

STANDARD PURCHASE ORDER -TERMS AND CONDITIONS

("Standard Terms and Conditions")

These Standard Terms and Conditions, set out below, shall apply to all purchases of Goods or Services under purchase orders or other similar documents (hereafter each such purchase of Goods or Services referred to, with the appropriate cover page, order form, or similar or other documentation, as a "**Purchase Order**"), unless otherwise agreed to in writing by Buyer, as follows:

• **Parts A and C shall apply to purchases of Goods by Buyer.**

• **Parts B and C shall apply to purchases of Services by Buyer.**

• **Parts A, B and C shall apply to purchases of Services which are provided by Seller in connection with what is otherwise a purchase of Goods by Buyer.**

"**Seller**" means: (i) the person selling the Goods directly to Buyer or (ii) the primary contractor responsible for providing the Services to Buyer.

"**Goods**" includes equipment, materials, supplies and other goods to be provided by Seller to Buyer under this Purchase Order, whether or not specifically set out on the cover page, order form or other documentation (each and collectively "**cover page**") which is part of this Purchase Order, as well as where applicable all specifications, instructions and installation, operating and maintenance manuals necessary for the installation, operation and maintenance of the Goods.

"**Services**" includes all labor, work and other services to be provided by Seller to Buyer under this Purchase Order, whether or not specifically set out any document which is part of this Purchase Order.

"**Delivery Point**" means the point at which Goods are to be delivered by Seller to Buyer, as shown in this Purchase Order or as otherwise agreed to by the parties in writing.

A. TERMS AND CONDITIONS APPLICABLE TO THE PURCHASE OF GOODS

1. WARRANTIES.

- (a) Seller shall provide the Goods to the Buyer in accordance with the terms and conditions of this Purchase Order, in the event of any inconsistency between these Standard Terms and Conditions and the other terms and conditions of this Purchase Order, these Standard Terms and Conditions shall govern.
- (b) Seller represents and warrants that the Goods supplied hereunder (i) shall be of the kind and quality specified herein, free from fault in design, workmanship and material, (ii) shall be new and of good and merchantable quality, (iii) are suitable and fit for the purpose for which they shall be used, (iv) shall perform in accordance with the specifications and drawings, if any, provided by the Buyer or otherwise referred to, or incorporated, in the Purchase Order, (v) shall not constitute an infringement or contributory infringement of any patent or any copyright or trademark, or violation of any trade secret when sold or used for their ordinary intended purpose. All Goods provided under this Purchase Order shall be delivered free from all liens, encumbrances or other charges. All Goods shall at all times be subject to Buyer's inspection but neither Buyer's inspection nor failure to inspect shall relieve Seller of any obligations hereunder or constitute a waiver of any of Buyer's rights or warranties of Seller. If any Goods fail to conform with specifications or drawings or are otherwise defective, then: (i) Buyer may, in its sole discretion reject all or any portion of the non-conforming or defective Goods purchased under this Purchase Order, and they may be (A) held at Seller's risk or (B) returned upon notice, and at Seller's cost to Seller and Buyer shall be entitled to a refund in full, or (ii) at Buyer's option, Seller shall promptly repair or replace same at Seller's sole expense.
- (c) The warranties in this Section 1 *Warranties* shall continue in full force and effect for a period of: (i) eighteen (18) months from the date of transfer of title to Goods, or (ii) twelve (12) months from the date of start-up of the Goods or start-up of the equipment into which the Goods are incorporated, whichever period ends last.
- (d) Where Goods are repaired or replaced under the above warranties, such Goods shall be warranted for a new period of: (i) eighteen (18) months from the date of completion of such repair or replacement, or (ii) twelve (12) months from the date of restart-up of the Goods or restart-up of the equipment into which the Goods are incorporated, whichever period ends last.

