

General Terms and Conditions for the Purchase of Goods and Services



1 Acceptance

The commencement of work on or shipment of the goods or the commencement of services covered by this purchase order by Seller constitutes an acceptance by Seller of this purchase order. Any acceptance of this purchase order means acceptance solely of the express terms contained therein. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this purchase order is hereby refused. Such proposal shall not, under any circumstances, be deemed to constitute a refusal of this purchase order or its content except for a modification to the description, the quantity, the price or the delivery schedule of the concerned goods or services. If this purchase order is deemed an acceptance of a prior offer by Seller, such acceptance shall be limited to the express terms in this purchase order.

2 Termination

Purchaser reserves the right to terminate this purchase order or any portion of the goods or services purchased at its sole convenience. Following such termination, Seller shall immediately stop all work and shall immediately cause any of its suppliers or sub-contractors to stop all work. In such circumstances, Seller shall be entitled to receive reasonable expenses resulting from such termination consisting of a percentage of the price set in this purchase order reflecting the percentage of the work performed or the services rendered up to the date of the notice of termination, plus, for work not then yet performed or services not then yet rendered, direct costs actually incurred prior to the date of the notice. Purchaser shall not pay for any work performed or services rendered after receipt of the notice of termination, nor for any cost incurred by Seller's suppliers or sub-contractors which Seller could reasonably have avoided. Purchaser may also terminate this purchase order or cancel the order for any portion of the goods or services, without liability, if Seller fails to comply with any of this purchase order's terms and conditions or if Seller is at fault. Without limiting the foregoing, Seller's bankruptcy or insolvency, filing of a voluntary or involuntary bankruptcy petition, the appointment of a receiver or trustee, late delivery of goods or services, delivery of goods or services which are defective or nonconforming or failure to provide reasonable assurances of future delivery shall each allow Purchaser to terminate this purchase order for cause. If termination occurs as a result of a Seller's default or for cause, Purchaser cannot be liable to Seller for any amount, and Seller shall then be liable to Purchaser for any and all damages resulting from the default or cause which gave rise to the termination.

3 Proprietary Information / Confidentiality / Advertising

Seller shall consider all information furnished by Purchaser to be confidential and Seller shall not disclose any such information to any other person, or use such information for any purpose other than performing its obligations under this purchase order, unless Seller obtains written permission from Purchaser to do so. This provision shall apply without limitation to drawings, specifications, or other documents provided by Seller to Purchaser under this purchase order. Seller shall not advertise or publish the fact that Purchaser has covenanted to purchase goods or services from Seller, nor shall any information relating to the purchase order be disclosed without Purchaser's written permission. Unless otherwise agreed in writing, no commercial, financial, or technical information disclosed in any manner or at any time by Seller to Purchaser shall be deemed secret or confidential. Seller shall have no rights against Purchaser with respect thereto.

4 Patents

Seller, as part of consideration for this purchase order and without further cost to Purchaser, hereby grants and agrees to grant to Purchaser or to the extent requested by Purchaser for its customers, an irrevocable and nonexclusive, free from all restrictions or royalties, license to use, sell, manufacture, and cause to be manufactured products embodying any and all inventions and discoveries made, conceived, or actually reduced to practice in connection with the performance of this purchase order.

5 Warranty

Seller acknowledges that Purchaser is relying on Seller's skill and judgement in selecting and providing goods and services suitable for Purchaser's particular use and expressly warrants that all goods or services furnished under this purchase order shall

- (a) conform to all specifications and applicable standards (including, without limitation, government and trade standards);
- (b) be new (unless otherwise expressly stated in writing);
- (c) be free from latent or apparent defects in material or workmanship;
- (d) conform to any statements made on the containers or labels or advertisements for such goods or services;
- (e) be adequately and correctly contained, packaged, marked, and labelled;
- (f) be merchantable, safe and appropriate for the purpose for which goods or services of that kind are normally used;

- (g) be fit for a particular purpose if Seller knows or has reason to know the particular purpose for which the goods and services will be used;
- (h) conform in all respects to any samples provided by Seller; and
- (i) not violate any other person's patents, copyrights, trademarks or other intellectual properties.

Seller further warrants that it has good and marketable title to the goods and Purchaser will own the goods free of any hypothecs, charges or claims of any third person. Inspections, tests, acceptance, or use will not affect Seller's obligations under these warranties. All warranties shall survive inspections, tests, acceptance, and use. Seller's warranties shall run to and are in favour of Purchaser, its successors, assigns and customers and to the users of goods or services sold by Purchaser. Seller agrees to replace or correct defects of any goods or services not conforming to warranty promptly, without expense to Purchaser, when notified of such nonconformity by Purchaser. If Seller fails to correct defects in or replace nonconforming goods or services promptly, Purchaser, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost.

