

## Vendor Terms and Conditions of Purchase

This purchase order ("Order") is placed by Buyer subject to the terms, conditions and instructions appearing on the face and reverse sides of this Order and any attachments hereto, or other documents expressly incorporated herein by reference. Specifications, drawings and data submitted to Supplier with this Order are hereby incorporated and made a part of this Order. By accepting this Order, Supplier agrees to be bound thereby. No additions or modification of the material, services and/or equipment covered by this Order will be binding upon Buyer unless agreed to in writing by a duly authorized representative of Buyer. Performance by Supplier, in whole or in part, shall be deemed acceptance of these T's & C's. Any additional or different terms or conditions contained in any acknowledgment of this Order by Supplier or any other document presented by Supplier shall be deemed objected to by Buyer without need of further notice of objection and shall be of no effect nor in any circumstance binding upon Buyer unless accepted by Buyer in writing.

### **1. Acceptance**

1.1. This Order and the attached T's & C's (hereinafter collectively referred to as the "Offer") is an offer by the Buyer to Supplier and does not constitute an acceptance by Buyer of any offer to sell, quotation or proposal from Supplier. Any of the following acts by Supplier shall constitute acceptance of this Order: signing and returning the Order; acknowledgment of receipt of this Order; performance by Supplier, in whole or in part, under this Order; or shipment of goods. No course of prior dealing or performance between Buyer and Supplier or usage of trade shall be relevant to supplement, explain, interpret, or modify any term, condition, or instruction used in this Order. Acceptance of the attached Order shall not constitute acceptance by Buyer of Supplier's terms and conditions. To the extent this Order is in any way deemed to be an acceptance of Supplier's proposal or other offer of Supplier, such acceptance is expressly conditioned upon the Seller's consent to these Terms and Conditions.

1.2. Supplier must confirm the Order in writing within five (5) business days. If an order confirmation is not received within this period, Supplier shall be deemed to have accepted the Order on Buyer's terms.

### **2. Time of Performance; Liquidated Damages for Late Submittals and Delivery**

2.1. Time is of the essence of the Order. Delivery or performance of any services (hereinafter jointly referred to as "Delivery") shall take place at the time and location as stated in the Order ("Delivery Date"). Unless a Change Order is issued to the contrary, any failure to pursue the work in a timely manner or to meet the Delivery Date shall be treated as a material default hereunder, and the Buyer shall be entitled to its remedies related to same as provided in these T's & C's. In the event of delay, or anticipated delay, from any cause, including Force Majeure, Supplier shall immediately notify Buyer in writing of the delay or anticipated delay, stating the reason for delay and its probable duration, and will undertake to mitigate the delay by all necessary means at Supplier's sole cost.

2.2. Excess unauthorized shipments, partial shipments, and shipments arriving in advance of scheduled delivery date may be returned at Supplier's risk and expense. Supplier shall not make early or partial deliveries unless authorized in writing by Buyer. Buyer shall, at no additional cost, retain goods furnished in excess of the specified quantity or in excess of any allowable overage unless, within forty-five (45) days of shipment, Supplier requests return of such excess. In the event of such request, Supplier shall reimburse Buyer for reasonable costs associated with storage and return of the excess.

2.3. Should there be a delay in delivery of goods or late submittals, in addition to any other remedies available to the Buyer under these T's & C's, liquidated damages shall apply as set forth herein:

- a) for late submittals of drawings, data, documents, manuals or instruction books by the required arrival date as stipulated in the Order, including requirements contained in documents incorporated in this Order by reference, Supplier shall pay Buyer or Buyer shall have the right to deduct from payment of money which may then be due or which may become due and payable to Supplier, a sum equal to \$100 for each day submittal is late, as liquidated damages and not as a penalty;
- b) for failure to make deliveries of goods as stipulated in the Order, Supplier shall pay Buyer or Buyer shall have the right to deduct from payment of money which may then be due or which may become due and payable to Supplier, a sum equal to, one percent (1%) of the agreed total price of the delivery for each day of delay, but not more than a total of ten percent (10%) of the price.

