



## PURCHASE ORDER TERMS AND CONDITIONS

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### 1. DEFINITIONS

In this Contract, unless the context otherwise requires:

**Claim** means any claim, demand, action, suit, proceeding or demand of any kind arising out of any cause of action of a party including for breach of this Contract or under any indemnity, in tort (including negligence) and any other common law, equitable or statutory cause of action in connection with the operation of this Contract;

**Delivery Point** means the delivery point set out in the Purchase Order, if applicable;

**Goods** means the goods supplied by the Supplier to the Principal under this Contract as described in the Purchase Order, if applicable;

**Liabilities** means damages, Claims, losses, liabilities, costs and expenses of any kind;

**Services** means the work to be provided by the Supplier under this Contract as described in the Purchase Order, if applicable; and

**Supply** means the supply of Goods, and any ancillary services, by the Supplier under and in accordance with this Contract, if applicable.

### 2. CONTRACT

#### 2.1 Formation

This Contract is formed when a Purchase Order has been issued to the Supplier in acceptance of a written quotation, tender, or offer to supply from the Supplier.

#### 2.2 Contract documents

This Contract consists of the following documents, to the exclusion of all terms and conditions contained in any documentation provided by the Supplier, including delivery dockets:

- (a) Purchase Order;
- (b) these Purchase Order terms and conditions; and
- (c) any other attachments to the Purchase Order provided by the Principal.

#### 2.3 Precedence

If there is any conflict or inconsistency between the documents constituting this Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in clause 2.2.

### 3. SUPPLY OF GOODS

#### 3.1 No minimums

Unless the Purchase Order provides otherwise, the Principal is not obligated to any minimum purchase or future purchase obligations in respect of Goods under this Contract.

#### 3.2 Standard of Goods

If the Supplier is supplying Goods to the Principal under this Contract, the Supplier represents, warrants and covenants in favour of the Principal that the Goods:

- (a) are new, of merchantable quality and free from defects in workmanship, material and design;
- (b) are free and clear of all encumbrances and liens;
- (c) meet the description and specifications set out in the Purchase Order and the Principal's offer documents;
- (d) do not infringe or misappropriate any third party's patent or other intellectual property rights;
- (e) are suitably packed, marked and transported according to Principal's instructions and/or in a manner to ensure that the Goods are delivered in an undamaged condition and in accordance with applicable law and industry standards;
- (f) and ancillary any services supplied in connection with the Goods are fit for the purpose for which the Goods or such services are required; and
- (g) any tools and equipment used on site by the Supplier or its personnel will be in safe working condition, will be compliance checked (if applicable), will comply with all applicable laws and industry standards, will be kept secure and fully insured, and will be operated by suitably qualified and competent persons, to the satisfaction of the Principal.

#### 3.3 Third party warranties

The Supplier shall obtain all warranties relevant to the Goods, if applicable, from manufacturers or suppliers, including any warranties that are provided by any subcontractor of the Supplier and ensure that the Principal has the benefit of those warranties.

#### 3.4 Records

- (a) If the Supplier is supplying Goods to the Principal under this Contract, the Supplier shall maintain accurate records of the Supply, including the dates on which the Goods were supplied, and any services provided.
- (b) The Principal may inspect the records maintained under this Clause 3.4 at any time upon reasonable notice.

#### 3.5 Safety Data Sheets

The Supplier shall provide any Safety Data Sheets required by applicable laws in connection with the Supply or the Services, as applicable.

## 4 DELIVERY

### 4.1 Applicability

If the Supplier is supplying Goods to the Principal under this Contract, the provision of this Clause 4 shall apply.

### 4.2 Delivery Date

Supplier shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (**Delivery Date**). Timely delivery of the Goods is of the essence. If Supplier fails to deliver the Goods in full on the Delivery Date, Principal may terminate the Purchase Order immediately by providing written notice to Supplier and Supplier shall indemnify Principal against any losses, Claims, damages, and reasonable costs and expenses directly or indirectly attributable to Supplier's failure to deliver the Goods on the Delivery Date.

