

Purchase Order Terms and Conditions

1. DEFINITIONS

- 1.1. The following words and phrases shall have the following meanings: Buyer means the party identified as the Buyer on the Purchase Order;
- (a) Consequential Damages means any and all punitive, exemplary, incidental, indirect or consequential loss of any kind arising out of or in connection with the Purchase Order including, without limitation: loss of use, product, production, revenue, profits (actual or anticipated), overhead, fixed fees, business opportunity or reputation, regardless of fault, negligence, strict liability, breach of contract or breach of warranty;
 - (b) Deliverables means the goods, materials, equipment, supplies and services described in the Purchase Order to be furnished by the Supplier;
 - (c) Delivery Terms means the conditions of delivery specified in the Purchase Order including location, method, cost, risk, scheduling and expediting;
 - (d) Event of Force Majeure means any occurrence which is beyond the control of and is not the fault of the party relying on such occurrence;
 - (e) Law means the common law, and all federal, provincial, territorial and municipal laws, statutes, by-laws, regulations, rules, orders, ordinances, directives, standards, codes, permits and licences which apply to the supply of the Deliverables;
 - (f) Owner means the owner of the Project;
 - (g) Price means the maximum amount that may become payable by the Buyer to the Supplier for the performance of the Purchase Order;
 - (h) Prime Contract means the contract between the Buyer and the Owner or between the Buyer and a Prime Contractor relating to the Project;
 - (i) Project means the project for which the Buyer is purchasing the Deliverables;
 - (j) Purchase Order means the document issued by the Buyer entitled "Purchase Order" which contains the terms of the purchase and supply of the Deliverables;
 - (k) Supplier means the party identified as the Supplier on the Purchase Order;
 - (l) Site means the location where the Deliverables are to be supplied;
 - (m) Warranty Period means the period specified in the Purchase Order, or where no period is specified, means twelve (12) months from the date the Deliverables have been accepted at the Site by the Buyer.

2. SCOPE

- 2.1. The Supplier shall provide the Deliverables as described in the Purchase Order. In the event of a conflict between the Purchase Order and these Terms and Conditions, the Purchase Order shall govern.
- 2.2. At the request of the Buyer, the Supplier shall provide documentation detailing the process of the manufacture, delivery, performance or supply of the Deliverables, and shall permit the Buyer to inspect, test or witness any part of these processes. No inspection, testing or witnessing by the Buyer shall relieve the Supplier of any of its obligations under the Purchase Order or these Terms and Conditions.
- 2.3. To the extent the Purchase Order is for the sale of goods, the Buyer shall have fourteen (14) days from receipt of the Deliverables at the Site to inspect the Deliverables and to advise the Supplier if it finds any or all of the Deliverables to be unacceptable. Nothing in the foregoing shall impair or limit Buyer's rights with respect to defects and deficiencies with the Deliverables, including but not limited to latent defects and work covered by warranties.

3. PROTECTION OF SITE AND DELIVERABLES

- 3.1. The Supplier shall take reasonable measures to ensure that no damage occurs to the Deliverables or to any other property at the Site as a result of the supply of the Deliverables.
- 3.2. The Supplier shall immediately report to the Buyer any damage to the Deliverables or other property at the Site resulting from the supply of the Deliverables, and the Supplier shall be responsible for:
- (a) the cost of replacement or repair of the Deliverables;
 - (b) the cost of repairs to other damaged property at the Site;
 - (c) costs to the Buyer arising from delay to the Prime Contract schedule directly attributable to any property damage caused by the Supplier.

4. TITLE AND RISK

- 4.1. The Buyer will specify Delivery Terms. If not detailed in the Purchase Order, responsibility for tasks, costs and risks associated with the transportation and delivery of the Deliverables shall, for transactions within North America, be in accordance with the Uniform Commercial Code (UCC), and for international trade, shall be in accordance with Incoterms 2010, as determined and communicated by the Buyer.
- 4.2. Any transfer of title to the Deliverables shall be without prejudice to the Buyer's right to inspect and refuse the Deliverables.

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5. REPRESENTATIONS AND WARRANTIES

5.1. The Supplier represents to the Buyer that:

- (a) it has the experience, resources, personnel and capability to provide the Deliverables in accordance with the Purchase Order and these Terms and Conditions;
- (b) it has the unfettered right to provide the Deliverables and that title to any chattels forming part of the Deliverables is free and clear of any claims, liens, charges, encumbrances or security interests;
- (c) it has legal power and capacity to carry on its business; and
- (d) it has obtained all required permits, licences and authorisations necessary to provide the Deliverables in the jurisdiction to which the Purchase Order pertains.