Supplier shall not be liable for delays in performing its obligations to the extent the delay is caused solely by Buyer provided that Supplier has provided written notice to Buyer within five (5) business days of the cause and extent thereof as well as a request for a schedule extension. Supplier shall use its reasonable efforts to mitigate the impact of any such delay. Supplier's liability for liquidated damages set forth herein is a reasonable estimate of the actual damages Buyer would sustain, which would be difficult, if not impossible, to accurately determine. Buyer's further legal rights remain unaffected.

### **3. Force Majeure**

A Force Majeure event is an event that is unforeseen, extraordinary, and is beyond the reasonable control of Buyer or Supplier extending longer than forty-eight (48) hours and which causes a party to be unable to perform its obligations. During such period of Force Majeure the parties' obligations to perform under this Order shall be excused. A non-exclusive list of events of Force Majeure are fire, explosion, acts of terrorism, riot or civil disturbance, flood, hurricanes, tornadoes, other named storms, sabotage, war, governmental decrees, stoppages, labor disputes, or shortages of energy or raw materials. Upon the occurrence of a Force Majeure event, the party affected by the event shall give immediate notice to

the other party including the date of inception of such event and expected duration. Failure to give such notice shall preclude Supplier from claiming that its performance hereunder was delayed by the event. Each party shall use its best efforts to minimize the adverse effects of such event.

#### **4. Supplier's Obligation to Inform**

Supplier shall provide Buyer with sufficient reasonable advance notice of any changes in the manufacturing processes, materials, or supplied parts for the goods; of relocations of the places of manufacture; as well as of changes in procedures and equipment for testing the goods or in other quality assurance measures so as to allow Buyer to determine whether such changes might have adverse effects. Supplier shall require its subcontractor or other third parties with which Supplier has contracted to also comply with the requirements of this section 4. Supplier will notify Buyer of any changes in its suppliers and service providers. If adverse effects cannot be avoided, Supplier shall deliver unmodified parts until Supplier has found a reasonable alternative solution satisfactory to the Buyer. In the event that the Supplier is unable or unwilling to deliver an alternative solution within ten (10) days, of such advance notice, then the Buyer shall be entitled to source the work to another supplier and the costs of same shall be borne by the Supplier.

#### **5. Change Orders**

5.1. Buyer shall have the right, at any time, to make changes to this Order that Buyer may deem desirable. Should any changes cause a material increase or decrease in the cost of, or the time required for, performance of this Order, an equitable adjustment in the price or delivery schedule, or both, shall be negotiated, and the Order shall be modified in writing accordingly. In the event that the parties are unable to negotiate an equitable adjustment, then the Dispute Resolution provision set out in section 24 shall apply. If such change affects the price or delivery date of the material, services and/or equipment covered by this Order, Supplier shall so notify Buyer in writing and shall within ten (10) days of the receipt of such notice of change, submit to Buyer a written claim for adjustment of price and/or delivery date resulting therefrom and an equitable adjustment shall be mutually agreed upon by the parties. Failure to submit such written claim within the prescribed time period shall constitute a waiver of any claim for adjustment. Agreement to any adjustment shall constitute a waiver of all claims by Supplier arising out of the change. Supplier acknowledges that it will not proceed with a change and that there will be no adjustment in price or time of performance, unless Buyer orders such change by the issuance of a written change order. There shall be no suspension of work by Supplier while Buyer and Supplier are in the process of making such changes and any necessary modifications to price or delivery dates.

5.2. Supplier shall make no substitutions in the goods, material or equipment covered by this Order, or any parts or components thereof, or deviations from the drawings or specifications relating thereto, without Buyer's express written consent, which said consent may be withheld in Buyer's sole discretion.

#### **6. Delivery/Acceptance**

6.1. Each delivery must be accompanied by a itemized Delivery Note, which shall include the Order number, Order identification code and the type of packaging, as well as the quantity and weight of the shipment. For services, Buyer must confirm the number of hours worked as well as the materials provided by the Supplier in writing within a reasonable period of time.

6.2. Buyer has the right to specify the shipment method as well as the carrier. Unless otherwise stated in the Order, delivery shall be FCA (Incoterms 2010).

6.3. Supplier's delivery obligations are not complete until Buyer has received proper delivery and all required shipping documentation. Buyer has the right to store the delivery at Supplier's risk and expense until Buyer receives all required documentation.

6.4. The goods shall be covered by Supplier's transportation insurance until such time as they are delivered FCA (Incoterms 2010).

