

Terms and Conditions

Unless otherwise specified on this Purchase Order, the following Terms and conditions shall govern the performance of this Purchase Order.

- The acceptance by the Seller of this Purchase Order constitutes unqualified acceptance by the Seller of all instructions, terms and conditions herein and no contrary or additional terms or conditions shall apply. In accepting this Purchase Order as herein described, the Seller undertakes and agrees to perform all Services or provide all Equipment as set out in this Purchase Order in strict compliance with this Purchase Order.
 - The terms of this Purchase Order and attachments as written by the Buyer and all documents, drawings and specifications referred to herein or therein, constitute the entire agreement between the Buyer and the Seller and are not valid unless signed by a duly authorized representative of the Buyer. No amendment or substitution shall be binding unless in writing, signed by a duly authorized representative of the Buyer and expressly made part of this Purchase Order. If this Purchase Order is given under any existing contract between the Seller and the Buyer, it is also subject to the terms of that contract, which shall prevail in case of any conflict herewith.
 - Price stated includes all taxes imposed by law at point of destination unless otherwise expressly stated in this Purchase Order. The Seller shall invoice the Buyer after each shipment of Equipment and each invoice shall include this Purchase Order number and shall identify separately on invoices all amounts for provincial sales taxes, harmonized sales taxes, federal goods and service taxes, VAT, or other similar taxes which are otherwise reflected in the price. Any additional costs for which the Buyer is responsible must be accompanied by supporting documentation. On shipments originating outside Canada, include one copy of Canada Customs invoice with shipment, and air mail six copies to the Buyer unless otherwise specified.
 - The currency will be in Canadian dollars unless otherwise specified.
 - Net 30 days will be computed from date of receipt of performance of Services or Equipment or from date of invoice receipt, whichever is later.
 - The Seller agrees to provide the Buyer within fourteen (14) days of the signing of this Purchase Order engineering drawings, of the Equipment ("Drawings") completed to the satisfaction of the Buyer. The Buyer will provide notice to the Seller of its approval of the Drawings within fourteen (14) days of receipt of said Drawings.
 - The Equipment must be shipped at the Seller's own risk and expense, prepaid and packed in a manner so as to preclude damage and in accordance with the Buyer's instructions and good commercial practice. Ship by most economical route. Freight charges to be shown as a separate item on the invoices with copies of third party invoices attached. No charges will be allowed for packing and crating unless covered as a separate item in this Purchase Order. No markup will be allowed on freight charges. The Seller will deliver goods to the DDP point designated in this Purchase Order with a delivery slip showing this Purchase Order number.
 - The Buyer shall not be liable for any quantity of Equipment in excess of the quantities specified in the Purchase Order, and any such excess quantity delivered may be returned by the Buyer to the Seller at the Seller's risk and expense.
 - In the case of Services, the Seller hereby warrants for a period of twelve (12) months, that the Services shall be performed in a professional manner in accordance with the best practices of the discipline governing such Services and shall be in accordance with all applicable laws, regulations, orders, by-laws, and codes. In the event that the Services do not comply with this provision or performance specifications, Seller shall correct all deficiencies using its best efforts, within thirty (30) days of notification by the Buyer of the deficiency.
 - In the case of Equipment, the Seller hereby warrants, for period agreed upon or if no agreement for a period of eighteen (18) calendar months from date of actual delivery or twelve (12) months from the performance testing of the Equipment, whichever is earlier:
 - the Equipment is fit for the purpose made known to the Seller by the Buyer or as per specifications provided by the Buyer and the Equipment is of merchantable quality; and
 - all Equipment conforms to samples or descriptions given or specifications provided, as the case may be, is free from defective workmanship or design and conforms to all applicable laws, by-laws, codes and regulations in effect on date of delivery.
- In the event that the Equipment does not comply with this provision or performance specifications, Seller shall, at its sole cost and expense, make all necessary repairs using its best efforts, within thirty (30) days of notification by the Buyer of the deficiency.
- Any repair, replacement or re-performance pursuant to the foregoing warranties shall renew and extend the warranties provided the aggregate warranty period shall not extend longer than 24 months from the date of original delivery or performance. The foregoing warranties shall be void as to any deficiency or defect resulting from the Equipment being improperly installed (provided that the Seller is not the Party responsible for installing the Equipment) or cared for, operated under abnormal conditions or contrary to specifications or instructions of Seller, normal wear and tear, modifications or alterations made by Buyer or a third party without Seller's consent.
- THE EXPRESS WARRANTIES SET FORTH IN THESE ARTICLES ARE EXCLUSIVE AND NO OTHER WARRANTIES OF ANY KIND, WHETHER STATUTORY, ORAL, WRITTEN, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY. THE BUYER'S EXCLUSIVE REMEDIES AND THE SELLER'S ONLY OBLIGATIONS ARISING OUT OF OR IN CONNECTION WITH SERVICES OR EQUIPMENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE THOSE STATED HEREIN.
- The Seller shall assign to the Buyer, or enforce for the Buyer's benefit, any warranties obtained from manufacturers which shall not be less than the warranty set out in this Purchase Order.