### 4.3 Delivery Point

- (a) The Supplier shall deliver the Goods to the Principal at the Delivery Point during Principal's normal business hours unless otherwise instructed by Principal.
- (b) The Goods delivered to each Delivery Point shall be delivered in good condition and without damage caused by delivery.

### 4.4 Delivery Documentation

The Supplier will provide detailed delivery dockets with every delivery, in duplicate. One delivery docket shall be packed with the Goods, the other shall be enclosed and attached to the outside of the consignment. Each delivery docket must contain at a minimum, the following information: the Principal's Purchase Order number (if any); description and quantity of Goods; and details of any items on back order.

### 4.5 Inspection and Rejection

The Principal shall have the right to inspect the Goods on or after the Delivery Date. The Principal, at its sole option, may reject all or any portion of the Goods if it determines the Goods are non-conforming or defective. If the Principal rejects any portion of the Goods, the Principal has the right, effective upon written notice to Supplier, at its sole option, to: (a) rescind the Purchase Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Principal requires replacement of the Goods, Supplier shall, at its sole expense, promptly replace the non-conforming Goods and pay for all related, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Supplier fails to timely deliver the replacement Goods, the Principal may replace them with goods from a third party and charge Supplier the cost thereof. Any inspection or other action by Principal under this Clause shall not reduce or otherwise affect Supplier's obligations under the Purchase Order.

## 5 RISK AND TITLE; SHIPPING TERMS

### 5.1 Passing of Risk and Title

If the Supplier is supplying Goods to the Principal under this Contract, the Goods remain at the Supplier's risk and title will not pass to the Principal until the Goods are delivered to, inspected by, and accepted by, the Principal at the Delivery Point on the Delivery Date.

### 5.2 Shipping Terms

Delivery of the Goods, as applicable, shall be made in accordance with the terms set out in the Purchase Order. Supplier shall give written notice of shipment to the Principal when the Goods are delivered to a carrier for transportation. Supplier shall provide Principal all shipping documents, including the commercial invoice, packing list, and any other documents necessary to release the Goods to Principal.

## 6 PROVISION OF SERVICES

### 6.1 Standard of Services

If the Supplier is providing Services to the Principal under this Contract, the Supplier shall:

- (a) perform the Services with the skill, care and diligence reasonably expected from a qualified, competent and experienced provider of services of a similar type and complexity as the Services;
- (b) ensure that its personnel are appropriately trained and experienced; and
- (c) ensure that the Services and any goods supplied are fit for the purpose for which they are required.

### 6.2 Records

- (a) If the Supplier is supplying Services to the Principal under this Contract, the Supplier must maintain accurate records of the Services, including any plans, specifications and other details, dates and hours of work, personnel, materials used and any additional work required.
- (b) The Principal may inspect the records maintained under this Clause at any time upon reasonable notice.

## 7 COOPERATION AND RESPONSIBILITIES FOR THE SITE

### 7.1 Cooperation

The Supplier shall co-operate with and not interfere with work or deliveries by other contractors or suppliers of the Principal and the Principal's personnel.

### 7.2 Responsibility for the site

Without limiting any other obligation of the Supplier under this Contract, the Supplier shall:

- (a) in respect of any Services, the Supply and any parts of the site occupied by it for the purposes of this Contract provide and maintain temporary guards, warning signs and fences, and erect appropriate notices and signs to a standard required by law and otherwise as approved by the Principal; and
- (b) in respect of the site generally:

- (i) use its best endeavours to protect all persons, vehicles and property at or in the vicinity of the site; and
  - (ii) familiarize itself and its personnel with the Principal's risk management system, safety and health management system and other systems and policies applicable to the site and develop a system to ensure full compliance therewith.
- (c) when or where any direct damage or injury is caused to public or private property by or on account of any act, omission or misconduct on the part of the Supplier or its personnel in the execution of the Services or the Supply, such property shall be restored by the Supplier at its expense.