#### **7. Prices and Payment**

7.1. The prices which have been agreed are fixed prices including packaging and delivery free domicile.

7.2. After delivery, Supplier shall send a separate invoice for every order to [accounts.payable@endress.com](mailto:accounts.payable@endress.com). The invoice may not accompany the Order. Unless otherwise agreed upon or stated in the Order, payment will be made Net 30 days upon receipt of goods as per agreement, receipt of the documents pursuant to Article 6, and receipt of a correct invoice. Buyer reserves the right to select the method of payment. Invoices will not be approved for payment until Buyer has received detailed Packing Lists, Bills of Lading and Receipted Freight Bills from Supplier, in accordance with the instructions on the Order. With regard to services provided, invoices will not be approved for payment until the Supplier provides duly signed timesheets and/or service reports.

7.3. All payments are made with the reservation of rights and recourse with regard to possible defects. Buyer shall have the right to withhold payment if the delivered goods are defective. Payment of any statement or invoice shall not in any way be

construed as acceptance of the Goods or waiver of any claims related thereto, nor shall it prejudice the right of Buyer to question the correctness of any charges contained therein.

## 8. Packaging/Shipping

The goods to be delivered must be packaged in the Supplier's customary manner or, at Buyer's request, in special packaging according to Buyer's instructions. Packing must ensure complete safety of all equipment from damage caused by corrosion, impact or penetration during transport. Any charges resulting from improper packing or loading will be to the Supplier's account and will delay final payment. Each package shall be numbered and labeled with Buyer's order number, project number, equipment number, instrument tag number, contents and weight, and shall contain an itemized packing slip.

## 9. Title/Risk of Loss

Supplier agrees to deliver to the Buyer title to the goods covered by the Order free and clear of all liens, claims, security interests, chattel mortgages and encumbrances of any kind. Title and risk of loss to the goods delivered hereunder shall pass to Buyer upon receipt by Buyer at Seller's facility or other delivery location designated by Buyer, unless otherwise agreed to in writing.

## 10. Property Supplied by Buyer

Buyer shall retain title to any drawings, sketches, designs, patterns, dies, molds, tooling, equipment and materials of every description paid for or supplied by Buyer for use in the performance of this order. Any such articles shall be retained by Supplier on consignment, suitably identified as Buyer's property. Supplier shall hold and maintain any such articles at its risk and expense, shall keep such articles insured at its expense while in its custody or control in an amount equal to the replacement cost thereof, with loss payable to Buyer, and shall not use such articles except in filling Buyer's orders. All such articles shall be delivered to Buyer upon demand, in the same condition as when received, except for reasonable wear and tear, and except to the extent such articles have been incorporated into items delivered to Buyer, or consumed in the normal performance of work for Buyer.

## 11. Warranty

11.1. Supplier warrants that the goods delivered and the services rendered pursuant to this Order are free from all defects in design, material and workmanship, are in strict accordance with applicable specifications, drawings and samples in the contract, and are new, of merchantable quality and fit for the purposes specified. Supplier agrees, at Buyer's option, to promptly remove, repair, replace and reinstall such defective item and refund such portion of the Order price as is equitable under the circumstances, without cost to Buyer, any goods delivered and services rendered, which shall be found by Buyer to be defective, nonconforming or otherwise not in accordance with this warranty within the earlier of twelve (12) months from the date of initial operation or eighteen (18) months from date of shipment. Supplier agrees that all warranties of Supplier on goods delivered, and services rendered, under this Order shall extend to, and be for the benefit of, Buyer and Buyer's customers. If Supplier refuses or fails to promptly correct such defect(s), or replace such items when requested by Buyer, Buyer may correct or replace such defective items and Supplier shall reimburse Buyer for any and all costs incurred by Buyer in effecting such corrections and replacements. Supplier's warranties enumerated shall be cumulative and shall not be deemed to exclude any other additional or further warranties provided by law.

11.2. Supplier warrants such repaired or replaced goods for a period of twelve (12) months from the date of completion and acceptance thereof or for the remaining time in the original warranty, whichever is greatest.