 - The Seller is responsible for safekeeping and protecting all materials and work in progress until final acceptance by the Buyer.
 - Title to Equipment or work resulting from the performance of the Services under this Purchase Order shall pass to the Buyer upon full payment of the purchase price, free and clear of all encumbrances. Acceptance of the Services shall be by the Buyer's authorized representatives, but acceptance of Equipment shall be subject to examination of Equipment within a reasonable time after receipt by the Buyer's authorized representatives at the Buyer's project site ("Jobsite"), regardless of any receipt executed prior to such examination. Rejected Equipment or Services shall, at the Seller's option and sole cost and expense, be either replaced or repaired or re-performed or performed by a third party or the Seller. Equipment sold hereunder shall be at the Buyer's risk upon acceptance.
 - Seller shall treat as confidential and Seller shall not reproduce, copy or publish or permit the reproduction, copying or publication of any of the drawings, prints, specifications or technical or other information or any part of them furnished by Buyer and will take all reasonable precautions to prevent any such occurrence. Such information will be returned to the Buyer upon completion of the Seller's obligations under this Purchase Order or upon demand, along with all copies the Seller has made and all other documents in which such information has been incorporated.
 - All patented products, designs, drawings, data, engineering instructions, models, specifications, trade secrets, manufacturing processes, technical information and other intellectual property relating to the good(s), whether written or oral supplied by or on behalf of the Buyer specifically in the performance of this Purchase Order shall be and remain the exclusive property of the Buyer. The Seller shall not use the Intellectual Property in any way other than for the manufacture or supply of this Purchase Order. The Seller shall use reasonable efforts to maintain confidential information and not to disclose to any third party any Intellectual Property, or any other information from the Buyer clearly designated as "confidential".
 - The parties agree that restrictions on use and disclosure of Confidential Information provided by either party will not apply to information which (a) was known to the recipient before receipt hereof from the disclosing party; or (b) becomes generally available to the public other than through the recipient's disclosure; or (c) is disclosed pursuant to the requirements of a governmental authority or judicial order.
 - The Seller and Buyer agree that any credits, grants, and government incentives, including credits from the Scientific Research and Experimental Development (SR&ED) Tax Incentive Program, specifically related to the work described and paid for under this Purchase Order or any predecessor contract are the sole property of the Buyer.
 - Any information or knowledge, which Buyer may have disclosed or may hereafter disclose to Seller in connection with this Purchase Order and any all services to be rendered and/or work to be performed pursuant to this Purchase Order is and shall be deemed confidential and proprietary information of Buyer. Seller shall not, without authorization in writing from Buyer, use, communicate or disclose the confidential proprietary information of Buyer. Seller agrees to safeguard the confidential and proprietary information of Buyer by using reasonable efforts, consistent with those used in the protection of its own proprietary information of a similar nature, to prevent its disclosure to third parties. Seller agrees to cause its employees, contractors, officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use of disclosure of such confidential and proprietary information. Seller further agrees not to assert any claims (other than a claim for patent infringement) with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the Products.
 - All documents containing proprietary information relating to the Products or acquired by Seller under a Purchase Order will belong to Buyer. All drawings, know-how and confidential information supplied to Seller by Buyer and all rights therein will remain the property of Buyer and will be kept confidential by Seller.
 - The Seller hereby warrants that the use of the Equipment shall not infringe the intellectual property rights of any third party. The plans and specifications prepared by the Seller under the Purchase Order shall become the property of the Buyer upon full payment of all monies owed to the Seller. In case said Equipment or any part is held by a court of competent jurisdiction to constitute infringement and the use of the Equipment or part is enjoined, the Seller shall, at its own expense, either procure for the Buyer the right to continue using the Equipment or part; or replace with non-infringing Equipment; or modify it so that it becomes non-infringing; or remove the Equipment and refund the purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of the Seller for patent infringement by the Equipment or any part thereof.
 - If this Purchase Order involves or results in: (i) any invention or any experimental, development or research activities including engineering related thereto; (ii) any reduction to practice of any subject matter, application or discovery which could be patented or copyright; or (iii) any improvement in the design of the Products or any alternative or improved method of accomplishing the objectives of this Purchase Order (collective, "Inventions"), such Inventions shall be owned by Buyer and be deemed confidential and proprietary property of Buyer, whether such Inventions or any portions thereof can be copyrighted or patented or not, and Seller shall cooperate (and cause its employees to cooperate) in executing any documents and lacking any other actions necessary or convenient to patent, copyright, or otherwise perfect or protect such Inventions for the benefit of Buyer.
 - The Buyer shall upon reasonable prior notice have access to the sites at which the Seller is performing the Services or manufacturing the Equipment. The Seller shall provide proper facilities for access to and inspection of the Equipment. If payment for the Services or Equipment is based upon reimbursement of expenditures, the Seller shall retain all books, payroll, and other records relating to this Purchase Order for a period of two years after the close of the calendar year to which the records relate. The Buyer shall have access to and the right to audit these records at any reasonable time or times to verify any and all charges made by the Seller.
