



## TERMS AND CONDITIONS

1. **Purchase Order, Acceptance and the PO Agreement:** These terms and condition apply to the sale and delivery of any goods set out on the attached or referenced PO form ("Goods"), to the performance of any work or services associated with such sale and delivery or set out on the PO form ("Work"), and to the supply of any product(s) resulting from work or services set out on the PO form (which supply could consist of delivery, assembly, manufacture or other mode of supply) ("Work Product"). The PO form, these terms and conditions and any other attachments referenced on the PO form together comprise the Purchase Order. In case of conflict or inconsistency, the order of priority is: the PO form, these terms and conditions, the attachments. The earliest of Supplier's acknowledgment or signing of the PO form, Supplier's shipment of Goods under the Purchase Order or Supplier's commencement of Work under the Purchase Order constitutes Supplier's acceptance of the provisions of the Purchase Order. Once accepted, the Purchase Order becomes the whole agreement between the parties with respect to the subject matter hereof, and such agreement is called the "PO". For clarity, the effectiveness of the PO is not conditional on the making of a down payment or any other conditions, unless stated on the PO form. This PO may not be changed or waived, and no substitutions may be made, except by written agreement of authorized representatives of the parties. The Buyer may request change(s) to this PO, and Supplier agrees to promptly make and agree to any such PO change(s), provided: (i) Supplier has the resources to effect the change(s); and (ii) any resulting difference in price or time for performance is equitably adjusted. The PO number on the PO form shall not be repeated for other orders.
2. **Representations, Warranties and Standards:** Supplier represents that it has good and proper authority to enter into the PO. Supplier warrants that it will have good title to the Goods at the time of delivery and to the Work Product at the time of supply, free and clear of encumbrances except those previously disclosed to Buyer. Supplier agrees to comply with all applicable federal, state, provincial and local laws, rules and regulations applicable to Supplier's performance of its obligations under the PO. Without limiting the applicability of law, Supplier makes those of the following warranties that are appropriate for any Goods delivered or Work Product supplied or Work performed under the PO: (1) the Goods, Work Product and Work will conform to all specifications, standards, drawings, requirements and quotations communicated by Buyer and with applicable law; (2) the Goods and Work Product will be free from defects in design (except to the extent designed by Buyer), material and workmanship; (3) the Goods and Work Product will be fit for their intended purpose(s) as communicated by Buyer or as otherwise ought to be known by Supplier; (4) the Work will be performed, the Goods will be delivered and the Work Product will be supplied in a timely manner and in accordance with good industry standards and applicable law, regulations and codes; and (5) the sale, installation and use of any article in the Goods, the Work or the Work Product will not infringe any intellectual property right. If Supplier has obtained any manufacturer's warranty in respect of the Goods or Work Product or any item thereof, it shall use reasonable commercial efforts to assign such warranty to Buyer, but a failure to do so does not limit the warranties in this section. **If applicable, this contractor and subcontractor shall also abide by the requirements of 41 CFR § 60-300.5(a) and 41 CFR § 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans and qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.**
3. **Delivery, Title, Inspection, Acceptance:** Title and risk of loss to Goods pass to Buyer at the place of, and at the time immediately following, delivery or unloading at the "ship to site" (the "Site"). In respect of Work Product: (i) in the case of delivery or other supply from outside the Site, title and risk of loss pass at the same time and place as described for Goods; and (ii) in the case of assembly or manufacture or other supply at the Site, title and risk of loss pass at the time of payment therefor. In the case of delivery of Goods or Work Product, Supplier shall provide: (i) for insurance while the Goods or Work Product are in transit that is customary in the industry, adequate to cover full loss, and that names Buyer as an additional insured if reasonably requested by Buyer; (ii) adequate packing so that the items are not damaged during delivery and handling except in reasonably unforeseeable circumstances; (iii) such documentation with delivery as reasonably requested by Buyer. In the case of shipments into the United States or into Canada from a different country than the destination country, Supplier shall ensure that the shipment includes any documentation required (including certificates of origin and invoices), and shall take such other actions required, for customs clearance into the United States or Canada, as the case may be. If such actions require involvement of a customs broker or other agent, Supplier shall seek the approval of Buyer to such agent, which approval shall not be unreasonably withheld or delayed. If requested by Buyer, Supplier shall arrange for the issuance of a data report on the Goods or Work Product to be issued and signed by an independent authorized inspection agency. Buyer may at its own cost inspect the performance of the Goods, the Work and the Work Product, and a failure to inspect within a reasonable period of time shall not be considered acceptance. Such inspection may include attendance by Buyer or its representative at the Supplier's, manufacturer's or other persons' site on reasonable notice. Buyer may, with reason, by notice reject or advise of defects in the Goods or Work Product or performance of the Work. Notwithstanding any other provision, if title and risk of loss to Goods or Work Product that are rejected are held by Buyer at the time of rejection, title and risk of loss are deemed to pass back to Supplier at the time of notification of rejection. Buyer has no obligation to pay for rejected Goods or Work Product, and Supplier shall refund Buyer any payment it had received for such Goods or Work Product.
4. **Remedies:** In the case of a breach of warranty set out in section 2 or the provision of notice of rejection or defects from Buyer to Seller set out in section 3, Supplier shall, at the option of Buyer, promptly replace or repair the affected Goods or Work Product or reperform the Work, all to the reasonable satisfaction of Buyer. If Supplier fails to do so with diligence Buyer may do so or may engage a third party to do so. Supplier shall be liable and pay for all for all costs and expenses associated with the replacement (subject to the next sentence), repair or reperformance, and such costs and expenses may be set off from purchase amounts owing. In the case of replacement of Goods or Work Product that have been rejected by Buyer and for which supplier has refunded any payment, Buyer shall be liable to pay for replacements for the rejected Goods or Work Product, but only up to the amount of the original purchase price.