For clarification purposes, the Supplier agrees that:

(a) the Services will:

- (i) be performed in a timely, good, workmanlike and professional manner,
- (ii) with due care, using qualified personnel fully familiar with the Services, and such Services will meet acceptable standards in the industry normally adhered to by recognized entities that perform services of the same or similar nature;
- (iii) staffed with sufficient personnel possessing the skills, experience and abilities to perform the Services; and
- (iv) conform to the specifications (if any) for the applicable Services otherwise be free from any errors, omissions or defects;

(b) the Products, will:

- (i) conform in all respects to the relevant specifications (if any), or in the absence of any specifications, meet acceptable standards in the industry normally adhered to by recognized entities that supply Products of the same or similar nature.
- (ii) be free from defects in design, materials and workmanship;
- (iii) be of merchantable quality; and
- (iv) be suitable for their relevant purpose;

(c) any equipment used on the End-User's site by the Supplier will be in safe working condition, comply with all applicable laws related to such equipment and be operated by suitably qualified and competent personnel, to the satisfaction of the Buyer;

(d) the Supplier has, or at the time of delivery to the Supplier will have, good and marketable title to the products being provided and the Supplier will receive title to the said products free of and clear of any liens, claims, charges, hypothecs, security interests or other encumbrances;

(e) the Supply does not and will not infringe, misappropriate or violate the Intellectual Property of any third party; and

(f) all information and materials forming part of the Tender (if any) are true and correct and are not misleading or deceptive.

## **12. Inspection and Expediting**

Buyer, or its representatives, shall have the right to expedite, inspect and witness testing of the goods or services ordered hereunder at any time prior to delivery or performance, and to finally inspect such goods and results of such services within a reasonable time after delivery at the ultimate destination of the goods or at completion of the performance of services. The goods or services shall not be deemed accepted until after such final inspection. The Buyer's inspection or failure to make any inspection of, or payment for, or acceptance of, the goods or services, shall in no way release the Supplier from any obligations related to this Order, nor impair Buyer's right to reject or revoke its acceptance of nonconforming goods and services or to seek any other remedies to which Buyer may be entitled. Supplier shall be responsible for all inspections required to comply with all applicable federal, state and local laws, ordinances, regulations and manufacturer's standards.

## **13. Indemnity and Insurance**

13.1. Supplier shall to the furthest extent permitted by law indemnify and hold harmless Buyer, its successors, assigns and customers, and their respective parent, affiliated and subsidiary companies, and the agents, employees, officers, directors, and servants of each ("Buyer Indemnitees"), from and against claims, liability, property damage, pollution, personal injury or death, fine, penalty, loss and damage, including without limitation, costs, expenses, and attorneys' fees, arising out of or relating to (a) this Order and breach thereof, (b) the items purchased hereunder, including defects thereof, or services furnished hereunder, and the negligent performance of Supplier pursuant to the Order, or any litigation arising out of or relating to this Order, and (c) Supplier's failure to comply with any and all applicable laws, codes, ordinances or regulations. Supplier shall further indemnify and hold harmless Buyer Indemnitees from and against any and all liens upon the premises of Buyer or its customers including without limitation, liens for labor performed and material furnished, attaching as a result of any act or omission by Supplier or its subcontractors, and Supplier shall also at its own expense procure the discharge, release or satisfaction of any and all notices of intention or other evidence of such lien or claim thereto. This indemnity shall apply regardless of the negligence or fault (whether joint or concurrent) of Buyer or its customer, except that it shall not apply to the extent of Buyer's sole negligence and willful misconduct.

13.2. Except as provided herein, neither party shall be liable to the other for, and each party hereby agrees to protect and indemnify the other against, any consequential, special, incidental or indirect injury, loss or damage (including without limitation loss of savings or anticipated savings, loss of profit or anticipated profits, loss of revenue, loss of use, loss of agreement, loss or deferment of production, business interruption or increased cost of working) whatsoever arising out of, or in connection with the goods, suffered by the indemnifying party or its respective group members, howsoever or by whomsoever such injury, loss or damage, may be caused, whether due to the neglect or fault, in whole or in part, of any of the parties released hereby, or otherwise. Notwithstanding the above, the release or exculpation from liability afforded a party under this article 13.2 shall not be applicable to remedies otherwise available under any indemnity obligation assumed by supplier or under articles 2, 11, 13.3, 17, 18.

