

PURCHASE ORDER – General Terms and Conditions

1 DEFINITIONS

"Buyer" means the person, firm, or company named in the Purchase Order to purchase the Goods and shall include the Buyer's legal representatives, successors and assigns.

"Goods" means the materials to be provided in accordance with this Purchase Order.

"Purchase Order" means the Purchase Order form, these General Terms and Conditions as may be amended by the Special Conditions attached to the Purchase Order form, and any other attachments forming part of this Purchase Order.

"Supplier" means the person, firm or company named in this Purchaser Order to supply the Goods.

"Supplier's Warranty" means the warranty described in s.10(1) of these General Terms and Conditions.

"Special Conditions" means the Special Conditions, described as such, in the Purchase Order form.

2 ENTIRE AGREEMENT

The Supplier hereby acknowledges that the Purchase Order constitutes the entire agreement between the Supplier and the Buyer related to the Goods, and that no prior agreements, whether verbal or in writing between the Supplier and Buyer shall be applicable or binding.

Notwithstanding that the Supplier may, prior to or subsequent to this Purchase Order, issue any document that purports to impose terms and conditions that vary the terms and conditions contained in the Purchase Order for the Goods, including but not limited to, offers, quotations, delivery documents, or invoices, the Supplier agrees that the terms and conditions contained in such document are not binding on the Buyer, are waived by the Supplier in their entirety, and shall have no effect on the terms and conditions contained in this Purchase Order.

In the event that there are any ambiguities in the Purchase Order, the parties agree that the *contra proferentem* will not be used to resolve the ambiguity against the party who drafted the Purchase Order.

3 CONFIDENTIALITY, SURVIVAL AND STRICT PERFORMANCE

The Supplier shall, and shall oblige its officers, employees, sub-contractors and agents to, maintain full secrecy and confidentially related to all information gleaned from the Buyer further to the awarding and performance of the Purchase Order, provided such information is not already in the public domain.

Notwithstanding the completion of this Purchase Order, the representations, warranties and covenants of the Supplier contained in the Purchase Order survive, and are not discharged, dissolved or terminated.

Failure by the Buyer to insist upon strict performance of any term or condition of Purchase Order shall not be deemed a waiver thereof or of any rights the Buyer may have and shall not be deemed a waiver of any subsequent breach of any such term or condition.

4 ACCEPTANCE

This Purchase Order will be deemed accepted and will be a binding agreement on the Supplier, upon the earliest of: (a) any performance by the Supplier under the Purchase Order; or (b) upon Supplier accepting any payment made by the Buyer for the Goods.

5 JURISDICTION AND ARBITRATION

This Agreement is governed by the law of the place where the Goods are delivered. The application of 1980 United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

The Supplier and Buyer agree that any dispute related to the Goods or the Purchase Order will be resolved by binding arbitration before a single arbitrator pursuant to the Arbitration Rules of the ADR Institute of Canada for projects within Canada, and the Commercial Arbitration Rules of the American Arbitration Association for projects within the United States (the "Arbitration Rules") and such arbitration will be held in the city nearest to where the Goods are delivered.

In the event either party requires injunctive relief, or any court order that it cannot obtain from an arbitrator pursuant to the Arbitration Rules, that party may seek a court order from a court house in the city nearest to where the Goods are delivered. Both the Buyer and the Supplier hereby attorns to the jurisdiction of such court.

6 ORDER OF PRIORITY

In the event of conflict, ambiguity or discrepancy between the documents the order of priority that will take precedence shall be as follows:

- a) Purchase Order (inclusive of Special Conditions)
- b) General Terms and conditions of Purchase Order
- c) Any other attachment hereto

Should any error, omission, deficiency, ambiguity or contradiction occur within or between the various parts of the Purchase Order documentation, the Supplier shall immediately request in writing (within 7 days of acceptance of the

Purchase Order) appropriate clarification from the Buyer. In the event that the Supplier fails to do so, any additional cost or delay due to any error, omission, deficiency, ambiguity or contradiction, shall be to the Supplier's account.

