

Purchase Order General Terms and Conditions (Goods and Services)

1. Definitions

Unless otherwise defined, when used in the Contract the terms listed below have the following meanings.

“**Affiliate**” means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person; a Person shall be deemed to “control” another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term “controlled” shall have a similar meaning;

“**Business Day**” means any day other than a Saturday or a Sunday or a day which is a statutory holiday in British Columbia, Canada, or Seller’s head office jurisdiction;

“**Buyer**” means the Westport entity identified as the Buyer in the Purchase Order;

“**Contract**” means the entire agreement between the Parties with respect to the supply of the Products and/or Services as constituted by the documents referenced in Section 2(b) of these General Terms and Conditions;

“**Delivery**” means the completion of: (i) the Services; or (ii) arrival of the Products at the delivery point specified in the Purchase Order, and the acceptance by Buyer in full (without identifying any defects, deficiencies or rejections) of the applicable Delivery; “**Deliver**” or “**Delivered**” shall have the same meaning;

“**FCA**” means “Free Carrier” as defined under Incoterms 2010 published by the International Chamber of Commerce;

“**Governmental Authority**” means any national, federal, provincial, or municipal government or other political subdivisions thereof, or any government, administration or regulatory authority, agency, board, body, commission, court or tribunal thereof, having, or purporting to have, jurisdiction in relation to the Contract or any Products or Services;

“**Intellectual Property Rights**” means any right or protection existing from time to time in a specific jurisdiction, whether registered or not, under any patent law or other invention or discovery law, copyright law, performance or moral rights law, trade-secret law, confidential information law (including breach of confidence), trade-mark law, trade-name law, passing off, unfair competition law or other similar laws and includes legislation by competent Governmental Authorities and judicial decisions under common law or

equity, and for greater certainty includes the right to file any applications, and the right to claim for the same the priority rights derived from any applications filed under any treaty, convention, or any domestic laws of a country in which a prior application is filed;

“**Order Date**” means the date of the Purchase Order;

“**Parties**” means Buyer and Seller;

“**Person**” is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization and a Governmental Authority;

“**Purchase Order**” means a written Purchase Order delivered by Buyer to Seller for the purpose of purchasing Products and/or Services;

“**Products**” means the product(s), if any, to be purchased by Buyer as described in the Contract;

“**Seller**” means the Person identified as the Seller in the Purchase Order;

“**Services**” means the service(s), if any, to be purchased by Buyer as described in the Contract;

“**Taxes**” means all corporate, capital, value added, excise, products, sales, use, services, personal, employment and income taxes, government pension, social security, employment insurance contributions, duties (customs or otherwise) and other taxes, withholdings, penalties, interest and additions thereto; and

“**Value-Added Taxes**” means any value added, products, services or sales taxes or other Taxes which are assessed to Buyer and required by law to be collected by Seller on a supply of Products or Services, and which in the normal course of Seller’s business are not included and are not required by law to be included in the price for the Products or Services and, for greater certainty, includes any Taxes collected by a Governmental Authority.

2. Nature of Agreement

(a) The Contract constitutes the entire agreement between the Parties with respect to the subject matter of the Contract and supersedes any previous agreement, understanding or communications between the Parties related thereto. No representation, inducement, promise or agreement not specifically set out in the Contract shall be of any force or effect.

(b) The Contract consists of the following documents:

- (i) the Purchase Order;
 - (ii) these General Terms and Conditions; and
 - (iii) subject to Section 2(e), any other document which is attached to, or incorporated by reference in, the Purchase Order.
- (c) If there is any conflict or inconsistency between the documents constituting the Contract, then unless otherwise expressly provided the documents will rank in the order of precedence in accordance with the order in which they are listed in Section 2(b).
- (d) The Contract shall be interpreted as a whole. The documents comprising the Contract are complementary and what is called for in any one shall be binding as if called for by all of them.
- (e) The Contract shall not include any terms or conditions that are referred to, submitted by or otherwise used by Seller (including as part of the submission of any proposal, quotation, invoice or bill of lading) and such terms and conditions are expressly rejected by Buyer. Notwithstanding the foregoing, in the event that Buyer issues a Purchase Order to Seller in response to a proposal or quotation provided by Seller, any terms and conditions contained in Seller's documentation that describe the specifications of the Products or Services shall form a part of the Contract. In the event of any conflict between such descriptions of the Products or Services in Seller's proposal or quotation and any other documents forming the Contract, the other documents shall prevail.
- (f) Buyer shall not be liable for any claims or liabilities suffered or incurred by Seller as a result of Seller's reliance in any way upon any information given to it by Buyer, unless contained in the Contract.
- (g) The Contract does not create an exclusive relationship between the Parties in respect of the Products or Services or any aspect of thereof.