13.3. Supplier agrees to maintain at its own expense all legally required insurance for its premises, associates, and employees. Notwithstanding the foregoing, Supplier shall maintain the following insurance with limits not less than as follows: Workers' Compensation in accordance with the requirements of the Province of Ontario and Employer's liability insurance of not less than \$1,000,000 per occurrence; Commercial General Liability and Products and Completed Operations insurance with a combined single limit of \$2,000,000 per occurrence for bodily injury and property damage; Automobile Liability insurance with a combined single limit of \$2,000,000 per occurrence for bodily injury and property damage and excess liability of \$2,000,000 combined single limit per occurrence; and Non Owned Automobile Liability insurance with a combined single limit of \$2,000,000 per occurrence. Upon request, Supplier shall provide Buyer with certificates of insurance naming Endress+Hauser Canada Ltd. as additional insured with respect to the operations of the Supplier including Cross Liability and Severability of Interest. Such certificates will provide that Buyer shall receive thirty (30) days prior written notification from the insurer of any termination or reduction in the amount or scope of coverage.

For clarification purposes, the Supplier agrees as follows: (a) As a minimum, carry such insurance coverages as the Buyer requests; in the event an End-User (the "End-User") has high insurance coverages, to carry such coverages and provide proof of same to the Buyer; (b) Provide to the Buyer proof of coverage of required safety training, WSIB and other coverages as required by the Buyer and its End-User.

## **14. Intellectual Property Protection**

The Supplier warrants that, by the use of the goods delivered to us, no property rights (e.g., patents or registered design rights, or other third party rights or business or trade secrets) are violated, neither in the country of origin nor in the country of use. Supplier shall indemnify and hold harmless Buyer Indemnitees from and against claims, demands, liability, loss and damage, including, without limitation, costs, expenses, and attorneys' fees arising out of or relating to any claim of patent or copyright or other intellectual property right infringement by or in any way related to the items or parts thereof or processes, furnished hereunder or any litigation based thereon. In addition, Supplier shall procure at Supplier's expense for Buyer and its customer the right to continue using the items or parts or processes found to have been infringing. Alternatively, Supplier may modify, supplement or replace such items and parts or processes so as to eliminate such infringement provided, however, that there shall be no performance degradation due to such actions. Supplier assigns to Buyer all right, title, and interest in and to all



trademarks, copyrights, patents and other intellectual property rights in any material created for Buyer under this order. This indemnity shall not apply to the extent the infringement claim is caused by: (a) alteration or modification of the goods other than by, or as authorized by, Supplier; or (b) goods, work or services for which Buyer provided and controlled the detailed design; or (c) from Buyer's use of the goods in combination with equipment which is not part of the goods where such infringement would not have occurred from the use of the goods not in combination with such equipment.

#### **15. Information**

Any knowledge or information concerning the design, manufacture, sale or use of the items covered by this Order which Supplier may disclose to Buyer incident to the performance, manufacture or delivery of items covered by this Order shall be deemed to have been disclosed as a deliverable under the Order and to be free from all restrictions as to the use or disposition thereof by Buyer, and Supplier agrees not to assert any claim against Buyer by reason of Buyer's use or disposition thereof. Supplier shall keep confidential all information, drawings, specifications, data or any other details furnished by Buyer or prepared by Supplier specifically in connection with this Order.

#### **16. Termination**

Buyer may, without cost, penalty or liability to it, except for conforming deliveries or services previously made and accepted, terminate this Order if one or more of the following events or similar shall occur: (i) failure of Supplier to perform any of its obligations under this contract including Supplier's warranties, (ii) any adverse change in the position, financial or otherwise, of Supplier or (iii) the insolvency of, or the filing of a petition under any federal or provincial bankruptcy or insolvency laws by or against Supplier, and, in any termination identified in this sentence, Supplier shall be responsible for any damages suffered by Buyer, its successors, assigns or customers.