7 INSURANCE

(1) The Supplier shall, at its own expense, maintain commercial general liability insurance, including coverage for products liability and completed operations hazards, for loss or damage arising out of any work performed by or on behalf of the Supplier, with a limit of liability of \$2,000,000 per occurrence. Such insurance shall be endorsed to name the Buyer as an additional insured, include provision to provide thirty (30) days prior written notice of cancellation to the Buyer and remain in effect until the expiration of the Supplier's Warranty.

(2) If any services are performed by or on behalf of the Supplier on the Project site, the Supplier shall also, at its own expense, maintain in effect at all times during the performance of such services the following insurance coverage:

- a) workers' compensation insurance or similar coverage for all its employees engaged in the performance of such services in accordance with the statutory requirements of the jurisdiction of the Project site; and
- b) automobile liability insurance coverage for loss or damage arising out of any licensed vehicles owned, leased or operated by the Supplier with a limit of liability not less than \$2,000,000 per occurrence.

(3) All insurance policies shall be placed with insurers licensed to do business in the jurisdiction of the Project site.

(4) Evidence of all insurance if requested is to be provided by the Seller and shall be delivered to the Buyer prior to commencement of the work and in any event as a precondition to any payment becoming due under this under this Purchase Order

8 RISK AND TITLE

The title in the Goods shall not pass from the Supplier to the Buyer and shall remain with the Supplier until the Buyer has accepted the Goods, or until the Buyer has paid for the Goods, whichever shall first occur.

The risk of loss for the Goods shall remain with the Supplier until the Buyer has accepted the Goods.

Where the Goods are destroyed or damaged prior to the transfer of title of the Goods, the Buyer shall be entitled to cancel this Purchase Order and where any payment for the Goods has been made by the Buyer, the Buyer shall be entitled to recover in full the monies paid by it.

9 INDEMNITY ARRANGEMENTS

The Supplier shall indemnify and hold harmless the Buyer, its agents, employees, affiliates, directors and officers from and against any and all claims, demands, losses, costs, damages, actions, suits or proceedings by third parties ("Third Party Liabilities") that arise out of or are attributable to the Supplier's provision of the Goods or performance of a Purchase Order, providing that such Third Party Liabilities are caused by acts or omissions of the Supplier or anyone else for whom the Supplier may be liable.

10 SUPPLIER'S WARRANTIES

- (1) The Supplier hereby guarantees, represents and warrants that:
 - a) The Goods will conform to all requirements of the Purchase Order including, but not limited to, the specifications, designs and drawings;
 - b) The Goods will be free from defects and be fit for the purpose for which they are intended;
 - c) The Goods will be manufactured and produced in accordance with best industry practice, and in accordance with all legal requirements, statutory regulatory or otherwise, that apply to the manufacture of goods similar to the Goods;
 - d) The Goods are free from all liens, claims and encumbrances and that the Supplier has clear legal title to all Goods and components included in the Goods, and
 - e) If included within the Special Conditions of this Purchase Order, the Supplier shall provide the required performance security at the required amounts at the Supplier's expense, in an acceptable form and content. Should the Supplier be in default in respect of any of its obligations hereunder, the Buyer shall be entitled to exercise any rights it has pursuant to the required performance security.
- (2) The Supplier's Warranty shall remain in force for twelve (12) months from the later of (a) the date when the Goods have been delivered and accepted by the Buyer, or (b) the date when the Goods have been incorporated into the work for which they are destined.
- (3) Upon the Buyer's notification of any breach of the Supplier's Warranty, the Supplier shall remedy this breach as required by the Buyer, at no additional cost to the Buyer. If the Supplier fails to remedy this breach within fourteen (14) days or any other period as agreed by the parties in writing, the Buyer may remedy the breach at the Supplier's cost. In addition, the Supplier shall reimburse the Buyer for all reasonable costs incurred by Buyer in connection with remedying the breach, including, but not limited to, any associated transport costs and any import costs if applicable.

