, THEN YOU ARE NOT PERMITTED TO MAKE PURCHASES ON THE SERVICE.

2.2 **Entire Agreement.** These Terms and the Confirmation Email are the only terms which govern the sale of the Goods by Seller to the Buyer, and comprise the entire agreement between the parties, superseding all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of the said contract shall prevail to the extent that they are inconsistent with these Terms.

2.3 **Offer and Acceptance for Orders.** Advertisements on the Service, including the Site, are invitations to you to make offers to purchase products and services on the Service and are not offers to sell. All prices and other amounts appearing on the Service are quoted in Canadian dollars. Your properly completed and delivered electronic order form constitutes your offer to purchase the Goods. Your order will be deemed to be accepted only if and when we send an order acceptance confirmation email to your email address (“**Confirmation Email**”). That Confirmation Email constitutes our acceptance of your order and forms a legally binding contract between you and the Seller in addition to these Terms.

2.4 **Rejection of Orders.** The Seller reserves the right to accept, reject, correct, cancel or terminate any order made by the Buyer, including accepted orders, for any reason and at its sole discretion. The acceptance of an order is subject to verification of the Buyer's information (including shipping information), the availability of the Goods, and compliance with these Terms.

3. PAYMENT

3.1 **Payment Method.** The Seller accepts major credit cards, including Visa, Mastercard, and American Express. The Seller will also accept payment via Apple Pay and Google Pay. Please be sure to provide your exact billing address and telephone number, which should be the address and telephone number connected with your credit card or payment account. Incorrect information may cause a delay in processing your order. The total price of your order will be charged to your method of payment when our order acceptance confirmation email and our order receipt confirmation email have been sent to your email address.

3.2 **Agreement to Pay in Full.** When you submit your electronic order form, you agree to pay in full for the Goods purchased through the Service, and you agree that the Seller may charge your credit card or payment account for any Goods purchased, including any applicable shipping, handling or processing fees, and for any additional amounts (including any taxes, customs fees and late fees, as applicable) as may be accrued to or in connection with your account. Purchases will include appropriate sales tax based on where the product or service is shipped and the sales tax rate(s) in effect at the time your order invoices. **YOU ARE RESPONSIBLE FOR THE TIMELY PAYMENT OF ALL AMOUNTS OWING BY YOU, AND FOR PROVIDING US WITH VALID CREDIT CARD OR PAYMENT ACCOUNT INFORMATION DETAILS FOR PAYMENTS OF ALL SUCH AMOUNTS.**

3.3 **Pricing.** With respect to items sold on the Service, we cannot confirm the price of Goods until you order. Despite our best efforts, a small number of the items on the Service may be mispriced. Following a transaction, if the correct price of a Good sold by us is higher than our stated price, we may, at our discretion, either contact you for instructions before shipping or cancel your order and notify you of such cancellation. Following a transaction, if the correct price of a Good sold by us is lower than our stated price or if you were mistakenly overcharged, you may be eligible for a partial refund. Customers who may be eligible for a refund should contact us at support@lhiftgolf.ca. Photos are merely exemplary of products advertised.

3.4 **Third-Parties.** We retain the right to utilize third-parties in fulfilling any aspect of any transaction, including payment processing, confirming the transaction, providing the product, shipping the product, fulfilling an order, or performing any other aspect of the transaction. For example, upon submitting an order to us, you may receive an email from a third-party with an invitation to review your order.

3.5 **Availability.** You acknowledge that certain products may be subject to certain laws, regulations, or other binding rules that may limit the availability of certain products or your ability to purchase certain products. We make no representation that all listed products are available to be purchased by any customer.

4. DELIVERY OF GOODS

4.1 **Delivery.** The Seller shall deliver the Goods to the shipping address you provided in your electronic order form (the **“Delivery Point”**) using the Seller's standard methods for packaging and shipping the Goods. You hereby waive any requirement for notice with respect to the method of route of transit.

4.2 **Delivery Date.** Any indicated date of delivery is only an approximate delivery date and will not be binding on the Seller. Seller is not liable for or in respect of any loss or damage arising from any delay in filling an order, failure to deliver an order, or delay in delivery of an order for Goods due to any event beyond the Seller's or its subcontractors' reasonable control, including if you fail to submit or later modify information necessary for the delivery of the Goods, or if you are not available to accept delivery of the Goods.

4.3 **Refusing Delivery.** In the event that you refuse to accept delivery of the Goods, you are bound to return such Goods to the Seller at your expense and risk of loss.

