

## STANDARD TERMS AND CONDITIONS OF PURCHASE

**1. Definitions:** "Affiliate" shall mean, in relation to any company, a corporation, partnership, joint venture or other entity in which such company owns, directly or indirectly, an equity interest of fifty percent (50%) or more. "Buyer" shall mean the entity named as such in the Contract and includes its representatives, successors and assigns. "Contract" shall mean the written order document including all attachments contained therein that is entered into between the Buyer and the Supplier for the provision of Goods. "Days" shall mean calendar days unless expressly stated otherwise. "Goods" shall mean all equipment, parts, materials, software, designs and documentation as outlined in the Contract. "Sub-Supplier" shall mean any entity to whom the Supplier has purchased any material or service to be incorporated into the Works. "Supplier" shall mean the entity named as such in the Contract and includes its representatives, successors and assigns. "Work" or "Works" shall mean the delivery of the Goods according to the Contract. "Worksite" shall mean any place where the Goods are delivered.

**2. Supplier Obligations:** Goods shall be new and unused and shall be designed and manufactured in accordance with the Contract. Where no standards or codes of practice are specified in the Contract, Goods shall conform to accepted industry codes and standards. No deviation from the Contract shall be made without Buyer's prior written authorisation.

**3. Compensation and Invoicing:** For the satisfactory performance of the Work in accordance with the Contract, Buyer shall pay Supplier in accordance with the rates as specified in Contract. Unless expressly stated otherwise the contract rates shall be: Fixed and not be subject to escalation or adjustment due to variations in materials or labour costs, currency fluctuations or any other factors; Inclusive of all duties, taxes, assessments, fees, or other charges including, but not limited to, excise tax, duty, goods and services tax, mineral oil tax, energy tax, sales tax, use tax or any other tax (excluding tax on income and value added tax), whether foreign or domestic, that may be imposed directly or indirectly by any taxing authority on any feature or service related hereto ("Taxes"); Exclusive of sales tax, goods and services tax or VAT which if applicable must be shown as a separate cost on invoices; Inclusive of any payroll burdens, or other costs associated with the personnel employed by the Supplier; Inclusive of packing/protection and delivery of the Goods to Worksite as specified in the Contract; Paid in the currency denoted in the Contract. Supplier shall comply with the invoicing terms and instructions denoted in the Contract subject to applicable local invoicing laws. Invoices shall be accompanied by original supporting documents (including original invoices received from Sub-suppliers or subcontractors, where appropriate). The Buyer shall effect payment within forty five (45) days of receipt by the Buyer of a completed valid invoice with all necessary supporting documentation. As sole remedy for any delay in payment of any undisputed invoice beyond the period stated herein, the Supplier shall be entitled to interest calculated pro rata on a daily basis at one percent (1%) over the thirty (30) day LIBOR rate applicable to the currency concerned as published by Reuters. All invoices shall be submitted timely in relation to the date of completion of the Work being invoiced in accordance with applicable laws. Buyer reserves the right to reject payment of invoices submitted more than sixty (60) days (or such other period as the Parties agree to in writing) following delivery of the Goods covered by the invoice. The Buyer may require the Supplier to provide supporting tax payment documentation as may be required by applicable law. The Buyer may deduct from payments due to the Supplier any amounts subject to a bona fide dispute or based upon a claim against the Supplier. Supplier shall indemnify and hold Buyer harmless from and against any damages, claims, liability, expense or costs (including legal costs) that may be brought against the Buyer or the Buyer may suffer or incur due to Seller's failure to pay any of the Taxes. The Buyer may enforce this right of indemnity at any time, including before it has incurred the damages, claims, liability or expense

**4. Timely Execution of the Works:** The Supplier shall deliver the Goods in accordance with the agreed schedule set out in the Contract or otherwise agreed between the parties. It shall be the responsibility of the Supplier to inform the Buyer of any event or circumstance which may, immediately or in the future, hamper the proper and timely delivery of the Goods. As soon as reasonably practicable, written notice must be given to the Buyer outlining the reasons for any delay or anticipated delay. Such notice shall also describe the recommended actions to be taken by the Supplier to overcome or minimise the delay. Without limiting the Supplier's obligations to perform

within the time specified, Buyer has the right to review and approve Supplier's proposed actions to minimise the delay and instruct at the Supplier's cost the appropriate actions to be taken to ensure timely delivery of the Goods.