6 Price Warranty

Seller warrants that the prices for the goods or services sold to Purchaser are not greater than those currently tendered or paid by any other customer for the same or similar goods or services in similar quantities. If Seller reduces its price for any article during the term of this purchase order, Seller shall correspondingly reduce its price to Purchaser. Seller warrants that prices shown on this purchase order are complete. No additional charges of any kind shall be added without Purchaser's written consent.

7 Taxes

All taxes, duties, tolls, fees, import charges and governmental exaction shall be separately stated on Seller's quotations and invoices and, unless so stated, shall be for the account of Seller.

8 Force Majeure

Neither party shall be liable for default or delays due to superior force, fires, floods, explosions, war or other acts of an enemy of Canada, riots or accidents. Each party shall notify the other in writing of the cause of such delay within five days after the event occurs. If performance is delayed for one or more periods in excess of ninety (90) days, either party may terminate this purchase order.

9 Indemnification

Seller shall defend, indemnify, and hold harmless Purchaser from and against all damages, claims, liabilities, penalties, fines, costs and disbursements (including judicial and extrajudicial fees and costs including, if applicable, on a solicitor and own client basis) arising out of or resulting in any way from any defect in the goods or services purchased, or from any act or omission of Seller, its agents, employees, or sub-contractors, or from any breach of warranties or representations or other obligations under this purchase order. This indemnification shall be in addition to the other warranties and obligations of Seller under this purchase order.

10 Changes

Purchaser shall have the right at any time to change drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation for the goods or services provided. If any change is made to the scope of services, the Seller will be entitled to receive an increase in his compensation or to the time allowed for performance to the extent such changes are important and do not result from a fault, a negligence or an omission of the Seller. The Seller must not proceed to modifications to the scope of services prior to receiving written permission to do so and an additional purchase order on behalf of Purchaser.

11 Inspection and Testing

Payment for goods delivered or services provided shall not constitute acceptance. Purchaser shall have the right to inspect such goods or services and to reject any or all of the goods or services which are, in Purchaser's judgement, defective or nonconforming. Goods rejected and goods supplied in excess of specified quantities may be returned at Seller's expense and, in addition to Purchaser's other rights, Purchaser may charge Seller for all expenses of unpacking, examining, repacking, and reshipping such goods. If Purchaser refuses any services provided, Purchaser, at its sole option, may require Seller to again correctly perform the services in accordance with this purchase order or may hire another person to perform the services at Seller's expense. If Purchaser receives non-conforming or defective goods, that this be apparent on examination or not, Purchaser may, as of the moment such a defect manifests itself or is discovered, require their replacement, as well as payment of any damage or loss resulting therefrom. Nothing in this purchase order shall relieve Seller in any way from its obligations to provide conforming goods and services.

12 Entire Agreement

This purchase order and any documents referred to herein constitute the entire agreement between the parties. Any modification to this purchase order must be in writing and signed by both parties.

13 Assignment and Subcontracting

No part of this purchase order may be assigned or subcontracted without prior written approval of Purchaser. No assignment or subcontracting, whether approved or not, exempts Seller from its obligation under this purchase order and Seller shall be jointly and severally liable with any assignee or sub-contractor for the performance of the obligations under this purchase order.

14 Setoff (Compensation)

All claims for money due or to become due from Purchaser shall be subject to deduction or setoff (compensation) by Purchaser for any claim arising out of this or any other transaction between the Seller and the Purchaser.

15 Shipment

If Seller must ship by a more expensive manner to comply with Purchaser's original delivery date, any resulting increased transportation costs shall be paid by Seller unless the rerouting or expedited handling is caused by Purchaser's change of the delivery date. Seller shall be solely responsible for the shipment and delivery of "dangerous goods" as defined in the Transportation of Dangerous Goods Act (Canada), and Seller shall indemnify and save Purchaser harmless from and against any damages, losses, claims, liabilities, penalties, fines, costs and disbursements (including judicial and extrajudicial fees and costs including, if applicable, on a solicitor and own client basis) resulting from the shipment of such dangerous goods.

16 Waiver and Remedies

Purchaser's failure to insist on performance of any terms or conditions or to exercise any right or claim or Purchaser's waiver of any breach shall not constitute, for the future, a waiver of any other terms, conditions, or claims. All of Purchaser's rights and remedies under this purchase order shall be construed as cumulative and shall include all rights and remedies available under law and equity.

17 Delivery

Time is of the essence of this purchase order. If goods are not delivered or services are not rendered within the delays promised, Purchaser may terminate this purchase order by notice effective when received by Seller as to goods not yet shipped or services not yet rendered and may also purchase substitute goods or services and charge Seller with any loss incurred in addition to its other rights and remedies.