5.2. In addition to any warranties expressed or implied by law, the Supplier warrants to the Buyer that the Deliverables meet all performance standards or specifications detailed in the Purchase Order and are, and shall continue to be;

- (a) of merchantable quality and fit for the purpose for which they are supplied;
- (b) supplied, performed, constructed, erected, fabricated or manufactured utilizing personnel, equipment and materials of the quality and grade most suitable for the Deliverables;
- (c) free of defects;
- (d) provided, delivered and, if applicable, installed:
 - (i) efficiently and expeditiously in a good and workmanlike manner and in accordance with the Purchase Order; and
 - (ii) with the standard of care and skill normally exercised by suppliers and contractors providing, delivering or installing similar goods or performing similar services.

5.3. During the Warranty Period, the Supplier shall at its own cost, complete such repair, replacement or re-work necessary to bring any defects in the Deliverables to the required standard. Warranty work is to be completed with minimal disruption to the continued operations of the Buyer and the Owner. The Supplier shall be liable to the Buyer for costs arising from damage to other property caused by or related to defects in the Deliverables and for any Consequential Damages suffered by the Buyer or any third party.

5.4. In the case of an emergency, or if the Supplier fails to perform warranty work within a reasonable period of time having regard to the circumstances, the Buyer may, upon twenty four (24) hour notice to the Supplier, complete the necessary repair, replacement or re-work and charge the cost thereof to the Supplier.

5.5. Should any warranty work be performed during the Warranty Period, then the Warranty Period shall, with respect to the warranty work, start fresh effective the date the warranty work is completed.

5.6. The Supplier's standard warranty for the Deliverables shall apply to the extent that it exceeds the Warranty Period or the warranty provisions provided for in the Purchase Order or these Terms and Conditions.

6. PRICE AND PAYMENT

6.1. The Buyer shall pay the Supplier for the Deliverables in accordance with the terms of the Purchase Order. The Price is subject to adjustment as provided for in these Terms and Conditions.

6.2. Unless otherwise stipulated in the Purchase Order:

- (a) all amounts are payable in Canadian funds;
- (b) the Buyer shall not be obligated to pay the Supplier until sixty (60) days after the Deliverables have been received and an invoice has been issued to the Buyer;
- (c) invoices shall be submitted by the Supplier to the Buyer at: Accounts Payable, Zone 3 Acheson Industrial Area, 2-53016 Hwy 60, Acheson, Alberta T7X 5A7.

6.3. The Supplier shall invoice the Buyer for the Deliverables within thirty (30) days of supply and acceptance of the Deliverables. If the Supplier is unable to provide an invoice within this timeframe, the Supplier shall notify the Buyer in writing of the anticipated date that an invoice will be provided. Invoices provided more than seventy five (75) days after acceptance of the Deliverables may not be considered for payment by the Buyer.

6.4. Invoices must meet the following requirements:

- (a) indicate the Purchase Order number issued by the Buyer;
- (b) specify the amount of Goods and Services Tax (GST) and provincial sales tax payable as separate line items;
- (c) specify the Supplier's GST registration number; and
- (d) any invoices for service work must include supporting documentation (LEM or ticket) for all invoiced amounts.

6.5. The Price stated on the Purchase Order is the maximum value of Deliverables that can be supplied under the Purchase Order. The Supplier shall not submit invoices for Deliverables that exceed the Price unless an increase has been pre-approved by the Buyer and documented in a change order submitted to the Supplier. The Buyer will not consider for payment any invoices that do not adhere to the pre-approval process.

6.6. If the Supplier fails to provide written confirmation of acceptance of a Purchase Order, acceptance is deemed to occur on the earlier of the third business day following receipt of the Purchase Order by the Supplier, or upon supply of the Deliverables.

6.7. Except for purchase orders solely for goods, payment by Buyer's customer (whether such customer be the Owner or contractor) to Buyer is a condition precedent to Buyer's obligation to pay Supplier for the Deliverables.

