

PURCHASE ORDER TERMS AND CONDITIONS

PART A – DELIVERY OF GOODS OR PRODUCT

1. **Delivery.** Delivery of goods or product (the “**Product**”) shall be as specified on the Purchase Order, as defined below, and in accordance with Incoterms 2000. Title to the Product and risk of loss shall pass on Delivery. Purchaser shall have the right to specify the carrier and/or the method of transportation to be used in transporting the Product. No packing, packaging or transportation charges shall be payable by Purchaser unless specifically stated on the face of the Purchase Order.

2. **Late Deliveries.** If Vendor does not deliver the goods within the time specified in the Purchase Order, Purchaser shall have the right to require any special method of transportation, including express or where practical air shipment, and Vendor shall pay any resulting additional transportation costs unless the delays are due solely to causes beyond the control of Vendor. Vendor agrees to pay Purchaser liquidated damages in an amount equal to one percent (1%) of the price of the Product to be delivered in a Purchase Order per week for the duration of delay, to a maximum of five percent (5%).

3. **Non-conforming Product.** Acceptance of all or any part of the Product shall not be deemed to be a waiver of Purchaser's right either to cancel or return all or any part of a shipment because of failure to conform to order specifications or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages. Such right shall be in addition to any other remedies provided by law or in equity. Acceptance of any part of the Purchase Order shall not bind Purchaser to accept future shipments. Purchaser will notify Vendor in writing of any Product that is rejected as not being in accordance with the terms of the Purchase Order or that is to be returned to Vendor. Vendor shall be responsible for all costs related to non-conforming Product and shall pay any and all transportation charges incurred in returning and replacing any non-conforming Product.

4. **Delivery Documentation.** Where applicable, Product requiring a Material Safety Data Sheet (“**MSDS**”) shall have the MSDS sheet attached to the shipments, clearly visible, as applicable, for all deliveries.

PART B - SERVICES

5. **General.** In the event Vendor provides services and/or Product to Purchaser either directly or through a subcontractor, Vendor agrees for itself, and agrees to require any subcontractor who provides services and/or Product to Purchaser pursuant to a Purchase Order to agree to all Terms and Conditions set forth herein as a condition of their providing the Work. Both Vendor under a Purchase Order and any of its subcontractors shall be referred to as the “**Vendor**” herein.

6. **Work.** Vendor agrees to assume all obligations specified in the Purchase Order, including such labor and/or Product as may be described in the Purchase Order (“**Work**”), and any specifications pertaining to the Work and these Terms and Conditions. Unless otherwise agreed by Purchaser, Vendor shall furnish and promptly pay for all labor and materials required to perform all the Work including the provision of equipment, materials and/or services, and all permits, licenses, inspections and certificates, that are desirable or required to complete the Work.

7. **Change Order Required.** Vendor agrees to do no extra work or make changes to the Work specified in the Purchase Order without the prior written consent of Purchaser and understands that Purchaser will not pay for additional work or changes unless authorized by Purchaser in writing. Should the scope of the Work or dollar value outlined in the Purchase Order change, regardless of the reason or amount, Vendor shall forward all requests for changes to the contact person responsible for the Work at Purchaser. Where Purchaser and Vendor agree to the changes, Purchaser will provide Vendor with a written change order. The changes shall be effective as of the date specified on the change order, or if no date is specified, shall be effective on the date of the signature of the last party signing the change order. The adjustment in the amount for a change shall be determined on the basis of the actual and direct costs and expenditures or savings of Vendor attributable to the change.

8. **Compliance with Laws.** Vendor agrees to comply with and complete the Work in accordance with the terms of the Purchase Order, all applicable federal, provincial, state or local government laws, regulations, ordinances, rules and permits pertaining to the Work including work practices and standards required by the profession, industry or trade involved in the Work.