3. Acceptance

A Purchase Order is not binding until accepted by Seller. The acceptance date of a Purchase Order will be the earlier of: (i) the date Seller confirms acceptance in writing; (ii) the date Seller Delivers the ordered Products, if applicable; (iii) five days after the Order Date unless Seller first rejects the Purchase Order in writing. Acceptance of the Purchase Order confirms

Seller's agreement to the terms and conditions of the Contract.

4. Supply of Products and Services

- (a) Seller shall furnish all skills, labour, supervision, equipment, materials, supplies or facilities required to supply the Products and Services in accordance with the Contract, as well obtain and maintain all permits, licenses and/or regulatory requirements which may be required to authorize it to deliver the Products and Services or otherwise satisfy its obligations pursuant to the Contract.
- (b) In performing its obligations under the Contract Seller shall comply with Buyer's Code of Conduct, a copy of which has been made available to Seller, and to the extent applicable all access, safety and other policies in effect at the site or sites where Services are to be provided.

5. Price

Seller agrees that if the price is omitted from the Contract, Seller's price will not be higher than Seller's lowest price offered for corresponding Products or Services as of the Order Date.

6. Extra Charges

No extra charges of any kind, including charges for packing or cartage, will be allowed unless specifically agreed to by Buyer in advance.

7. Over-Shipments

Buyer will pay only for maximum quantities ordered. Excess quantities of Products resulting from over-shipments will be held at Seller's risk and expense for a reasonable time awaiting shipping instructions. Return of excess quantities will be at Seller's expense and risk.

8. Installments

If the Contract contemplates delivery of Products by installment, Seller shall have the obligation to complete Delivery of all such installments.

9. Packing and Shipment

Unless otherwise specified, when the price of any Products set out in the Contract is based on the weight of the ordered Products, such price is to cover net weight of the Products ordered only, and no charges will be allowed for boxing, crating, carting, storage or other packing requirements.

Unless otherwise specified, all Products shall be packed, packaged, marked and otherwise prepared for shipment in a manner which is: (a) in accordance with good commercial practice; (b) in accordance with any applicable laws or regulations; (c) acceptable to common carriers for shipment at the lowest rate for the

particular Products; and (d) adequate to insure safe arrival of the Products at the named destination. Seller shall mark all containers with necessary lifting, handling and shipping information, purchase order numbers, date of shipment and the names of the consignee and consignor.

An itemized packaging sheet must accompany each shipment. No partial or complete Delivery shall be made hereunder prior to the date or dates specified in the Contract unless Buyer has given prior written consent.

10. Delivery, Title and Risk of Loss

Unless otherwise specifically provided in the Contract, all shipments of Products shall be FCA at Seller's designated facility, and transfer of title to, and risk of loss in respect of, Products shall be passed to Buyer upon Delivery. If either Party causes loss or damage to the Product during delivery or receipt, the Party causing the loss or damage shall pay for such loss or damage to the Product regardless of whether or not title to or risk of loss in respect thereof resides with such Party.

11. Importation, Exportation, Customs and Duties

- (a) For the purposes of any export out of or import into Canada prior to Delivery, Seller shall be owner of the Products, and the exporter and importer of record, as applicable. As such, Seller assumes full responsibility for the contents of any and all declarations, filings or other representations made to any Governmental Authority of any country in relation to the shipment of Products.
- (b) To the extent that Buyer is required to make any declaration, filing or other representation to any Governmental Authority of any country for the purpose of enabling the shipment of any Products pursuant to the Contract, Buyer shall do so only at Seller's request and pursuant to the instructions provided by Seller, and any such declaration, filing or representation made by Buyer shall be deemed to have been done at the request and instruction of Seller. Seller shall be responsible for providing any and all such information to Buyer as may be required to ensure that Products can be shipped to the applicable destinations.
- (c) Unless explicitly indicated in the Contract, Seller shall be responsible to account for and pay any tariffs and other duties and fees relating to the exportation of the Products out of any country, province or state.
- (d) Seller shall advise Buyer of the country of origin and manufacture of all components included or to be included in the Products, and any other information required by any Governmental

Authority and, in respect of such Products, shall advise Buyer which Products may be exported or imported on a duty-free basis as a result of valid certificates of origin or permissible proofs of origin, and shall make any customs filing and/or to otherwise cooperate with Buyer in the supply of documentation required by Buyer to qualify for reduced customs and duty rates.

- (e) Seller shall diligently pursue any duty drawback, refund of duties, duty deferral or remissions, to which Buyer or Seller may be entitled, and, to the extent that any rebates or benefits received in connection therewith relate to shipping or customs and duty costs paid by Buyer hereunder, whether directly or indirectly, Seller shall provide Buyer with a credit for any recovered amounts.