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7. LIENS AND CHARGES

- 7.1. The Buyer and Supplier shall comply with the requirements of builders' lien legislation applicable to the supply of Deliverables to the Project. The Supplier shall, upon request by the Buyer, provide such letters, declarations, waivers or other documentation as may be required under builders' lien legislation, or by the Buyer's internal processes. If builders' lien legislation is not applicable to the supply of the Deliverables, the Buyer may, at its discretion retain a 10% holdback in the same manner and for the same purposes as if the builders' lien legislation was applicable.
- 7.2. The Supplier shall promptly settle and pay all third party accounts and claims related to the Deliverables. If the Supplier has not settled outstanding claims after three (3) days' notice from the Buyer that it has become aware of third party claims related to the Deliverables, the Buyer shall have the right, but not the obligation to pay the account or claim and to set off the amount so paid against any monies otherwise payable to the Supplier.
- 7.3. If a lien or encumbrance is registered against the Project, or the property of the Buyer or the Owner as a result of the Purchase Order or the supply of the Deliverables, the Supplier shall, at its own cost, immediately cause such lien or encumbrance to be discharged. If the Supplier fails or refuses to do so, the Buyer may, but shall not be obligated to take measures to ensure timely discharge. The Supplier shall reimburse and indemnify the Buyer and the Owner from all costs incurred from the discharge of the lien or encumbrance, including solicitor and client legal costs.
- 7.4. In all circumstances where the Supplier is to reimburse or indemnify the Buyer for any costs, expenses, accounts, claims, liens or charges as herein provided, the Buyer may set-off, back-charge or recover such sums from amounts owed to the Supplier under the Purchase Order or any other agreement between the Buyer and the Supplier.

8. LAWS, SAFETY AND ENVIRONMENTAL

- 8.1. The Supplier shall comply with all Laws including without limitation, occupational health, workers' compensation, safety and fire regulations of any governmental authority having jurisdiction over the Project or the Deliverables, and with the Buyer's safety and emergency programs and procedures. While at the Site, the Supplier shall comply with the Buyer's Alcohol and Drug Requirements for Contractors and Contract Workers and any drug and alcohol policies of the Owner. The Supplier shall obtain copies of applicable policies from the Buyer's personnel on Site and shall ensure that all individuals assigned to work under the Purchase Order including its employees, agents, subcontractors, and their employees and agents comply with the requirements of this provision.
- 8.2. The Buyer shall be entitled to exclude any of the Supplier's employees, agents or subcontractors from the Site if the Buyer determines, in its sole discretion, that such persons are working or acting in an unsafe manner or posing a risk, or potential risk, to any other persons or property located at or about the Site. The Buyer assumes no liability to the Supplier or to any third parties arising from the enforcement or non-enforcement of this provision, and the Supplier hereby fully indemnifies the Buyer against any and all such liability.
- 8.3. The Supplier shall ensure that all equipment and tools brought onto the Site or used by the Supplier or its subcontractors for the supply of the Deliverables are inspected and certified to be safe and in good and proper working order. All equipment and tools shall meet the requirements of applicable safety codes, regulations and Laws and shall have proper and operable safety devices and precautions installed as required.
- 8.4. The Supplier and the Buyer shall comply with all Laws and requirements respecting environmental protection in the storing, handling, transporting and dispensing of materials used in the supply of the Deliverables.

9. CONFIDENTIAL INFORMATION AND PROPRIETARY RIGHTS

- 9.1. Information pertaining to the commercial practices of the Buyer, or any proprietary or confidential information of the Buyer that is disclosed to the Supplier as a result of this transaction shall be held in strict confidence by the Supplier. Such information shall not, except as required by Law, be disclosed by the Supplier to any third party without written authorization from the Buyer, unless such information is in the public domain.
- 9.2. Intellectual property, including all trade secrets, trademarks, patents, copyrights and other proprietary rights of the Buyer, together with all documents, information, data, electronic media, know how, knowledge, trade secrets, trademarks, patents, copyright or products developed, improved or prepared by the Supplier or its employees, agents or subcontractors while providing the Deliverables shall be and shall remain the sole property of the Buyer and shall be delivered to the Buyer on demand. The Supplier waives all moral rights that it may have in respect of this property.