- (e) Buyer shall be entitled to the benefit of any of Seller's service warranties and guaranties customarily offered by Seller, in addition to those warranties set forth above.
- (f) Seller shall bear all costs for removal, repair, replacement and reinstallation of Goods under the above warranties.
- (g) To the fullest extent permitted by law Seller herewith assigns and transfers to Buyer all right to, and benefit from, any and all manufacturers' or suppliers' warranties (each and collectively "Manufacturer's Warranty") that apply or otherwise relate to any Goods provided under this Purchase Order. Seller shall fully cooperate with and assist Buyer in making any claim under any Manufacturer's Warranty. Any claim by Buyer under a Manufacturer's Warranty shall not: (i) prevent Buyer from (A) making a claim under any other warranty or (B) otherwise seeking to protect its rights; and (ii) limit or restrict Buyers rights or remedies in law or at equity.
- (h) Acceptance of, or payment for, the Goods delivered under this Purchase Order shall not constitute a waiver by Buyer of any of the warranties of Seller, either express or implied, and shall not be deemed to alter or affect the obligations of Seller or rights of Buyer under any of such warranties, either express or implied, nor shall acceptance of, or payment for, any Goods constitute a waiver of any of Buyer's rights or remedies either contained herein, or in law or at equity.
- (i) All warranties and the benefits thereof will run to Buyer, its successors, assigns and customers.
- (j) To the extent the Goods will be sold into or distributed in the U.S., Seller warrants that its manufacturing facility (and any other facility that may be approved for use by Buyer for the manufacture, processing, packing or storage of product inputs or Goods) (the "Facility") is registered with the U.S. Food and Drug Administration as required by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 and regulations promulgated thereunder (the "the Bioterrorism Act"). Seller will comply with all the recordkeeping requirements of the Bioterrorism Act applicable to "Non-Transporters" with respect to the Goods. To the extent the Goods will be sold into or distributed in Canada, Seller warrants that its manufacturing facility (and any other facility that may be approved for use by Buyer for the manufacture, processing, packing or storage of product inputs or Goods) (the "Facility") will comply with the Safe Food for Canadians Act and regulations promulgated thereunder. Seller will comply with all the recordkeeping requirements of the Safe Food for Canadians Act with respect to the Goods.
- (k) Upon request of Buyer, Seller shall determine whether any Products contain tin, tantalum, tungsten, gold or any other material that is designated under applicable rules of the Securities and Exchange Commission ("SEC") as a "conflict mineral." If no Product contains one or more conflict minerals that are necessary to the functionality or production of such Product within the meaning of applicable SEC rules and interpretations, Seller shall, upon request, certify to Buyer that none of the Products contains such conflict minerals. If any Product contains one or more such conflict minerals, Seller shall certify to Buyer the country of origin of any such conflict mineral or that the conflict mineral came from recycled or scrap sources within the meaning of those terms under applicable SEC rules. If Seller is unable to identify the country of origin, and the conflict mineral(s) in question did not come from recycled or scrap sources, Seller shall in good faith conduct an inquiry of its relevant suppliers as to the country of origin of such conflict minerals, and such inquiry shall comply with then-existing standards under SEC rules for the conduct of a reasonable country of origin inquiry. In the event that Seller is or becomes aware that any conflict minerals that are necessary to the functionality or production of any Products originated from a "covered country" within the meaning of the SEC's conflict minerals rules and did not come from recycled or scrap sources, Seller shall make a good faith effort to determine whether such conflict minerals came from a processing facility certified as conflict free by a recognized industry group that requires an independent private sector audit of the smelter or from an individual processing facility that has obtained an independent private sector audit that is publically available, and to provide written documentation of such determination. Seller shall also take such additional actions and provide such additional information requested by Buyer as may be necessary in order for Buyer to be or remain compliant with applicable laws, rules and regulations relating to conflict minerals.
- (l) The warranties set forth or referred to herein are in addition to all rights and remedies Buyer may have in law or at equity.
- (m) Seller shall provide Buyer with not less than forty-five (45) days advance written notice of any changes in or to the Goods, including, without limitation, changes in or to the specifications, raw materials, packaging, manufacturing processes, manufacturing locations, analytical test methods, use of a new reagent or solvent, or any other change which results in an alteration to the physical or chemical characteristics of the Goods.
- (n) Seller represents and warrants that no article manufactured, packed, warehoused, distributed, shipped, delivered, labeled, or sold by Seller (hereafter "Article") hereunder shall be: (i) adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act ("FDCA"), as amended, the Federal Meat Inspection Act as amended, the Federal Poultry Products Inspection Act, as amended, the Safe Food for Canadians Act, as amended, or any rules and regulations promulgated thereunder; (ii) an article which may not, under the provisions of Section 404 of the FDCA, be introduced into interstate commerce; or (iii) adulterated or misbranded within the meaning of any provincial or local law, or any rules and regulations promulgated thereunder.

- (o) Seller represents and warrants that every Article shall be manufactured, packaged and labeled in accordance with the requirements of the Canada Consumer Product Safety Act, as amended; the Hazardous Products Act, as amended; the Safe Food for Canadians Act, as amended, and all other federal, provincial and/or local laws, including all rules and regulations promulgated thereunder, concerning the manufacturing, packaging and labeling of the Article.
- (p) Where Goods consist of chemicals or chemical compounds in any form, Seller shall provide Buyer with a certificate of analysis with each delivery, shall keep a retain of such chemical or chemical compound until the expiration of the warranty period, and make a sample from such retain available to Buyer upon request.

2. TITLE.

- (a) Seller represents and warrants that Buyer shall receive clear and unencumbered title to the Goods supplied hereunder and that the Goods may be acquired, owned, held, used and disposed of by Buyer without infringing any patent, industrial design, copyright or trademark whether foreign or domestic.
- (b) Title to each item included in the Goods shall pass to Buyer on the earlier of: (i) payment for such item, or (ii) its delivery to the Delivery Point. Notwithstanding the foregoing, risk of loss for all Goods shall remain with the Seller and shall transfer to Buyer only when the Goods are under the care, custody, and control of Buyer at the Delivery Point.

3. CERTIFICATE OF ORIGIN.

Where applicable:

- (a) Seller shall at Seller's cost, prepare and issue to Buyer, to the extent required, Certificate(s) of Origin for Goods sold pursuant to the North American Free Trade Agreement (NAFTA) or any successor legislation and shall provide copies of the issued Certificate of Origin to the customs administration of Seller's and Buyer's home country upon request as well as provide all information requested by either customs administration in respect of the issued Certificate(s) of Origin. Seller shall maintain records in respect of the Certificate of Origin for five (5) years or such longer period as required by law. Seller shall otherwise comply with Seller's obligations under NAFTA or any successor legislation .
- (b) Seller shall defend, indemnify and save Buyer harmless from and against all liability, loss and cost incurred for additional duties, tariffs and penalties imposed by any customs administration, resulting from the Certificate(s) of Origin furnished with respect to Goods being found to be incomplete, false or otherwise invalid in whole or in part, or arising out of a breach by Seller of Section 3(a) *Certificate of Origin* above. Seller's indemnity herein shall extend to all costs and expenses, including attorney's fees, arising from any resulting redetermination or reassessment with respect to any of the Goods.

