

bildtec.



Authorized Product User Terms & Conditions

This **AUTHORIZED USER AGREEMENT** (this “Agreement” or this “Authorized USER Agreement”) is entered into effective the dated that this agreement has been acknowledged by the confirmation on the Bildtec Website (the “Effective Date”) by and between **Bildtec Building Systems Inc.** (“Supplier”) and (“USER”).

The parties agree as follows to the following Terms & Conditions:

1. Appointment

- a. Subject to the terms and conditions of this *Authorized USER Agreement*, the Supplier appoints the USER, and the USER accepts such appointment and agrees to act as the Supplier's USER of the Supplier Products within the geographical territory defined as follows (the “Territory”):

- ONTARIO

The USER acknowledges that its employs Accredited and Licensed Professional Engineers in the Province of Ontario with the expertise and knowledge to design systems using BILDTEC technical data for its components. The USER with the aid the Professional Engineer(s) it employs is Licensed to Stamp and thus certify its design drawings for its own use. The USER agrees to exercise its best efforts to (a) use the Bildtec System(s) and or Components as per Bildtec’s designed applications of its products; (b) abide by Supplier's policies and procedures with regard to the purchase, installation and support of Supplier Products; (iii) uphold the rules and regulations as required by the Ontario Professional Engineers Association; and

- b. Conduct its business in a manner that reflects favorably at all times on the Supplier Products and the good name, goodwill and reputation of Supplier or its affiliates. USER acknowledges and agrees that it has no rights or claims of any type to the Supplier Products, or any aspect thereof, except such rights as are created by this *Authorized USER Agreement*. USER agrees that it shall not and is not authorized

to promote, resell, deliver, install, service or otherwise support the Supplier Products outside of the Territory unless it has prior written authorization from the Supplier/

- c. The USER agrees to only utilize the Supplier's substructure systems in conjunction with BILDTEC Approved or Certificated Porcelain Manufacturer(s).

2. Products and Pricing

Supplier Products consist of the items, components and classification of items that make up the substructure system(s). The Project Pricing or Wholesale Purchase Price to the USER of all Supplier Products delivered pursuant to this Agreement shall be as set forth in Annual Price List(s) and or Project Price Proposal(s) provided. These prices are subject to change from time to time.

3. Approvals

USER shall obtain, at its own expense, such approvals, Sales Licenses, consents, certifications, permits and other authorizations, including all approvals as are required to qualify the Supplier Products for sale in the Territory for the purposes governmental and non-governmental if required (collectively, the "Approvals"), as soon as is reasonably practicable in any of the Territories contemplated in this agreement; provided, however, that Supplier shall not be obligated to deliver any Supplier Products unless and until USER provides Supplier with satisfactory evidence that such Approvals have been obtained in Territories that require any such approvals. Supplier agrees to cooperate with USER to obtain such Approvals.

4. Appointment

Supplier's appointment of the authorized USER in Section 1 of this Agreement is a conditional appointment to use and install the Product(s) in the Territory.

5. Sales Outside of the Territory

The USER can promote the Use of Supplier Products in the Territory on its website, Social Media outlets, Print Media, Television Media and all other forms of media utilized by the USER. Notwithstanding the foregoing sentence, the USER shall not actively advertise or actively solicit orders for Supplier Products outside of the

Territory. In the event USER receives an order from outside its Territory, USER will work with the Supplier to fulfill the order in a manner financially beneficial to the Supplier and USER; and the USER located in the region where the order originated (as determined by Supplier in its sole discretion and in compliance with applicable law).

7. No Third Party Agents

The USER shall not sell/license the Supplier Product(s) through third parties (such as similar Product manufacturers, distributors, value added re-sellers or other USER's or agents) without Supplier's prior written consent to the proposed relationship (including the specific term of such relationship).

