

Purchase Order Terms and Conditions

1. **TERMS:** The terms and conditions of this Purchase Order, including those on the face hereof and those set forth below represent the entire agreement between Buyer and Seller. Acceptance is limited to the terms and conditions of this Purchase Order, and no purported revisions of, additions to, or deletions from this Purchase Order shall be effective, whether in Seller's proposal, invoice, acknowledgment or otherwise, and no local, general or trade custom or usage, shall be deemed to effect any variation herein unless expressly agreed to in writing by the Buyer's authorized representative. All goods and services furnished pursuant to this Purchase Order shall strictly conform to the specifications, descriptions and warranties set forth in this Purchase Order. The delivery of any goods or the furnishing of any services pursuant to this Purchase Order shall constitute acceptance by Seller of this Purchase Order subject to, and in strict accordance with, all of its terms and conditions. Any reference on the face of this Purchase Order to Seller's proposal shall be exclusive of any terms and conditions attached to or referred to therein. To the extent that terms appearing on the face of this Purchase Order are inconsistent with those set forth herein, the terms on the face shall govern.
2. **TIME OF THE ESSENCE:** Time is of the essence for this Purchase Order. The delivery of goods shall be made as specified on the face of this Purchase Order and each and every part hereof. Buyer reserves the right to reject goods and to cancel all or any portion of this Purchase Order in the event of failure to deliver at the time and place specified. Buyer's acceptance of any part of a shipment not delivered as specified herein shall not obligate Buyer to accept the remainder of that shipment or any future shipments. If Seller is required to provide Material Safety Data Sheets, they shall be delivered to Buyer prior to delivery of any goods under this Purchase Order. All goods shall be received subject to Buyer's inspection and acceptance, and subject to Buyer's right to reject and return at Seller's expense goods which fail to conform strictly to the requirements of this Purchase Order. All goods are subject to inspection and testing by Buyer. The delivery of services shall be made as specified on the face of this Purchase Order and each and every part hereof. Buyer reserves the right to reject services and to cancel all or any portion of this Purchase Order in the event of failure to deliver at the time and place specified. Buyer's acceptance of any services not delivered as specified herein shall not obligate Buyer to accept the remainder of those services or any future services. All services delivered shall be subject to Buyer's inspection and acceptance, and subject to Buyer's right to reject those services which fail to conform strictly to the requirements of this Purchase Order. All services are subject to inspection and testing by Buyer.
3. **FORCE MAJEURE:** Buyer shall not be liable to Seller for any failure of Buyer to take any delivery of goods or receipt of services under the terms of the Purchase Order hereunder when due, if occasioned by any event beyond Buyer's reasonable control, including without limitation fire, flood, earthquake, lightning or other acts of God; acts of, or compliance with the directions of, civil or military authority, including any federal, provincial or local agency or authority; wars; riots; insurrections; sabotage; accident; embargo; strike or other labor trouble; interruption of or delay in transportation; shortage or failure of supply of materials; or

equipment breakdown. At Buyer's option, the time for delivery hereunder shall be extended to the extent of the delay occasioned by any such circumstance and the deliveries so omitted shall be made during the period of such extension.

4. **RISK OF LOSS:** Risk of loss of any goods sold hereunder shall transfer to Buyer at the time and place of delivery; provided that risk of loss prior to actual receipt of the goods by Buyer shall nonetheless remain with Seller.

5. **SHIPMENT:** Buyer may specify the manner in which the goods are to be shipped, the particular route, method, packaging, carrier and delivery date in the Purchase Order. In the event that Seller fails to ship goods in accordance with the stated terms in the Purchase Order or on or before any scheduled shipping date, Buyer shall have the right to specify a more rapid method of shipment than was specified originally and Seller shall bear, at no additional cost to Buyer, any increased costs thereby.

6. **PACKING, MARKING, AND INVOICING:** A packing slip shall be included with each shipment of goods. The Seller's invoices, together with original bills of lading, properly signed by carrier's representative, shall be forwarded to Buyer. Individual invoices shall be issued for each separate shipment. Buyer shall not be charged for packaging, boxing, crating or cartage unless previously advised in writing by the Seller. All invoices, packing lists, bills of lading, and each separate package within each shipment shall clearly reference piece number, Buyer Purchase Order number and Seller's packing slip number. Partial shipments shall be identified as such on the shipping memoranda and invoices. Invoices shall be submitted to Buyer within 2 weeks of receipt of the goods and/or the delivery of services.