9. **Training.** Vendor shall ensure its employees and agents i) if so requested, have attended a Purchaser General Safety Orientation within 12 months of commencing the Work, ii) comply with Purchaser's applicable general safety orientation hand book, health and safety policy (the “**Policy**”) in effect from time to time, iii) comply with Purchaser's safety rules; and iv) refrain from smoking while on site, unless in a designated smoking area. The Policy is available to Vendor on request, and forms part of this Agreement. Vendor shall leave the site clean, and ensure all employees and agents respect and comply with the rules, regulations, ordinances and practices required by the applicable health and safety legislation of the province or state in which the Work is performed. Vendor shall provide Purchaser with records of training required for the Work on request. Vendor is responsible to supply all safety equipment and apparel required to complete the Work. Vendor shall make arrangements to protect partially completed Work and equipment or materials and be responsible for any damage occasioned by Vendor's failure to do so.

10. **Workers Compensation and Insurance.** Prior to commencing the Work, Vendor shall, if in Canada, furnish to Purchaser a clearance certificate from the provincial Workers' Compensation Board or equivalent in the province of Work showing that Vendor is in good standing, or if in the United States, shall furnish such documentation as is required by workers' compensation laws in the state where the Work is being performed. Vendor shall have and maintain General Liability and Property Damage insurance, with coverage of not less than two million dollars (\$2 million) per occurrence and shall provide certificates of insurance or a waiver, if applicable under the workers' compensation laws in the province or state where the Work is being performed. Vendor shall also have and maintain auto liability insurance in the amount of one million (\$1 million) for each of bodily injury and property damage, if vehicles are being used, and any other insurance as may be required by a prudent business person in the state or province in which the Work is performed. Any waiver shall not void Vendor's indemnity contained herein. Vendor shall provide thirty (30) days prior written notice to Purchaser of its intent to change or cancel any insurance coverage. Failure of Vendor to maintain valid insurance coverage or provide the thirty (30) days prior written notice of any change or cancellation shall be cause for termination of this Agreement by Purchaser. In the event of an incident or accident, Vendor shall report the incident or accident immediately to Purchaser.

11. **Environmental Concerns.** If Vendor encounters hazardous substances at the place of Work, or has reasonable grounds to believe that hazardous substances are present at the place of Work, which were not disclosed prior to commencement of the Work or which were disclosed but have not been dealt with in accordance with legal requirements, Vendor shall take all reasonable steps to ensure that no person's exposure to any hazardous substance exceeds the levels prescribed by any applicable labor or environmental regulations at the place of Work, and immediately report the circumstances to Vendor in writing.

12. **Time for Performance.** Time shall be of the essence. Vendor agrees to complete the Work in accordance with the date specified herein or instructions from Purchaser as provided from time to time. No oral extensions of time for performance of this Agreement shall be accepted, without the prior written agreement of Purchaser. Vendor shall ensure each work crew contacts the person responsible for Work at Purchaser and signs in, as required by Purchaser.

13. **Prior Work.** To the extent Vendor knows or ought to have known that work that precedes Vendor's Work, has been done by others in an improper manner, Vendor shall be responsible to report such to Purchaser prior to commencing the Work. In the event Vendor fails to provide such report, Vendor shall be liable for any costs, damages and expenses whatsoever accruing to the Vendor or Purchaser and shall indemnify Purchaser for any costs accruing to Purchaser.

14. **Holdbacks.** With the request for final payment, or holdback or retainage, Vendor shall provide Purchaser with a signed Statutory Declaration or applicable lien waiver in a form acceptable to Purchaser. Holdback or retainage amounts, if any, shall be paid as soon as possible upon expiration of the lien period applicable or in accordance with applicable law, whichever is earlier, however Purchaser may retain out of the holdback or retainage amount such sum as is required by law to satisfy any claims which may be enforceable against the Purchaser.