4. PACKAGING. Seller shall ensure all Goods are packaged in accordance with applicable law and regulations and in such a manner as to ensure the Goods are transported and delivered to Buyer without sustaining damage.

5. LABELING AND SHIPPING.

- (a) Seller shall place or affix the number of this Purchase Order on all invoices, packing lists, packages, containers and related correspondence. Each shipment must be accompanied by all safety data sheets or similar documentation, and a packing list showing the exact quantity and description of Goods shipped. Seller shall mark all containers with necessary lifting, handling, environmental, safety and shipping information.
- (b) Where Buyer is responsible for freight charges Seller shall ship the Goods by the most economical manner and route unless otherwise specified or directed by Buyer.
- (c) If Buyer specifies or directs Seller to ship the Goods in a specific manner or by a specific route and Seller fails to do so, Seller shall reimburse Buyer for any loss or extra expenses incurred by Buyer resulting from such failure.

6. PAYMENT TERMS. Unless otherwise agreed to in writing by Buyer in the Purchase Order, invoices shall be due and payable 45 days after the later of (i) receipt of the invoice by Buyer, or (ii) delivery of the Goods to Buyer.

B. TERMS AND CONDITIONS APPLICABLE TO THE PURCHASE OF SERVICES

7. PERFORMANCE.

- (a) Seller shall diligently and carefully perform the Services in strict accordance with this Purchase Order and shall furnish all labor, supervision, tools, materials and equipment necessary therefor and, if directed by Buyer, shall provide all Goods required in connection with the Services.
- (b) Unless otherwise agreed to in writing by Buyer, Seller shall immediately upon completion of the Services remove from Buyer's premises all its equipment, surplus materials and debris and shall leave such premises in a clean and tidy condition.
- (c) Title to all work product resulting from the Services shall pass to Buyer as such work product is completed. *Notwithstanding the foregoing*, the Services and all work product shall remain at the risk of Seller until completion of all the Services hereunder and acceptance of those Services by Buyer.

8. WARRANTY.

- (a) Seller represents and warrants to Buyer that:
 - (i) Seller shall perform the Services in a professional and workmanlike manner, in accordance with the industry's highest standards of care, thoroughness, and competence;
 - (ii) Seller shall perform the Services in full compliance with all applicable laws, regulations and rules, and all specifications, drawings and other documentation delivered by Buyer, or as otherwise agreed to by Buyer and Seller in writing;
 - (iii) Seller shall employ only persons who may lawfully work at the site where the Services are to be performed
 - (iv) Seller shall employ only trained, qualified, competent and experienced personnel to perform the Services; and
 - (v) All work product resulting from the Services shall be of the kind and quality specified herein, free from fault in design, workmanship and material.
- (b) The above warranties shall continue in full force and effect for a period of twelve (12) months after completion of the Services. Seller shall, during such period, re-perform all Services that were performed incorrectly or otherwise do not fully comply with the above warranties.
- (c) Where Services are re-performed under the above warranties, such Services shall be warranted for a new period of twelve (12) months from the date re-performance is completed.
- (d) Seller shall bear all costs for re-performance of the Services under the above warranties.
- (e) Seller shall assign to Buyer the benefit of all warranties or similar obligations provided by any subcontractor or supplier to Seller (each and collectively "**Supplier Warranties**"). Seller shall ensure that all Supplier Warranties are assignable to Buyer without the consent of the subcontractor or supplier, or shall obtain the necessary consents before completing the Services. Seller shall fully assist Buyer in making any claim under any Supplier Warranty. Any claim by Buyer under a Supplier Warranty shall not: (i) prevent Buyer from (A) making a claim under any other warranty or (B) otherwise seeking to protect its rights; and (ii) limit or restrict Buyer's rights or remedies in law or at equity.

9. SELLER'S PERSONNEL AND EQUIPMENT. If Buyer determines in its sole discretion that any of Seller's personnel or equipment do not comply with applicable safety and security requirements or of any other legally permitted reason, Buyer may refuse to permit such personnel or equipment to enter upon any of Buyer's premises. Seller shall indemnify defend and hold harmless Buyer from any and all claims, causes of action, petitions, demands, loss or expenses (including court costs, interest and attorney's fees) of every kind arising out of Buyer's refusal to permit any of Seller's personnel or equipment to enter upon any of Buyer's premises.

10. BOND. At Buyer's request, Seller shall furnish Buyer with a performance bond in an amount designated by Buyer. The form and content of the bond and the surety shall be subject to prior approval by Buyer.

11. ENVIRONMENT, HEALTH AND SAFETY. Without limiting the generality of Section 27 *Compliance with Laws and Policies* below, the parties agree as follows:

- (a) Seller shall, and shall be responsible for ensuring that its employees, agents and subcontractors at all times comply with all applicable laws, regulations, by-laws, permits, approvals or other lawful requirements imposed or issued by any Federal, Provincial or local governments relating to environmental protection as well as any environmental policies or procedures imposed by Buyer from time to time.

