



Purchase Order – Terms and Conditions

1. This Purchase Order, including the information provided on the face hereof, these Purchase Order – Terms and Conditions, and all referenced materials, constitutes the entire agreement (collectively the "Agreement") between Finning and the Supplier with respect to the goods, material, and equipment (the "Goods") to be delivered hereunder and with respect to any services (the "Services") with both Goods and Services referred to as the "Work"). To the extent that there is a conflict or ambiguity among the documents comprising this Agreement, the following descending order of precedence shall apply: i) terms on the face hereof; ii) the Purchase Order – Terms and Conditions; and iii) any referenced documents. This Agreement shall be deemed to have been accepted by the Supplier on the earlier of: i) the Supplier signing or otherwise indicating its acceptance of this Agreement by any means (including by electronic communication); and ii) the Supplier commencing, or taking steps to commence, performance of the Agreement. This Agreement may only be amended by written agreement signed by both parties and which explicitly references the section(s) of this Agreement which are to be amended. Standard form order, invoicing, and other operational documents issued by Finning or the Supplier in connection with the provision of Work under this Agreement shall be wholly governed by the terms hereof and no alternative terms contained therein shall be applicable. Notwithstanding the foregoing, should this Agreement make explicit reference to the Work being governed by the terms of a separate agreement, which agreement is referenced on the face hereof (a "Contract"), the terms of the Contract shall be deemed to wholly govern the performance of the Work and the obligations of the parties and these Purchase Order – Terms and Conditions shall not apply.

2. The Supplier shall provide the Work for the price(s) set out in this Agreement (the "Fees"). The Fees shall be the entire compensation payable to the Supplier for the provision of conforming Work and this compensation shall be deemed all-inclusive, including all profit and all costs of supervision, labour, materials, equipment, transportation, systems, tools, overhead, financing, payroll burdens, taxes and all other fees, Services associated with the Goods, costs and expenses whatsoever incurred by the Supplier in providing the Work with the sole exceptions of GST, PST, and HST (if applicable). Invoices for Work shall be rendered to Finning in accordance with the terms of this Agreement and the direction provided by Finning from time to time. Finning reserves the right to withhold and/or set off payment for incomplete or deficient Work or in respect of any amounts which Finning determines, in its sole discretion, are owing by Supplier to Finning. Unless otherwise provided for in this Agreement, Finning shall pay to the Supplier the amounts shown in properly rendered invoices within the time period specified on the face hereof for payment. Payment made hereunder shall not constitute any sort of acceptance or approval of Work.

3. The Supplier shall immediately notify Finning of any product recalls or other information affecting the Work and shall make all repairs or replacements as soon as possible in accordance with the direction that Finning, in its sole discretion, may provide.

4. Unless otherwise agreed to by the parties to this Agreement in writing, the Supplier shall be solely responsible for all costs and risks of delivery of the Work to Finning's specified location. Title to the Work shall pass to Finning on the earlier of Finning making any payment in respect of those goods or delivery. Risk of loss for all Work shall remain with the Supplier until the successful delivery and acceptance of conforming Work by Finning. Supplier shall be solely responsible for the costs of storage and return shipment for any non-conforming Goods including unauthorized

shipments, over shipments, goods rejected by Finning, and shipments delivered in error. All Goods are subject to inspection and acceptance by Finning. Finning reserves the right to reject any goods where the packing slip or other provided shipping materials do not make reference to a corresponding validly-issued purchase order. The Supplier is solely responsible to ensure that its employee, agents, contractors or any others associated with its supply of Work are legally entitled to work in the location(s) where that Work is to be provided.

5. To the extent that a manufacturer warranty applies to any Goods provided hereunder, the Supplier shall ensure that Finning is provided a copy of the associated warranty on or before delivery of those Goods and that any such warranty is fully assigned to Finning, provided however that manufacturer warranties shall not limit the Supplier's obligations hereunder. In addition to any manufacturer warranties which may be applicable, the Supplier warrants the following: i) all Work shall strictly conform to and function in accordance with any specifications provided by Finning; ii) all Work shall comply with any promotional materials, samples, catalogues, and other materials provided by the Supplier to Finning; iii) the Goods shall be fully useable for their intended purposes without the requirement of obtaining additional goods or services; iv) the Goods shall include all instructions for use and safety which Finning may require and which may be required by applicable law; v) all Work shall be free from defects in design, materials, and workmanship and safe for its intended use; vi) unless otherwise agreed to in writing by Finning, all Goods shall be new; vii) Finning's use, modification, repair and resale of the Goods shall not infringe upon the intellectual property of any person; viii) the Work shall be free from all liens, charges, or encumbrances of any kind whatsoever; ix) all Work shall comply with all applicable laws, applicable industry standards, and the standards set by any generally accepted standards agencies, including the Canadian Standards Association, for that Work in the location(s) where it is to be used and where it is provided.