#### **17. Default**

Any material breach of the Order by Supplier that is not cured within seven (7) days of notice of same by Buyer to Supplier shall be a default of this Order. In addition, Supplier shall be deemed in default if Supplier becomes insolvent, makes an assignment for the benefit of its creditors, voluntarily files a bankruptcy petition or is involuntarily placed in bankruptcy. Buyer has the right of anticipatory default and may take possession of any and all goods and materials identified to the Order if Supplier does not respond to Buyer's written demand of adequate assurance of due performance within a reasonable time not exceeding thirty (30) days. In the event of default by Supplier, Supplier shall be liable to Buyer for all costs incurred by Buyer in the completion of the Order including those costs in excess of the Order price to Buyer. Buyer specifically retains all rights and remedies under this Order and otherwise existing at law. In the event of default, Buyer will in no way be liable or responsible for any costs, damages, losses, or claims incurred by Supplier as a result of such default.

It is understood and agreed that in the event the Supplier does not provide the buyer with at least three (3) weeks written notice that it is unable to provide the services hereunder, the Supplier shall pay to the Buyer any excess fees the Supplier incurs in obtaining another party to carry out the said services (including, but not limited to, any fees related to short notice or expedited scheduling).

#### **18. Set-Off**

All amounts due Supplier shall be considered net of indebtedness of Supplier to Buyer, and Buyer shall be entitled at all times to set-off any amount owing or to become owing from Supplier to Buyer or any of its affiliated companies against any amount payable or to become payable from Buyer to Supplier on this or any other order.

#### **19. Work at Buyer's or Customer's Location**

19.1. Should the Supplier's employees or representatives work on our or a customer's business premises, they must always observe accident prevention and all other safety regulations, as well as applicable plant rules. They may not start work without knowledge of these rules and regulations, and shall comply with same at all times.

19.2. Assembly and installation must be accepted. The work is accepted when our representative has explicitly accepted in writing the Supplier's performance as being according to contract. However, Buyer may still claim defects at the time of the final account. Should Buyer not fulfill its obligation to accept the work, the Supplier must allow Buyer a fulfillment period of at least three (3) weeks.

19.3. Buyer must confirm the hours worked as well as the material provided by the Supplier in writing within an appropriate period of time after the work has been completed.

#### **20. Ownership and Title to Intellectual Property**

To the extent Supplier creates designs, sketches, schematics, drawings, reports, test results, specifications, specimens, data, packaging and other work product exclusively for or at the specific request of Buyer (the "Buyer Work Product"), such Buyer Work Product shall constitute works made for hire under the copyright laws of the United States and Canada and shall be the sole and exclusive property of Buyer. Title to such Buyer Work Product shall transfer to Buyer and become the property of Buyer upon the date of payment for the Buyer Work Product. Supplier shall have the right to retain a copy of the Buyer Work Product for its records. Buyer Work Product shall not include knowledge, ideas, concepts, inventions, works, methodologies and processes (i) created by Supplier outside the scope of this Order; (ii) developed or acquired by Supplier related to the manufacture of the Items; or (iii) designed, developed or provided by Supplier that are used for Supplier's general business, are

of a general abstract nature or character, or which may be generically re-used (collectively, the "Supplier Materials"). Supplier retains all right, title and interest and in to the Supplier Materials. Supplier hereby grants to Buyer a nonexclusive, worldwide, paid-up, royalty free, perpetual limited license to utilize the Supplier Materials solely as is necessary for use of the goods by Buyer.

## 21. Confidentiality/Publicity

Supplier shall not use for any purpose whatsoever other than for Supplier's performance pursuant to the Order, any data, drawings or other documents given Supplier by Buyer without the prior written permission of Buyer, which permission may be withheld in Buyer's sole discretion. In addition, it is understood and agreed that under no circumstances shall the Supplier be entitled to disclose any information related to the Order and/or any Buyer Work Product to any parties other than the Supplier's staff, who shall be under a similar restrictions as to disclosure. For clarification purposes, such information shall not be made available to any of the Buyer's competitors or other customers of the Buyer. Such data, documents and drawings are to be returned to Buyer upon completion of the work under the Order. Supplier also shall not engage in any acts of publicity nor publicize any generalities or details about the Order without the prior written permission of Buyer.