7. **PAYMENT, WAIVER OF LIENS:** Payment shall be made by Buyer following the Buyer's receipt and acceptance of the goods and services, in proper form and substance, of all documentation required by this Purchase Order. Seller shall furnish to Buyer any analysis or breakdown of the price as Buyer may reasonably request. This Purchase Order shall not be filled at prices higher than quoted or charged by Seller, except as expressly agreed by Buyer. As a condition to any payment hereunder, Seller shall furnish to Buyer, upon request, an executed waiver of liens and claims in form reasonably satisfactory to Buyer. Seller agrees to indemnify, defend and hold harmless Buyer from and against any and all liens and encumbrances arising out of Seller's performance of this Purchase Order or arising out of any claim for payment by any labourer, subcontractor or supplier of Seller. Invoices for goods shall be paid by Buyer within 60 days from the date of receiving goods or inspecting goods and approving the goods, whichever is later unless otherwise specified in the Purchase Order. Invoices for services shall be paid by Buyer within 60 days from the date of delivery or approval of the delivery of services, whichever is later, unless otherwise specified in the Purchase Order.

8. **SELLER'S WARRANTIES:** Seller expressly warrants that for a period of one (1) year after Buyer's acceptance of the goods or services hereunder, or for such longer period as may be expressly provided in this Purchase Order or under applicable law, all goods and services covered by this Purchase Order shall (a) strictly conform to Seller's specifications, drawings, samples and other written materials and descriptions, or, to the extent the goods were purchased for the Buyer's specifications and drawings as set forth or referred to in this Purchase Order, that the goods strictly conform with those specifications and drawings; (b) be free from defects in design, material and workmanship; (c) be of merchantable quality and suitable for the particular purposes intended, whether express or reasonably implied; and (d) bear all warnings, labels, and markings required by applicable laws and regulations, (e) none of the goods covered hereby, to the extent they are subject to laws prohibiting adulteration or misbranding, is adulterated or misbranded within the meaning of such laws as of the date of delivery to Buyer; (g) all services have been performed in a good and workmanlike manner and in accordance with the terms and specifications in the Purchase Order or according to the terms and specifications specified by the Buyer; and (h) all goods and services furnished or rendered pursuant to this Purchase Order have been produced, sold, delivered or rendered to Buyer in compliance with all applicable laws and regulations. If any deficiencies are found in the goods or services delivered, the Seller shall replace or repair the goods and/or service without any expense to Buyer, including transportation or labour fees for up to 12 months of the receipt date.
9. **BUYER'S REMEDIES:** Buyer's acceptance of all or any part of the goods or services provided hereunder shall not be deemed a waiver of the failure of such goods or services to conform to all of the warranties set forth in Section 8. Buyer retains the right to cancel any portion of the remaining Purchase Order or any other outstanding Purchase Orders with the Seller, to reject any portion of the goods or services delivered, or to revoke acceptance as to any portion of the goods or services accepted, and return such goods to Seller and to recover the purchase price, any excess costs of cover, and damages, including manufacturing costs, costs of removal or recall, transportation and custodial expenses, injury to person or property incurred by Buyer, all in addition to Buyer's other remedies under this Purchase Order or applicable law. If Seller becomes insolvent or makes an assignment for the benefit of creditors, or files or has filed against it any petition in bankruptcy, Buyer shall have the right to cancel this Purchase Order immediately.
10. **PATENT, COPYRIGHTS, TRADEMARKS:** Seller warrants that the goods furnished under or used in connection with this Purchase Order (except those furnished according to Buyer's specific design) and Buyer's express or reasonably implied intended use thereof, do not and shall not infringe any patent, copyright, trademark, trade secret or other proprietary right of any third party. If any claim, suit or proceeding is made or instituted against Buyer alleging any such infringement, Seller shall indemnify, defend and hold Buyer harmless from and against any damages, liabilities, judgments, costs and expenses (including without limitation, reasonable attorney's fees) it may incur in connection with any such claim, suit or proceeding. In the event that the goods Buyer uses are held in any suit or proceeding to

constitute an infringement, or if Seller determines that there is a substantial risk of a finding of such infringement, Seller agrees, as appropriate, and at its expense to: (a) procure for Buyer, at no expense to Buyer, the right to continue using the goods, (b) replace the goods with equivalent goods that meet the requirements of this Purchase Order and that do not infringe any such rights, or (c) modify the goods so that they become non-infringing.

