

## **PURCHASE ORDER TERMS AND CONDITIONS (SERVICES)**

### **1 PERFORMANCE OF SERVICES**

- 1.1 The Service Provider shall perform the Services in accordance with this Purchase Order, the Prime Contract drawings and specifications and the Applicable Law. In performing the Services, the Contractor shall also comply with:
- a. all Site instructions and guidelines while on the Site and ensure that the Service Provider's personnel are familiar with and comply with all such instructions and guidelines;
  - b. take all reasonable precautions in performing the Services in order to protect the health and safety of its personnel, the Purchaser's employees and the public; and,
  - c. follow any other regulations stipulated by the Purchaser during the performance of the Services.
- 1.2 The Service Provider shall at all times during the performance of the Services co-operate with the employees and agents of the Purchaser and other contractors.
- 1.3 The Service Provider agrees to perform the Services at the Site.
- 1.4 The Service Provider is an independent contractor and shall perform the Services as an independent contractor. The Services shall be performed by the Service Provider under its own superintendence and at its own risk. Nothing in this Purchase Order is to be construed as creating a master and servant or principal and agent relationship between the Purchaser and the Service Provider. The Service Provider has no authority to, in any way, conclude any agreement of any kind on behalf of the Purchaser nor incur any liability on behalf of the Purchaser and shall not represent to any third party that it has the power to do so except as authorized in writing by the Purchaser.

### **2 CHANGES**

- 2.1 No substitutions shall be made with respect to the Services without the prior written consent of Purchaser.
- 2.2 Purchaser may, at any time, make changes to the Services including, without limitation, additions, deletions, rescheduling and acceleration or deceleration to all or any part of the Services, and the Service Provider agrees to perform its obligations under the Purchase Order as changed.
- 2.3 In the event a change, or an instruction or act or omission of Purchaser, directly or indirectly causes an increase or decrease in the time or cost to perform its obligations under the Purchase Order, the Service Provider shall, within 5 days of receiving such notice of the change or becoming aware of the circumstance impacting the time or direct costs to perform the Services, as the case may be, submit to Purchaser detailed information, substantiating its impact. An equitable adjustment shall be made to schedule or compensation, or both, and the Purchase Order shall be modified in writing accordingly. In no event shall Purchaser be liable to Service Provider for consequential or indirect damages, such as loss of profit, loss of revenue, loss of opportunity, or of similar nature. For clarity, Service Provider has no right under this section unless notice is given in accordance with this section.
- 2.4 The Service Provider shall proceed diligently with the supply of the Services, pending final resolution of any request for relief, dispute, claim, appeal or action arising under the Purchase Order.
- 2.5 In the event that performance of the Services is impacted by a force majeure event, as defined in the Prime Contract, an adjustment to the schedule shall be made (not to exceed the time lost as a result of the force majeure event) provided that notice has been provided to Purchaser within 5 days following occurrence of the force majeure event and Service Provider has been diligent in mitigating the effects of such event. For clarity, adjustment of schedule shall be the sole remedy in case of force majeure.

### **3 TERMINATION AND SUSPENSION**

- 3.1 If the Service Provider:
- a. fails to follow the Purchaser's instructions;
  - b. breaches any provision of this Purchase Order;
  - c. becomes insolvent, bankrupt or takes the benefit of any insolvency or bankruptcy statute, enters into a plan of arrangement for the benefit of its creditors, or makes a general assignment for the benefit of creditors;
  - d. is responsible for any theft or misappropriation of the property of the Purchaser or Owner;
- then the Purchaser may, by notice to the Service Provider, terminate this Purchase Order immediately and shall incur no further liability whatsoever to the Service Provider, its agents or employees including, without

limitation, loss of profit, consequential damages or any other losses suffered by the Service Provider its agents or employees. Upon notice of termination, the Service Provider shall ensure no further commitments with respect to the Services are made and shall take all reasonable steps necessary to minimize any costs arising from commitments made prior to receipt of the notice.

If the Purchaser terminates the Services in whole or in part pursuant to this section, Purchaser may procure, upon such terms and in such manner as it deems appropriate, goods and Services, similar to that to be supplied under the Purchase Order but undelivered, and the Service Provider shall be liable to Purchaser for any additional costs for such items. Service Provider shall receive no further payment until the Purchase Order is completed. Service Provider shall continue performance of the Purchase Order to the extent not terminated.

#### **4 PAYMENT AND TAXES**

- 4.1 The Service Provider shall invoice the Purchaser at the address specified on the first page hereof, itemizing the Price, its HST registration number and applicable HST, separately, for all Services performed and Prices earned by the Service Provider during the previous month.
- 4.2 The Purchaser will pay monies owing pursuant to the invoice within 10 days following receipt of funds from the Owner or 45 days from submission of complete and correct invoice, whichever is the later.
- 4.3 The Purchaser shall be entitled to hold back from payment to the Service Provider and remit any amounts which are required to be held back and remitted under the provisions of the Income Tax Act (Canada) or any applicable lien or workers' compensation legislation.
- 4.4 In the event that any amount is due to the Purchaser by the Service Provider, the Purchaser shall have the right of set-off against the Service Provider for that amount whether such amount arises pursuant to this Purchase Order, or otherwise.