12. Invoicing and Payment

- (a) Each invoice issued pursuant to the Contract: (a) shall be rendered separately for each delivery; (b) shall set forth the contract number or Purchase Order number under which it is issued; and (c) shall be rendered to the proper Accounts Payable Department of Buyer as set forth in the Contract. Unless otherwise stated in the Contract, invoices shall be due 60 days following receipt thereof by Buyer. Unless otherwise provided in the Contract, payment made by Buyer shall be made in Canadian currency via electronic funds transfer to an account provided by Seller. If the payment due date falls on a day that is not a Business Day, the invoice will be payable on the next Business Day.
- (b) Seller shall separately state or re-phrase invoice items in order to reduce transaction taxes if requested by Buyer and as permitted by applicable laws. Seller must not invoice Buyer for transaction taxes, and such amounts should not be included in the invoiced amount, to the extent Buyer advises Seller in writing (by exemption certificate or otherwise) that it will self-assess and remit those taxes.
- (c) Buyer shall have the right to withhold disputed amounts, without incurring interest or penalty thereon. Buyer shall have the right to set off from any payment due to Seller, any other amount owed by Seller to Buyer, whether under the Contract or otherwise.
- (d) No certificate given, payment made or inspection, approval or use of the Products or Services or any part thereof by Buyer will:
 - (i) prejudice the right of either Party to dispute whether the paid amount is the amount properly due and payable;

- (ii) be evidence of the value of the Products or Services;
- (iii) be an admission of liability on the part of Buyer;
- (iv) be construed as evidence of satisfactory performance of the Contract, in whole or in part; or
- (v) be construed as acceptance of defective Products or Services or as relieving Seller from any of its obligations or liabilities under the Contract.

13. Taxes

- (a) Subject to Section 13(b), Seller shall, as applicable, invoice, collect and remit all Value-Added Taxes required by applicable laws in respect of Products or Services supplied by Seller.
- (b) The Parties acknowledge that the price for the Products and Services under the Contract is exclusive of Value-Added Taxes, but inclusive of all other Taxes which may be imposed in respect of the provision of the Products and Services. Value-Added Taxes shall be added to an invoice only if Seller is required to collect such taxes by law, and in such case, Seller shall collect and remit Value-Added Taxes as required by law. Seller shall segregate on the applicable invoice the amounts for Products and Services and related charges for which Buyer is not liable to pay Value-Added Taxes from any amounts for Products and Services and related charges for which Buyer is liable to pay Value-Added Taxes. Any applicable Value-Added Taxes which may be imposed upon Buyer in respect of the Products and Services shall be: (i) calculated by Seller in the manner stipulated herein and as required by law or administrative policy; and (ii) reflected on the applicable invoice as a separate line item, together with such information as required under applicable law or administrative policy so that Buyer can obtain any applicable tax credits or refunds.
- (c) Buyer may withhold amounts from payments due to Seller at the withholding rate specified by law. Seller shall facilitate the withholding and payment of any withholding Tax as requested by Buyer.
- (d) Without restricting any obligation of Seller under the Contract, or otherwise releasing Seller therefrom, Seller shall promptly give written notice to Buyer of any change in the residence, corporate structure, ownership or identity of Seller under the Contract that would result in Buyer's obligation to withhold and remit Taxes arising or changing under any applicable laws, together with

supporting documentation reasonably requested by Buyer.

14. Inspection

Each and every Product purchased under the Contract is subject to Buyer's inspection and approval at any place Buyer may reasonably designate. Buyer expressly reserves the right, without liability hereunder or otherwise, to reject and refuse acceptance of Products which do not conform in all respects to: (a) any instructions contained in the Contract; (b) Buyer's specifications, drawings, blueprints and data; and (c) the Warranty. Buyer may, in Buyer's sole discretion, hold such rejected Products for Seller's inspection at Seller's risk upon notification to Seller or return such Products to Seller at Seller's expense and risk and recover from Seller the sale price paid therefore. No rejected Products shall be replaced without a new Purchase Order. Payment for any Products shall not be deemed an acceptance thereof.

15. Changes

Buyer reserves the right at any time to change any one or more of the following:

- (a) specifications, drawings, blueprints and data incorporated in the Contract where the Products to be purchased are to be specifically manufactured for Buyer;
- (b) method of packaging, packing or shipment; and
- (c) place and/or time of delivery.

If any such change causes an increase or decrease in the cost of, or the time required for the performance of, the Contract, an equitable adjustment shall be made in the price or delivery schedule, or both. Any claim for adjustment by Seller shall be deemed waived unless asserted in writing within 30 days from the receipt by Seller of Buyer notification of the change. Nothing contained in this clause shall relieve Seller from proceeding without delay in the performance of the Contract as changed.

