AGREEMENT OF MOVABLE HYPOTHEC -

 (WITHOUT DELIVERY)

The effective date of this Agreement of Movable Hypothec Without Delivery (the “Agreement”) is [DATE],

**BETWEEN: [YOUR COMPANY NAME]** (the "Purchaser"), a company organised and enduring by the rulings of the [State or Province] of [STATE/PROVINCE], with its head office located at:

 [YOUR COMPLETE ADDRESS]

**AND: [COMPANY NAME]** (the "Seller"), a company organised and enduring by the rulings of the [State/Province] of [STATE/PROVINCE], with its head office located at:

 [COMPLETE ADDRESS]

**1. INTERPRETATION**

**DEFINITIONS**

The following terms and expressions, wherever used in these presents or in any deed or agreement supplemental or ancillary thereto, unless there be something in the subject or the context inconsistent therewith, shall have the following meanings:

1.1 “Contract” means the Sales Contract (including the terms and conditions, warranties, description of buyer’s obligations and other appendices annexed thereto) signed by Purchaser on [DATE] and accepted by Seller on [DATE] pursuant to which Seller agreed to sell and Purchaser agreed to purchase the Equipment, and which forms Appendix 1 hereto, as same may be amended, restated, renewed or replaced from time to time;

1.2 “Equipment” means the machinery and equipment purchased by Purchaser from Seller and more fully described in the Contract and the appendices thereto, as reproduced in Appendix 2 hereto.

All capitalised terms not otherwise defined herein shall have the meaning assigned thereto in the Contract. The terms of the Contract are incorporated herein by reference and shall prevail in the event of any conflict between the terms hereof and the terms thereof.

**2. OBLIGATIONS SECURED**

2.1 The hypothecs hereby constituted secures the performance by Purchaser of all its obligations, direct and indirect, absolute and contingent, presently due and hereafter to become due to Seller pursuant to the Contract (the “Obligations”). Without in any way limiting the generality of the foregoing, the Obligations include the payment by Purchaser to Seller of the purchase price for the Equipment in the amount of [AMOUNT] (the “Purchase Price”) plus interest thereon for late payments at the rate of [%] per month or [%] per annum, which amounts shall be payable in accordance with the terms and conditions for payment contained in the Contract and incorporated herein by reference, as same may from time to time be amended or replaced.

**3. HYPOTHECS**

3.1 As security for the full and final performance of the Obligations, as well as for the payment of interest on overdue interest and the recovery by Seller of all costs and expenses arising from the preservation of the Equipment and the realisation of the hypothec created herein, Purchaser hereby grants a movable hypothec without delivery to and in favour of Seller with respect to the Equipment to the extent of [AMOUNT], with interest thereon at the rate of [%] per annum, calculated and payable monthly, with interest on unpaid interest at the same rate and on the same terms.

3.2 As general and continuing collateral security for the performance by Purchaser of the Obligations not otherwise secured by the hypothecs created under the terms of Section 3.1, including, without limiting the generality of the foregoing, interest on all overdue interest, as well as the costs and expenses incurred by Seller in order to preserve or realise upon the Liens created and to be created from time to time under the terms hereof and all other costs and expenses related to the Obligations, Purchaser hereby hypothecates the Hypothecated Property to and in favour of Seller to the extent of an additional sum of [AMOUNT] with interest thereon at the rate of [%] per annum, with interest on overdue interest at the same rate.

**4. REPRESENTATIONS AND WARRANTIES**

4.1 Purchaser hereby represents and warrants to Seller that:

4.1.1 Purchaser is a validly organised and subsisting company in good standing under the laws of [COUNTR] of its jurisdiction of incorporation, having its head office or domicile situated in [COUNTRY];

* + 1. Purchaser has the necessary power and capacity to grant the hypothec hereby constituted and to bind and oblige itself as set forth in this agreement;
		2. Neither the execution, delivery and performance by Purchaser of this agreement in accordance with its terms, nor the consummation of the transaction contemplated thereby conflicts with or results in a breach of the documents of incorporation or the by-laws of Purchaser or of any provision of any contract or other instrument by which Purchaser is bound;
		3. Upon delivery of the Equipment by Seller to Purchaser, pursuant to the Contract, Purchaser alone shall hold the rights of ownership in all of the Equipment, free and clear of all priorities, hypothecs, charges or other rights existing in favour of any person other than Seller;
		4. This agreement has been duly authorised by all necessary corporate action on the part of Purchaser and duly executed and delivered by its duly authorised officers such that the obligations which it evidences are in full force and effect and constitute binding obligations of Purchaser;
		5. The Equipment shall be located at [ADDRESS], which premises are [owned by/ leased by] Purchaser;

4.1.7 All national, [state / provincial] and other tax returns of Purchaser have been duly filed and all [STATE/PROVINCIAL] and other taxes, assessments and other governmental charges or levies upon Purchaser and any of its property, income, profits and assets, which are due and payable, have been paid.