4.4 **Non-Delivery.** Buyer shall give written notice to Seller of non-delivery of the Goods within five (5) business days of the date when the Goods would in the ordinary course of events have been received. In such cases, Seller may, at its sole and exclusive discretion, replace such Goods or provide a partial or total refund for such Goods. The foregoing shall constitute Seller's sole liability and Buyer's sole remedies for non-delivery of the Goods.

4.5 **Eligible Addresses.** We only ship products to addresses located in Canada and the contiguous United States.

5. TITLE AND RISK OF LOSS

5.1 **Title and Risk of Loss.** Title and risk of loss passes to you upon transfer of the Goods to the carrier for delivery. Immediately upon transfer of the Goods to the carrier for delivery to the Delivery Point, Buyer assumes the entire risk of loss, including loss or interruption of use of, or damage to, the Goods from any cause whatsoever.

6. CANCELLATION, INSPECTION AND REJECTION OF NON-CONFORMING GOODS, AND REFUNDS

6.1 **Cancellation.** You may request to cancel your order at any time prior to shipment by notifying the Seller in writing of your intention to cancel your order. If the Goods have already been shipped by the Seller, your request will be denied and your sole remedy shall be a request for a refund as described in Subsection 6.3 upon delivery of the Goods. You acknowledge that, depending on the form of payment you use, return payment charges from a financial institution or third party payment processor may apply, which you will be responsible to pay. The Seller does not charge additional fees for return payments on cancelled orders other than for the actual cost incurred at the applicable financial institution or third party payment processor to process the return payment, if any.

6.2 **Inspection and Rejection of Non-Conforming Goods.** Upon delivery of the Goods:

- (a) You shall inspect the Goods within 24 (twenty-four) hours of receipt ("Inspection Period"). You will be deemed to have accepted the Goods unless you notify the Seller in writing of any Non-Conforming Goods during the Inspection Period. The Seller may require you to furnish such written evidence or other documentation as reasonably required upon request, including proof of purchase.
- (b) Notwithstanding Subsection 5.1 of these Terms, if you notify the Seller of any Non-Conforming Goods within the Inspection Period, then subject to the results of any investigation the Seller chooses to conduct with the carrier, the Seller may, in its sole and exclusive discretion, (i) replace such Non-Conforming Goods with conforming Goods, or (ii) credit or refund you the purchase price, together with any reasonable shipping and handling expenses incurred by you in connection therewith. The Seller may require you to ship, at your expense and risk of loss, the Non-Conforming Goods to the address the Seller advises you of in writing. If the Seller exercises its option to replace Non-Conforming Goods, the Seller shall, after receiving your shipment of Non-Conforming Goods, ship to you, at your expense and risk of loss, the replaced Goods to the Delivery Point. For

greater clarity, the Seller is under no obligation to replace Non-Conforming Goods or credit or refund you the purchase price or any shipping and handling expenses for the Non-Conforming Goods.

- (c) You acknowledge that, depending on the form of payment you use, return payment charges from a financial institution or third-party payment processor may apply which you will be responsible to pay.
- (d) You acknowledge and agree that the remedies set forth in Subsection 6.2(b) are your exclusive remedies for the delivery of Non-Conforming Goods. Any right of rejection or revocation of acceptance are waived if you fail to give the Seller notice of any claim within the Inspection Period. For further clarity, Goods damaged in transit will not be accepted for a refund under Subsection 6.3 below.

6.3 **Refunds.** The Seller may accept the return of conforming Goods only in the following circumstance and on the following conditions:

- (a) Unsatisfied Buyers may contact the Seller directly for a refund within thirty (30) days from the date of delivery for any reason provided subject to this Subsection 6.3. Goods returned to the Seller without first requesting a refund will not be accepted.
- (b) To initiate a refund, please contact the Seller and provide proof of purchase. The Seller may require the return of the Goods unused, uninstalled and in their original condition and packaging, at your expense and risk of loss, before issuing a refund. The Seller will inspect the returned Goods to determine whether they are unused and in their original, resaleable condition upon receipt and will advise you of whether the return is accepted, where Seller may choose to accept or reject such return in its sole and exclusive discretion.
- (c) The refund shall be issued only after the Seller has confirmed the return is accepted and solely for the purchase price paid by you, excluding any shipping, handling, or additional charges incurred by you. You acknowledge that, depending on the form of payment you use, return payment charges from a financial institution or third-party payment processor may apply which you will be responsible to pay.
- (d) The availability of a refund applies only to the original buyer who purchased the Goods directly from the Seller, and does not cover Goods that have been resold. For further clarity, the right to the refund within thirty (30) days of the date of delivery is non-transferable and may not be assigned or extended to any other party.
- (e) Any right to request a refund is waived if you fail to give the Seller notice of your request for a refund within the 30 (thirty) day period or if you, or anyone in your possession, allow to access the Goods, has used, installed, modified, altered, damaged, improperly stored or handled, improperly tested, neglected or misused the Goods or taken any other act inconsistent with rejection or revocation of acceptance.