- (b) Buyer may at any time evaluate Seller's environmental practices and procedures and may, from time to time, require the assistance of Seller in completing evaluations in this regard.
 - (c) Seller shall, and shall be responsible for ensuring that its employees, agents and subcontractors at all times comply with all applicable Federal, Provincial or local occupational health and safety laws and regulations as well as any additional safety rules imposed by Buyer from time to time, whether attached as an Appendix to these Standard Terms and Conditions and made part of a Purchase Order, or otherwise.
12. **SITE INSPECTION.** Seller acknowledges that prior to its acceptance of the Purchase Order it has, and shall be deemed to have, examined the Purchase Order thoroughly and familiarized itself with and considered the location and all conditions of the work to be performed as part of the Services including, without restricting the generality of the foregoing, topography, access to the work site, the right-of-ways, the character and quantity of surface and subsurface conditions, the uncertainties of weather, the availability of labour and other requisite elements such as power, water and transportation and the type and quantities of necessary equipment and materials (each and collectively "**Site Conditions**"). Seller shall report to Buyer any proposed changes to the Purchase Order resulting from Site Conditions.
13. **PAYMENT TERMS.** Unless otherwise specified in the Purchase Order, the following payment terms shall apply to purchases of Services:
- (a) In the case of a lump sum price for the Services, no invoice shall exceed an amount that is proportionate to the Services performed during the period covered by such invoice. Invoices shall include such information as Buyer may require.
 - (b) In the case of hourly rates in respect of the Services, invoices shall, for the period covered by the invoice, include a statement of hours expended by each of Seller's personnel at their applicable hourly rates, the dates upon which such hours were expended and a description of Services provided, together with such other information as Buyer may require.
 - (c) For Purchase Orders billed on a time and materials basis, materials shall be separately identified on each invoice together with such other information as Buyer may require.
 - (d) Unless otherwise specified in the Purchase Order, invoices shall be due and payable on the later of 45 days after: (i) receipt of the invoice by Buyer, or (ii) completion of the Services which are the subject of the invoice.

C. TERMS AND CONDITIONS APPLICABLE TO ALL PURCHASE ORDERS

14. **ACCEPTANCE.** This Purchase Order is Buyer's offer to Seller, and acceptance is expressly limited to its terms and Buyer hereby objects to and rejects any different or additional terms in any response to this purchase order and, in addition, Buyer and Seller are not bound by prior dealings or trade usage. EXCEPT AS AGREED TO IN WRITING BY BUYER, IN THE EVENT OF A CONFLICT OR INCONSISTENCY BETWEEN ANY AGREEMENT SUBMITTED BY SELLER AND THE PROVISIONS HEREOF, THE PROVISIONS HEREOF SHALL GOVERN AND CONTROL AND SELLER ACKNOWLEDGES THAT UNIFORM COMMERCIAL CODE SECTION 2-207 OR THE APPLICABLE PROVINCIAL OR LOCAL LAW EQUIVALENT, SHALL NOT APPLY, AND SHALL NOT ALTER, ADD, CHANGE OR MODIFY THE PROVISIONS HEREOF. Each acceptance of a Purchase Order by Seller shall constitute the creation of a separate binding contract between Seller and Buyer, subject to the terms hereof. Any of the following acts by Seller shall constitute acceptance of a Purchase Order:
- (a) Seller signing and returning a copy of any cover sheet, order form or similar document which references these Standard Terms and Conditions;
 - (b) Seller's shipment of all or any portion of the Goods covered by a Purchase Order;
 - (c) Seller's express written acknowledgment of these Standard Terms and Conditions or
 - (d) Seller's performance of any of the Services identified in a Purchase Order
15. **DRAWINGS AND SPECIFICATIONS.** Unless otherwise agreed to by the parties, all drawings, blueprints, specifications, dies, patterns and tools, whether supplied by Buyer or prepared or constructed by Seller as required for the completion of this Purchase Order, or for repair, replacement or re-performance pursuant to the warranty provisions hereunder, shall be the property of Buyer.
16. **PRICE.**
- (a) All prices quoted by Seller shall be quoted in Canadian Dollars or converted to an equivalent Canadian Dollar value at the time of quote unless expressly waived by Buyer provided however that prices shall be quoted in Canadian Dollars where expressly

required by Buyer. Prices shall be as last quoted in writing by Seller to Buyer and shall not change without written agreement of Buyer, delivered prior to delivery of the Goods or performance of the Services. Buyer may cancel any order without any resulting liability after receiving a price change notice. Charges for packing, packaging, freight/shipping and handling will not be allowed or paid by Buyer unless expressly included in Seller's price quote prior to Buyer's acceptance. Prices for Services shall include expenses, charges and costs for all equipment, goods and materials necessary to complete the Services.