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11 SUPPLIERS DEFAULT

All rights and remedies of the Buyer contained in this Purchase Order are cumulative and in addition to and without prejudice to the rights and remedies of the Buyer at law, in equity or by statute.

The Buyer may forthwith terminate this Purchase Order by serving a written notice to the Supplier in the event that:

- (i) The Supplier is in breach of a condition of this Purchase Order;
- (ii) The Supplier becomes insolvent, commits an act of bankruptcy, is declared bankrupt, goes into liquidation, winds up or makes an agreement with its creditors or has any form of diligence executed or execution levied against his Goods or assets or if a receiver or administrator is appointed in respect of any of its assets; or
- (iii) The Supplier abandons the Purchase Order or delays completion of the Purchase Order (in whole or in part).

In the event of a default under this Section 11, the Buyer will provide notice to the Supplier, and the Supplier may remedy the default (except for a default under Section 11(ii), which default is deemed to be incapable of being remedied) provided that such default must be remedied within 10 business days after notice of the default has been provided to Supplier, and in the event that it is not possible to remedy the default within 10 business days, the Supplier will be deemed to be in compliance with this Purchase Order provided the Buyer has approved the Supplier's plan to remedy the default, and the Supplier executes on this plan. In the event of the Supplier's un-remedied default under this Section 11, the Supplier will be liable to the Buyer, for all costs and losses that the Buyer suffers as a result of such default.

12 DOCUMENTATION

The Supplier shall provide the Buyer by the due date(s) in this Purchase Order, all drawing, certificates or other documentation in the specified format and quantities as detailed in this Purchase Order.

13 PACKING

The Supplier shall ensure that the Goods are properly packed, secured and labelled in accordance with accepted industry practice and to meet the Buyer's requirement as specified in this Purchase Order.

14 INTELLECTUAL PROPERTY RIGHTS

The Supplier agrees to indemnify, defend and hold harmless the Buyer, its servants and agents, successors, assigns, customers and users from and against all actions, suits, claims, demands and costs of whatsoever nature (including legal cost on a full indemnity basis) arising out of or in any way connected with any alleged or actual infringement of any patent, proprietary right, registered design, copyright or trademark in any way connected with the performance of obligation of the Supplier under this Purchase Order.

The Supplier shall supply with the Goods all data sheets, manual, handling and operating instructions required for the proper use, maintenance, repair, installation or operation of the Goods.

15 DELIVERY

The Supplier shall deliver or make the Goods available to the Buyer at the time and place specified in the Special Conditions to this Purchase Order. Unless stated to the contrary under these Special Conditions, delivery of all Goods shall be in accordance with the Delivery Duty Paid (DDP) Incoterm 2010 rule to the place of delivery. If at any time Supplier is unable to deliver the Goods as required, the Supplier shall immediately notify the Buyer, and in any event, not later than seven (7) days upon the Supplier become aware (or should have been aware) of the occurrence of the event causing the delay together with full details of the event causing the delay and actions to be taken to overcome or minimize delay and, where delay cannot be avoided, to inform the Buyer of the earliest revised delivery date.

The Supplier shall at its own costs take all such remedy actions as may be necessary to remedy such delay. The Supplier shall not be entitled to claim any additional costs unless the delay is due to a default of the Buyer. In the event that the revised delivery date is not acceptable to the Buyer, the Buyer shall have the right to terminate this Purchase Order and recover from the Supplier all losses and expenses sustained by the Buyer as a result of the delay. Time of delivery of the specified Goods if stated in the Purchase Order shall be of the essence.