**5. COVENANTS**

* 1. Purchaser hereby covenants and agrees that it will:
		1. Not create, assume, incur or suffer to exist, directly or indirectly, any hypothec, priority, charge or any other right whatsoever on the Equipment other than in favour of Seller;
		2. Give Seller notice in writing of:
			1. any change in the representations and warranties made by Purchaser in Section 4;
			2. the name(s) of the insurer(s) who are party to the insurance contract(s) envisaged herein;

5.1.3 Provide Seller with any information, which the latter could reasonably require *in re*lation to the Equipment or in Contract to verify whether Purchaser is respecting its Obligations. Purchaser shall inform Seller of any fact or event, which might have an adverse effect on the value of the Equipment or on Purchaser’s financial situation;

5.1.4 At any time and from time to time, permit Seller, its officers, employees and authorised representatives to examine, inspect or evaluate the Equipment and, in this respect, will give Seller, its officers, employees and authorised representatives unrestricted access to the places where the Equipment is located;

5.1.5 Perform all acts and things and execute all documents as may be necessary to ensure that this hypothec remains effective and at all times opposable to third parties. Purchaser shall, in particular, execute at the request of Seller a timely notice of renewal hereof;

5.1.6 Pay, upon demand, all fees and expenses including legal, notarial and professional fees incurred from time to time by or on behalf of Seller in connection with the negotiation, preparation, delivery, publication, amendment, renewal and discharge of this agreement and in connection with the enforcement of any of Seller’s rights hereunder or the recovery or conservation of the Equipment, including without limitation all costs and expenses of maintenance, operation, administration, conservation and/or collection of the Equipment and reasonable compensation for any person or firm engaged, employed or consulted by or on behalf of Seller to act in connection with the maintenance, operation, administration, conservation and or collection of any of the Equipment;

5.1.7 Pay to Seller, on demand, all sums expended by the latter for the fulfilment of any of Purchaser’s obligations hereunder, with interest thereon as set out above, calculated monthly and payable on demand, the whole without prejudice to the other rights of Seller;

* + 1. Insure the Equipment and maintain same insured at all times for an amount acceptable to Seller, against theft, fire, and any other cause or peril which in the opinion of Seller should be insured against. The policies evidencing such insurance shall contain no co-insurance clause and shall specifically provide that they cannot be cancelled unless Seller has been given written notice by the insurer of such proposed cancellation at least [NUMBER] days in advance. Purchaser shall forthwith provide Seller with evidence of such insurance and evidence that Seller’s rights have been made known to the insurer and, at least [NUMBER] days prior to the expiry of a policy, Purchaser shall deliver to Seller evidence of the renewal or replacement thereof. Each insurance policy shall be made on such terms and with such insurer as may be approved by Seller.
		2. The loss under each policy shall be made payable to Seller as named insured but the receipt by Seller of the proceeds of any insurance shall not operate as a payment of the Obligations hereby secured unless such proceeds are expressly applied by Seller *in re*duction thereof, and to the extent only of such application. In the event of failure on the part of Purchaser to perform any obligation set forth in this Section, Seller may, at the expense of Purchaser, purchase such insurance, as it may deem appropriate;

5.1.10 protect, use and maintain the Equipment and carry on and conduct its business so as to protect the value thereof. Purchaser shall comply with all requirements of the laws and regulations applicable to the operation of its business and the ownership of the Equipment, including [COUNTRY]’s law and regulations relating to the environment;

5.1.11 not change the use or destination of the Equipment nor the place where same is situated without the prior written consent of Seller;

5.1.12 pay and discharge all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or upon any properties belonging to it prior to the date on which penalties attach thereto;

5.1.13 not sell, alienate, assign or otherwise dispose of Equipment.