- (b) No increases in the price or other charges shown Buyer's Purchase Order, including, without limitation, increases in customs and excise duties subsequent to the date of Seller's price quote as accepted by Buyer, shall be payable by Buyer unless such increases are agreed to by Buyer in writing.
- (c) No payment or acceptance of Goods or Services by Buyer hereunder shall constitute a waiver with respect to any provisions of this Purchase Order, nor shall anything herein contained be construed to limit any warranties or conditions implied by law.
- (d) If any error is discovered in an invoice by Buyer, such error shall be adjusted within thirty (30) days from the date of discovery of such error, provided however, that there shall be no adjustment made for any error discovered by Seller more than twelve (12) months after receipt of an invoice by Buyer.
- (e) Unless otherwise specifically provided for in this Purchase Order, Seller assumes exclusive liability for and shall pay before delinquent, all sales, use, customs and excise, import, export (from country of origin), value added and other taxes, charges, duties, levies, imposts or contributions of any kind or with respect to or measured by the Goods or the Services supplied hereunder (Collectively "**Sales Taxes**"). **Seller shall indemnify, defend and hold harmless the Buyer Indemnified Parties, as defined herein, from any claims Causes of action, costs and expenses (including court costs and expenses and attorney's fees) arising out of Seller's failure to pay any Sales Taxes that are Seller's responsibility under this Section.**
- (f) Unless otherwise specifically provided for in this Purchase Order, Seller assumes exclusive liability for and shall pay before delinquent all Federal, Provincial and local income taxes, pension benefits, social security taxes, employment, disability and other customary insurance and for any other taxes or payments which may be due and owing by Seller or which are the result of fees or amounts paid by Buyer to Seller under this Purchase Order (each and collectively "**Income Taxes**"). **Seller shall indemnify, defend and hold harmless the Buyer Indemnified Parties, as defined herein, from any claims Causes of action, costs and expenses (including court costs and expenses and attorney's fees) arising out of Seller's failure to pay any Income Taxes that are Seller's responsibility under this Section.**
- (g) Buyer shall furnish Seller any applicable, valid and effective tax exemption certificates and Seller shall collect Sales Taxes and other taxes only in accordance with those tax exemption certificates.
- (h) Any applicable Sales Taxes and other government charges shall be separately listed on Seller's invoice.
- (i) All taxes and duty rebates, remissions, exemptions or other such savings shall be for the account of Buyer and accordingly, shall reduce the price shown in the Purchase Order. In the event that Buyer has already paid the price shown in the Purchase Order, Seller shall pay all amounts received in respect of rebates, remissions, exemptions or other such savings to Buyer within ten (10) days of their receipt. Seller shall apply promptly for all available rebates, remissions and exemptions in compliance with applicable law.
- (j) Early payment discounts shall run from the later of: (i) Buyer's receipt of Seller's invoice, (ii) delivery of the Goods, or (iii) completion of the Services.

17. **BEST PRICE AND MEET OR RELEASE.** Seller shall not charge Buyer a higher price for goods covered by these terms and conditions than it charges to any other customer for goods of like quality.

- (a) If at any time, Buyer notifies Seller that it has been offered (including through a bid process initiated by Buyer) product in equal or lesser quantities and of similar or superior quality to the Product by another supplier (an "**Alternative Supplier**") that would result in a lower delivered cost to Buyer for such Product than the delivered cost in effect under this Agreement, or would otherwise result in more favorable economic terms, when taken as a whole to Buyer, than the economic terms of the Agreement (an "**Alternative Supplier Offer**"), Buyer shall notify Seller of the Alternative Supplier Offer and shall provide a copy of the Alternative Supplier Offer to an independent third party auditor designated by Seller, for prompt verification.
- (b) After Seller receives the auditor's verification of the Alternative Supplier Offer Buyer shall provide Seller, as applicable, with:
 - (i) fifteen (15) days to meet the lower price of the Alternative Supplier Offer for any Product ordered after the fifteen (15) day period, or
 - (ii) sixty (60) days to meet a quality or performance advantage. If Seller cannot meet the applicable fifteen (15) or sixty (60) day period, Buyer may purchase the quantity of Products covered by the Alternative Supplier Offer, and any such purchases from an Alternative Supplier shall reduce the quantity of Product Buyer is obligated to purchase under this Supply Agreement.

18. TIMELY PERFORMANCE AND COVER.

- (a) Seller understands and agrees that time is of the essence and Seller shall deliver all Goods and perform and complete all Services in accordance with time schedules referred to on the cover page hereto or otherwise agreed to by the parties.
- (b) If it is reasonably anticipated that Seller may fail to deliver Goods or perform and complete all Services within the above time periods, Seller shall promptly notify Buyer of any anticipated delay and forthwith take all steps necessary to expedite performance so as to prevent such failure. Any additional costs resulting from such steps including, but not limited to, the full cost of cover for Goods or Services not timely delivered or completed shall be borne by Seller.

19. INDEPENDENT CONTRACTOR.

- (a) The parties acknowledge and agree that Seller is an independent contractor and nothing contained in this Purchase Order or otherwise nor any past relationships or course of dealings between the parties shall be construed as constituting a joint venture or partnership or establishing a relationship of principal and agent, master and servant, franchisor or franchisee, or employer and employee. Seller shall be solely responsible for the performance of the Services and such Services shall be performed by Seller according to its own methods and at its own risk, subject only to compliance with the provisions of this Agreement.
- (b) Seller, in keeping with its independent status, shall cause itself and any of its employees when applicable, to be registered with the appropriate government agencies for the purpose of workers' compensation, unemployment insurance, social security or equivalent and income tax. Seller shall indemnify the Buyer Indemnified Parties in accordance with Section 16 (e) *Price* for failure to pay any aforementioned taxes.
- (c) Seller shall ensure that all Seller personnel and subcontractors have received all training regarding health and safety or any other matters required by applicable law or applicable governmental regulations or authorizations. Training or implementation of any additional health and safety measures appropriate for the work will be specified by Buyer. Upon Buyer's request Seller shall provide Buyer written documentation of said training and worker qualifications.

20. SUBCONTRACTORS.

- (a) Seller may not subcontract any part of this Purchase Order without the prior written approval of Buyer and if granted such approval shall not operate to relieve Seller of any liability to Buyer under this Purchase Order.
- (b) Seller shall enter into written contracts with subcontractors that include provisions requiring them to perform in accordance with and subject to the terms and conditions of this Purchase Order.
- (c) Seller shall be fully responsible to Buyer for any and all acts and omissions of its employees, agents or subcontractors and their employees or agents of any tier.