7. LIMITED WARRANTY AND DISCLAIMERS

7.1 **Limited Warranty.** Seller warrants to Buyer that for a period of one (1) year from the date of shipment of the Goods ("Warranty Period"), that such Goods will be free from defects in material and workmanship.

7.2 **DISCLAIMER.** EXCEPT FOR THE WARRANTIES SET FORTH IN SUBSECTION 7.1, SELLER MAKES NO CONDITION OR WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) CONDITION OR WARRANTY OF MERCHANTABILITY; OR (ii) CONDITION OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (iii) CONDITION OR WARRANTY OF TITLE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE AND EXPRESSLY DISCLAIMS ALL SUCH OTHER WARRANTIES.

7.3 **Third Party Products Excluded.** Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Subsection 7.1. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS, CONDITIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) CONDITION OR WARRANTY OF MERCHANTABILITY; (b) CONDITION OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) CONDITION OR WARRANTY OF TITLE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE AND EXPRESSLY DISCLAIMS ALL WARRANTIES.**

7.4 **General Warranty Exclusions.** The Seller shall not be liable for a breach of the warranty set forth in Subsection 7.1 if:

- (a) Buyer makes any further use of such Goods after giving notice of receipt of Goods that are not free from defects in material and workmanship;
- (b) the Goods have been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or where you have failed to follow the Seller's oral or written instructions regarding the storage, installation, commissioning, use or maintenance of the Goods; or
- (c) Buyer alters or repairs such Goods without the prior written consent of Seller.

7.5 **Notice and Return.** The Seller shall not be liable for a breach of the warranties set forth in Subsection 7.1 unless: (i) Buyer gives written notice of the defective Goods, reasonably described, to Seller within the Warranty Period; (ii) if applicable, Seller is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Subsection 7.1 to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller verifies Buyer's claim that the Goods or Services are defective, where Seller may grant or refuse such verification in its sole and exclusive discretion.

7.6 **Remedies.** Subject to Subsections 7.4 and 7.5 above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.

7.7 **LIMITATION OF REMEDY AND LIABILITY. THE REMEDIES SET FORTH IN SUBSECTION 7.6 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SUBSECTION 7.1.**

8. DISCLAIMERS AND LIMITATION OF LIABILITY

8.1 **USE AT OWN RISK.** YOU AGREE THAT THE GOODS ARE PROVIDED BY THE SELLER ON AN "AS IS" AND "AS AVAILABLE" BASIS, UNLESS OTHERWISE SPECIFIED IN WRITING. YOU FURTHER ACKNOWLEDGE AND AGREE THAT THE INSTALLATION AND USE OF THE GOODS IS A POTENTIALLY DANGEROUS ACTIVITY AND INVOLVES THE RISK OF SERIOUS INJURY, DISABILITY, DEATH OR PROPERTY DAMAGE. YOUR USE OF THE GOODS SHALL BE AT YOUR SOLE RISK.

8.2 **LIMITATION OF LIABILITY.** IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHATSOEVER, AND ANY LOST INCOME, PROFITS OR REVENUES OR DIMINUTION IN VALUE, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), ANY OTHER THEORY OF LIABILITY, OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

8.3 **AGGREGATE LIABILITY.** IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS AND SERVICES SOLD HEREUNDER IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE EVENT WHERE SUCH LIABILITY FIRST AROSE.

9. YOUR INFORMATION

9.1 **Privacy Policy.** The Seller collects, uses and discloses your personal information in accordance with its Privacy Policy, incorporated herein by reference, which is available at https://www.lhifftgolf.ca/_files/ugd/4c9625_2976d313248a46b9b3382e69cb878576.pdf, or upon written request. The Seller's Privacy Policy may be changed from time to time by the Seller in its discretion without any notice or liability to you or any other person by making an amended Privacy Policy accessible through the Service.

9.2 **Accurate Information.** You agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the Service, including your name, phone number, shipping address, email address, geographical location, payment information (such as credit card numbers and expiration dates), billing address, and any other transaction-related information (the "Purchase Data"). If you provide any information that is untrue, inaccurate, not current or incomplete, the Seller has the right to suspend or terminate your order and refuse any and all current or future orders.

9.3 **Liability for Incorrect Information.** We rely on the information you provide through the Service, including Purchase Data, which must be true, accurate, current and complete. You will be solely responsible and liable for any and all loss, damage, and additional costs that you, we or any other person may incur as a result of your submission of any false, incorrect or incomplete information or your failure to update your Purchase Data if required.