10. TERMINATION

- 10.1. This Purchase Order may be terminated by the Buyer:
 - (a) if the Supplier fails to perform any obligation provided for in the Purchase Order, and such default continues for more than twenty four (24) hours (or such reasonable period of time determined by the Buyer in its sole discretion) after notice from the Buyer to the Supplier to rectify the default;
 - (b) without cause upon twenty four (24) hours written notice to the Supplier; and
 - (c) immediately if the Prime Contract is terminated. Upon termination, the Buyer shall pay for Deliverables supplied to the date of termination and the Buyer shall not be liable for any costs or losses of the Supplier arising from the termination including, without limitation, any overhead or unearned profits with respect to the uncompleted portion of the Purchase Order. Monies due the Supplier shall not exceed the value of Deliverables actually supplied under the Purchase Order to the date of termination.
- 10.2. Notwithstanding 10.1, in the event of a default under 10.1(a) the Buyer, without prejudice to any other right or remedy it may have,

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may elect to make good the default and deduct the cost thereof from payment due the Supplier. If the Buyer elects to remedy the default, it may, for the purpose of completing the Purchase Order, take possession of the Deliverables and complete the work or engage a third party to do so and the Buyer shall be permitted to set off all costs and expenses incurred by it, against any monies owed to the Supplier.

10.3. If work on the Project is temporarily disrupted or suspended, the Buyer may, upon written notice to the Supplier, immediately suspend activity under the Purchase Order. Upon receipt of notice of suspension the Supplier shall discontinue supply of the Deliverables and will consult with the Buyer to determine the future status of the Purchase Order. The Supplier shall have no claim against the Buyer or the Owner for damages or losses incurred as a result of the suspension of activity under the Purchase Order.

11. INSURANCE REQUIREMENTS (Not applicable when the Deliverables are goods only).

11.1. If the Supplier is providing services to the Buyer then the Supplier shall, without limiting its obligations or liabilities herein, provide and maintain for the duration of the Purchase Order and the Warranty Period, the following insurance coverage:

- (a) if any engineering or design work is to be performed in relation to the Deliverables or pursuant to the Purchase Order, professional errors and omissions insurance with limits not less than \$2,000,000.00 per occurrence;
- (b) contractor's owned equipment insurance covering all equipment, tools and materials owned by, or while under the care, custody and control of the Supplier;
- (c) workers' compensation coverage as follows:
 - (i) coverage for all workers providing the Deliverables in accordance with the statutory requirements of the jurisdiction where any work related to the Deliverables is performed;
 - (ii) for workers performing services at the Site whose place of residence is outside of Canada, an additional amount of workers' compensation coverage with extra-territorial benefits, at least equal to the benefits provided under the workers' compensation benefits legislation applicable to the jurisdiction where the Site is located;
 - (iii) for a Supplier who is a sole proprietor, optional personal workers compensation coverage satisfactory to the Buyer for the duration of the Purchase Order;
- (d) comprehensive general liability insurance providing coverage of not less than \$2,000,000.00 for each occurrence or accident resulting in damages because of bodily injury (including death) and personal injury sustained by any person or persons or because of injury to or destruction of property arising out of any operations in connection with the Purchase Order, including any obligations or liabilities to the Buyer, and including coverage for contractual liability, tortious liability and products and completed operations liability and containing cross-liability and severability of interest provisions;
- (e) automobile insurance with a limit of no less than \$2,000,000.00 per occurrence; and
- (f) such additional coverage as may be required by Law or by the Buyer, as the case may be.

11.2. The policies noted in 11.1(b) and (d) shall contain a waiver of subrogation in favor of the Buyer.

12. INDEMNIFICATION AND LIABILITY

12.1. Without limiting the Buyer's rights and remedies hereunder or at law or in equity, the Supplier shall be liable to the Buyer in respect of and will indemnify and hold the Buyer harmless from and against any and all claims which may be brought against the Buyer or any costs or expenses which the Buyer may pay or incur by reason of any matter attributable to supply of the Deliverables, a breach of the Purchase Order or these Terms and Conditions, or the negligent acts or omissions, tortious acts, strict liability offences or wilful misconduct of the Supplier (or those for whom it is responsible in law) including without limitation: i) deficient or defective Deliverables; ii) damage or destruction to property; iii) environmental damage; iv) non-compliance with the Laws or with the policies of the Buyer or Owner; v) third party claims against the Buyer that arise out of the supply of the Deliverables; vi) costs of disposition of any alleged claim, lien or encumbrance arising in connection with the Deliverables; and any cause whatsoever, except as otherwise provided in the remainder of this Article.

12.2. The Supplier shall not be liable for any act or omission if done or omitted pursuant to the negligence of the Buyer.

12.3. Subject to 12.4 and except as provided for in 3.2(c) and 5.3, neither party shall be liable to the other for Consequential Damages.

12.4. Nothing herein shall exclude or limit the Supplier's liability for claims sustained or incurred by the Buyer as a result of third party claims against the Buyer that arise out of the supply of the Deliverables.