21. INDEMNITIES. Seller shall defend, indemnify and save Buyer its members, shareholders, managers, directors, officers, employees, agents and affiliates (each and collectively "**Buyer Indemnified Parties**") harmless from and against any and all losses, liabilities or expenses (including legal fees and expenses), suits, actions, claims, demands, damages of all kinds and descriptions on account of bodily injury, sickness, disease or death of any person or persons, or damage to or destruction of tangible property, including the loss of use resulting therefrom caused by the Goods ("Claims"), including but not limited to, latent defects which Buyer Indemnified Parties may suffer or incur by reason of, arising from, relating to, or in connection with:

- (a) any Claims, suit or allegation, including, without limitation, any Claims or suit for alleged infringement of any patent, industrial design, copyright or trademark, resulting from or arising in connection with the manufacture, sale, use or other disposition of any of the Goods or the provision of any of the Services hereunder;
- (b) any breach of this Purchase Order by Seller or any employee, agent or subcontractor of Seller, including non-delivery or late delivery of the Goods;
- (c) any violation of applicable law by Seller or any employee, agent or subcontractor of Seller; or
- (d) any other act or omission by Seller or any employee, agent or subcontractor of Seller.

It is hereby specifically and expressly agreed that with respect to any and all claims against Seller by any employee or agent of Buyer, any indemnification available hereunder shall not be limited by reason of any immunity to which Seller may be entitled under any workers compensation and/or industrial insurance acts, disability benefit acts, or other employee benefits acts and any limitation on the amount or type of damages, compensation, or benefits payable by or for Seller to an employee or agent of Buyer

with respect to any such claim. Notwithstanding the foregoing and in addition to Seller's obligations therein, in jurisdictions that impose strict liability upon parties in products liability actions, Seller agrees to fully indemnify, protect, defend, release and hold harmless Buyer from and against any and all products liability Claims except to the extent such Claims result directly and proximately from the negligence or willful misconduct of Buyer.

22. INSURANCE.

- (a) Seller shall, at its own expense, obtain and maintain during the term of this Purchase Order, with insurers having an A.M. Best rating of A VIII or better, the following minimum coverages which may be increased at Buyer's reasonable discretion:
 - (i) commercial general liability insurance (including contractual, products, and completed operations coverages) of not less than \$1,000,000 per occurrence covering bodily injury, death and property damage arising out of or relating to the acts or omissions of Seller in providing the Goods or performance of the Services, which insurance shall include Buyer as an additional insured, provide a waiver of subrogation in the Buyer's favor and provide thirty (30) days' notice of cancellation or material change;
 - (ii) insurance of not less than \$1,000,000 per occurrence covering bodily injury, death and property damage arising out of the ownership or operation of a motor vehicle used or to be used in connection with the supply of Goods or the performance of the Services by Seller and which insurance shall include Buyer as an additional insured, provide a waiver of subrogation in the Buyer's favor and provide thirty (30) days' notice of cancellation or material change; and
 - (iii) Seller shall furnish evidence of its and its permitted subcontractor's compliance with Worker's Compensation or similar legislation applicable at the site(s) where the Services shall be performed or Goods shall be delivered;
 - (iv) product liability insurance of not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate covering bodily injury, death and property damage arising out of Seller's provision of the Goods to Buyer and which insurance shall include Buyer as an additional insured, provide a waiver of subrogation in the Buyer's favor and provide thirty (30) days' notice of cancellation or material change.
- (b) Prior to commencing to provide any Goods or Services hereunder, Seller shall deliver to Buyer a broad form "vendors endorsement," ISO # 20-15-07-04 or equivalent thereto, in favor of Buyer and a certificate of insurance evidencing the above coverages or, if required by Buyer, certified copies of the above insurance policies and endorsements. The above insurances shall be primary to any other coverage in favor of the Buyer.
- (c) Seller's compliance with the provisions of this section will not be interpreted or construed in any way to limit Seller's liability for its acts or omissions or in any way limit, modify, or otherwise affect Seller's indemnification obligation pursuant to this Purchase Order. The insolvency, bankruptcy, or failure of any insurance company carrying insurance for Seller, or failure of any such insurance company to pay claims asserted for any reason, will not abrogate, waive or alter any of Seller's responsibilities or liabilities hereunder.
- (d) Seller shall ensure that its permitted subcontractors comply with the above insurance requirements and each permitted subcontractor shall provide Buyer with evidence of the above coverages and endorsements prior to delivering any Goods or Services hereunder.

23. CONFIDENTIALITY. Seller shall not use or disclose to any third person any business information, business plans, data, designs, drawings, specifications or other information, (collectively, the "**Confidential Information**") belonging to or supplied by or on behalf of Buyer except in the performance of this Purchase Order. Upon completion of the Purchase Order or upon Buyer's earlier request, all Confidential Information, including any copies thereof, shall be returned to Buyer. Where Buyer's Confidential Information is furnished to Seller's subcontractors or suppliers in connection with the performance of this Purchase Order, Seller shall insert the substance of this provision in its orders and shall ensure compliance with such provision by its suppliers.

