

TERMS AND CONDITIONS

1. This Purchase Order constitutes the entire agreement between the Buyer and the Supplier with respect to the goods, material, and equipment (herein called the "Goods") to be delivered hereunder or with respect to any work or services (herein called the "Services") to be performed hereunder, or to both, as the case may be, and no other terms and conditions which the Supplier has submitted or may submit to the Buyer shall in any way or under any conditions apply. In the absence of any other acceptance by the Supplier of the terms and conditions hereof, shipment by the Supplier of the Goods or performance by the Supplier of the Services shall constitute such acceptance.
2. This Purchase Order may not be changed, amended or varied in any way whatsoever without the written consent of the Buyer.
3. The price or prices set out on the face hereof shall exclude GST, PST and HST but include all other taxes, duties and costs of whatsoever kind not expressly imposed by law on the Buyer, unless otherwise specified herein. The Buyer shall pay the Supplier the price or prices (plus applicable GST and PST) set out on the face hereof on or before the date set out on the face hereof.
4. Time shall be of the essence of this Purchase Order. In addition to any other remedy or remedies which the Buyer may have, the Buyer reserves the right to cancel this Purchase Order in whole or in part if delivery of the Goods or performance of the Services is not made by the time and in the manner stipulated herein. If this Purchase Order is cancelled in whole or in part due to the foregoing, the Buyer shall not be obliged to pay any cancellation charges unless it has otherwise agreed, in writing, to do so.
5. The Goods and Services are subject to inspection and acceptance by the Buyer within a reasonable time after receipt of the Goods or completion of the Services. Unless otherwise specified herein, title and risk in and to the Goods and Services shall pass from the Supplier to the Buyer upon acceptance of the Goods or Services, as applicable, by the Buyer pursuant to this Section 5. The Buyer will notify the Supplier in writing of its rejection of the Goods or Services or any part thereof not in accordance with the description or specifications stipulated herein. Rejected Goods or items on which Services have been performed may then be returned, at the Supplier's cost, to the Supplier or may be stored by the Buyer, at the Supplier's risk, for disposition by the Supplier but at the Supplier's expense for all costs, including storage costs incurred as a result of such rejection and storage.
6. The Goods or items on which Services have been performed shall be properly packaged by the Supplier for shipment to the Buyer at the location specified on the face hereof and, unless otherwise specifically provided on the face hereof, the purchase price of the Goods and Services shall include all costs of packaging. Damage to the Goods or to items on which Services have been performed resulting from improper packaging or otherwise shall be charged to the Supplier and may be deducted by the Buyer from the purchase price of the Goods or Services.
7. Over Shipments and unauthorized substitutions shall be for the Supplier's account and in the event the Supplier requests work or items on which Services have been performed to be returned, all expenses incurred by the Buyer in connection therewith shall be for the Supplier's account.
8. All plans, drawings, specifications, information, patterns, dies, tools and other property supplied by the Buyer, and any information or use derived therefrom, shall be kept confidential by the Supplier and shall not be used by the Supplier except for the purpose of supplying the Goods to or performing the Services for the Buyer. All such plans, drawings, specifications, information, patterns, dies, tools and other property shall remain the property of the Buyer and shall be immediately returned by the Supplier to the Buyer upon request. The Supplier agrees, if requested by the Buyer, to properly execute and return to the Buyer any license or similar agreement the Buyer may request in connection with the Supplier's use or possession of such plans, drawings, specifications, information, patterns, dies, tools or other property.
9. The Supplier may not assign the whole or any part of its obligations arising hereunder without the prior written consent of the Buyer.
10. The Supplier represents, warrants, covenants and agrees to and with the Buyer that the Goods delivered or the Services performed hereunder do not infringe any valid patent, copyright or trademark, foreign or domestic, owned or controlled by any other person and agrees to indemnify and save harmless the Buyer against any and all liabilities, losses, damages, claims and expenses (including any and all legal fees and costs on a solicitor-client basis) which the Buyer may be required to pay or which the Buyer may at any time sustain by reason of any claim, action or litigation arising out of any alleged or actual infringement of any patent, copyright or trade mark, foreign or domestic, resulting from the use or sale by the Buyer of the Goods or the Services. The indemnity contained in this Section 10 shall survive the acceptance of the Goods and the Services, as the case may be, by the Buyer in accordance with Section 5 above.
11. Unless otherwise specified herein, the Supplier represents and warrants to the Buyer that: (a) the Goods will be, at the time of acceptance by the Buyer, new and of merchantable quality; (b) at the time of acceptance by the Buyer, the Supplier will have good and marketable title in and to the Goods, free and clear of all liens, charges, security interests and encumbrances of any kind; (c) the Goods and the Services are fit for the particular purpose or use for which they are purchased by the Buyer; and (d) the Goods and Services will be free from any defects in material, workmanship or design. In particular, but without limiting the foregoing, the Supplier agrees that for a period of twelve (12) months from the date upon which the Goods or items on which Services are performed are used or are put into operation (unless otherwise specified in writing prior to the delivery of the Goods or completion of the Services) the Supplier shall replace and install, entirely at the Supplier's expense, the Goods or the items on which Services are performed or any part or parts thereof which may prove to be defective as aforesaid. The warranties set out in this clause are in addition to any and all warranties of the Supplier arising by operation of law or otherwise and nothing herein contained shall be construed as limiting or restricting any warranties not herein contained.
12. The Supplier shall indemnify the Buyer against any and all claims, losses, expenses, penalties, damages and liabilities of whatsoever kind (including any and all legal fees and costs on a solicitor-client basis) which the Buyer may at any time be required to pay for personal injuries (including death) and or property damage suffered by any person or which the Buyer may at any time sustain by reason of the supply of the Goods or the performance of the Services by the Supplier or any defect whatsoever therein or by the negligence, fault or breach of this Purchase Order of or by the Supplier, its employees, servants, contractors and agents. The indemnity contained in this Section 12 shall survive the acceptance of the Goods and the Services, as the case may be, by the Buyer in accordance with Section 5 above.
13. The Supplier shall at all times comply fully with all applicable laws, regulations, ordinances and governmental orders. Supplier shall at all times pay or caused to be paid when due any assessment or contribution required to be paid pursuant to workers' compensation legislation or similar legislation in force from time to time in the province, state or territory in which the Goods are made or in which the Services are performed and upon failure to do so, the Buyer, in addition to any other rights reserved to it hereunder or at law, may retain the amount of such assessment or contribution from any payment whatsoever then due or becoming due by the Buyer to the Supplier. In addition, the Supplier shall indemnify the Buyer against any and all claims, losses, expenses, penalties, damages and liabilities of whatsoever and (including any and all legal fees and cost on a solicitor-client basis) which the Buyer may at any time be required to pay or which the Buyer may at any time sustain by reason of the failure of the Supplier to pay such assessment or contribution when due. The indemnity contained in this Section 13 shall survive the acceptance of the Goods and the Services, as the case may be, by the Buyer in accordance with Section 5 above.
14. This Purchase Order shall be governed by and construed in accordance with the laws of Alberta and any proceedings taken by either party in respect of or in connection with this Purchase Order shall be taken exclusively in Alberta (except that any party may enforce in any jurisdiction any judgment or order so rendered) and the Supplier hereby irrevocably submits to the exclusive jurisdiction of the Courts of Alberta.