16. Warranties

- (a) Seller warrants that the Products to be furnished hereunder will: (i) be in full compliance with Buyer's specifications, blueprints, drawings and data or Seller's samples, if any; (ii) be designed, engineered, manufactured, fabricated, assembled, delivered and sold, as applicable, in accordance with the highest industry standards; (iii) meet the requirements of the Westport Supplier Quality Manual <http://www.westport.com/supply/quality/>; (vi) be of merchantable quality; (vii) be free from any defect in material or workmanship; (viii) be fit for the use intended by Buyer; and (ix) be free

- from any actual (or claim of) infringement of Intellectual Property Rights of any Third Party. Seller further warrants title to the Products, free and clear of all third party claims of any nature, including, without limitation, liens, encumbrances and security interests.
- (b) Seller warrants that any Services shall be performed: (i) in compliance with all applicable laws, ordinances, regulations (including, without limitation, any applicable environmental, health and safety legislation and all applicable laws in relation to the corruption or bribery of public officials), permits and any by-laws, code of ethics, rules or regulations established from time to time by Seller, any regulatory body governing Seller or regulating the performance of services similar to the Services or any relevant professional body; and (ii) in a competent and professional manner exercising the level of skill, care and diligence of a reputable and experienced professional specializing in the provision of similar services that is acting in accordance with the highest industry standards.
- (c) Seller warrants and represents that it has complied with and will continue, during the performance of its obligations under the contract, to comply with, all applicable laws, ordinances, regulations, permits and any by-laws, code of ethics, rules or regulations established from time to time by Seller, any regulatory body governing Seller or regulating the delivery of products similar to the Products or any relevant professional body, including those laws and regulations applicable at the point of manufacture concerning the packaging, storage, shipment and exportation of all or any part thereof, the protection of the environment, workplace safety, conditions and standards. Seller hereby agrees to grant access to Buyer or its designated agent to inspect Seller's manufacturing facilities during normal business hours and upon reasonable notice, to verify compliance with local laws and regulations. The right to such inspections will not relieve Seller of sole responsibility for ensuring compliance with all local laws and regulations. Seller further warrants and represents that any chemical substance delivered hereunder shall not be on the list of prohibited substances detailed in the applicable environmental laws or regulations that are in force in the jurisdiction of manufacture or delivery. When the laws or regulations of more than one jurisdiction apply, Seller shall act in conformity with the laws or regulations that are more stringent with respect to the matter concerned.
- (d) Seller shall assign to Buyer its rights under any third party warranty in respect of any Products or Services Delivered in accordance with the Contract, the assignment of which does not relieve Seller of any obligation to provide a warranty in accordance with the Contract. If Seller is unable to obtain for Buyer the full benefit of a third party warranty, Buyer will have the right to enforce the warranty for its own benefit (in the name of Seller if necessary) and in case of a warranty that has not been assigned to Buyer, Buyer will have the right to subrogate to all Seller's rights with respect thereto. Seller will not take any action that will void or impair any third party warranty unless authorized by Buyer.
- (e) Seller agrees that the warranties contained in the Contract shall: (i) be in addition to any warranties either express or implied in law or expressly made by Seller other than hereunder (collectively, the "**Warranty**"); and (ii) survive Delivery by Seller and inspection, acceptance and payment by Buyer.
- (f) Unless a different time period is specified in the Contract, the Warranty shall be in effect for a time period that is the lesser of 24 months commencing from installation and commissioning of the Product, or 30 months after Delivery of the Product or Service.
- (g) If any Products or Services Delivered hereunder are in breach of the Warranty, Buyer may, at its option: (i) require Seller to correct at no cost to Buyer any defective or non-conforming Products or Services by repair, replacement or re-performance; or (ii) return defective or non-conforming Products at Seller's expense and risk to Seller and recover from Seller the sale price thereof; or (iii) correct the defective or non-conforming Products or Services itself and charge Seller with the cost of such correction. The foregoing remedies are in addition to all other remedies at law or in equity or under the Contract, and shall not be deemed to be exclusive. The Warranty shall be for the benefit of Buyer and Buyer's customers and subsequent owners of the Products during the period during which the Warranty is in effect.
- (h) Waiver by Buyer of any drawing or specification requirement for one or more of the Products shall not relieve Seller of the Warranty and shall not constitute a waiver of such requirements for the remaining Products to be Delivered hereunder unless so stated by Buyer in writing. The provisions of this clause shall not limit or affect the rights of Buyer under Section 14 entitled "Inspection".