24. TERMINATION. Buyer may, in its sole discretion, terminate this Purchase Order at any time, in whole or in part by written notice to Seller. Upon receipt of such notice, Seller shall immediately discontinue any Services or efforts in respect of provision of Goods being performed in connection with this Purchase Order, except as directed by Buyer. Upon such termination, and subject to audit, Buyer shall reimburse Seller for Goods delivered and Services actually provided to Buyer up to the effective date of termination. In no event shall Buyer be liable to Seller for lost or anticipated profits

25. SET-OFF.

- (a) Buyer shall be entitled at all times to set-off against any amount due or owing to Seller under this Purchase Order, such amounts that, in the opinion of Buyer, are sufficient to: (i) cover any account owing from Seller to Buyer or to any of its

affiliated companies, or (ii) protect Buyer from any losses or expenses arising from defects or deficiencies in the Services performed or Goods provided by Seller, or any other failures by Seller to comply with the requirements of this Purchase Order.

- (b) Buyer shall further have the right, but not the duty, to withhold any monies payable by it hereunder and apply same to the payment of: (i) any obligations of Seller to Buyer howsoever arising or (ii) any obligations of Seller to any other parties arising in connection with this Purchase Order.

26. **FORCE MAJEURE.** Neither party shall be liable for delays or defaults due to acts of God, terrorism, governmental authority or public enemy, war, fires, floods, epidemics, freight embargoes, or contingencies reasonably beyond its control. The party so affected shall use its good faith efforts to remediate such force Majeure as expeditiously as possible and, upon prompt written notice to the other party, shall be excused from making or taking deliveries hereunder to the extent of such prevention or restriction. Buyer may terminate this Purchase Order pursuant to Section 24 *Termination* herein in the event of such delay in performance. If, at any time, there is a period of shortage of supply of Goods for any reason, Seller shall allocate to Buyer such proportion of its available inventory that Buyer's purchases of the affected Goods over the preceding twelve (12) months bears to Seller's total sales of the affected Goods during such period to Seller's other customers under written contract for the purchase of the affected Goods.

27. **LIENS.**

- (a) Seller shall keep Buyer's premises free and clear of any and all liens and charges arising in connection with the performance of this Purchase Order.
- (b) Buyer may withhold a lien holdback from the price agreed to be paid to Seller for the purpose, in the manner, in the amount and for the time provided under all applicable laws, rules and regulations. In the event that any lien or charge is filed against Buyer's premises in connection with this Purchase Order or any claim shall exist in connection with this Purchase Order which may form the basis for any lien or charge against Buyer's premises, Seller shall take such steps as are necessary to immediately discharge the lien, charge or claim. If such lien, charge or claim has not been discharged within five (5) days of notice from Buyer, Buyer may in its sole discretion take such steps as it deems necessary to discharge such lien, charge or claim, including withholding amounts payable under this Purchase Order. Seller shall be liable for and shall indemnify and save Buyer harmless from any and all costs and expenses (including legal fees) and other liabilities arising from such lien, charge, or claim.

28. **COMPLIANCE WITH LAWS AND POLICIES.** Seller shall comply with all applicable laws, regulations, by-laws, permits, approvals or other lawful requirements imposed or issued by any Federal, Provincial or local governments. Seller shall also comply with any business conduct policies and safety and security rules imposed by Buyer from time to time. Seller shall ensure that its employees, subcontractors and agents are made aware of and comply with the above laws, regulations, by-laws, permits, approvals, policies and rules and shall furnish Buyer with such evidence of compliance as Buyer may require from time to time.

29. **GOVERNING LAW.** This Purchase Order shall be deemed to be an agreement made in the Province and the laws of Canada applicable therein in which the Buyer's corporate head office is located and shall be construed in accordance with the laws of that Province pertaining to the sale of Goods or provision of Services and without reference to that jurisdiction's choice or conflict of laws rules. The parties hereby expressly exclude the application of the following international conventions to this Agreement: (a) the Uniform Law on the Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods, (b) the United Nations Convention on Contracts for the International Sale of Goods of 1980 and (c) the United Nations Convention on the Limitations Period in the International Sale of Goods, concluded in New York on 14 June, 1974, and the Protocol Amending the Convention on the Limitations Period in the International Sale of Goods, concluded in Vienna on 11 April, 1980.

30. **DISPUTE RESOLUTION.** This Agreement shall be governed by and enforced in accordance with the laws of the state in which the Buyer's corporate office is located without reference to its conflict of law rules. **Each party knowingly, voluntarily, and intentionally waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal action, proceeding, cause of action or counterclaim arising out of or relating to this Agreement. Each party represents that it has consulted or had the opportunity to consult legal counsel with respect to this waiver.** Any dispute, controversy, or claim arising out of or related in any way to this Agreement and/or any sale and purchase or use of Products hereunder or any transaction contemplated hereby which involves a party not a party to this Agreement and which cannot be amicably resolved by the parties shall be solely, exclusively and finally resolved by binding arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Any party may serve notice of its desire to refer a dispute to arbitration in accordance with the notice provision of this Agreement. The arbitration shall take place before a single arbitrator unless the amount in controversy exceeds \$250,000, in which case the arbitration shall take place before a panel of three (3) arbitrators, each of whom shall have

experience with and knowledge of the chemical distribution industry. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator. In the event three arbitrators are appointed, each party shall pay for the cost of its own arbitrator plus one-half of the cost of the third arbitrator. Except as otherwise provided, each party shall bear its own costs relating to the arbitration proceedings irrespective of its outcome. All other costs, fees and expenses shall be split equally between the parties. Arbitration shall take place in the state in which the Seller's corporate office is located. The language of the arbitration shall be English. The decision of the arbitrator(s) shall be in writing with written findings of fact and shall be final and binding on the parties. The arbitrator shall be empowered to award money damages, but shall not be empowered to award any damages precluded by this Agreement, or any injunctive or any other equitable relief. This section is the sole recourse for the resolution of any disputes arising out of, in connection with, or related to this Agreement, provided however, that nothing in this Agreement shall preclude either party from seeking injunctive or equitable relief in accordance with applicable law. No demand for arbitration may be made under this Section more than one year after the occurrence of the event giving rise to such demand. The parties hereby expressly exclude the application of The United Nations Convention on Contracts for the International Sale of Goods to this Agreement, including, without limitation, Article 35(2) thereof.