For clarification, the Supplier also agrees as follows and in addition to any non-disclosure and confidentiality agreement/s entered into between the parties:(a)The Supplier acknowledges that it has information about certain matters, which are confidential to the Buyer including without limitation: pricing information and practices, financial information and records, marketing and business strategies, customer information, Buyer's end-user customer (the "Customer") and Customer information, Buyer information and Supplier information. (b) In that this confidential information could be used to the detriment of the Buyer and not to disclose it to any third party, either during the term of the Order and/or these T's & C's (the "Agreement") (except as may be necessary to perform their duties) or after termination of the agreement for any reason, except with the advance written permission of the Buyer or as compelled by law. In the event Supplier is compelled by law, it shall provide Buyer with notice and an opportunity to object and seek a protective order or other remedy.

## 22. Non-Solicit/Non-Compete

The Supplier shall not, during the term of the Agreement or for a period of 24 months thereafter, directly or indirectly, contact or solicit any designated customer of the Buyer for the purpose of providing, or causing to be provided to customer, services or products offered by the Buyer. "Designated Customer" means a business, Buyer, organization, association and/or person to whom the Buyer provided product or services offered by the Buyer during the 12 month period immediately preceding the termination of the Agreement.

The Supplier shall not, during the term of the Agreement or for a period of 24 months thereafter directly or indirectly, employ or retain as an employee any employee of the Buyer or induce or solicit or attempt to induce any such employee to leave the Buyer.

The Supplier covenants and agrees that it shall not either individually or in partnership or in conjunction with any person or persons, firm, association, as principal, agent, director, officer, employee, investor or in any other manner whatsoever, directly or indirectly, carry on, be engaged in, or be concerned with a business providing the products and/or services of the Buyer for a period of 24 months after the end of this Agreement, whether this Agreement ends by termination, by resignation or otherwise. The Supplier agrees that such a restriction including but not limited to the term of 24 months is reasonably required by the Buyer to protect its legitimate business interests.

## 23. Assignment

Supplier may not assign the Order, or any of this work hereunder, nor pledge any payment by Buyer pursuant to the Order without the prior written consent of Buyer, which consent may be withheld in Buyer's sole discretion. If consent is granted, Supplier will remain liable to Buyer in all respects just as if such assignment had not taken place. Buyer reserves the right to assign the Order, in whole or in part, to any party.

## 24. Suspension

At its option, Buyer may suspend all or any part of the Order upon written notice to Supplier. Upon receipt of such written notice, Supplier shall take all reasonable actions to preserve and protect all completed goods and all work in progress including materials and related plans and drawings as well as taking reasonable measures to assure a prompt resumption of work once the suspension ends. Except for substantiated additional costs incurred by Supplier due to resumption, Buyer will incur no liability to Supplier by reason of suspension. Notwithstanding such suspension, the Supplier's obligations under the Order and T's & C's shall remain in effect.

## 25. Dispute Resolution

In the event of any disagreement amongst the parties to the Order with respect only to the interpretation of these T's & C's or to the performance of any party pursuant to these T's & C's, either the Buyer or Supplier may submit the disagreement to arbitration by written notice to the other. The arbitration shall be conducted in accordance with the following:

25.1. Upon written demand of the Buyer or Supplier, their respective representatives shall meet and attempt to appoint a single arbitrator. In the event that such representatives are unable to agree on a single arbitrator within thirty (30) days of the written demand then a single arbitrator shall be appointed by any Justice of the Ontario Superior Court of Justice;

25.2. The arbitrator shall be qualified by education, experience and training to pass upon the particular dispute;

25.3. The arbitrator shall immediately hear all questions in dispute within thirty (30) days after appointment, subject to any reasonable delay due to unforeseen circumstances, and will render a decision within seven (7) days. In the event that the arbitrator fails to make a decision within such period, then either the Buyer or Supplier may have a new arbitrator chosen as provided herein, as if none had previously been selected;

25.4. The decision of the arbitrator shall be in writing and shall be final and binding upon all parties;

25.5. Each party to an arbitration shall bear and pay its own costs; and

25.6. The arbitration shall be governed in all respects by The Arbitrations Act (Ontario) and regulations thereunder.

## 26. Compliance with Certain Laws

Supplier agrees to comply with all federal, provincial and local laws, executive orders, rules, regulations and ordinances which may be applicable to Supplier's performance of its obligations under this Order. If this Order is subject to Province of Ontario contracting mandates, Buyer will so state on the face hereof, and if so stated, as a condition to the effectiveness of this Order, Supplier agrees to certify to Buyer, by separate writing, that it complies with all government contracting requirements applicable to Buyer, Supplier and the goods.