17. Indemnification

Seller shall hold harmless, indemnify and defend Buyer, its Affiliates, and its and its Affiliates' directors, officers, employees, secondees, representatives, agents and contractors and their respective representatives, agents and employees (together, the "**Buyer Indemnified Parties**"), from and against all actions, injury, claims, liabilities, loss, damages, demands, penalties, fines, expenses (including actual legal expenses), costs, obligations and causes of action of every kind and nature whatsoever (the "**Losses**"), that may be asserted or brought against, or suffered or incurred by, the Buyer Indemnified Parties for or in respect of, or arising in any way whatsoever, out of:

- (a) the fault, misconduct or negligence of, or the breach of the Contract by, Seller, its directors, officers, employees, secondees, representatives, agents, or subcontractors or their respective employees, agents, representatives or subcontractors;
- (b) any defect in design, manufacture material and workmanship (including for greater certainty, any resulting death, personal injury or damage to personal or real property), in any Products or Services supplied to Buyer by Seller under the Contract;
- (c) any damage to or destruction of a Product during transportation where Seller bears the risk of loss and any action by any Governmental Authority with respect to the shipment of Product over any international boundary in connection with delivery of such Product;
- (d) the claims and demands of all Persons arising out of, or in connection with, the delivery of any Products or Services, including taking all such actions as may be required to discharge any lien or encumbrance on any Product; and
- (e) any action or claim by any third party that the use, possession, sale or distribution of the Products or Deliverables hereunder, or any part of thereof, infringes any Intellectual Property Rights of the third party (an "**IPR Claim**");

except, in each case, to the extent such Losses are solely attributable to the breach of the Contract or misconduct by a Buyer Indemnified Party.

In the event of any IPR Claim, without limiting, and in addition to, its indemnification obligations under this Section 17, Seller shall, at its own expense, use commercially reasonable efforts, in Seller's discretion, to:

- (a) procure the Buyer Indemnified Parties with the right to continue to use the Products or the

infringing part or parts thereof, as the case may be; or

- (b) modify the Products, or the infringing part or parts thereof, as the case may be, so that it is non-infringing without materially affecting its performance or functionality; or
- (c) replace the Products or the infringing part or parts thereof, as applicable, with a substitute that provides materially and substantially similar performance and functionality.

18. Limitations on Liability

In no event shall Buyer be liable to Seller for any indirect, consequential, incidental, punitive or exemplary losses, damages or expenses or for loss of profit, revenue, use or production, downtime or business interruption, anticipated profits, lost savings, loss of opportunity, or any other economic loss of any kind, whether such losses arise under contract, tort (including negligence), strict liability or otherwise.

19. Insurance

Seller, at its sole cost, will maintain insurance coverage throughout the term of the Contract as described in Schedule A with insurance companies reasonably acceptable to Buyer. The limits set forth in Schedule A are minimum limits and will not be construed to limit Buyer's liability. All cost and deductible amounts will be for the sole account of Seller. Where legally possible, all policies required by Buyer hereunder (or otherwise) will name Buyer as an additional insured (per ISO Endorsement #CG 2010 or its equivalent) and waive subrogation rights in favor of Buyer, except policies providing statutory workers' compensation and professional liability coverage. Such policies will be designated as primary coverage as to any similar coverage carried by Buyer. Seller will not begin work in respect of any Products or Services until all required insurance has been obtained. All policies required under this Section 19 will contain provisions that provide at least 30 calendar days' prior written notice of any cancellation, non-renewal, or reduction in coverage to Buyer. Seller must provide written proof of such insurance coverage upon the written request of Buyer.

20. Non-Publicity

Without the prior written consent of Buyer, Seller shall neither: (a) make any news release, public announcement, denial or confirmation of the Contract or its subject matter; nor (b) in any manner advertise or publish the fact that Buyer has placed any order for Products and/or Services.

21. Buyer's Property

Unless otherwise agreed to in writing, all tooling, equipment or material of every description furnished

to Seller by Buyer or its Affiliate or specifically paid for by Buyer or its Affiliate and any replacement thereof, shall remain the property of Buyer or its Affiliate (“**Buyer’s Property**”). Buyer’s Property, and whenever practical, each individual item thereof, shall be plainly marked or otherwise adequately identified as property of Buyer and shall be safely stored separately and apart from Seller’s property. Seller shall not substitute any property for Buyer’s Property and shall not use Buyer’s Property, except in filling Buyer’s orders. Buyer’s Property while in Seller’s custody or control shall be held at Seller’s expense, and will be insured by Seller in an amount equal to the replacement cost with loss payable to Buyer. Buyer’s Property shall be prepared for shipment and delivered in good condition, normal wear and tear excepted to Buyer, FCA at Seller’s plant, immediately upon request by Buyer.