8. Orders

All orders will be transmitted by USER to Supplier and shall be subject to acceptance in writing by Supplier. Supplier may (in its sole discretion) refuse acceptance of any order. Each order submitted shall constitute an offer by the USER to purchase or license the Supplier Product(s) described in such order and, upon acceptance by Supplier, shall give rise to a contractual obligation of the USER to purchase or license the said product(s) on the terms and conditions set forth in this Agreement. Conflicting, inconsistent or additional terms or conditions contained in any order submitted by the USER shall not be binding unless the Supplier specifically accepts such terms or conditions in writing. All expenses arising out of the change or cancellation of an order after acceptance by Supplier, including the cost of diversion, Cancellation or re-consignment of shipments, and any reasonable restocking charge, shall be paid by the USER to Supplier, on demand.

9. Payment and Delivery

The purchase price shall be quoted and payable in Canadian Dollars for Product(s) delivered within Canada and U. S. Dollars for Products(s) delivered with the United States to the Supplier at the address specified on the invoice. Unless otherwise agreed by the parties in writing, payment shall be made by the USER by wire transfer or EFT in advance of shipment from the Supplier facilities in either Canada or United States. The Supplier Product(s) shall be F.O.B. 345 Horner Avenue, Toronto, Ontario, Canada the Supplier's facilities. Risk of loss for the Supplier Products shall pass upon delivery to the named carrier at Supplier's facilities. The USER will pick up the Product(s) from the Suppliers facilities at its own expense.

10. Security Interest

If the USER received Terms for a specific Project or component item Sales, Notwithstanding the passage of title, Supplier shall retain a security interest in all Supplier Product(s) delivered until amounts for which USER is responsible under this Agreement have been received by Supplier. Supplier shall have all rights of a secured party, including the right to file a financing security under PPSA or a comparable law within the Territory to protect Supplier's security interest. In the event USER defaults in its payment obligations, Supplier will have the right to recover from the USER all Supplier Products on said premises, to recover all Supplier Products supplied by USER to its customers and associated supplies, and to pursue any other remedy existing at law or equity. The USER, for itself and on behalf of its customers, hereby waives a prior hearing and demand for Supplier's exercise of such rights.

11. Resale Price and Expenses

The USER shall set the selling price at which the Supplier Product(s) are sold by it in the Territory. The Supplier will set the MRSP annually for the overall Canadian and US Marketplace. The USER shall be solely responsible for the costs involved in the distribution of the Supplier Product(s), including sales costs, import duties if applicable, any and all banking charges, shipping and handling costs, installation costs or other operating expenses, wire transfer fees and other costs associated with making payment, and taxes, however designated.

12. Promotional Literature

Supplier agrees to furnish, in English, to USER (via email and or BILDTEC SUPPORT in pdf format) such descriptive literature, advertising materials, technical manuals and sales promotional collateral concerning the Supplier Product(s) as Supplier may, from time to time, have available for such purposes. USER shall have the right to translate such materials into the languages of the Territory at its own expense. Supplier shall retain ownership of all proprietary rights, including, intellectual property rights to the translated versions of the materials. USER will be solely responsible for the accuracy

of the translations and will provide Supplier with a copy of each translated work. USER shall promptly revise (at USER's costs) the materials upon notice from Supplier.