**6. EVENTS OF DEFAULT**

6.1 The occurrence of any of the following events shall constitute an event of default (here*in re*ferred to as an “Event of Default”):

6.1.1 Should Purchaser fail to pay, observe or perform all or any part of its Obligations when such payment, observance or performance becomes due or payable;

6.1.2 Should any representation or warranty which has been made by Purchaser in the Contract, or in Article 4 hereof, or otherwise pursuant to these presents, prove to be either incorrect or substantially inaccurate at any time and from time to time;

6.1.3 Should Purchaser cease to operate its enterprise or a substantial part thereof;

6.1.4 Should Purchaser be in default under any agreement or contract binding it to Seller or to any other creditor;

6.1.5 Should Purchaser destroy or deteriorate any Equipment or materially diminish its value or the hypothec hereby constituted;

6.1.6 Should Purchaser make an assignment for the benefit of creditors, or file or consent to the filing of a petition in bankruptcy, a proposal or a notice of intention under the Bankruptcy and Insolvency Act or be adjudicated insolvent or bankrupt, or petition or apply to any tribunal for any receiver, trustee, liquidator or sequestrator of, or for any substantial portion of its property or if Purchaser commences any proceeding relating to it or its property or any substantial portion thereof under any reorganization, arrangement, readjustment, composition or liquidation law of any jurisdiction, whether now or hereafter in effect (any of which proceedings, including, without limitation, the making of an assignment for the benefit of creditors, or the filing or consenting to the filing of a petition in bankruptcy, a proposal or a notice of intention under the Bankruptcy and Insolvency Act shall be referred to herein as a “Proceeding”); or if there is commenced against Purchaser any Proceeding and such Proceeding remains undismissed for a period of [NUMBER] days; or any receiver, trustee, liquidator or sequestrator of, or for Purchaser or any substantial portion of its property is appointed or if Purchaser consents to or approves or accepts any Proceeding or the appointment of any receiver, trustee, liquidator or sequestrator of, or for, Purchaser or any substantial portion of its property;

6.1.7 Should any process of execution be enforced or levied upon the Equipment and remain unsatisfied for a period of [NUMBER] days, provided that such process is not in good faith disputed by or on behalf of Purchaser and, if it is so disputed, provided further that non-payment shall not, in the judgement  of Seller, jeopardise or impair the security created hereby and that Purchaser shall also give or cause to be given security which, in the discretion of Seller, shall be sufficient to pay in full the amount claimed in the event that it shall be held to be a valid claim;

6.1.8 Should Purchaser fail to obtain the cancellation of any prior notice of exercise of hypothecary rights or any other registered entry affecting the whole or any part of the Equipment by or in favour of any other creditor of Purchaser within [NUMBER] days of their respective publication or registration, as the case may be;

6.2 Purchaser shall be in default of performing its Obligations by the mere lapse of time stipulated for performance without the necessity of any notice whatsoever.

**7. RECOURSES**

7.1 Upon the occurrence of an Event of Default, the Seller may declare as being immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by Purchaser, an amount equal to the aggregate Obligations and exercise any rights it has in virtue of these presents or the law of [COUNTRY].

7.2 Upon the occurrence of an Event of Default, whatever hypothecary right Seller elects to exercise, the following provisions shall apply:

7.2.1 Seller shall have the right, at the expense of Purchaser and in order to preserve or realise upon the Equipment:

7.2.1.1 notwithstanding the provisions of the Act respecting the protection of personal information in the private sector in [COUNTRY], to use any information obtained by reason of the exercise of its rights;

7.2.1.2 to perform any of Purchaser’s Obligations;

7.2.1.3 to exercise any right with respect to the Equipment; and

7.2.1.4 in Contract to exercise any one of its rights, to use the places where Purchaser’s property is situated;

* + 1. Seller may acquire directly or indirectly any of the Equipment;

7.2.3 Seller may from time to time in the course of the exercise of its rights, renounce, with or without consideration, any right of Purchaser;

7.2.4 Seller shall not be bound to make an inventory, to take out insurance or to furnish any security;

7.2.5 Seller shall not be bound to continue operating Purchaser’s business nor to make the Equipment productive or to preserve the same; and

7.2.6 Seller shall be deemed to have acted in the best interest of Purchaser and its successors if Seller has acted in good faith.

7.3 Where Seller exercises a right of taking in payment and Purchaser, inasmuch as it has the right to do so, requires that Seller sell the Equipment upon which such recourse was exercised, Purchaser acknowledges that Seller shall not be bound to abandon the right of taking in payment unless Seller has obtained, before the end of the period allowed for surrender, (i) a satisfactory security guaranteeing that the sale will be made at a sufficiently high price to enable Seller’s claim to be paid in full, (ii) the full reimbursement of all costs thus incurred by it, including lawyers’ fees and consultants’ fees and (iii) an advance of the funds needed for the sale of the said property. Purchaser hereby acknowledges that Seller may elect the method of such sale.