6. Provided that Finning has not already received conforming and complete Work, Finning may make changes to the Work at any time. To the extent that the Supplier can provide documented evidence of reasonable additional third party costs associated with those changes, Finning shall be responsible to cover those reasonable additional costs. Finning may in its sole discretion suspend any Work that is in progress for such time periods as it may require. If Work is suspended, Supplier shall, at its sole expense, take all necessary steps to preserve the Work in progress so that it may be recommenced at Finning's direction.

7. Finning may withhold from any payment amounts required to be withheld under any legislation including amounts required to be withheld under the *Income Tax Act* (Canada) for payments to non-residents of Canada and applicable builders' lien legislation. To the extent that such amounts are not withheld by Finning for any reason whatsoever, including representations made by the Supplier, the Supplier hereby agrees to indemnify and fully reimburse Finning for any amounts which may need to be paid at a later date to any authority in respect of the Fees.

8. Any equipment, machinery, tools, furniture, or other property of Finning used or handled by the Supplier in connection with the provision of the Work shall be treated with the utmost care, used or handled only for its intended purposes, shall remain the property of Finning, and shall be provided on an "as is" basis and used at the Supplier's own risk. That property shall not be commingled with the property of the Supplier and the Supplier shall ensure that all Finning property is clearly marked and returned



upon termination, expiry, and/or completion of this Agreement. Supplier shall be solely responsible for any damage, loss, or destruction, by any cause whatsoever, of such property while it is being used by the Supplier and/or while it is in the Supplier's possession. Unless otherwise agreed to by Finning, any equipment utilized by the Supplier performing this Agreement shall be Caterpillar branded equipment. Should the Supplier fail to comply with the foregoing sentence, Finning may, at the Supplier's sole expense, take such actions as it, in its sole discretion, deems appropriate to ensure that equipment is removed, covered up, or otherwise adequately dealt with in such a way so as to minimize the potential damage to its reputation caused by the Supplier's use of unauthorized equipment.

9. The Supplier shall immediately notify Finning if it becomes aware of any circumstances or other information which have lead, or could lead, to a breach of the terms of this Agreement. Notwithstanding any obligations of confidentiality or otherwise that Finning may owe the Supplier, Finning may, in its sole discretion, take whatever steps that it deems advisable to mitigate the impact of the actual or suspected breach including notifying third parties. If any circumstance comes to the attention of the Supplier that poses a danger with respect to personal injury to any person or property damage, the Supplier shall use its best efforts to immediately rectify the problem to Finning's satisfaction. The Supplier shall, at its sole expense, take whatever steps Finning may direct to remedy an actual or suspected breach of this Agreement by the Supplier.

10. All information provided to the Supplier by Finning in relation to this Agreement, including the existence and terms of this Agreement and information which may have been provided in furtherance of this agreement prior to execution, shall be kept strictly confidential by the Supplier and only shared with those individuals within the Supplier organization who have a need to know to facilitate performance by the Supplier. It is the intention of Finning and the Supplier that no personal information about any individual is to be shared under this Agreement. The Supplier shall immediately notify Finning if any personal information is inadvertently provided to the Supplier and shall take such steps as Finning may direct regarding its destruction and/or return.

11. Any and all intellectual property including, without limitation, all: (i) copyrights, moral rights, rights of authorship and attribution, neighbouring rights and other rights in works of authorship; (ii) patents; (iii) database rights; (iv) rights in respect of industrial designs, integrated circuit topographies and mask works; (v) rights in respect of trademarks, trade names, service marks, slogans, domain names, URLs or logos; (vi) rights protected by trade secrets and confidentiality obligations; and (v) other things created in the course of or resulting from the Work, including any deliverables and work in progress, and all rights therein (collectively, the "Work Product") shall be owned solely and exclusively by Finning. The Supplier shall ensure that each person who contributes to the design, development or creation of any Work Product has entered into such agreements as may be advisable to protect Finning's rights as set out in this paragraph. Notwithstanding the foregoing, the Supplier shall remain the sole and exclusive owner of any intellectual property which forms part of the Work Product and was in existence prior to the Supplier entering into this Agreement provided however that to the extent any Supplier intellectual property is incorporated, embedded or otherwise included in any Work Product, or is required by Finning in order to use or obtain the benefits of any Work Product, then the Supplier hereby grants to Finning a perpetual, irrevocable, worldwide, royalty free, fully paid-up, sub licensable, transferrable, unlimited license to use and exploit that Supplier intellectual property to the same extent as if Finning were the

owner of that Supplier intellectual property and any and all intellectual property rights therein.