**5. Shipping & Delivery:** Any reference to "Incoterms" shall mean the latest edition. Supplier must ensure that the Goods are properly packed, secured and labelled in accordance with generally accepted industry standards and suitable for the type of transportation. Each loose item will be marked or tagged with Buyer's Purchase Order reference number. All shipments must include two (2) legible packing lists, with the description of each item, including serial numbers or other form of identification. All packages must show Buyer's designated company name, purchase order number and also item number where applicable. Supplier shall be responsible for any losses resulting from Supplier's failure to ship in a manner or route directed by Buyer and for all goods delivered short or damaged or for loss during transit.

**6. Changes:** Subject to this clause 6, Buyer shall have the right at any time to amend the Contract. Such changes may include additions, deletions, substitutions, alterations, changes in quantity, form, kind, dimension, changes in the specified sequence, method or timing of the provision of the Works. Such changes shall be made by written instruction to the Supplier. Unless otherwise agreed, the extent of such changes shall be limited to reasonable departures from the Works set forth in the Contract. Supplier shall promptly, no later than seven (7) days of becoming aware of a necessary change to the Works, advise Buyer of any proposed change to the Works and such change's anticipated effect on the Contract. The Supplier shall not proceed with any change unless such change has been authorised in writing by the Buyer.

**7. Quality and Inspection:** Supplier shall allow Buyer or its appointed representatives the opportunity to inspect, test and/or witness testing of the Goods. Buyer shall have the right to reject any Goods which are defective or inferior or which do not pass any such test. Such inspection/testing/witnessing by Buyer shall not relieve Supplier of any obligation and/or liability under the Contract. The Supplier and Sub-Suppliers shall have an implemented and documented system for Quality Assurance which complies with the principles and guidelines of ISO 9001 or equivalent.

**8. Warranty:** The Supplier expressly warrants that:- Goods will conform to all requirements of the Contract, be free from defects, and be fit for the purpose defined in the Contract, or, if no such purpose is defined, for the normal usage of such Goods. It shall have good title to all Goods and /or parts thereof and the Goods shall be free from all liens, claims, and encumbrances. The warranties set out in this clause 8 shall remain in full force and effect for a period of twenty four (24) months from when the Goods are delivered, or any extended period set out in the Contract, whichever is later. Repairs to or replacement of the Goods shall themselves be subject to a further period of twelve (12) months from the date of re-performance, repair or replacement. Supplier shall bear all Supplier costs, charges and expenses incurred in connection with correcting defects in the Goods. Where applicable, the Buyer shall have the right to assign the benefit of the warranties set out in this clause 8 to its customers, and its and their respective successors or assignees.

**9. Default and Take Over:** Supplier will be considered in default of this Contract if Supplier is subject to winding up, dissolution, liquidation, administration or bankruptcy or a controller (as defined in the *Corporations Act 2001*), receiver, receiver and manager, administrator, liquidator or any other person is appointed to it or any of its property or is unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any applicable law or, if in the sole opinion of Buyer, Supplier fails at any time during the performance of the Works to provide the necessary labour, equipment, materials, supplies or supervision, fails to use due diligence in the performance of the Works or breaches any provision of the Contract. In the event of any default by the Supplier in the performance of any of its obligations under the Contract, the Buyer may give five (5) days' written notice to the Supplier requesting remedial action be taken with regard to the stated default. Should the Supplier fail to comply with the notice, or to agree alternative remedies with the Buyer, within five (5) days following such notice, the Buyer shall be at liberty to take reasonable actions to remedy the default at the Supplier's sole cost. In the event that, in the Buyer's sole opinion, Supplier's default shall be deemed not capable of remedy to the

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Buyer's satisfaction, the Buyer shall have the right to immediately terminate the Contract, in part or whole, by serving a notice to the Supplier. In the event of a termination of the Contract, Buyer shall be entitled to take title and possession of part or whole or the allocated portion of the Works. If requested by the Buyer, the Supplier shall assign to the Buyer all its rights, title and interest in any and all sub-order or sub-contract.