11. **INDEMNIFICATION:** To the fullest extent permitted by law, Seller agrees to indemnify, defend, and hold harmless Buyer, its affiliates, and their respective directors, officers, employees and agents (the "Indemnified Parties") from and against all claims, demands, causes of action, losses, costs and expenses (including without limitation, reasonable attorneys' fees and costs of defense) (collectively, "Losses") arising out of or incident to Seller's performance hereunder, or the presence of Seller, its employees, agents or invitees ("Seller Parties") on Buyer premises, provided that such Losses are attributable to (a) the negligence or willful misconduct of the Seller Parties, (b) the failure of the Seller Parties to comply with applicable laws, or (c) bodily injury, sickness, disease or death, or damage to or destruction of tangible property (including the loss of use thereof); in each case regardless of whether or not caused in part by the negligence or other fault of any Indemnified Party hereunder; provided that Seller shall not be liable for Losses caused by the sole negligence or willful misconduct of any Indemnified Party. Seller's indemnification obligations under this section shall not be limited by applicable Workers' Compensation or other disability or employee benefit laws, and, solely as respects the indemnities set forth in this Section, Seller hereby expressly waives any rights it may have to assert any immunity or defenses that it may have under such laws against any Indemnified Party.

12. **LABOUR, WORK AND SERVICES - REQUIREMENTS:** In supplying any services hereunder, Seller warrants that it is, and undertakes such performance as, an independent contractor, with sole responsibility for the payment of all federal and/or provincial health insurance, unemployment insurance, social security and/or other similar taxes incurred hereunder. Any performance by Seller under this Purchase Order on Buyer's premises shall be in full compliance with Buyer's safety and other rules and procedures and with all Federal and Provincial laws and regulations regarding workplace safety, including without limitation, laws pertaining to occupational safety and health. Prior to commencement of any services hereunder and until the satisfactory completion thereof, Seller shall, at its expense, maintain the following minimum insurance coverage on an "occurrence" basis:

- Employer's Liability \$1,000,000 bodily injury by accident, each accident \$1,000,000 bodily injury by disease, policy limit \$1,000,000 bodily injury by disease, each employee
- General Commercial Liability, including Contractual Liability, Products/Completed Operations and Broad Form Vendor's Endorsement Combined Single Limits: \$1,000,000 per Occurrence
- General Aggregate \$1,000,000 Products/ Completed Operations Aggregate
- Business Auto Liability Combined Single Limits: \$1,000,000 per accident

At Buyer's request, the Seller shall provide certificates of insurance showing the above coverage and providing for at least thirty (30) days prior written notice of cancellation or modification resulting in a reduction below the required minimum coverage and naming Buyer as an additional insured. If Seller fails to furnish such certificates or maintain such insurance, Buyer shall have the right to cancel this Purchase Order immediately. Seller, for itself and its insurers, hereby waives subrogation against Buyer, and Seller agrees that, with respect to claims against Buyer arising out of Seller's performance hereunder, Seller's insurance shall be primary and Buyer insurance shall be excess. Seller's obligations to maintain such insurance shall in no way limit the liability or obligations assumed by Seller hereunder. In addition, Seller shall provide proof of current/valid WSIB coverage to Buyer, and Seller shall submit a Form 1000 which will be required for every Service Purchase Order. In accordance to ISO procedures, the Seller shall complete a Buyer Supplier Quality System Survey prior to rendering services. If any of the above required forms are not received by the commencement of the service, Buyer has the right to cancel the Purchase Order without liability for any costs incurred by the Seller in the way of labour or materials. Buyer shall accept Seller's final invoice for services rendered only if accompanied by a completed Buyer Completion Certificate.

13. **RETENTION:** Buyer may retain up to 10% of any invoice until such time that Seller has provided to Buyer adequate evidence that the goods furnished or services rendered have been delivered in full, including spare parts, documentation and or other related goods and are free and clear of any and all encumbrances or claims.

14. **LAWS AND REGULATIONS:** All goods furnished or services rendered pursuant to this Purchase Order shall be produced, sold, delivered, or delivered to Buyer in compliance with all applicable laws and regulations, including without limitation, all applicable environmental and occupational health and safety laws and regulations.

15. **BUYER'S TERMINATION WITH NOTICE:** Buyer may at any time, without cause, terminate this Purchase Order in whole or in part upon written notice to Seller. In such event, Seller shall be entitled to a reasonable termination fee consisting of a percentage of the Purchase Order price reflecting the percentage of the work, goods delivered or services properly performed prior to termination. Payment of such termination fee shall be Seller's sole remedy. Upon Buyer's request, Seller shall preserve, protect and deliver to Buyer, at Buyer's expense, materials on hand, work in progress, and completed work.

16. **ASSIGNMENT AND SET-OFF:** Seller shall not assign its rights or delegate its performance hereunder, nor any interest herein, without Buyer's prior written consent and any attempted assignment or delegation without such consent shall be void. Buyer shall be entitled at all times to set-off any amount owing from Seller to Buyer, whether under this Purchase Order or otherwise, against any amounts otherwise payable to Seller.

17. **CONFIDENTIALITY:** Seller and its directors, officers, employees and agents shall not disclose to any third party any information pertaining to the goods furnished or services rendered hereunder, or pertaining to Buyer's business or operations which Seller obtains or has access to in connection herewith, without the prior written consent of Buyer.