7.4 Purchaser shall be deemed to have surrendered the Equipment held by or on behalf of Seller if Seller shall not have received, within the delays prescribed by the laws of [COUNTRY] or by a court for surrender, a written notice from Purchaser to the effect that it opposes the exercise of the hypothecary right specified in the prior notice.

7.5 If Seller itself sells the Equipment, it shall not be required to obtain any prior appraisal thereof.

7.6 The sale by Seller of the Equipment may be concluded by the Seller without legal warranty or, at its option, without any warranty whatsoever.

**8. MISCELLANEOUS**

* 1. The security granted to Seller under these presents shall be in addition to and without prejudice to or novation of any other security, by whomsoever given, held at any time by Seller, and Seller shall be under no obligation to exercise any right, whether hypothecary or otherwise, or realise upon such other security or any of the funds or assets Seller may be entitled to receive or have a claim upon and Seller may in its absolute discretion and without diminishing the security created hereunder, grant extensions of time or other indulgences with respect to the Obligations and security given therefore and give up or modify, vary, exchange, renew or abstain from perfecting or taking advantage of any security and may discharge any party or parties and accept or make any compositions or arrangements and realise upon any security when and in such manner as Seller may see fit and such security shall not be reduced, affected or amended by these presents.

8.2 Any and all monies received by Seller from Purchaser or others or from any hypothec or other security by whomsoever granted to Seller to secure the performance of the Obligations of Purchaser may be applied by Seller upon such part of the Obligations as Seller in its absolute discretion sees fit, the whole notwithstanding the rules governing the application of payments.

8.3 The rights and remedies of Seller under this Agreement shall be cumulative and not exclusive of any rights or remedies which it would otherwise have, and no failure or delay by Seller in exercising any right shall operate as a waiver thereof, nor shall any single or partial exercise of any power or right preclude its other or further exercise or the exercise of any other or right.

8.4 Seller is not bound by any degree of care beyond reasonable diligence in the exercise of its rights or in the performance of its duties, and it shall not be liable for any loss or damage resulting therefrom except as a result of its own intentional or gross fault.

8.5 Seller may delegate to any other person the exercise of its rights or the performance of its duties hereunder and may provide such agents or mandataries with any information that Seller may possess with respect to Purchaser or the Equipment.

8.6 The property or sums of money received or held by Seller by reason of these presents may be invested by Seller in such manner, as it shall deem appropriate without regard to rules governing the administration of the property of others.

8.7 This Agreement shall continue in full force and effect until Seller shall have discharged Purchaser of all its Obligations hereunder.

8.8 Every obligation of Purchaser hereunder is and will remain indivisible and the performance thereof in its entirety may be claimed from each of the successors, permitted assigns, liquidators, trustees or legal representatives of Purchaser.

8.9 Seller may, without being obliged to, perform any one of the obligations of Purchaser hereunder should the latter fail to do so and Purchaser shall, forthwith after demand therefore, reimburse Seller for all costs incurred by Seller in so doing with interest on such sums as set out above.

8.10 Any notice, request or other communication hereunder to any party hereto in connection with this agreement shall be deemed to have been duly given or made to the party to which such notice, request or other communication is required or permitted to be given or made under this agreement, when delivered to such party (by prepaid courier, by telecopier or by hand delivery) at its address set forth in its appearance above or at such other address as any of the parties hereto may hereafter notify the others in writing.

8.11 Unless there be something in the subject or the context inconsistent therewith, words importing the singular only shall include the plural and *vice versa* and words importing the masculine gender shall include the feminine gender and *vice versa* and all references to dollars shall mean Canadian Dollars.

8.12 The division of these presents into articles, sections, subsections and paragraphs and the insertion of titles are for convenience of reference only and do not affect the meaning or the interpretation of these presents.

8.13 This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8.14 This Agreement and the interpretation and enforcement thereof shall be governed by and in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein.

8.15 Purchaser acknowledges that it has read this Agreement, as well as the Contract, that it has received an adequate explanation of the nature and scope of its obligations hereunder and thereunder, and that it is satisfied therewith.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

PURCHASER SELLER

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title

**APPENDIX 1**

Sales Contract signed by Purchaser on [DATE] and accepted by Seller on [DATE] pursuant to which Seller agreed to sell and Purchaser agreed to purchase the Equipment.

**APPENDIX 2**

## HYPOTHECATED EQUIPMENT

## QUANTITY UNIT NUMBER DESCRIPTION