22. **Liens**

Seller shall keep Buyer’s property free of all liens arising through Seller for any reason (including from any failure of Seller or any of its permitted subcontractors to pay its accounts when due), and if any such lien is filed, Seller, on notice from Buyer, shall procure promptly a release thereof. If Seller fails or refuses to procure such a release within 10 days after notice from Buyer, then Buyer may pay such amounts or take such other actions (including posting security or making payment into court) as may be necessary to procure such release and shall be entitled to recover from Seller all costs of doing so, regardless of whether or not Seller disputes the lien. Seller shall, whenever Buyer requests, furnish Buyer with proof satisfactory to Buyer that all such liens have been satisfied and released.

23. **Title to Intellectual Property**

Seller confirms that Buyer exclusively owns any and all data, work products, reports and other documentation, deliverables, know-how, ideas, concepts, inventions, discoveries, developments, productions, processes, improvements and any other intellectual property, together with all Intellectual Property Rights in each of the foregoing, which may be perfected, acquired, conceived, made, developed or otherwise created by Seller: (i) in the course of delivering the Products or Services, regardless of the stage of completion; or (ii) otherwise in connection with the Contract (collectively the “**Deliverables**”). In consideration of the payments made by Buyer under the Contract, Seller hereby (i) irrevocably assigns, transfers and conveys to Buyer all right, title and interest in and to the Deliverables as any such Deliverables come into existence; and (ii) waives, and shall cause all those who developed, created or conceived any element of the Deliverables to waive, all moral rights therein, and Seller shall, when so

requested by Buyer, execute all documents as may be required by Buyer to fully and effectively vest in Buyer such right, title and interest in and to the Deliverables and to confirm the waiver of any moral rights therein. Seller will forthwith deliver to Buyer all documents, other recordings and things, including prints, drawings, dies, prototypes and specifications, relating to such Deliverables. In the course of delivering the Products and/or Services, Seller shall ensure that Buyer will be able to freely use the Deliverables. Without limiting the foregoing, Seller will not use or otherwise incorporate any Intellectual Property Rights owned by third parties into the Deliverables. In the event Seller uses or otherwise incorporates any Intellectual Property Rights that Seller may now or hereafter own, possess, or in which it may hold licensing rights (“**Background IPR**”) into any Deliverable, Seller hereby grants to Buyer a perpetual, irrevocable, fully paid-up, royalty-free, transferable, sublicensable (through multiple levels of sublicensees), worldwide non-exclusive right and license to use or otherwise practice all or any portion of such Background IPR. For greater certainty, Seller acknowledges and agrees that the foregoing license is sufficiently expansive for Buyer to reproduce, distribute, display and perform (whether publicly or otherwise), prepare derivative works of and otherwise modify, make, have made, sell, offer to sell, import and otherwise use and exploit the Deliverables, or any parts thereof, and have others exercise such rights on behalf of Buyer. The obligations under this Section 23 shall survive the expiration or earlier termination of the Contract and shall remain in effect indefinitely.

24. **Confidentiality**

For the purposes of this Section, the term “Affiliates” shall include certain confidential third party business partners of Buyers and/or its Affiliates.

In the course of delivering the Products and/or Services, and in the discussions leading up to the entering into of the Contract, Seller has obtained and will continue to access, obtain, generate or be made aware of information, in whatever form and whether or not marked as “confidential”, that is of a proprietary and/or confidential nature with respect to Buyer and/or any of its Affiliates, and this information includes (but is not restricted to) the existence of the Contract and the relationship among the Parties, the identities of certain confidential third party business partners, business plans, customer lists, financial data, marketing data, technical data, engineering data, testing data, trade secrets and any other information in respect of Buyer or any of its Affiliates which is disclosed to Seller or which Seller becomes aware of in the delivery of the Products and/or Services or in connection with the Contract (“**Confidential Information**”). Seller agrees

to use such Confidential Information only for the purpose of delivering the Products and/or Services and not to use it for any other purpose, unless otherwise agreed to in advance and in writing by Buyer. Seller further agrees to maintain such Confidential Information in strict confidence and not to directly or indirectly disclose it to any other Person except to those of its directors, officer, employees, agents and representatives who have a need to know such Confidential Information for purposes of the Contract and are bound by confidentiality obligations similar to the provisions of this Section 24. These obligations shall not apply to information that Seller can show to Buyer that at the time of its disclosure is in the public domain through no fault of Seller; was known to Seller prior to the disclosure by Buyer or its Affiliates; or is hereafter received by Seller in good faith from a third party having the lawful right to disclose the same. Upon delivery of the Products and/or Services or the earlier termination of the Contract, Seller shall deliver to Buyer all property and any documents and computer files containing any Confidential Information or other Buyer information, including all copies thereof unless otherwise agreed in writing by Buyer.