18 Title and Risk

Notwithstanding any other provision of this purchase order, Seller shall assume and pay for any and all loss or damage to the goods resulting from any cause whatsoever until receipt of the goods by Purchaser at the point of ultimate destination. Notwithstanding the foregoing, title to the goods shall pass from Seller to Purchaser when the goods are transferred at the point of origin to railcar, truck or other transportation facility.

19 Limitation on Purchaser's Liability – Statute of Limitations

Purchaser shall not be liable under any circumstances for loss of anticipated profits or for incidental or consequential damages. Purchaser's liability on any claim of any kind for any loss or damage shall in no case exceed the price allocable to the goods or services giving rise to the claim. Purchaser will not be liable for the payment of any penalty. Any action resulting from any breach by Purchaser must be commenced within one year after the cause of action arises failing which the maximum amount of the Seller's claim shall not exceed \$100.

20 Currency

All prices stated herein are in Canadian currency unless otherwise specified.

21 Governing Law

The agreement resulting from this purchase order shall be governed by and construed under the laws of the Province where Purchaser's plant is located, as applicable. Seller hereby attorns to the jurisdiction of the courts of such Province over any and all disputes, claims and causes of action between Purchaser and Seller. Any court claim shall be instituted in the judicial district or region where the Purchaser's plant is located.

22 Compliance with Laws

In performance of the contract constituted hereunder and in every activity connected therewith, Seller shall comply fully with all applicable laws, orders, ordinances, rules, by-laws, regulations, codes, plant safety regulations, permits and standards, whether federal, provincial or local. Seller shall certify in writing such compliance at Purchaser's request.

23 Open Site

Seller acknowledges and agrees that a work site located on Purchaser's property may be an open site, meaning that contractors, sub-contractors and suppliers working at, or supplying goods and services to or for such site may be union or non-union. Seller shall perform its obligations at the site in a manner which ensures there are no labour problems, work stoppages or other labour disputes which might affect Purchaser and shall, if required or necessary, obtain written agreements with the unions representing its employees that nonaffiliation rights in any collective agreement will not be exercised in connection with the provision of the goods and services.

24 Workers' Compensation

If Seller is to perform any services at Purchaser's property pursuant to this purchase order, Seller and its sub-contractors shall at all times be registered and in good standing with the requirements of all applicable legislation governing workers' compensation. Seller shall certify in writing such compliance at Purchaser's request.

25 Health and Safety

Seller shall at all times comply strictly with all laws, ordinances, rules, regulations, codes and plant safety requirements relating to employment standards, occupational health and safety, hazardous materials information systems, and protection of the public and shall, at Purchaser's request, provide a certificate from the competent authority which attests it.

26 Construction Liens

Subject to Seller's rights under any legislation applicable to such matters, Seller shall not file or register any construction lien or similar lien, hypothec or claim of a person having participated in a construction against Purchaser's property without first giving Purchaser at least five business days' written notice of its intention to do so. Unless Purchaser determines that such laws do not apply, all payments under this purchase order shall be subject to a 10% holdback. If required by law, the Seller shall establish a special account for the deposit of the holdback where they will be systematically deposited. The Seller shall be the payment certifier in respect of any of Seller's sub-contractors and suppliers and shall indemnify Purchaser from all liability arising from premature certification. The Purchaser shall be the payment certifier in respect of this purchase order as a whole. If a lien, hypothec or another third-party claim is filed or registered against the Purchaser's property by anyone engaged by or through the Seller as a result of the Seller or other person failing to pay their obligations, the Seller shall immediately obtain its discharge, failing which the Purchaser may take all steps necessary to obtain discharge of same (including paying the Seller's or other person's obligations), and may charge that amount to the Seller's account and withhold that sum from any other monies due to Seller under this purchase order. The Seller shall indemnify the Purchaser from and against all damages, losses, liabilities, claims, penalties, fines or costs and disbursements (including judicial and extrajudicial fees and costs including, if applicable, on a solicitor and own client basis) suffered by the Purchaser in respect of any lien, hypothec or other claim filed or registered by Seller or any person engaged by or through Seller.

27 Tools

Designs, plans, tools, jigs, dies, fixtures, templates, patterns and drawings (collectively, the "Tools") furnished by Purchaser and the Tools made or acquired by Seller specifically for the performance of Purchaser's purchase order shall remain or become the property of Purchaser. The Tools shall be used exclusively for production of goods specified in Purchaser's purchase orders.

28 Conflict of Documents

If Purchaser and Seller have entered into a written contract under which goods or services must be provided, the terms of the contract shall prevail in case of conflict between the terms of this purchase order and those of the contract.

29 Contacts with Regulatory Agencies

Seller shall immediately notify Purchaser of any issue that needs to be reported to regulatory agencies.