#### **5 WARRANTIES AND REPRESENTATIONS**

- 5.1 The Service Provider represents and warrants that:
  - a. it shall perform the Services in an efficient, prompt, economical, skillful and careful manner, in accordance with the specifications and technical requirements of the Prime Contract, and the methods, standards and practice currently prevailing among leading firms in the field to which the Services relate;
  - b. it has the skills and experience necessary to perform the Services in accordance with the terms and conditions of this Service Order;
  - c. the Services shall be free from defects in material and workmanship, and fit for its intended purpose;

If the Service Provider is in breach of any condition, warranty or guarantee related to the Services, and without limiting the rights and remedies of Purchaser at law or hereunder, the Service Provider shall at its own expense promptly make such alterations, repairs and replacements as are necessary so that said item is free from defects and fulfils the preceding warranties. If the Service Provider is unable to remedy such defects as set forth above, then: (a) the defective item shall be removed at Service Provider's expense; and (b) Service Provider shall, without cost to Purchaser, either promptly furnish a satisfactory item on same terms of shipment as required by the Purchase Order or Service Provider shall promptly refund the purchase price in full or that portion thereof which has been paid by Purchaser; and (c) Supplier shall reimburse Purchaser for all additional costs incurred in purchasing and/or re-installing a replacement item.

- 5.2 Purchaser shall have the right to enforce the warranties to the full extent of the Warranty Period, as defined in the Prime Contract. All remedial work performed by Service Provider shall be warranted by Service Provider, in accordance with this Section 5, for a further period of 12 months.

#### **6 LIABILITY AND INDEMNITY**

The Service Provider agrees to release, indemnify, defend and hold harmless Purchaser and its affiliates, subsidiaries and parent companies, its other subcontractors, and their respective agents, employees, officers, directors and shareholders (the "Indemnitees") from and against any and all claims, demands, judgments, proceedings, damages, injuries, losses, costs and expenses (including actual lawyer's fees and legal costs) and other liabilities ("Claims") of any kind, including any Claims advanced by third parties, arising in any manner out of breach of Applicable Law or in any way connected with this Purchase Order or the performance, non-performance or purported performance of the Services, including any Claims for which Purchaser may become responsible or liable under the Prime Contract. The obligations of the Service Provider under this section will not be affected in any way by any certificate, acceptance, approval, payment or any other act, matter or thing done or omitted under this Purchase Order.

## 7 INSURANCE

The Service Provider shall place and keep in force, and provide the Purchaser with evidence thereof upon request, the following insurance policies, with reputable and financially secure insurance companies acceptable to the Purchaser:

<u>Policy</u>	<u>Limits</u>
• <b>Workers' Compensation</b>	Statutory Requirements
• <b>Automobile Liability</b> (including bodily injury, death, and property damage) for owned or leased automobiles	As stipulated in the Prime Contract.
• <b>Comprehensive General Liability</b> (including bodily injury, death, and property damage, including loss of use thereof, and non-owned automobile liability)	As stipulated in the Prime Contract.

All other requirements specified in the Prime Contract with respect to insurance policies, such as waiver of subrogation, naming of additional insured, cancellation notices, etc. shall apply to the insurance policies to be provided by the Service Provider. Further, the Service Provider will pay the amount of all deductibles of said insurance policies and may not charge back any such amount to Purchaser.

## 8 PROPRIETARY RIGHTS

The Service Provider agrees not to breach or infringe any patent, copyright, trademark, industrial design, trade secret or other proprietary right owned by any third party during the performance of the Services and agrees to indemnify the Purchaser with respect to all claims or expenses arising from any such breach or infringement.

## 9 TIME

Time is of the essence of this Purchase Order.

## 10 LAWS

The laws of the Province in which the work under the Prime Contract is performed shall govern this Purchase Order. Any dispute arising out of or in connection with this Agreement or the performance of the Services shall be resolved in accordance with the dispute resolution provisions of the Prime Contract.

## 11 ENTIRE AGREEMENT

This Purchase Order sets forth the entire agreement between the Purchaser and the Service Provider pertaining to the Services and supersedes any previous discussions, negotiations and agreements, whether written or verbal, pertaining to the subject matter of this Purchase Order.

## 12 CODE OF ETHICS AND BUSINESS CONDUCT

- (a) Service Provider has read, understood, agreed to comply with, and agreed to cause its employees and sub-contractors to comply with Purchaser's Code of Ethics and Business Conduct which is publicly available online at [www.ic2i.ca](http://www.ic2i.ca)
- (b) Service Provider, its employees, and its sub-contractors have access to Purchaser's Violation and Ethics Reporting System (Whistleblowing System) detailed in Purchaser's Code of Ethics and Business Conduct.