## **8 COMPLIANCE WITH LAWS**

### **8.1 Permits and authorizations**

At all times during the term, the Supplier and the Supplier's personnel shall hold such permits, licences, authorizations and accreditations as may be required for the Supplier and the Supplier's personnel to perform their obligations under this Contract in compliance with all applicable laws.

### **8.2 Supply and Services to comply**

In performing its obligations under this Contract, the Supplier shall comply at all times with:

- (a) the conditions of any permits, licences, authorizations and accreditations held by the Supplier in accordance with Clause 8.1;
- (b) all laws applicable to the Supply and/or the Services;
- (c) all laws applicable to the Principal in respect of its operations, including modern slavery legislation;
- (d) the Principal's site policies and rules; and
- (e) any industry standards applicable to the Supply and/or the Services.

## **9 DIRECTIONS**

The Principal may give reasonable directions to the Supplier to deliver the Goods and/or to provide the Services, as applicable, in a particular manner or at a particular time, or to suspend all or part of the Supply and/or the Services. The Supplier must do everything possible to minimize any cost or expense consequent upon any such suspension. The Supplier shall make all reasonable efforts to comply with any such directions provided that the Supplier will be fairly compensated in the event that it incurs significant additional cost or delay as a consequence.

## **10 SUBCONTRACTORS**

- (a) The Supplier must not engage any subcontractor to perform any part of the Supply without the Principal's prior approval (which may be conditional).
- (b) Approval by the Principal of any subcontractor and/or of any subcontract does not release the Supplier from any of its obligations under this Contract.

## **11 REMOVAL OF PERSONNEL FROM SITE**

The Principal's representative may direct the Supplier to remove from the site any person employed in connection with the Supply or the Services who, in the reasonable opinion of the Principal's representative, is guilty of misconduct, is incompetent or negligent or who works in an unsafe manner.

## **12 SUPPLIER'S EQUIPMENT**

### **12.1 Plant and equipment supplied by Supplier**

The Supplier shall supply all plant and equipment and other incidental items and materials required for the Supply and/or the performance of the Services, as applicable.

### **12.2 Fit for purpose and compliance with laws**

All of the Supplier's equipment shall comply with the requirements of this Contract, the requirements of all applicable laws, the policies and requirements of the Principal, applicable codes of practice and standards, and be properly licensed. The Principal will inspect the Supplier's equipment brought to site and may reject any item of the Supplier's equipment which it considers unsuitable for the purpose for which the Supplier proposes to use it.

### **12.3 Supplier's responsibilities in relation to Supplier's equipment**

The Supplier shall ensure that the Supplier's equipment is suitable for the Supply and/or Services, as applicable, and maintained to a high standard to ensure safe operation and to avoid unnecessary disruption to the Supply and/or the Services.

## **13 INVOICING AND PAYMENT**

### **13.1 Price schedule**

- (a) The prices set out in the Purchase Order (the **Price**) shall be the sole consideration payable to the Supplier under this Contract, and are deemed to include all risks, Liabilities and obligations expressed or implied in this Contract or incurred in the course of the Supply and/or the Services, as applicable.
- (b) Unless otherwise specified in the Purchase Order, the Price includes, as applicable, all packaging for the Goods, transportation costs of Goods to the Delivery Point, insurance, customs duties and fees and applicable taxes, including, but not limited to, all, harmonized sales tax, goods and services tax, provincial sales tax, value added tax, use or excise taxes. No increase in the Price is effective, whether due to increased material, labour or transportation costs or otherwise, without the prior written consent of Principal, as applicable.

### **13.2 Invoice**

The Supplier will provide the Principal with a monthly invoice for the Supply and/or the Services, as applicable, during the relevant calendar month, setting out particulars of the Supply and/or the Services provided and calculations by which the invoice was calculated.