## 27. Governing Law

This order shall be governed by the law of the Province of Ontario and Canada. Supplier agrees that all causes of action against Buyer in connection with this Order shall be venued in the Provincial courts of Ontario, Canada.

## 28. Miscellaneous

28.1 Any provision of this Order which is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remaining portions hereof.

28.2. The failure of either party at any time to require performance by the other party of any provision of this Order shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision of this order constitute a waiver of any succeeding breach of the same or any other provision.

## 29. Hazardous Materials

Supplier shall notify Buyer of all "hazardous materials" (as that term is defined in applicable Federal, Provincial and local statutes) and such other identification of materials included in the products as may be required by Buyer from time to time which are contained in the products, and provide any appropriate special handling instructions. Supplier shall furnish Buyer with copies of all applicable "material safety data sheets" for products no later than the shipment date under this order.

## 30. Bribery and Corruption

30.1. Supplier represents, warrants and covenants that it shall at all times comply with all applicable laws relating to anti-bribery, corruption, extortion or fraud, including the Corruption of Foreign Public Officials Act (Canada), the Criminal Code (Canada), any other applicable anti-bribery legislation in any applicable jurisdiction (including the United Kingdom's Bribery Act 2010 (United Kingdom) and the US Foreign Corrupt Practices Act (US)), and any written policy of the Buyer regarding such matters that is provided to the Supplier and which is in effect from time to time. Supplier shall ensure that each of its Supplier representatives and any authorized subcontractors (if any) who perform any services or any functions in connection with this Agreement, agree to, and shall at all times, comply with terms substantially similar to this provision. Supplier shall immediately notify Buyer if Supplier has reason to believe a violation of this provision has occurred.

30.2. Without limiting the generality of the foregoing, Supplier shall not directly or indirectly:

(a) Offer any money, gifts, entertainment, favours, services, contributions (political, charitable, or otherwise), sponsorships or anything else of value to any public official or third party; or

(b) Accept any money, gifts, entertainment, favours, services, contributions (political, charitable or otherwise), sponsorships or anything else of value from anyone, with the intent to influence decisions or actions relating to the subject

matter of this Agreement or to otherwise obtain an improper or unfair business advantage. Supplier shall promptly report to the Buyer any incidents that result in a breach, or a potential breach, of this provision.

(c) Where it is determined in the Buyer's sole discretion that Supplier, or any of its Supplier Representatives or authorized subcontractors are in breach of any of the obligations set forth in this Article, the Buyer shall have the right to terminate this Agreement immediately, without penalty or liability, upon written notice to Supplier without prejudice to any further right or remedies on the part of the Buyer under this Order of applicable law. Supplier shall indemnify Buyer for all liabilities, damages, costs, or expenses incurred as a result of any such violation of the above mentioned obligations and termination of this Order.

(d) For the purposes of this provision, the following terms are defined: "Bribery" includes promising, offering or giving an undue advantage to a person or entity, either directly or through an intermediary, in order that the person or entity should perform, or refrain from performing, an act in breach of their business or public duties; "Corruption" includes any act intended to result in the misuse of entrusted power for personal or corporate gain; "Extortion" includes the illegal use of an official position or powers to obtain property or funds; and "Fraud" includes any deception deliberately practiced in order to secure unfair or illegal gain.

**31. Code of Conduct.** Buyer's Code of Conduct is available on Buyer's website. Supplier agrees to perform its contractual obligations under this Order with substantially similar standards of ethical behavior.

### **32. Entire Agreement**

This Order, together with the specifications, drawings, attachments, exhibits and supplements specifically referenced in the Order, constitutes the entire agreement between Supplier and Buyer with respect to the matter contained herein and supersedes all prior oral or written representations and agreements. This Order may only be modified by an amendment/alteration issued by Buyer. Any invoice, acknowledgment or other communication issued by Supplier in connection with this Order shall be construed to be for record and accounting purposes only and shall have no effect on these terms.

### **33. Survival.**

The provisions of this Order that by their nature survive completion or termination of this Order, including but not limited to all rights and obligations relating to warranty, liability, indemnity, intellectual property, confidentiality, controlling law, arbitration, taxes, and audit, shall survive such completion or termination.