31. WAIVER OF JURY TRIAL. SELLER IRREVOCABLY WAIVES ANY AND ALL RIGHT SELLER MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS PURCHASE ORDER, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS PURCHASE ORDER OR ANY TRANSACTION CONTEMPLATED IN THIS PURCHASE ORDER OR ANY OF SUCH DOCUMENTS. SELLER ACKNOWLEDGES THAT IT HAS CONSULTED OR HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL WITH RESPECT TO THIS WAIVER AND THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

32. JURISDICTION AND VENUE. The Seller agrees that any claim to enforce any Arbitration award or otherwise brought on this Purchase Order may be brought only in the courts of the Province whose law governs this Purchase Order. Seller submits to the exclusive jurisdiction of those courts and hereby waives any objection to such jurisdiction or venue, including but not limited to, forum non conveniens.

33. RECOVERY OF COSTS. In any suite to enforce any Arbitration award or otherwise brought on this Purchase Order, upon the entry of a final non appealable order of a court of competent jurisdiction, the prevailing party shall be entitled to recover its costs and expenses, including attorney's fees, from the other party.

34. BUYER'S RIGHTS.

(a) Seller agrees that any right, cause of action or remedy under the warranties or undertakings assumed or imposed upon Seller under this Purchase Order shall extend without exception to any company affiliated with Buyer on whose behalf this Purchase Order is issued by Buyer.

(b) Except as specifically set forth herein, all rights and remedies provided in favor of Buyer hereunder are in addition to and without prejudice to any other rights and remedies to which Buyer may lawfully be entitled, including without limitation, under and by virtue of the provisions of any Federal, Provincial or local law governing the sale of goods.

(c) The failure of Buyer to insist upon strict performance by Seller of any of the terms and conditions of this Purchase Order shall not be deemed a waiver of any rights or remedies that Buyer may have at law or in equity in respect thereof and shall not be deemed a waiver of any subsequent default by Seller.

35. ENTIRE AGREEMENT AND CHANGES.

(a) This Purchase Order shall constitute the entire, final, complete, and exclusive agreement between Buyer and Seller and no terms or conditions, other than those stated herein, and no agreements or understandings, oral or written, in any way purporting to modify this Purchase Order, or customs or usages of trade shall be binding on Buyer unless documented by Buyer's written authorization.

(b) Without limiting the generality of the foregoing, the quality, quantity and other specifications of the Goods or Services to be supplied hereunder shall not be changed from those referred to in Buyer's Purchase Order unless such changes are agreed to by Buyer in writing.

36. GOVERNING LANGUAGE. It is the express wish of the parties that this agreement be written in English, and that only the English version of this agreement binds the Parties. Any translation of this Agreement into French is for informational purposes only. C'est le souhait des parties que cet accord soit écrit en anglais, et que seulement la version anglaise de cet accord lie les parties. N'importe quelle traduction française de cet accord est pour but informatif seulement.

37. MISCELLANEOUS.

- (a) The headings contained herein are provided for convenience only and are not to be considered when interpreting or construing this Purchase Order.
- (b) No right, title, estate or interest in this Purchase Order and no obligations or duty or liability of Seller shall be transferred, assigned, set over, conveyed, pledged, hypothecated or otherwise disposed of without the prior written consent of Buyer, which consent may be given or withheld in the sole discretion of Buyer.
- (c) Each notice, statement and invoice to be given pursuant to this Purchase Order shall be in writing and shall be sent by prepaid ordinary or registered mail or by recognized courier to the addresses for Buyer and Seller noted on the cover page hereto. Notices, statements and invoices sent by mail or courier shall be deemed to have been received when actually received or refused.
- (d) Buyer or any person designated by Buyer may at any and all reasonable times for a period of twenty-four (24) months after completion of delivery of the Goods or Services hereunder, have access to Seller's books and records relating to the reimbursable costs, if any, provided for under this Purchase Order, for the purpose of auditing and verifying such costs and Buyer may make copies of such books and records as reasonably required by Buyer in performing such audit. Seller shall promptly review and settle with Buyer all matters arising from such audit including the refunding of monies where applicable.
- (e) If this and any other documents are transmitted by any means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to Seller.
- (f) Seller shall not use Buyer's names, logos, trade names, trademarks or copyrights or the fact that Seller is performing Services or supplying Goods for Buyer in any press release, media statement, advertisement or other public communications or otherwise publicize this Purchase Order without the prior written consent of Buyer.
- (g) The invalidity or unenforceability of any portion or provision of the Purchase Order shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be severed from the Purchase Order and the balance of the Purchase Order shall be construed and enforced as if the Purchase Order did not contain such invalid or unenforceable portion or provision.
- (h) This Agreement shall not be construed more strongly against either party regardless of which party is more responsible for its preparation.