12. In providing the Work, the Supplier shall abide by: i) all Finning policies, rules, and regulations relating to use of, and access to Finning and other sites; ii) the Finning Health and Safety, Personal Protective Equipment and Environmental Commitment policies; iii) all applicable laws; iv) Finning Supplier code of conduct; and (v) any further instructions or direction provided by Finning from time to time. In the event that any Work is provided on a third party site, the Supplier shall abide by all applicable third party policies, rules, and regulations of that site. Where the rules, regulations and policies of Finning or relevant third parties differ, the stricter standard shall apply. The Supplier shall, at all times, comply with the security and access requirements issued by Finning in relation to any access that the Supplier, its employees, agents, officers and any other entity related to the Supplier, has to Finning's databases, computers, network and other information storage and transmission infrastructure.

13. The Supplier shall indemnify on demand, save harmless, and defend Finning, its affiliates, directors, officers, employees and agents (each, an "Indemnified Party" and together, the "Indemnified Parties") from and against all losses, damages, judgments, costs of compliance with any orders, interest, fees, costs, fines, and other expenses of any kind whatsoever, at any time suffered or incurred by the Indemnified Parties, or any one of them including legal costs (on a solicitor and own client/full indemnity basis), accounting and expert fees, costs of collection in any way relating to or arising out of the acts or omissions (negligent or otherwise), willful or intentional misconduct, fraudulent acts, criminal acts, and breach of this Agreement, of or by the Supplier or those for whom the Supplier is responsible at law.

14. Should circumstances arise which give rise, or could give rise to an indemnification obligation by the Supplier ("Claims"): i) Finning shall provide notice within a reasonable period of time to the Supplier with particulars of the circumstances which have resulted in, or could result in, the obligation for the Supplier to indemnify Finning, ii) If applicable, Finning shall determine, in its sole discretion, whether to permit the Supplier to defend the Claims using mutually acceptable counsel or to take over defence of Claims, provided however that Finning's decision in this respect shall not affect the obligations of the Supplier to indemnify Finning for legal costs on a solicitor and own client/full indemnity basis or the ability for the Supplier to, at its sole expense, participate in the defence of a Claim with counsel. The parties to this agreement shall provide reasonable information and assistance in defending Claims. The Supplier shall not conclude or agree to a settlement or resolution of an indemnified Claim under this Agreement where such settlement requires an admission of fault without the prior written consent of Finning, and iii) Upon receipt of a demand for indemnification, the Supplier shall, within thirty (30) days, notwithstanding any dispute or defence of Claims which may be ongoing, pay to Finning the amount of that demand.

15. The Supplier hereby agrees that all of the Work shall be performed at its own risk and that Finning shall have no liability, including as may relate to the negligent or other acts or omissions of Finning and any Indemnified Party, whatsoever to the Supplier, its permitted Subcontractors, employees, agents, and others for whom it is responsible at law, or any third party which in any way relates to the performance of the Work including as may arise out of the following: i) damage, destruction, or theft of the Supplier or any third party property or equipment used in providing the Work, and ii) personal injury, permanent or temporary disability, death, or any one or more of the foregoing. Notwithstanding anything else in this Agreement, under no circumstances shall Finning be



liable to the Supplier for: i) special, contingent, exemplary, punitive, indirect, incidental or consequential loss damages, ii) loss of anticipated revenue, overhead, profit, or economic losses of any kind, iii) loss of production, business or contracts, iv) loss by reason of shutdowns, non-operation or increased costs of operation, or v) loss of business reputation or opportunities, of any nature arising at any time or from any cause whatsoever relating to this Agreement, and whether or not such losses or damages were foreseeable even if the Supplier advises Finning of the possibility of them.