16 INSPECTION AND RETURN

In the case of Goods delivered by the Supplier not conforming with the Purchase Order whether by reason of not being of the quality or the quantity stipulated or being unfit for the purpose for which they are required, the Buyer shall have the right to reject such Goods within a reasonable time of their delivery and to purchase elsewhere and to claim for any additional expenses incurred, all without prejudice to any other right which the Buyer may have against the Supplier. The making of any prior payments by the Buyer shall not prejudice the Buyer's right of rejection. Title and risk in the Goods or any parts thereof which does not comply with the requirements of this Purchase Order, or which are rejected by the Buyer shall immediately re-vest in the Supplier. If the Supplier shall deliver the wrong quantity of specified Goods the Buyer may without prejudice to its other rights accept or reject in part or whole the number or quantity of Goods so delivered and where Goods are to be returned to the Supplier they shall be packaged and returned at the Supplier's expense

17 ACCEPTANCE OF GOODS

Acceptance of Goods by the Buyer is subject to inspection and testing after delivery (or at the Buyer's discretion, before delivery) and if the Goods are to be installed or incorporated into plant or premises subject to inspection and testing following such installation or incorporation. Signature by or on behalf of the Buyer shall not be or be construed as acceptance by the Buyer of the Goods but only the number of packages or items of the Goods delivered by the Supplier. Such acceptance shall be without prejudice to the Supplier's liability for any defect in or damage to the Goods or any breach of this Purchase Order.

In every case inspection and testing must be carried out to the satisfaction of the Buyer. If in the opinion of the Buyer the Goods do not comply in any respect however minor with the Purchase Order the Buyer may in its discretion either:

- a) Reject and return the Goods at the Supplier's expense, such expense to be deducted from any monies owing by the Buyer to the Supplier or recovered from the Supplier as a debt due and owing; or
- b) Convert the Goods into a condition acceptable to the Buyer, the cost of such conversion to be deducted from any monies owing by the Buyer to the Supplier or recovered from the Supplier as a debt due and owing.

18 HEALTH, SAFETY & ENVIRONMENT (HSE)

By attending at the Project site for any reason, the Supplier shall comply with the Buyer's health, safety, and environment management system ("HSEMS") and Project Specific Site Safety Plan ("PSSP"). The Supplier is required to have current management systems, plans, policies, or guidelines that permit it to comply with the HSEMS and PSSP.

Any items arriving on site without the required Material Safety Data Sheet (MSDS)/Safety Data Sheets (SDS) will be returned at no charge to the Buyer.

All Supplier personnel attending at the site must report to the site office for visitor orientation, and to be escorted on the site if necessary.

Supplier personnel failing to meet these requirements will be removed from site by the Buyer until the Supplier can comply with these requirements, and such removal will be without prejudice to any of the Buyer's rights under this Agreement, including but not limited to the rights identified in Section 11.

19 HAZARDOUS MATERIALS

The Supplier shall ensure that the Goods shall comply with the requirements of law and, to the extent that they contain toxic, corrosive or hazardous materials, the Supplier shall ensure the relevant Transportation of Dangerous Goods (TDG) Placards are used and Material Safety Data Sheet (MSDS)/ Safety Data Sheets (SDS) are provided with material, together with appropriate care and handling instructions. Goods supplied under this Purchase Order, which are contaminated beyond use at the time of delivery, shall be properly recycled or disposed of by the Supplier

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20 SPARES

This Purchase Order is placed in full reliance on the Supplier's representation and warranty (and Supplier hereby makes such representation and warranty) that it intends to continue to supply the Goods and any component parts necessary to use the Goods for their intended purpose, and that the Supplier will give sufficient notice to the Buyer of its intention to cease supply of Goods, component parts or replacements, to enable the Buyer to purchase such Goods, component parts or replacements from alternative sources.

21 ACCESS

Where required by the Buyer, the Supplier will allow the Buyer to expedite, inspect and test the Goods during manufacture upon providing reasonable prior notice. Any expediting, inspection, testing or failure to do so shall in no way relieve the Supplier of its obligations as specified in this Purchase Order.

22 RATES AND PRICES

Unless otherwise expressly specified in the Purchase Order, all prices stated therein shall be deemed to be:

- a) Fixed and firm and shall not be subject to escalation and payable in the currency denoted in the Purchase Order,
- b) Fully inclusive sole compensation inclusive of all taxes (except VAT), duties, packing/protection, delivery including offloading to the specified delivery point, and other charges of any kind.