13. Use of Trademarks

The USER shall not be permitted to print, post or otherwise use letterhead, calling cards, literature, signage or other representations in the name of Supplier (or any of its affiliates) or to represent itself as Supplier (or any of its affiliates) or make commitments on behalf of Supplier (or any of its affiliates) without the express, written permission of Supplier. USER expressly agrees that no license to use Supplier (or any of its affiliates' trademarks, trade names, service marks or logos (collectively, the "Supplier Trademarks") is granted by this Agreement. USER may, however, indicate in its advertising and marketing materials that it is an *Authorized USER* for Supplier Products and may, as necessary, incidentally use the Supplier Trademarks in its sales/marketing efforts. Upon request by Supplier, USER will place proper trademark, copyright and patent notices in its advertisements, promotional brochures and other marketing materials for Supplier Products. Supplier reserves the right to review USER's marketing and sales materials prior to their publication or use. No rights shall inure to USER as a result of any such use or reference, and all such rights, including goodwill shall inure to the benefit of and be vested in Supplier. Upon termination of this Agreement for any reason, USER will immediately cease using the Supplier Trademarks as allowed in this Section and shall immediately take all appropriate and necessary steps to (a) remove and cancel any listings in public records, telephone books, other directories, remove any visual displays or literature at USER's location, the Internet and elsewhere that would indicate or would lead the public to believe that USER is the representative of Supplier (or any of its affiliates) or Supplier's (or any of its affiliates') products or services; and (b) cancel, abandon or transfer (as requested by Supplier) any product licenses, trade name filings, trademark applications or registrations or other filings with the governments of the Territory (whether or not such filings were authorized by Supplier) that may incorporate the Supplier Trademarks or any marks or names confusingly similar to the Supplier Trademarks. Upon USER's failure to comply with this paragraph, Supplier may make application for such removals, cancellations, abandonments or transfers in USER's name. USER shall render assistance to and reimburse Supplier for expenses incurred in enforcing this paragraph.

14. Infringement by Third Parties

USER will cooperate fully with and assist Supplier in its efforts to protect Supplier's

Intellectual property rights within the Territory and shall exercise reasonable diligence to detect and shall immediately advise Supplier if USER has knowledge of any infringement of any patents, trademarks, copyrights or other intellectual property rights owned or used by Supplier.

15. Confidential Information; No Reverse Engineering

The Supplier may provide the USER with certain confidential or proprietary information ("Confidential Information"). Confidential Information includes information, whether written, electronic or oral, which USER knows or reasonably should know is proprietary, confidential or a trade secret of Supplier, including any and all technical or business information, Software and documentation, specifications and design information for the Supplier Products, servicing information, customer lists, pricing information, marketing information, policies, procedures and manuals regarding Supplier's distributors or distribution channels, research and development and other proprietary matter relating to the Supplier Products or business of Supplier. USER will refrain from using the Confidential Information except to the extent necessary to exercise its rights or perform its obligations under this Agreement. USER will likewise restrict its disclosure of the Confidential Information to those who have a need to know such Confidential Information in order for USER to perform its obligations and enjoy its rights under this Agreement. Such persons will be informed of and will agree to the provisions of this Section and USER will remain responsible for any unauthorized use or disclosure of the Confidential Information by any of them. Upon termination of this Agreement (or earlier, upon request by Supplier), USER shall cease to use all Confidential Information and promptly return to Supplier (or destroy, upon request by Supplier) any documents (whether written or electronic) in its possession or under its control that constitutes Confidential Information. During the term of this Agreement and thereafter, neither USER, nor USER's employees, independent contractors nor other agents shall (a) reverse engineer, decompile or otherwise disassemble the Supplier Products from the products themselves or from any other information made available to them, or (b) otherwise use any of the Confidential Information or Supplier provided training to support, maintain or otherwise service a third party's products or services.

16. Compliance with Laws

In connection with its obligations under this Agreement, the USER agrees to comply with all Federal, Provincial, State, Local Municipal and Foreign laws, constitutions, Building Codes, statutes and ordinances of any governmental authority that may be

applicable to the USER, its activities under this Agreement or the Supplier Product(s), including all applicable export control laws and regulations. The USER agrees to take all such further acts and execute all such further documents as Supplier reasonably may request in connection with such compliance.