18. **NO WAIVER OF DEFAULTS:** No failure by Buyer to enforce at any time any of the terms or conditions of this Purchase Order shall constitute a waiver thereof or in any way impair Buyer's right at any time to avail itself of such remedies as it may have to enforce such terms or conditions. No waiver by Buyer hereunder will be effective unless in writing and signed by Buyer.

19. **SURVIVAL - REMEDIES CUMULATIVE:** All agreements and representations of Seller herein (including those regarding, confidentiality, indemnification and warranties) shall survive delivery and final payment hereunder, or any earlier termination hereof. All of the rights and remedies available to Buyer hereunder are in addition to, and not in limitation of, the rights and remedies otherwise available at law or in equity.

20. **UNENFORCEABILITY OF PROVISIONS:** It is agreed that should any clause, condition or term, or any part thereof, contained in this agreement be unenforceable or prohibited by law or by any present or future provincial or federal legislation, then such clause, condition, term or part thereof, shall be amended, and is hereby amended, so as to be in compliance with the said legislation or law but, if such clause, condition or term, or part thereof cannot be amended so as to be in compliance with any such legislation or law then such clause, condition, term or part thereof is severable from this agreement, and all the rest of the clauses, terms and conditions or parts thereof contained in this agreement shall remain unimpaired.

21. **NOTICE:** Any notices, consents, approvals, statements, authorizations, documents, or other communications (collectively "notices") required or permitted to be given hereunder shall be in writing, and shall be delivered personally or mailed by registered mail, postage prepaid, by facsimile or email, to the parties at their respective addresses set forth in the Purchase Order or at any such other address or addresses as may be given by any of them to the other in writing from time to time. Such notices, if mailed, shall be deemed to have been given on the second business day (except Saturdays and Sundays) following such mailing, or, if delivered personally, shall be deemed to have been given on the day of delivery, if a business day, or if not a business day, on the business day next following the day of delivery; provided that if such notice shall have been mailed and if regular mail service shall be interrupted by strike or other irregularity before the deemed receipt of such notice as aforesaid, then such notice shall not be effective unless delivered.

22. **GOVERNING LAW:** This Purchase Order shall be made and construed in accordance with the laws of the Province of Ontario and laws of Canada, without giving effect to its principles of conflicts of law, and any for action, proceeding or arbitration instituted by any party the venue shall be in the Regional Municipality of Durham, Province of Ontario.
23. **ORDER SUBJECT TO GOVERNMENT DIRECTIONS AND POLICIES, ETC.:**
- (a) This Purchase Order is subject to all statutes, orders-in-council, directives and regulations of the Government of Canada/Province of Ontario in force from time to time relating to the supply of goods or services to the Government of Canada/Province of Ontario, its ministries, departments, agencies and Crown Corporations, or its contractors, including any directives and policies of the Department itself, and where there is any inconsistency between the terms and conditions of this Purchase Order and any such statute, order-in-council, directive, regulation or policy, the terms and conditions of this Purchase Order shall be ineffective to the extent of that inconsistency, but shall otherwise remain in full force and effect.
- (b) Where any statute, order-in-council, directive, regulation or policy described in (a) is repealed, enacted or amended, the terms and conditions of this Purchase Order shall be deemed to have been amended to the extent that is necessary in order to bring this Purchase Order into conformity therewith, but shall otherwise remain in full force and effect.
24. **ARBITRATION:** If at any time during the continuance of this agreement and after its termination any dispute, difference or question shall arise between or among the parties, touching or concerning this agreement, the rights or transaction thereof, or the construction, meaning or effect of the Purchase Order, or any provisions hereof, or the rights or obligations of such parties under the Purchase Order or otherwise, with respect thereto, then every such dispute, difference or question shall be submitted to and settled by arbitration and the decision of the arbitrator hereinafter appointed to deal with such matter, shall be accepted by all parties to such dispute, difference or question. The arbitration shall be carried out by a single arbitrator agreed upon by the parties to the matter. If, within five (5) days after notice of the matter has been given by one (1) of such parties to the other, such parties cannot agree upon a single arbitrator, then, in such event, the arbitration shall be conducted by a single arbitrator appointed by a Judge of the Ontario Superior Court of Justice. The arbitration shall be conducted in accordance with the provisions of the Arbitrations Act of Ontario and of any amendments thereto, or of any successors statute thereof in force at the time of such dispute, difference or question. The decision of the arbitrator shall be final and binding upon all the parties to such dispute, difference or question and there shall be no appeal therefrom.
25. **ENUREMENT:** This agreement shall be binding upon and enure to the benefit of the parties hereto and their respective executors, administrators, successors and assigns.