 - The Buyer reserves the right to cause the Seller to remove any of its employees or agents from the Buyer's Jobsite for reasonable cause. The Seller shall continue to be liable to perform this Purchase Order, notwithstanding the removal of such personnel from the Buyer's Jobsite.
 - At all times, in the performance of this Purchase Order, the Seller shall abide by all valid laws and regulations prescribed by any government or body having jurisdiction over the Services or Equipment, and further agrees to abide by the Buyer's security policy, safety rules and regulations and all applicable provincial or state and federal safety codes, and, without limitation, the Seller agrees to abide by the equivalent Occupational Health and Safety Act and Workplace Safety and Insurance Act of the jurisdiction where the Services or Equipment is to be performed or supplied. The Seller shall be entitled to a change order made necessary by any change in applicable law subsequent to this Purchase Order which results in increased costs to be borne by the Seller.
 - To the extent of its negligence, the Seller shall be responsible for and shall save harmless and indemnify the Buyer from and against all loss, costs, damages, suits, claims and demands of every nature whatsoever arising out of or by reason of the negligent acts, errors or omissions of the Seller in the performance or purported performance of this Purchase Order by the Seller, including without limitation, those made or sustained in respect of intellectual property, copyright, trademark or letters patent.
 - The Seller shall carry (i) all insurance as may be required by applicable law and (ii) such other insurance acceptable to the Buyer, naming the Buyer as an additional insured on all liability policies, and shall, when requested, provide certificates of insurance to Buyer. Such insurance shall include, without limitation, comprehensive liability insurance with minimum limits of \$1,000,000 each occurrence, transit insurance in an amount equal to the full replacement cost of any Equipment being shipped, and, if applicable, professional liability insurance in the amount of \$1,000,000 each occurrence.
 - In the event of any dispute arising from this Purchase Order, the parties shall use their reasonable efforts to resolve such dispute within thirty (30) days of one party notifying the other of said dispute. After such thirty (30) day period, all disputes shall be submitted to arbitration pursuant to the Arbitration Act of the Province or State of the Jobsite. Such arbitration shall take place in the nearest major city of that Province or State. Any and all determinations resulting from the arbitration process shall be binding on the parties to this Purchaser Order.
 - Time is of the essence in this Purchase Order. The Buyer reserves the right to cancel this Purchase Order if delivery is not made by specified date.
 - The Buyer reserves the right to cancel all or any part of this Purchase Order in the event that Seller commits any material default under this Purchase Order and fails to undertake to remedy same within fifteen (15) days or such period as agreed to by the Buyer, without further liability.
 - The Buyer further reserves the right to cancel all or any part of this Purchase Order prior to supply of Services or shipment of Equipment, in which case the Buyer shall be liable for the cost and expenses incurred by the Seller prior to receipt of such notice of cancellation. In the event of cancellation, no payment shall be made for any Equipment that is part of the Seller's standard stock.
 - Upon termination of this Purchase Order for any reason whatsoever, the Seller shall, and shall require its employees and agents to, leave with the Buyer all notes, documents, books, records, drawings, diagrams, charts, code, including source code, software, manuals, and similar writings made by the Seller in connection with the performance of this Purchase Order.
 - While this Purchase Order is current, if the Buyer is unable to accept the performance of Services or delivery of Equipment because of any cause whatsoever beyond the Buyer's control, then performance of this Purchase Order shall be partially or wholly suspended during the continuance of such causes, and the time for performance shall be correspondingly extended. The Seller shall be excused from performance of Services or delivery of Equipment for reason of causes beyond the Seller's reasonable control, but only for the duration of such cause. In such event the Buyer, but not the Seller, may cancel this Purchase Order. Lack of funds shall not be considered a cause beyond the control of either party.
 - No previous waiver or course of dealing shall affect either party's rights to strict performance of other or future obligations.
 - This Purchase Order and any payments due hereunder are not assignable by the Seller without the Buyer's prior written consent.
 - This Purchase Order shall be governed by the laws of, and the parties irrevocably attorn to the jurisdiction of the courts of the Province or State of destination specified by this Purchase Order, and the laws of Canada or the United States, as the case may be, applicable therein, and shall be treated in all respects as a contract in that Province or State without reference to conflict of laws.
 - This Purchase Order shall inure to the benefit of, and be binding on, the Seller and the Buyer and their respective heirs, executors, administrators, successors and permitted assigns.
 - Any notice, instruction or document required or permitted to be given or served by this Purchase Order or by law may be given by fax, registered mail or courier to the intended recipient as set out in this Purchase Order. Any notice shall be deemed to have been received by the intended recipient the same day if personally served, the next business day if sent by courier or fax, and on the fifth business day next following where sent by registered mail.
 - The parties liability with respect to any claims arising out of this Purchase Order shall be absolutely limited to direct damages arising out of the Services or Equipment provided and the parties shall bear no liability whatsoever for any consequential loss, injury or damage incurred by the parties, including but not limited to, claims for loss of use, loss of profits and loss of markets.