17. Product Warranties

a. *Limited Manufacturing Warranty:* The Supplier warrants for a period of 352 days following delivery of the Products (the "Warranty Period") that the Products shall be free from defects in materials and workmanship. Supplier's sole obligation under this warranty shall be to provide, at no charge to USER, replacement Products. Defective Products must be returned to the Supplier (at USER's cost) in order to receive warranty replacement (unless Supplier determines such return is not necessary) and shall become Supplier's property. For a warranty claim to be made, The USER must follow the procedures established by Supplier from time to time.

b. *Warranty of Good Title:* The Supplier agrees to indemnify the USER from any liability to any third party for infringement of Canadian and or United States patents, copyrights, trademarks or trade secrets with respect to Supplier Products sold by the USER pursuant to this Agreement. This obligation does not extend to any foreign patents, copyrights, trademarks, or trade secrets or to any Supplier Products manufactured or modified by Supplier to meet USER's or a customer's specifications. Supplier shall, at its option, be allowed sole and exclusive control over the defense, settlement and compromise of any claims of infringement. Supplier must be notified in writing by USER within 10 days of any third party claim which, if upheld, might result in a liability subject to indemnification under this Subsection. If the distribution of the Supplier Products is threatened by a claim of infringement, or is likely to be enjoined or liability for infringement is found, Supplier may, in its discretion and at its sole option: (i) procure for USER the right to continue distributing the Supplier Products; or (ii) modify the Supplier Products so as to make them non-infringing; or (iii) substitute non-infringing products; or (iv) refund the price paid by USER for the Supplier Products in its possession subject to their return by USER and terminate this Agreement with respect to the allegedly infringing products. THIS SUBSECTION STATES THE ENTIRE LIABILITY OF THE SUPPLIER WITH RESPECT TO INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT BY ANY SUPPLIER PRODUCT

- d. Disclaimer. EXCEPT AS PROVIDED IN THIS SECTION, SUPPLIER MAKES NO OTHER WARRANTY, PROMISE OR OBLIGATION WITH RESPECT TO THE SUPPLIER PRODUCTS, THEIR USE, REPAIR OR PERFORMANCE. SUPPLIER DISCLAIMS ANY WARRANTY, PROMISE OR OBLIGATION THAT THE SUPPLIER PRODUCTS SHALL BE FIT FOR ANY PARTICULAR USE OR PURPOSE, REGARDLESS OF WHETHER SUCH USE OR PURPOSE IS MADE KNOWN TO SUPPLIER OR NOT. SUPPLIER DISCLAIMS ANY WARRANTY, PROMISE OR OBLIGATION THAT THE SUPPLIER PRODUCTS CONFORM TO ANY SAMPLES OR MODELS. SUPPLIER HEREBY DISCLAIMS ALL OTHER WARRANTIES, PROMISES AND OBLIGATIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTIES, PROMISES AND OBLIGATIONS ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. THE WARRANTIES SET FORTH IN THIS SECTION ARE INTENDED SOLELY FOR THE BENEFIT OF *USER*. ALL CLAIMS UNDER THIS AGREEMENT SHALL BE MADE BY *USER* AND MAY NOT BE MADE BY *USER'S* CUSTOMERS.

USER's Warranties: The USER agrees, at its cost, to provide its customers with, at a minimum, substantially the same warranties as set forth in Subsection 17(a). The USER will assume all costs involved in providing any additional warranties.

18. Reporting

Every month the USER shall e-mail to the Supplier a rolling 3 month information in a timely manner in response to the Supplier requests for information pertaining to USER's activities in the Territory. Such requests may include, prospect lists and status of prospect sales activity, information applicable to specific sales activities, data regarding the design and installation in the Territory, including product operational data and other information required by Supplier to effectively document and register the product use for the purpose of Warranties and User License.