**10. Force Majeure:** In the event of Force Majeure (as defined in this Clause 10), the party so affected shall promptly give written notice, within three (3) days, to the other Party. In the case of Force Majeure, each Party will bear its own costs arising from a Force Majeure event. The affected Party shall make every reasonable effort to remove or remedy the cause of such Force Majeure or mitigate its effects as soon as possible. If the Force Majeure condition continues for more than thirty (30) days the Buyer may terminate the Contract. Neither party shall be considered in breach of its obligations under the Contract for reasons of Force Majeure. "Force Majeure" as referred to herein shall mean an unforeseen occurrence beyond the reasonable control of the party affected and whose effects could not have been avoided and which cannot be overcome by the use of due diligence or foresight. For the purposes of this Contract only, the following occurrences shall be deemed Force Majeure: national strikes or lock outs or other national industrial disturbances or concerted actions of labour except strikes involving the workforce of the Supplier or its Sub-Suppliers; fire, earthquake, explosion and/or other natural physical disaster; acts of God including floods, typhoons, tsunamis, volcanos, earthquakes and other tectonic disturbances; war, civil war, acts of terrorism or armed conflict; nuclear, chemical or biological contamination; changes to any governmental legislation.

**11. Suspension of the Works:** The Buyer may, at any time at its sole option, suspend all or part of the Works for any reason whatsoever by giving written notice to the Supplier. In such an instance, Supplier shall cease the Works on the effective date of suspension. Except as expressly set forth in this Clause 11, such suspension shall not in any way invalidate or alter the Contract and Supplier's responsibilities under the terms of the Contract. The Supplier shall use its best efforts to minimise and mitigate costs associated with suspension. When requested by Buyer, the Supplier shall immediately resume the performance of the Works. Buyer will grant no compensation or extension of time for any suspension that might result from an action, inaction, omission or default caused by the Supplier.

**12. Termination for Convenience:** Where Supplier is not in default, Buyer may terminate this Contract for convenience by providing thirty (30) days' written notice. The Supplier must cease performance of its obligations as instructed in such notice. Upon termination of this Contract, Supplier shall be entitled to be paid the full value of the Works satisfactorily completed in part or whole up to the date of termination, together with reasonable costs to be mutually agreed between Buyer and Supplier associated with such termination and not previously paid. In no event shall the total amount paid to Supplier exceed the contract price for the applicable Goods. The Supplier acknowledges its obligations to take all reasonable steps to mitigate liabilities arising from such termination. The Buyer shall not be liable for any of the Supplier's anticipated costs, losses or loss of profit or business arising out of or in relation to the termination of the Contract under this clause. The exercise by the Buyer of its rights of termination shall be without prejudice to other rights the Buyer may have under the Contract or at law.

**13. Title and Risk:** Title to Goods shall pass to Buyer progressively on delivery of Goods, or payment (whichever occurs first). All materials or equipment for which the title has passed to the Buyer shall be clearly marked as the Buyer's property and where possible be stored separately. Notwithstanding transfer of title, risk of loss or damage shall remain with the Supplier and Supplier shall retain care, custody and control of said items and exercise due care thereof to protect them from loss or damage until delivery of the Goods to Worksite.

**14. Laws and Dispute Resolution:** During the performance of the Work, Supplier shall be subject to all applicable laws and any transaction or order relating to the Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and each of the parties hereby irrevocably submits to the non-exclusive jurisdiction of any court of competent jurisdiction sitting in Toronto, Ontario. Each party hereby irrevocably waives the defence of an inconvenient forum to the maintenance

of any action in Toronto, Ontario. Disputes over payment and collection may be resolved, at Buyer's option, in any jurisdiction where the Supplier may have any asset. Each of the parties hereby irrevocably submits to the jurisdiction of any such court, and irrevocably waives, to the fullest extent it may effectively do so, the defence of an inconvenient forum or its foreign equivalent to the maintenance of any action in any such court. Buyer shall be entitled to assert its rights of lien or attachment or other rights, whether in law, equity or otherwise, in any country where the Supplier has any assets.

**15. Insurance:** The Supplier shall effect and maintain throughout the term of the Contract sufficient insurance to cover its liabilities under the Contract and at law, such coverage including but not limited to: Worker's Compensation, Employer's Liability Insurance covering claims and liabilities for the death of or injury to any person employed by the Supplier in connection with Contract. These insurances shall be endorsed to indemnify and hold Buyer harmless from and against any and all liability Buyer may have either by operation of statute or at common law; Comprehensive General Liability Insurance covering claims and liabilities in respect of death of or accident or injury to any person or any property loss or damage (including that of Buyer); Automobile Liability Insurance in respect of all motor vehicles, whether owned or not, used in connection with the Work in the types and amounts required under applicable laws. Such insurance policies shall contain a waiver of subrogation against the Buyer and shall name the Buyer's as additional insured. The Supplier's obligation for maintenance of insurance under this clause 15 shall in no way limit the Supplier's indemnity obligations under the Contract. Supplier shall provide on demand valid certificate(s) of insurance in respect thereof evidencing such insurance coverage. Failure of Supplier to obtain and maintain in effect any of said insurance policies, or to furnish certificates of insurance or allow inspection of policies, shall be sufficient cause to allow Buyer to withhold payments due, to exercise its rights under clause 11, or to terminate for default. The failure of the Buyer to request or receive a certificate of insurance, or the acceptance of an incomplete certificate shall not operate as a waiver of the Supplier's obligations hereunder.