15. **Bonds.** If required by Purchaser, Vendor shall furnish evidence of being bondable and upon request will obtain a performance and payment bond. Vendor shall be responsible for bonding any sub-Vendors. Under no circumstances shall Purchaser be liable or responsible for debts of Vendor, or payments to subcontractor.

16. Protection of Work. Vendor shall make arrangements to protect partially completed Work and equipment or materials left at the Work site and to be responsible for any damage occasioned by Vendor's failure to do so.

17. Substandard Work. If Purchaser, in its sole discretion, determines that Vendor has failed or is failing to satisfactorily perform any aspect of the Work, Purchaser may, at no extra cost to Purchaser and at its sole option: a) require Vendor to correct, replace and/or re-execute faulty or defective Work done or materials furnished; b) require Vendor to increase the number of workers assigned to the Work and to use overtime labor or work on Saturdays, Sundays or holidays to complete the Work on schedule; or c) terminate this Agreement and complete or correct the Work or retain others to do so. In this event, Purchaser may require materials and equipment of the Vendor to be left on the Work site for use in completing or correcting the Work. Vendor shall be responsible for all costs or expenses, including legal fees and expenses, incurred by Purchaser as a result of Vendor's failure to satisfactorily perform the Work.

18. Termination. The Parties agree that Purchaser may terminate or suspend this Agreement at any time. In the event this Agreement is terminated by Purchaser without cause and prior to completion, Purchaser's sole liability to Vendor hereunder shall be limited to the Vendor's out-of-pocket costs for labor and material for the actual Work satisfactorily performed by Vendor to the date of termination, as determined in the sole discretion of Purchaser, supported by reasonable and sufficient records. Under no circumstances will Vendor be entitled to recover lost profits or other damages from Purchaser as a result of such early termination.

PART C - TERMS APPLICABLE TO PRODUCT AND SERVICES

19. Purchase Order and Agreement. The offer by Purchaser in the form attached to these Terms and Conditions shall be defined as the "**Purchase Order**". The Purchase Order, together with these Terms and Conditions, any Specifications, Change Order, and the proof of delivery for Product shall be referred to as the "**Agreement**". A Purchase Order does not constitute an acceptance by Purchaser of any offer or proposal by Vendor, whether in Vendor's quotation, acknowledgement, invoice or otherwise. In the event Vendor's quotation or proposal is held to be an offer, that offer is expressly rejected and is replaced in its entirety by the offer made by the Purchase Order. A contract is formed when Vendor accepts the Purchase Order. Each Purchase Order shall be deemed accepted by Vendor upon its terms and this Agreement unless Vendor sends Purchaser a notice rejecting the Purchase Order within one (1) business day of receipt of the Purchase Order. Acceptance of the Purchase Order is expressly limited to the terms and condition contained in this Agreement and such terms and conditions as are otherwise expressly referenced on the face of the Purchase Order. No purported acceptance of a Purchase Order on terms and conditions which modify, supersede, supplement or otherwise alter the terms and conditions of this Agreement shall be binding upon Purchaser and such terms and conditions shall be deemed rejected and replaced by the terms and conditions of this Agreement unless Vendor's proffered terms or conditions are accepted in writing by Purchaser, notwithstanding Purchaser's acceptance of or payment for shipment of goods or similar act of Purchaser.

20. Payment of Claims. Vendor shall promptly and satisfactorily settle and pay all accounts, claims or liens with respect to the Work or the Product. Purchaser agrees to provide Vendor with two (2) days prior written notice to settle and pay such accounts, claims or liens. If Vendor fails or refuses to settle or pay same or provide Purchaser with notice that it has reasonable grounds for disputing same within the two (2) days, Purchaser shall have the right to settle or pay such accounts, claims and/or liens for the account of Vendor. In the event Vendor provides Purchaser with notice that it is disputing an account, claim or lien, Purchaser shall have the right to pay or settle such accounts, claims or liens in such manner that in Purchaser's opinion will not prejudice Vendor's right to dispute same

21. Payment. Purchaser agrees to pay all undisputed amounts for Products and Work within the times specified on the Purchase Order, or sixty (60) days if there is no time specified on the face of the Purchase order. In connection with Work, payments shall be subject to applicable construction, mechanics and/or suppliers lien laws. All payments for Work are conditional on Purchaser's receipt of current workers compensation clearance certificates and the insurance documentation.