Seller acknowledges and agrees that Buyer and its Affiliates will suffer irreparable harm in the event that any of the obligations contained in this Section are breached and that monetary damages will be inadequate to compensate Buyer and its Affiliates for the breach. Accordingly, Seller acknowledges and agrees that, in the event of a breach or threatened breach by Seller or any of its directors, officers or employees of any of the provisions of this Section, Buyer, in addition to and not in limitation of any other rights, remedies or damages available to it at law or in equity, shall be entitled to an interim injunction, interlocutory injunction and permanent injunction in order to prevent or to restrain any such breach by Seller.

The obligations under this Section 24 shall survive the expiration or earlier termination of the Contract and shall remain in effect indefinitely.

25. Termination

Unless and to the extent as otherwise provided under the Contract, Buyer may terminate the supply of the Products and/or Services in whole or in part for its convenience at any time by notice to Seller in writing. Seller will thereupon immediately stop all work under the Contract, or the terminated portion thereof, and notify its subcontractors to do likewise. Upon termination under this Section 25, Seller shall be entitled to be paid for Products and Services Delivered in accordance with the Contract up to and including the date of termination, plus all reasonable and necessary documented costs directly resulting

from such termination, which Seller shall use all commercially reasonable efforts to minimize. The total of all claims under this Section 25 shall not exceed the cancelled commitment value of the Contract or the cancellation costs listed in the Contract, whichever is less.

26. Termination for Default

- (a) Time is of the essence under the Contract. Buyer may, by written notice, terminate the Contract in whole or in part if Seller fails: (i) to make delivery of the Products or to perform the Services within the time specified therein, or any extension thereof by written change order or amendment; or (ii) to replace or correct defective Products or Services in accordance with the provisions of those clauses hereof entitled "WARRANTIES" and "INSPECTION"; or (iii) to perform any of the other provision of the Contract or so fails to make progress as to endanger performance in accordance with its terms. Buyer is the sole judge under such circumstances.
- (b) In the event of termination pursuant to paragraph (a), Buyer may procure from a third party, upon such terms and in such manner as Buyer may deem appropriate, products or services similar or substantially similar to those so terminated, and Seller shall be liable to Buyer for any excess costs occasioned Buyer thereby.
- (c) In the event of termination of the Contract in part, Seller shall continue the performance of the Contract to the extent not terminated.
- (d) If the Contract is terminated pursuant to paragraph (a), Buyer, in addition to any other rights provided herein, may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer: (i) any completed Products or Services; and (ii) such partially completed Products or Services as Seller has produced or acquired for the performance of the terminated part; and Seller shall, upon direction of Buyer, protect and preserve such property in the possession of Seller. Payment for completed Products or Services delivered to and accepted by Buyer shall be in an amount agreed upon by Seller and Buyer (not to exceed the contract price set out in the Contract). Seller's obligations hereunder to carry out Buyer's direction as to delivery, protection and preservation shall not be contingent upon prior agreement as to such amount.
- (e) Failure of Buyer to enforce any right under this clause shall not be deemed a waiver of any right hereunder. The rights and remedies of Buyer under this clause shall not be exclusive and

are in addition to any other rights and remedies provided by law or under the Contract.

27. Force Majeure

- (a) If a Party is prevented from performing any obligation under the Contract, in whole or in part, by an event or cause which is beyond the control of that Party, which is not able to be overcome by the exercise of reasonable care and proper precautions, and which could not have been reasonably foreseen, including, without limitation, an act of God or the public enemy; riot; civil commotion; armed aggression; terrorism; insurrection; war; flood; fire; explosion; serious accident; earthquake or other catastrophe; or epidemic or quarantine restriction (an “**Event of Force Majeure**”), such obligation shall, to the extent that its performance is prevented by such Event of Force Majeure, be suspended as long as such Event of Force Majeure continues to prevent such performance, and the non-performance of such obligation to such extent during such period of suspension shall not constitute a breach or default hereunder. An Event of Force Majeure specifically does not include extreme or inclement weather which is not unusual at the place where the Contract is being performed, lack of raw materials or supplies, strikes, lockouts, slowdowns or other labour disruption of a Party, or the financial condition of a Party.
- (b) If either Party relies on the occurrence of an Event of Force Majeure as a basis for being excused from performance of its obligations under the Contract, the Party relying on the event or condition shall: (i) provide notice to the other Party of the occurrence of the Event of Force Majeure giving an estimation of the expected duration of such event and the probable impact on the performance of its obligations under the Contract; (ii) exercise all reasonable efforts to continue to perform its obligations under the Contract; (iii) use all reasonable efforts to correct or cure the Event of Force Majeure; (iv) use all reasonable efforts to mitigate or limit damages; and (v) provide prompt notice to the other Party of the cessation of the Event of Force Majeure.