13. FORCE MAJEURE

13.1. Either the Buyer or the Supplier may claim that an Event of Force Majeure has taken place by giving the other party verbal notice within 24 hours of the event, and written notice, together with a proposed plan of corrective action to resolve or minimize the effect of the Event of Force Majeure, within 48 hours of the event. Lack of productivity or availability of labour or transportation shall not qualify as an Event of Force Majeure, unless it arises as a result of a strike or lockout of the labour force employed by the Supplier. Financial capability is not an Event of Force Majeure.

13.2. If the Buyer has given notice of an Event of Force Majeure, or agrees with the Supplier that the Purchase Order is affected by an Event of Force Majeure, then the Buyer may suspend or terminate the Purchase Order or any portion thereof, or may elect to cause the Supplier to complete the Purchase Order with such time adjustments as are required by the Event of Force Majeure.

13.3. Any delay or failure on the part of either the Buyer or the Supplier, which is a result of an Event of Force Majeure, shall not constitute a default under the Purchase Order or give rise to any claim for damages.

13.4. An Event of Force Majeure shall not result in any increase to the cost of the Deliverables or to the Price.

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14. DISPUTE RESOLUTION

- 14.1. In the event of a disagreement between the parties relating to the Purchase Order, the Supplier shall perform the Purchase Order as directed by the Buyer pending resolution of the dispute.
- 14.2. The parties shall make reasonable efforts to resolve disagreements by negotiation between the senior managers for each party, and shall, on a without prejudice basis provide open and timely disclosure of relevant facts, information and documents to facilitate such negotiations. If any dispute (other than a decision by the Buyer to terminate the Agreement, which is expressly excluded from this provision) cannot be resolved by negotiation, or other method agreed to by both parties within ten (10), business days, then the matter may be referred by either party to be resolved by arbitration in accordance with the Arbitration Act of Alberta. The arbitration tribunal shall be composed of one arbitrator and the arbitration shall be conducted in the City of Edmonton unless another location is agreed to by both parties. The cost of arbitration shall be borne equally by the parties.
- 14.3. For disputes arising out of or relating to the acts, omissions, responsibilities, directives, and/or liabilities of the Owner, prime contractor and other contractors in the contracting chain between Buyer and Owner, Buyer may consolidate any action raised by the Supplier with an action involving the Owner and/or such contracting parties. Supplier hereby consents to such consolidation and the jurisdiction thereof and shall agree to stay any action brought against Buyer pending resolution of such actions with the Owner and such contracting parties. To the extent Supplier's cause of action arises from the acts, omissions, responsibilities, directives, and/or liabilities of the Owner, prime contractor and other contractors in the contracting chain between Buyer and Owner, Supplier shall be bound by the decision in such consolidated actions.

15. NOTICES AND GENERAL

- 15.1. All notices required to be given shall be in writing and deemed to have been well and sufficiently given if delivered personally or by courier, or sent by facsimile, to either the Buyer or the Supplier, as the case may be, at the address shown for each party on the Purchase Order. Any notice delivered during regular business hours of the addressee shall be deemed to have been received on the date of delivery and any notice delivered after regular business hours shall be deemed to have been received on the next business day.
- 15.2. Electronic communication may be used for day-to-day matters connected with the Purchase Order, however, when notice is required by these Terms and Conditions, such notice shall be sent by the methods set forth in Section 15.1 and shall not be sent by electronic communication.
- 15.3. No failure or delay on the part of either party in exercising any right, power or privilege shall operate as a waiver thereof.
- 15.4. The Supplier shall not assign the Purchase Order or any part thereof, without the consent of the Buyer.
- 15.5. If a court of competent jurisdiction determines that any provision of the Purchase Order or these Terms and Conditions is invalid or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions of the Purchase Order or these Terms and Conditions.
- 15.6. Once a schedule for supply of the Deliverables has been established by the parties, time shall be of the essence.
- 15.7. Any terms, covenants, provisions, or conditions of the Purchase Order or these Terms and Conditions which expressly, or by their nature survive the termination of the Purchase Order shall continue in full force and effect subsequent to and notwithstanding such termination and shall not merge, until such terms, covenants, provisions and conditions are satisfied or by their nature, expire.
- 15.8. The Purchase Order shall be governed by and construed in accordance with the laws of the Province of Alberta. Other than provided for in the Section pertaining to Dispute Resolution, the parties consent to the exclusive jurisdiction of the courts of the Province of Alberta.
- 15.9. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Purchase Order.