20. Term and Termination

Unless earlier terminated as provided in this Agreement, the term of this Agreement shall commence as of the Effective Date and shall automatically expire at the end of one (1) year following the Effective Date. The Agreement will automatically renew on the anniversary date of the agreement unless the Supplier provides written notice to the USER via email 30 days prior to the anniversary date. Either party may terminate this Agreement as follows: (a) Immediately upon one hundred & twenty (120) days'

prior notice with or without cause; (b) Immediately, for any breach or default of this Agreement by the other party which has not been cured within thirty (30) days after the delivery of notice thereof to the party alleged to be in breach, specifying with particularity the condition, act, omission or course of conduct asserted to constitute such breach or default; (c) Immediately, upon the dissolution, insolvency or any adjudication in bankruptcy of, or any assignment for the benefit of creditors by, the other party or if the other party ceases to conduct business in the ordinary or normal course; (d) Immediately, if required by law or by any rule, regulation, order, decree, judgment or other governmental act of any governmental authority; or (e) Immediately by Supplier if Supplier reasonably suspects that USER breached any of its obligations of confidentiality or protection of Supplier's proprietary rights.

21. Effect of Termination

Upon notice of termination of this Agreement for any reason, the following provisions shall apply: (a) Supplier shall have the right to immediately appoint another USER to serve existing customers and continue sales efforts in the Territory; (b) Supplier may continue to fill any orders from USER that have been accepted by Supplier prior to the termination of this Agreement under the terms and conditions of this Agreement; (c) All outstanding balances owed by USER to Supplier shall become immediately due and payable to Supplier; (d) Both parties shall at all times thereafter refrain from any conduct that would be inconsistent with or likely to cause confusion with respect to the nature of their business relationship; (e) All rights granted to USER under this Agreement shall cease, and where appropriate, revert to Supplier; and (f) Supplier, in its sole discretion, shall have the right, but shall in no way be obligated (unless otherwise required by law), to inspect and repurchase all or any quantity of the Supplier Products (including Supplier Products for demonstration, displays and components of the Supplier Products) then owned or ordered by USER at the lesser of (i) the original price paid by USER for such Supplier Products, or (ii) at the then-current price to USER, and under both (i) or (ii), less any applicable restocking or refurbishing charge. Supplier shall have the right to assign such option to repurchase to any other person whom it may designate. No consideration or indemnity shall be payable to USER either for loss of profit, goodwill, customers or other like or unlike items, nor for advertising costs, costs of samples or supplies, termination of employees, employees' salaries and other like or unlike items. In no event shall USER continue to represent itself as a Supplier USER or representative after termination of this Agreement. The Supplier shall have no liability to the USER by reason of any termination by Supplier. USER shall indemnify and hold harmless Supplier from and against any and all liability, loss, damages and costs (including reasonable attorneys' fees) arising out of any claim by USER or any third party standing in the right of Distributor to any right of entitlement contrary to the express terms of this Section.

22. Indemnification

The USER agrees to indemnify and hold Supplier harmless from any and all actions, awards, claims, losses, damages, costs and expenses (including reasonable attorneys' fees) attributable to USER's breach of this Agreement or to any negligent, grossly negligent, willful or unlawful acts or omissions of USER, its employees, officers, agents, subcontractors, USERS or representatives.

23. Relationship of the Parties

The USER is an independent corporation and not an employee, agent, affiliate, partner or joint venture with or of the Supplier. Neither the USER nor the Supplier shall have any right to enter into any contracts or commitments in the name of, or on behalf of the other or to bind the other in any respect whatsoever, except insofar as is allowed by this Agreement.

24. Force Majeure

Neither party shall be liable in the event that its performance of this Agreement is prevented, or rendered so difficult or expensive as to be commercially impracticable, by reason of an Act of God, labor dispute, unavailability of transportation, goods or services, governmental restrictions or actions, war (declared or undeclared) or other hostilities, or by any other event, condition or cause which is not foreseeable on the Effective Date and is beyond the reasonable control of the party. It is expressly agreed that any failure of the Canadian Government to issue a required license for the export of any Supplier Product ordered by USER shall constitute an event of force majeure. In the event of non-performance or delay in performance attributable to any such causes, the period allowed for performance of the applicable obligation under this Agreement will be extended for a period equal to the period of the delay. However, the party so delayed shall use its best efforts, without obligation to expend substantial amounts not otherwise required under this Agreement, to remove or overcome the cause of delay. In the event that the performance of a party is delayed for more than 6 months, the other party shall have the right, which shall be exercisable for so long as the cause of such delay shall continue to exist, to terminate this Agreement without liability for such termination.