28. Books, Records and Audit

Seller shall keep at its usual place of business, and, if applicable, cause its subcontractors to keep in their usual place of business, books, accounts, background invoices and other relevant materials (“**Records**”) substantiating its performance of the Contract. Buyer may audit all such Records, and upon reasonable notice, may, at any time and from time to time, undertake an audit of all such Records and Seller’s third party invoices for the

purpose of verifying the proper performance by Seller of its obligations. Seller shall respond to all audit enquiries by Buyer not later than twenty-one (21) Business Days from the date of any audit enquiry by Buyer. Seller shall keep such Records, and Buyer’s audit rights shall exist, at all times during the duration of the Contract and for twenty-four (24) months from the last day of the calendar year in which the applicable Products or Services are delivered.

29. General

- (a) Waiver by a Party of any default by the other Party hereunder shall not be deemed a waiver by such Party of any other default.
- (b) Seller shall not change the Contract nor ship non-conforming Products without first obtaining the written consent of Buyer.
- (c) Seller shall not be entitled to subcontract or otherwise delegate any performance of any benefit or obligation arising under the Contract without Buyer’s prior written consent, with consent may be withheld in Buyer’s sole discretion. Even when consent is granted, Seller shall be responsible for all acts or omissions of its employees, agents, consultants, suppliers or subcontractors in relation to the performance of the Contract and any such acts or omissions shall be deemed to be those of Seller.
- (d) Each Party is and will remain at all times independent of each other Party. The Parties are not and shall not be considered to be joint venturers, partners or agents of each other and none of them shall have the power to bind or obligate any other, except as expressly set forth in the Contract. Each Party covenants and agrees that it shall not in any way, incur any contractual or other obligation in the name of the other Party, nor shall it have liability for any debts incurred by the other Party. No representation will be made or acts taken by either Party which could establish any apparent relationship of agency, joint venture, partnership or employment.
- (e) The Contract shall be governed by, and construed in accordance with, the laws of British Columbia, without reference to its conflict of laws principles. The Parties hereby attorn to the exclusive jurisdiction of the courts of British Columbia in connection with all matters arising in relation to the Contract. The United Nations Convention of Contracts for International Sales of Goods shall not apply to the Contract.
- (f) The invalidity of unenforceability of any provision of the Contract shall not affect the validity or enforceability of any other provision of the

Contract, all of which shall remain in full force and effect.

30. **Assignment**

- (a) Seller shall not assign any rights or obligations under the Contract (including the right to receive monies due hereunder) without the prior written consent of Buyer, with consent may be withheld in Buyer's sole discretion. Any purported assignment without consent shall be void.
- (b) Buyer may, without the prior consent of Seller, assign its rights and obligations under the Contract: (i) at any time if such assignment is considered necessary by Buyer in connection with a sale of Buyer's assets or a transfer of its obligations; and (ii) upon reasonable prior notice to Seller, to any Affiliate of Buyer or to any other assignee, provided that such assignee agrees in writing to be bound by the provisions of the Contract. Any such assignment by Buyer approved hereunder shall be effective as a release and novation of Buyer with respect to the duties and liabilities under the Contract so assigned and delegated.

SCHEDULE A

MINIMUM INSURANCE COVERAGE

Insurance certificates to be sent to the attention of “Legal Department, Buyer” upon acceptance of the Purchase Order.

1. Workers’ Compensation and Occupational Disease Insurance - Statutory Limit.
2. Employer’s Liability Insurance - \$3,000,000 Per Person.
3. Commercial General Liability Insurance - \$3,000,000 Per Occurrence
 - Includes Products and Completed Operations with a minimum combined single limit of liability of \$2,000,000 (per occurrence) for bodily injury or death and property damage.
4. Automobile Liability Insurance - Any Auto
 - Bodily Injury\$1,000,000 Per Person
 - Property Damage.....\$1,000,000 Per Occurrence
 - or Combined Single Limit\$1,000,000 (combined bodily injury and property damage).
5. Buyer shall not insure nor be responsible for any loss or damage to property of any kind owned or leased by Seller or its employees, servants, or agents.
6. A certificate of insurance, providing a minimum of thirty (30) days’ notice of cancellation, is to be furnished to Buyer at least seven (7) days prior to start of the Services or delivery of Product before approval to enter Buyer premises is granted.
8. An Umbrella/Excess Liability Policy (occurrence coverage) shall be required if limits on the certificate of insurance do not meet Buyer’s minimum insurance requirements and/or depending upon the type of Products and Services being provided.
9. Insurers must have a minimum rating of A VII (A7) as evaluated by the most current AM Best Rating Guide.