**16. Indemnity:** For the interpretation of this clause, the term "Buyer's Group" shall include the Buyer, its Affiliates and their other suppliers (but always excluding Supplier) and its and their officers, employees (including agency personnel), agents, directors and successors of any of them, the term "Supplier's Group" shall include the Supplier and its sub-suppliers and its and their officers, employees (including agency personnel), agents, directors and successors of any of them and the term "Third Party" shall mean any party which is not a member of the Buyer's Group or the Supplier's Group. Supplier releases Buyer's Group from any liability to Supplier's Group for, and Supplier shall defend, indemnify and hold Buyer's Group harmless from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities, howsoever arising, including by negligence or breach of duty (statutory or otherwise) of the Buyer's Group, that may be brought against a member of the Buyer's Group or a member of the Supplier's Group may suffer or incur, related to: Disease of or injury to or death of any person employed or provided by the Supplier's Group, whenever occurring, suffered or incurred by Supplier Group arising from or related in any way to performance of the Works, regardless of how such personal injury or death is caused and even if caused by the negligence of Buyer's Group; and Damage to or loss of the Supplier's Group's provided materials and/or equipment, whenever occurring, suffered or incurred by Supplier Group arising from or related in any way to performance of the Works, regardless of how such damage or loss is caused and even if caused by the negligence of Buyer's Group. A member of the Buyer's Group may enforce this right of indemnity at any time, including before it has incurred the damages, claims, liability or expense. Buyer releases Supplier's Group from any liability to Buyer Group for, and Buyer shall defend, indemnify and hold Supplier's Group harmless from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities arising out of the gross negligence or wilful misconduct of the Supplier's Group, that may be brought against a member of the Supplier's Group or a member of the Supplier's Group may suffer or incur, related to: Disease of or injury to or death of any person employed or provided by the Buyer's Group, whenever occurring, suffered or incurred by Buyer Group arising from or related in any way to performance of the Works; and Damage to or loss of the Buyer's Group's provided materials and/or equipment, whenever occurring, suffered or incurred by Buyer Group arising from or



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related in any way to performance of the Works. Each party shall bear its responsibility towards any third party according to applicable law.

**17. Consequential Loss:** Notwithstanding any other provision of this Contract: Supplier shall release, indemnify, defend, and hold harmless Buyer from and against any Consequential Loss sustained by Supplier related to this Contract, its performance or breach, even if the loss or damage results from Buyer's negligence, breach of contract, strict liability, other legal fault or otherwise. "Consequential Loss" shall include but not be limited to loss of profits, production delays, loss of production or product, loss of or interruption to business, loss of any contract or other business opportunity, loss of use of property or wasted overheads, losses resulting from failure to meet other contractual commitments or deadlines, or any special, incidental, or consequential loss or damage of any nature sustained by the indemnifying party in connection with or arising out of this Contract, howsoever the same may arise whether under contract, tort (including negligence) strict liability or otherwise.

**18. Audit Rights:** For the period from the start of the Work up to five (5) years after completion of the Work, the Supplier and its Sub-Suppliers shall keep full and accurate records pertaining to the Goods supplied. The Buyer shall have the right of audit of these records including but not limited to all records, books, correspondence and including original invoices of Supplier's Sub-Suppliers.

**19. Language:** The language of the Contract and all documentation provided by the parties and their Sub-Suppliers shall be in English.

**20. Assignment and Subcontracting:** The Supplier shall not assign or sublet the Contract or any part of the Contract without the prior written consent of Buyer. No Subcontracting of any of the Works by Supplier shall relieve the Supplier from any obligations or liabilities under this Contract and the Supplier shall be responsible for the acts and omissions of any Sub-Supplier as though they were acts and omissions of the Supplier. The Buyer may assign or otherwise transfer the benefit of the Contract in whole or in part to any other party at any time without the Supplier's consent.