### 13.3 Payment

Subject to Section 13.4, the Principal will pay all undisputed invoices to the Supplier within thirty (30) days of receipt of the invoice.

### 13.4 Disputed amounts

If the Principal disputes the whole or any portion of the amount claimed in an invoice submitted by the Supplier, the Principal shall pay that portion of the amount stated in the invoice which is not in dispute and the Principal shall notify the Supplier in writing of the reasons for disputing the invoice.

### 13.5 Effect of payment

The making of any payment to the Supplier shall not be taken or construed as proof or admission of the Supply and/or the Services, as applicable, or any part thereof having been performed to the satisfaction of the Principal but shall be taken to be payment on account.

### 13.6 Taxes

Except as otherwise provided in this Contract, the Supplier shall pay any and all taxes, duties, excises, assessments and other government charges in connection with the Supply and/or the performance of the Services, as applicable.

### 13.7 Set-Off

Without prejudice to any other right or remedy it may have, Principal reserves the right to set off at any time any amount owing to it by Supplier against any amount payable by Principal to Supplier.

## 14 INSURANCE

### 14.1 Required insurance

The Supplier shall, at its own cost, obtain and maintain the following insurances for the term with financially sound and reputable insurers:

- (a) General and product liability insurance for not less than \$20,000,000;
- (b) If the Supplier is supplying Goods to the Principal under this Contract, Goods in transit insurance for not less than the replacement value of the Goods;
- (c) Worker's compensation insurance;
- (d) Comprehensive motor vehicle insurance covering all mechanically propelled vehicles used at any time in connection with the Supply for not less than \$10,000,000; and
- (e) Compulsory third party motor vehicle insurance.

### 14.2 Evidence of insurance

The Supplier shall, before commencing the Supply, lodge with the Principal certificates of insurance to evidence the existence of the policies required to be arranged by the Supplier and its subcontractors in respect of such insurance, and shall provide updated certificates of currency during the term.

## 15 INDEMNITIES

### 15.1 Indemnity

Subject to Clause 15.2, the Supplier will indemnify, defend and hold harmless the Principal, its affiliates

and their directors, officers, shareholders and employees (**Indemnified Parties**) from and against all Liabilities (including reasonable legal and professional fees and costs) that any Indemnified Party suffers, sustains or incurs, arising from or relating to any one or more of the following:

- (a) the Goods and/or Services supplied by Supplier;
- (b) the breach or non-performance by the Supplier or its personnel or subcontractors of any term or condition of this Contract;
- (c) any Claim that an Indemnified Party's use or possession of the Goods, as applicable, infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party;
- (d) any negligent act or omission or wilful misconduct by the Supplier or its personnel or subcontractors arising out of or related to the performance of this Contract;
- (e) any Claim made against the Principal by any of the Supplier's personnel in respect of relevant legislation concerning income tax, workers' compensation or other benefits (statutory or otherwise) or any applicable award, determination or agreement of a competent court or tribunal; or
- (f) any breach of Clause 19.

### 15.2 Exclusions

The Supplier will not be liable under Clause 15 to the extent that the Liability was directly caused by the Principal's negligence or wilful default.

## 16 TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement at any time at its sole discretion by providing notice in writing to the other party.

## 17 CONSEQUENCES OF TERMINATION

### 17.1 Accrued rights

Termination of this Contract does not affect any accrued rights or remedies of either party.

### 17.2 Consequences

Subject to Clause 17.1, the Supplier is not entitled to any compensation or damages on termination of this Contract.

### 17.3 Survival

Provisions of this Contract which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Contract, including, but not limited to Clauses 1, 3, 8, 13, 14, 15, 16, 17, 18, 19, 20 and 22.