5. **Termination:** Buyer may by notice terminate this PO or any order under it at any time for cause or convenience. The causes for termination include: (1) a breach by Supplier of its obligations hereunder, provided Supplier was provided notice of default and did not remedy the default within 3 days of the notice or any such other date as may be reasonably required and indicated in the notice; (2) the financial condition of Supplier appears unsatisfactory to Buyer, acting reasonably; (3) impropriety by someone under the control of Supplier; (4) the continuation of, or the failure to remedy the effects of, an event of force majeure (described in section 7) for a period of more than 30 days. In the event of termination for cause or convenience Buyer will pay Supplier for Goods delivered, or Work Product supplied or Work performed to the date of termination, as the case may be, and such Goods and Work Product shall be the property of Buyer. In addition: (a) in the event of termination for cause, Buyer will be entitled to excess costs incurred by Buyer arising from the termination and all other remedies available at law; (b) in the event of termination for convenience, Buyer shall pay Supplier for any direct and reasonable net out-of-pocket expenses incurred arising from the termination. Except in the case of a default in payment terms that is not disputed, Supplier may not terminate this PO or any order under the PO, but may claim as its exclusive remedy direct damages for contract breach. In the case of default in payment terms that is not disputed, Supplier may on notice terminate this PO or any order, provided Buyer was provided notice of default and did not remedy the payment default within 5 business days of the notice. In the event of termination or completion of the PO, the terms relating to confidentiality, indemnity and warranty shall survive for 18 months thereafter, except that the performance of every warranty remedy shall trigger an additional warranty under section 2 applicable to the remedy that will survive for 18 months again after completion of the remedy.
6. **Price, Payment, Charges:** Price(s) stated on the PO form shall be described net of taxes, freight, duties, carrying and other charges. To be recoverable such other charges must be actually incurred by Supplier and agreed to by Buyer. If no price is stated because it cannot be determined with certainty, the reasonable estimate of the parties at the time of this PO of the price for the scope of the delivery of the Goods, the supply of the Work Product or the performance of the Work, as the case may be, at the date of this PO (as set out in a quote or otherwise) shall be considered the price for purposes of the PO. If there is a change to the price or to the amounts or types of charges, the change must be agreed to by Buyer, and Buyer shall not otherwise be liable for prices billed and payment in excess of the stated or estimated amounts. Buyer may hold payment until satisfied that Supplier's labour and materials bills associated with the Work have been paid, and may set off amounts owing as elsewhere described in the PO.
7. **Force Majeure:** Neither party shall be responsible for any delay or failure to perform its obligations hereunder when due to force majeure events of: fire; flood; explosion; act of terror; or any other event beyond its control that renders performance impossible or radically different than what is expected hereunder. The force majeure event must affect the party to this PO directly, as opposed to one of its suppliers, unless the delay or failure of the supplier could not have been anticipated by the party or, if anticipated, could not have been alleviated insofar as it affects the other party using best efforts. If a force majeure event occurs, the party affected shall give prompt notice to the other and use all commercially reasonable steps to eliminate and mitigate the effects on the other party of the force majeure event.
8. **Site Presence:** If the delivery of Goods, the supply of Work Product or the performance of Work entails the presence of personnel, vehicles or property of Supplier or its contractors on Buyer's site ("Supplier's Site Presence"), Supplier agrees that its personnel and contractors will comply with applicable health, safety and environmental laws, regulations, practices and codes and the applicable policies and procedures of Buyer, and will also use due care in order to ensure that no damages arise from Supplier's Site Presence, including damages to the Site such as releases from vehicles. Buyer may request that any person or property not meeting this requirement be removed from the Site, and Supplier shall promptly cause such removal without liability or recourse to Buyer. Notwithstanding the section "Indemnity", Supplier shall be responsible for, and indemnifies Buyer for any and all damages or claims, injury to persons and damage to property (including Supplier's and its contractors' and their visitors' personnel and property) and other damages arising by virtue of Supplier's Site Presence, including reasonable attorney's fees and costs, except to the extent due to the negligence of Buyer. Supplier warrants that it is fully insured and that the insurance includes worker's compensation insurance for Supplier's personnel and is adequate to provide coverage for any injuries sustained by any person on the Site or for any property damaged during the performance of this PO the Site. Supplier shall ensure that any of its contractors used hereunder have similar insurance. If Buyer requests, Supplier shall provide such certificates of insurance.
9. **Indemnity:** Each party indemnifies the other for all damages and claims, including those of third parties, arising from its performance or non-performance of the terms of this PO, whether arising in contract, tort, or other form or legal theory, subject to the section "Site Presence". In addition, Supplier indemnifies Buyer for any claim of infringement of intellectual property rights arising from the Goods, Work or Work Product.
10. **Other:** All documents and information provided from one party to the other relating to performance of the PO are confidential and may not be disclosed except with the consent of the other party. The provincial or state law of the Site (the "Jurisdiction") and federal laws applicable therein shall govern this PO. In the event of conflict or dispute, either party may submit the issue to binding arbitration under the arbitration laws of the Jurisdiction. The PO is not assignable by a party without the consent of the other party, not to be unreasonably withheld. If a party subcontracts all or a portion of its obligations under the PO, it remains liable to Buyer for such obligations.