22. Set-off. If Vendor is in any way indebted to Purchaser, moneys due to Vendor hereunder may be withheld as an offset against other such other indebtedness.

23. Warranties. Vendor warrants that the Product and/or Work covered by this Purchase Order conforms to the specifications, drawings, samples or descriptions furnished or specified by Purchaser, will be fit and sufficient for the purposes intended, will be of merchantable quality, made with good materials and workmanship, free from defects, and in respect of the Work, is of professional standards of the industry concerned. In addition, Vendor acknowledges that Vendor knows of Purchaser's intended use and expressly warrants that all Products and/or Work covered by each Purchase Order will be fit and sufficient for the particular purpose intended by Purchaser.

24. Indemnity by Vendor. Vendor agrees to indemnify and hold harmless Purchaser, Purchaser's Affiliates, designates, directors, officers, employees and agents (the "**Representatives**") against all liabilities, damages, losses, costs, claims, expenses, suits, proceedings and demands with respect to any part of the Product and/or Work covered by this Purchase Order, including but not limited to reasonable legal fees and disbursements, suffered or incurred by the Representatives, including for bodily injury to or death of any person, or damage to or destruction of property resulting from the Product and/or Work, regardless of whether Vendor has insurance or a valid letter or waiver of insurance requirements under applicable workers' compensation laws, arising out of, occasioned by or in connection with: (i) the failure of any representation or warranty made by Vendor under this Agreement to be true and correct, (ii) negligent acts or omissions or willful misconduct of Vendor and those for whom Vendor is responsible at law for performance of this Agreement, and (iii) actual or claimed trade mark, trade name, patent or copyright infringements, or any litigation based thereon. Such obligations shall survive acceptance of the Product and/or Work and payment therefore by Purchaser.

25. Insolvency of Vendor. If Vendor becomes insolvent, or is subject to any legislation pertaining to insolvency or bankruptcy, or if a receiver or receiver and manager or other party is appointed over Vendor or its assets, or if Vendor ceases to conduct operations in the normal course of business, then Purchaser shall in its complete discretion, without any liability whatsoever to Vendor, have the right to immediately terminate this Agreement and shall be indemnified by Vendor for all costs, fees and damages suffered by Purchaser as a consequence of the termination.

26. Confidentiality. Vendor agrees to keep confidential all of the information and materials it obtains from Purchaser or its agents in connection with the Purchase Order, and Vendor agrees not to use or disclose such information to any person, other than for performance of the Work hereunder on a need-to-know basis.

27. Modifications to this Agreement. This Agreement may not be modified or terminated orally, and no modifications or termination nor any claimed waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against whom such modifications, termination or waiver is sought to be enforced. No acknowledgement of Purchase Order from Vendor containing terms and conditions shall have the effect of modifying these Terms and Conditions.

28. Time of the Essence. Time is of the essence of this Agreement.

29. No Assignment. Vendor agrees to not assign this Agreement or any part thereof and without the prior written consent of Purchaser.

30. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the province or state in which the Work is performed or the final destination for the Product.

31. Entire Agreement. Except as may be expressly agreed in writing by authorized representatives of the parties, this Agreement includes the Purchase Order, these Terms and Conditions, any Specifications required for the Work, any change orders approved pursuant to Section 8 above, and constitutes the entire agreement between the Parties related to the Product and/or Work and replaces any earlier agreements, whether oral or written. The Purchase Order, and these Terms and Conditions are paramount to any invoice related thereto. The parties agree that there are no other agreements, representations or warranties other than those expressed herein.