## 18 EXCLUSION OF CONSEQUENTIAL LOSS

- (a) Except with respect to the Supplier's liability for indemnification, liability for breach of confidentiality or liability for infringement or misappropriation of intellectual property rights, notwithstanding anything in this Contract (express or implied), in no circumstances whatsoever (including negligence) is a party entitled to recover from the other party any damages for business interruption or loss of actual or anticipated revenue, income or profits or

any indirect, consequential, contingent or penal damages whatsoever arising out of, or in respect of, this Contract, with the exception of damages covered under a policy of insurance held by the other party, for which that party's liability shall be limited to the cover available under such insurance policy.

- (b) Each party releases the other party from, and indemnifies it and shall keep it indemnified from, any such liability.

## 19 CONFIDENTIALITY

Each party (**Recipient**) must keep confidential and may not use or disclose or copy, except where required by applicable law, any non-public, confidential or proprietary information of the other party, whether disclosed orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as confidential, and obtained by the Recipient during or in relation to the Supply or the performance of the Services, as applicable, provided that the Recipient may use such information solely for the use of performing its obligations under this Contract. The disclosing party shall be entitled to injunctive relief for any violation of this Clause. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Recipient at the time of disclosure; or (c) rightfully obtained by the Recipient on a non-confidential basis from a third party.

## 20 DISPUTE RESOLUTION

The parties acknowledge their expectation is that any dispute, difference or claim arising out of or relating to this Contract will be settled by discussion and negotiation between the parties' representatives or senior management.

## 21 LOCAL COMMUNITIES

The Supplier acknowledges that the Principal seeks to share economic benefits with First Nations and local communities through business and employment relationships, and in performing this Contract the Supplier will seek to encourage opportunities to benefit First Nations people and local communities.

On an annual basis, Supplier shall report to Principal the number of First Nations persons in Supplier's organization (and in any Supplier subcontractors' organizations) who are providing/have provided services to the site during the calendar year. Such report shall contain a break-down of the relevant First Nations communities of which such persons are members.

## 22 GENERAL

### 22.1 Time is of the essence

Time is of the essence in this Contract, and the Supplier must comply strictly with the date(s) indicated on the Purchase Order for delivery of the Goods and/or the performance of the Services, as applicable.

### 22.2 Entire understanding

This Contract comprises the sole and entire agreement of the parties and supersedes all prior or contemporaneous agreements, negotiations and understandings between the parties, whether oral or written, with respect to the subject matter of this Contract. This Contract prevails over any terms or

conditions contained in any other documentation and expressly excludes any of the Supplier's general terms and conditions of sale or any other document issued by Supplier in connection with this Contract.

### 22.3 Assignment

The Supplier shall not assign, transfer, delegate, subcontract, charge or encumber this Contract or any part thereof or any benefit, rights, moneys, or interest under this Contract without the Principal's prior written consent. Principal may at any time assign, transfer or subcontract any or all of its rights or obligations under this Contract without Supplier's prior written consent.

### 22.4 Independent Contractor

The relationship between the Principal and the Supplier is a relationship of principal and independent contractor and nothing contained in this Contract shall be construed so as to create a relationship of employment, agency or partnership between the Principal and the Supplier, or between the Principal and any of the Supplier's personnel.

### 22.5 Amendment and Modification

No change to this Contract is binding upon Principal unless it is in writing, specifically states that it amends this Contract or the Purchase Order and is signed by an authorized representative of the Principal.

### 22.6 Waiver

No waiver by Principal of any of the provisions of the Contract shall be effective unless explicitly set forth in writing and signed by Principal. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Purchase Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

### 22.7 Force Majeure

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Purchase Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable (**Force Majeure Event**). Supplier's economic hardship or changes in market conditions are not considered Force Majeure Events. Supplier shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Purchase Order.

### 22.8 Governing law

- (a) This Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Each party irrevocably attorns and submits to the jurisdiction of the Ontario courts situated in the City of Toronto

- (b) The *United Nations Convention on Contracts for the International Sale of Goods (1980)* does not apply to this Contract.