16. Finning may terminate this Agreement for any reason on thirty (30) days' notice. Finning may terminate this Agreement immediately if any of the following apply: i) the Supplier is notified by Finning of breach or suspected breach of this Agreement and fails, at its sole expense, to take such steps as Finning may direct, in its sole discretion, within seven (7) days to diligently and expeditiously remedy that breach, and ii) the Supplier becomes insolvent, takes the benefit of any legislative protection for bankruptcy, or any other circumstance exists which Finning determines, in its sole discretion, indicates that the Supplier lacks the resources to fulfil its obligations under this Agreement.

17. On termination or expiry of this Agreement, Finning shall provide direction to the Supplier as to which Work is to be stopped. In full satisfaction of any claims the Supplier may have in respect of that termination, Finning shall: i) subject to the terms of this Agreement, pay the Supplier as required by this Agreement for all Work which Finning directs to continue, and ii) for Work which Finning directs should be ceased, Finning shall pay the Supplier for its reasonable and documented costs incurred up to the effective date of expiry or termination within a reasonable period of time upon Finning being provided satisfactory evidence of those costs. The Supplier shall comply with Finning's direction regarding the delivery of any Work in progress and the Supplier hereby grants Finning a license to access any Supplier facilities for the retrieval of Work in progress at any time during the term of this Agreement and for a reasonable period of time afterwards for the same. In the event that Finning allows, in its sole discretion, the Supplier to continue to provide the Work or a portion thereof after expiry or termination occurs, the terms of this Agreement shall be deemed to continue to apply to that Work, provided however that there shall be no implied extension or renewal and any ongoing Work shall be terminable by Finning immediately on notice.

18. While the Work is being performed and any other obligation exists under this Agreement, the Supplier shall obtain and maintain, at its own sole cost and expense, either by way of a new policy or by endorsement to an existing policy, the following insurance policies at all times during the performance of the Work (including in respect of any Work performed prior to the Effective Date) until completion of the Work (unless another period is set out herein): i) "Commercial General Liability" insurance, including third party bodily injury, property damage, contractual liability and non-owned automobile liability with a limit not less than \$5,000,000 dollars per occurrence, ii) If applicable (as determined by Finning), Professional "Errors and Omissions" insurance in an amount of not less than \$2,000,000 dollars per occurrence, iii) If applicable (as determined by Finning), Automobile Liability Insurance covering any and all motor vehicles owned or non-owned, operated or licensed by the Supplier or any of its agents or employees and used to provide the Work with a minimum bodily injury and property damage limit of five million \$5,000,000 dollars inclusive, per occurrence, iv) If applicable (as determined by Finning), Cargo Insurance with limits not less than five hundred thousand \$500,000 dollars per occurrence for damage to cargo in transit. Should individual shipments have a cargo value in excess of this minimum coverage requirement, the Supplier shall

maintain sufficient cargo coverage for the full declared value of any shipment transported for Finning or any of its affiliates. The amount of cargo coverage declared by a Supplier shall impact what orders a Supplier is eligible to transport, v) If applicable (as determined by Finning), Property or Contractors Equipment insurance to cover physical damage to or the loss of all major tools and equipment, construction office trailers and their contents, unlicensed vehicles and other property for which the Supplier owns or is responsible, throughout the course of the performance of its obligations under this Agreement.

19. The Supplier shall be solely responsible for the payment of any self-insured amounts or any deductibles. All Supplier policies of insurance shall be considered primary and Finning's policies shall be non-contributory with respect to any loss. All insurance policies shall contain an obligation of the part of the insurer to notify Finning at least 30 calendar days prior to any material change or cancellation of the policy(ies). Finning, its officers, employees, servants and agents shall be named as additional insureds with respect to the Services and a waiver of subrogation as against Finning shall be in place. Such insurance shall also insure all Subcontractors and anyone employed directly or indirectly by the Supplier or its Subcontractors to perform any part of the Services pursuant to this Agreement.

20. Time shall be of the essence in the performance of this Agreement. All duties and obligations imposed by this Agreement and all rights and remedies available under this Agreement are cumulative and shall be in addition to and shall not operate in limitation of, any duties, obligations, rights and remedies otherwise imposed or available under this Agreement, at law or in equity. It is the intent of the parties that, except where specifically noted otherwise, all provisions of this Agreement shall survive termination of this Agreement and/or completion of the Work. No failure by Finning to exercise any right under or insist on strict performance of this Agreement shall operate as a waiver. Any waiver by Finning must be in writing and shall be effective only for the specific circumstances contained therein. This Agreement shall be governed by the laws of the Province of Alberta without reference to conflict of laws rules. The parties to this Agreement hereby submit to the exclusive jurisdiction of the courts of that Province for the settling of any disputes.