**21. Liens:** The Supplier agrees to protect, defend, indemnify and hold the Buyer and the Buyer's customers, and their respective Affiliates, harmless from and against all liens, claims, suits, demands and judgements, which may arise out of, or in connection with this Contract. Buyer and its customers may enforce this right of indemnity at any time before it has incurred the relevant liability. The Supplier agrees to waive any right to exercise a lien to make claim or seek a judgement or award against the Goods or part of at any time. The Supplier acknowledges that its sole right in the event of failure by the Buyer to perform any of its obligations under the Contract is to seek financial relief in respect thereof.

**22. Entire Agreement:** The Contract constitutes the entire agreement between the parties hereto and supersedes all prior negotiations, agreements, representations and understandings written or oral except to the extent they are expressly incorporated into the Contract.

**23. Confidentiality:** The Supplier shall ensure at all times its officers, employees, Sub-Suppliers and agents maintain full secrecy and keep confidential all matters and confidential information provided by the Buyer that are not in the public domain concerning or arising out of the performance of the Contract.

**24. Severability/Partial Invalidity:** In the event that any provision of this Contract, for any reason, are held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such provision shall be read down to the minimum extent necessary to achieve its validity, legality and enforceability, and severed from these Terms and Conditions in any other case, and any invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other part or provision of this Contract.

**25. Ethics and Compliance:** The Supplier warrants and represents to the Buyer that in carrying out its business activities it complies with the generally accepted standards of business ethics and conduct. Further, Supplier

acknowledges that the Government of the United States of America has imposed: (a) trade sanctions and export restrictions against certain countries and political areas and companies, nationals and U.S. Government-designated nationals of such countries and areas, (b) restrictions on U.S. companies and nationals doing business with them, and (c) restrictions on U.S. companies and nationals doing business with certain companies and persons who the U.S. Government has determined have violated the foregoing restrictions. Supplier agrees that it shall keep itself informed of and shall comply with such sanctions and restrictions as they are revised from time to time, and that neither Supplier, any Supplier associate, nor any of the parties performing the Works on behalf of Supplier hereunder shall be entities or individuals subject to such sanctions and restrictions. Supplier shall at all times comply with all applicable laws, foreign and domestic, applicable to Supplier's business and the Works. In the event that it should come to the attention of the Buyer that the Supplier has engaged, is engaging in or is about to engage in any activity which may result in violation of this clause 25, Supplier will take such corrective action as the Buyer may request. Any breach by the Supplier, its directors, officers, employees, subcontractors and agents of any provision contained in this clause 25 is a material breach of the Contract and the Buyer's remedies shall, in addition to the right of immediate termination, as set forth under clause 12, include any other remedies available under applicable law. In addition to any other indemnities, Supplier shall owe to Buyer, the Supplier must defend, indemnify and hold the Buyer harmless from and against all claims, damages, demands, litigation, costs (including legal costs), losses and expenses, howsoever arising, that may be brought against the Buyer or which the Buyer may suffer or incur, arising out of the Supplier's violation of this clause 25. Buyer may enforce this right of indemnity at any time before it has incurred the relevant liability.

**26. Proprietary Rights:** In addition to any other indemnities Supplier shall owe to Buyer, the Supplier shall at its own expense defend, indemnify and hold harmless the Buyer, Buyer's customers and users of Goods from all claims, damages, demands, costs (including legal costs), litigation, losses and expenses, that may be brought against the Buyer or which the Buyer may suffer or incur, resulting from the Supplier's infringement of a trademark, patent or registered design, or proprietary right. Buyer may enforce this right of indemnity at any time before it has incurred the relevant liability. In the event of suit or pending suit for infringement where the use of the Goods and/or Goods or part is enjoined, the Supplier shall at its own expense either procure for the Buyer the right for continued usage, or replace and reinstall Goods or part of, with substantially equal but non-infringing Goods. Title to, access to, copyright, the right to possession of and free use of all things created under or arising out of the Goods shall vest in the Buyer immediately upon commencement of or creation of the article, document, or proprietary data. The Buyer shall have the sole right to seek patents on any item or idea arising out of the performance of the Contract and the Supplier shall assist the Buyer in registering such rights if so requested. The Supplier shall grant the Buyer a transferable, non-exclusive, royalty-free, world-wide licence to use any patented process of the Supplier and any software programmes included in or ancillary to any Good supplied under the Contract.