9.4 **Encryption.** The Service uses encryption technology to protect credit card information and payment account information from access by unauthorized third parties. However, the Seller cannot guarantee that the encryption technology will operate as intended or

that a third party will not be able to access such information. BY SENDING ANY SENSITIVE INFORMATION OVER THE INTERNET IN CONNECTION WITH YOUR USE OF THE SERVICE, YOU AGREE THAT THE SELLER WILL NOT HAVE ANY LIABILITY IF THE APPLICABLE ENCRYPTION TECHNOLOGY FAILS TO PROTECT YOUR INFORMATION OR IF YOUR INFORMATION IS OTHERWISE COMPROMISED.

10. TERMINATION

10.1 **Termination.** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement and such failure continues for fourteen (14) days after Buyer's receipt of written notice of nonpayment; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

11. GENERAL

11.1 **Governing Law and Forum.** The Seller is physically located within the Province of Manitoba, Canada. These Terms will be governed by the laws of the Province of Manitoba and the federal laws of Canada and shall be treated in all respects as a Manitoba contract, without reference to the principles of conflicts of law, and the parties hereto expressly attorn to the exclusive jurisdiction of the courts of Manitoba for enforcement thereof. Notwithstanding the foregoing, you and the Seller may apply to the court in any jurisdiction to obtain injunctive relief and any other available equitable or legal remedy regarding any matter relating to confidentiality, intellectual property rights or proprietary rights. You and the Seller expressly exclude the *United Nations Convention on Contracts for the International Sale of Goods* and *The International Sale of Goods Act (Manitoba)*, as amended, replaced or re-enacted from time to time.

11.2 **Notice.** Any notice required or authorized under these Terms to be given by either party to the other party shall be in writing and may be delivered as follows:

- (a) **To You.** We may provide any notice to you under these Terms by: (i) sending a message to the email address you provide and consent to us using; or (ii) posting to the Service. Notices sent by email will be effective when we send the email, and notices we provide by posting will be effective upon posting. It is your responsibility to keep your email address current.
- (b) **To Us.** To give us notice under these Terms, you must contact us as follows: in person or by courier, transmitted by facsimile or via email, or sent by prepaid registered mail, and addressed to the addresses described below or such other parties or such other addresses as we may notify you of in writing, in accordance with subsection 11.2(a):

LHIFT Golf
4941 Rebeck Road
Narol, MB R1C 0C9
Canada
Email: support@lhfiftgolf.ca

Any notice given shall be deemed to be received on the date of delivery by person, by courier or by transmission by facsimile, as the case may be, or on the seventh day from the date of mailing. Any notice sent via email shall be deemed to be received on the date of transmission if confirmation of delivery is obtained and if such notice is also given by courier.

11.3 **Electronic Communications.** You consent to the exchange of information and documents between us electronically over the internet or by email. You agree that this electronic agreement shall be equivalent of a written paper agreement between us.

11.4 **Goods Not for Resale or Export.** You represent and warrant that you are buying the Goods for your own personal use, and not for resale or export.

11.5 **Relationship.** No agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by these Terms.

11.6 **No Third Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

11.7 **Assignment and Enurement.** The Seller may assign these Terms to any third party. These Terms cannot be assigned or transferred, in whole or in part, by you. These Terms will enure to the benefit of and be binding upon each of you and the Seller and our respective heirs, executors, personal representatives, successors and permitted assigns.

11.8 **No Waiver.** No waiver of any provision of these Terms shall be binding on the Seller unless executed by the Seller in writing. No waiver of any of the provisions of these Terms shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. The failure of the Seller to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision.

11.9 **Severability.** Any provision of these Terms which is held by a court of competent jurisdiction to be illegal, invalid or unenforceable in such jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such illegality, invalidity or unenforceability and shall otherwise be enforced to the maximum extent permitted by law, all without affecting the remaining provisions of these Terms or affecting the legality, validity or enforceability of such provision in any other jurisdiction.

11.10 **Survival.** All obligations under these Terms that necessarily extend beyond termination or expiration of these Terms in order to fully achieve their intended purpose shall survive termination or expiration of these Terms, including without limiting the generality of the foregoing, all indemnification provisions, intellectual property provisions, ownership provisions, waivers, limitation of liability provisions, disclaimers, confidentiality provisions, obligations, representations, warranties, covenants and ownership provisions.

11.11 **Headings.** All article or section headings are for reference and convenience only and shall not be considered in the interpretation of these Terms.

11.12 **Currency.** All references to money amounts in these Terms, unless otherwise specified, are in Canadian dollars.