25. Limitation of Liability

SUPPLIER SHALL IN NO EVENT BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OR FOR ANY LOST PROFITS, LOST SAVINGS OR LOSS OF REVENUES SUFFERED BY *USER* ARISING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE SALE, DISTRIBUTION OR USE OF SUPPLIER PRODUCTS. *USER* SHALL INDEMNIFY THE *SUPPLIER* AND HOLD IT HARMLESS FROM ANY CLAIMS, DEMANDS, LIABILITIES, SUIT OR EXPENSES OF ANY KIND ARISING OUT OF THE SALE, SUBLICENSE OR USE OF SUPPLIER PRODUCTS IN THE TERRITORY OR BY *USER'S* CUSTOMERS. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY REASON.

26. Governing Law

This Agreement shall be governed in all respect by the laws of the Province of Ontario, Canada, which shall be applied without reference to any conflict-of-laws rule under which different law might otherwise be applicable. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any purchases or transactions entered into pursuant to this Agreement. Venue for any lawsuits brought by the parties to this Agreement against each other regarding or as a result of this Agreement shall be adjudicated in the City of Toronto, Province of Ontario. The Distributor hereby submits itself to the exclusive jurisdiction of said courts and consents to service of process by confirmed facsimile transmission or commercial courier (with written verification of receipt returned to the sender).

27. Assignment and Delegation

The *USER* shall have no right to assign any of its rights or delegate its obligations under this Agreement without the prior written consent of Supplier. Any assignment or delegation attempted without such written consent shall be void and of no legal effect whatsoever. This Agreement shall be binding upon the parties' respective successors and permitted assigns.

28. Severability

In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court or arbitration decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provisions shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court or arbitration decision.

29. Construction

The headings or titles preceding the text of the Sections and Subsections are inserted solely for convenience of reference, and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction or effect of this Agreement. Both parties have participated in the negotiation and drafting of this Agreement. This Agreement is executed in the English language and may be translated into another language for informational purposes only. In the event an ambiguity or question of intent or interpretation arises, the English version of this Agreement shall prevail and this Agreement shall be construed as if drafted by both of the parties and no presumption or burden of proof shall arise favoring or disfavoring either party by virtue of the authorship of any of the provisions of this Agreement.

30. Notice

Any notice, consent or other communication required or permitted under this Agreement shall be written in English and shall be deemed given when (a) delivered personally; (b) sent by confirmed Email transmission; or (c) sent by commercial courier with written verification of receipt returned to the sender. Notice, consent or other communications (but not service of process) may also be given by e-mail. Rejection or other refusal to accept or the inability to deliver because of changed address or Email address of which no notice was given shall be deemed to constitute receipt of the notice, consent or communication sent. Names, addresses and email addresses for notices (unless and until written notice of other names, addresses and email addresses are provided by either or both parties) are provided below.

31. Entire Agreement; Modifications; No Waiver; Counterparts and Survival

This Agreement and any Exhibit that may be attached hereto (which is specifically incorporated herein by this reference) contain the full and entire agreement between the parties with respect to the subject matter hereof. It supersedes all prior negotiations, representations and proposals, written or otherwise, relating to its subject matter. Any modifications, revisions or amendments to this Agreement must be set forth in a writing signed by authorized representatives of both parties. USER acknowledges and agrees that any failure on the part of Supplier to enforce at any time or for any period of time, any of the provisions of this Agreement shall not be deemed or construed to be a waiver of such provisions or of the right of Supplier thereafter to enforce each and every provision. This Agreement may be made in several counterparts, each of which shall be deemed an original. The provisions of this Agreement that, by express terms of this Agreement, will not be fully performed during the term of this Agreement, shall survive the termination of this Agreement to the extent applicable.