23 PAYMENT

Subject to the satisfactory delivery and operation of the Goods and any other requirements in accordance with the Purchase Order, the Buyer shall pay the Supplier 45 days (Canada) or Net 30 days (US) following date of an acceptable invoice unless otherwise specified. All invoices must be accompanied with a copy of the delivery acknowledgement bearing the name and signature of the Buyer, Purchase Order reference number, details of the Goods, and the delivery location in order to be valid.

The Buyers name on the invoice MUST match the Buyers name on the Purchase Order in order to process payment.

Invoices received on site will not be accepted. Invoices must be submitted electronically in accordance with the Buyers Invoice Submission Standards to apinvoices@graham.ca.

Invoices must include the Purchase Order number, invoice amounts must match Purchase Order amount. Non-compliant/rejected invoices will be returned without payment. Invoicing cannot exceed the Purchase Order amount; if invoicing approaches the Purchase Order amount the Supplier must contact Buyer for a new or revised Purchase Order.

24 SET OFF

The Buyer is entitled to set-off against payments owing to the Supplier where the Buyer has made, in good faith, a determination that the Supplier is in default of its obligations under the Purchase Order, and such default has caused, or is reasonably likely to cause, the Buyer, the Owner or another party working on the Project, damages because of such default. In such cases, the Buyer will set-off the amount as is reasonably necessary to maintain itself in a "no-better/no-worse" position, as if there had otherwise been no such default by the Supplier.

25 TERMINATION FOR CONVENIENCE

The Buyer may at any time give written notice to the Supplier to terminate this Purchase Order forthwith and in such event the Buyer shall pay and the Supplier shall accept in settlement of all claims under this Purchase Order, such sum as shall reasonably compensate it for all work done and obligations assumed by it in performance of this Purchase Order prior to its termination and for all work reasonably done by the Supplier in giving effect to such termination.

The value of any material, payment for which has been arranged by the Buyer but left with, and can be put to use by, the Supplier shall be taken into account in calculating such losses but such sum shall in no event exceed the price in the Purchase Order unless otherwise agreed in writing.

26 VARIATIONS

The Buyer shall at its own discretion through a written variation order, be entitled to issue and to make any alteration, increase or decrease in the form, specification, quality or quantity of any part of the scope of supply, which in its opinion may be desirable. No alteration shall in any way vitiate or invalidate the Purchase Order. Variation to the Purchase Order agreed by both parties shall be in writing and the only valid manner of varying the Purchase Order price.

Variations to the Purchase order shall be valued in accordance with the following principles:

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- a) Where supply is of a similar character and executed under similar conditions to supply priced in the Purchase Order, it shall be valued at such rates and prices contained therein as may be applicable.
- b) Where supply is not of a similar character or is not executed under similar conditions, then the rates for additional supply contained in the Purchase Order shall be used as the basis for valuation, so far as may be reasonable, failing which a valuation based on prevailing market conditions shall be made.

Except with the written approval of Buyer, the Supplier shall not delay the commencement or execution of any supply, which is, or is alleged to be, an amendment to the Purchase Order pending agreement on its value or its effect on the scheduled completion date. Failure to comply with this provision shall constitute a default of the Supplier.

27 OFFERING GRATUITIES

If the Supplier or any of its agents or employees shall be found to have offered or given any advantage, gratuity, bonus, bribe or loan of any sort to any agent or employee of the Buyer or to any of their respective staff members, the Buyer shall be at liberty forthwith to cancel the Purchase Order, and to hold the Supplier liable for any loss or damage which the Buyer may thereby sustain.

28 ASSIGNMENT

Neither party may assign the Purchase order or any part without the prior written consent of the other party which may be granted or refused at the party's sole option and discretion. The refusing party shall not be obliged to provide reasons in respect of any refusal.