30 Attestation of Capacity

By its acceptance of this purchase order, Seller represents and warrants that it is not presently under an actual or proposed probation, incapacity or suspension that would prevent or delay the performance of its obligations under this purchase order, nor has Seller been declared ineligible for the award of contracts by any government or governmental agency and acknowledges that the foregoing is an essential condition for Purchaser, entitling the Purchaser to immediately terminate this purchase order with liability of any kind.

31 Severability

If a court of competent jurisdiction decides that any provision of this purchase order is unreasonable, arbitrary, against public policy, or otherwise invalid or unenforceable, then such provision will be considered divisible or severable so that the other provisions of this purchase order shall remain valid and enforceable and a court may amend or otherwise reform the provision in order to make it reasonable, not arbitrary, not against public policy, valid and enforceable. Such amendment or reformation of a provision will apply only with respect to this purchase order and in the particular jurisdiction in which such decision is rendered.

32 Press Releases

Neither party will issue or publish any press release or other public announcement with respect to this Agreement or the transactions contemplated therein without all parties' prior written consent; provided, however, that any party may issue or publish any such press release or public announcement if such action is required by law.

33 Personnel

Seller shall furnish the personnel required to manufacture the goods and/or to perform the services covered by the purchase order and any other attachments hereto that describe the goods and services to be provided. Seller shall ensure that all persons it employs or retains to manufacture the goods and/or to perform the services are competent and are properly trained, instructed, supervised and, if required by applicable law, licensed and insured. Purchaser shall have the right to approve the personnel and to require a change in personnel if Purchaser should so desire. Prior to Seller making any changes in personnel not required by Purchaser, Seller shall obtain Purchaser's written agreement. Purchaser shall not withhold consent unreasonably.

34 Independent Contractor

Seller is an independent contractor and not Purchaser's employee, agent, or partner. Seller shall comply with Purchaser's instructions in performing the services, but not as to the manner in which those instructions are carried out except as specified in this purchase order. Seller shall not do anything that would result in personnel it hires being considered Purchaser's employees.

35 Information Furnished by Purchaser

Seller represents that it has carefully examined the tests, services, reports, data and other information furnished by Purchaser regarding the services to be provided and Seller has fully acquainted itself with all other conditions relevant to the services, and Seller assumes the risk of such conditions and, regardless of such conditions, the expense or difficulty of performing the services, will fully complete the services for the stated purchase order price without further recourse to Purchaser. Information furnished to Seller by Purchaser is not guaranteed by Purchaser and is furnished only for the convenience of Seller.

36 Insurance

Seller, at its own expense, shall carry:

- (i) professional liability insurance in the amount of not less than \$ 1,000,000; and
- (ii) general liability insurance (including automobile liability) in the amount of not less than \$ 1,000,000.

Purchaser shall be named as an additional insured on Seller's automobile and general liability policies. Seller shall provide Purchaser a certificate of insurance stating that Purchaser will receive not less than 30 days notice in the event of cancellation of any and/or all Seller's insurance policies. Seller agrees that the above mentioned insurance shall apply as primary coverage. Such insurance shall contain a crossliability and/or severability of interest clause protecting the Purchaser against claims by the Seller as if the Purchaser were separately insured.

37 Professional Opinion

Seller expressly agrees that Seller is performing professional services for Purchaser and that Purchaser has a right to rely upon and will rely upon Seller's expert opinions and conclusions.

38 License to do Business

Seller warrants that it has obtained or before commencing the services, will obtain all appropriate valid licenses to do business or perform services necessary to deliver the goods or services ordered. Failure to do so will be considered default under this purchase order and Purchaser may, at its option, immediately terminate this purchase order or suspend Seller's operations until Seller's failure to obtain the licenses is corrected. Seller shall reimburse Purchaser for any resulting cost to Purchaser.

39 Authorized Representative

Seller shall cooperate fully with Purchaser in providing the services. Purchaser will name an authorized representative at or before the start of the work who shall be responsible for providing information, instructions, and approvals on Purchaser's behalf. Such representative will be available to Seller at all reasonable times.

40 Third Party Commitments

Seller shall not commit or purport to commit Purchaser to any obligations, including without limitation, payment of any money, except as specifically authorized by this purchase order.

41 Invoices

Invoices shall be issued by Seller on a monthly basis and shall be payable net fortyfive (45) days. Invoices shall include supporting documentation satisfactory in form and content to Purchaser.

42 NAFTA Compliance

Seller shall provide to Purchaser on request blanket NAFTA Certificates of Origin or a NAFTA Statement of Manufacturer for qualified products annually, on or before December 30 of each year during the Agreement term. Seller shall update any previously issued NAFTA Certificates and shall notify Purchaser of any changes affecting NAFTA eligibility within 30 days after any change occurs.

43 Country of Origin Labeling

Seller shall ensure that every item of foreign origin entering the United States and/or Canada under this Agreement is legibly marked in English with its country of origin. Seller shall also confirm the country of origin information for each product on the customs invoice.