

PURCHASE ORDER TERMS - MATERIALS

1. DEFINITIONS

In addition to terms referenced in the Purchase Order cover sheets, the following capitalized words and phrases have the meanings noted below:

- 1.1 **"Affiliate"** will have the meaning provided in the Business Corporations Act (Alberta).
- 1.2 **"Business Day"** means any day, except Saturday, Sunday or a statutory holiday observed in Alberta.
- 1.3 **"Change Order"** means a written order authorizing a change in, addition to or deletion from the Materials, issued by Company in accordance with GC 6.2.
- 1.4 **"Claim"** means any one or more of the following, whether first party or third party: claims; demands; losses; costs; liabilities; damages; liens; encumbrances; actions; suits or proceedings; together with interest, fines, penalties and legal costs on a solicitor-and-own-client basis, all as applicable.
- 1.5 **"Company"** is the entity issuing this Order, as identified in the header of the Order cover sheet.
- 1.6 **"Company Group"** means Company, its Affiliates and agents and all their respective Personnel.
- 1.7 **"Confidential Information"** means all information, in any format, related to the supply of Materials or the nature of Company Group's business, affairs or trade secrets, which Supplier directly or indirectly receives or acquires from Company Group (or other suppliers providing goods, materials or services to Company), including information in the Order.
- 1.8 **"Consequential Losses"** means any one or more of: loss of profits (actual or anticipated), loss of business opportunity, loss of revenue (actual or anticipated) and loss of reputation.
- 1.9 **"Contract Price"** means the total amount payable by Company to Supplier under the Order for timely and proper supply of the Materials, as accepted by Company in accordance with the Order, as may be adjusted by Change Orders.
- 1.10 **"Defect"** means any part of the supplied Materials which is not in accordance with the Order.
- 1.11 **"Delivery"** means delivery of the Materials in the quantities and quality, at the time and place, and otherwise to Company's specifications and requirements, all in accordance with the Order.
- 1.12 **"Dispute"** means any disagreement or difference arising between the Parties under, or in respect of any matter arising from, the Order.
- 1.13 **"Event of Force Majeure"** means the occurrence of a circumstance beyond a Party's reasonable control or expectation and without its fault or negligence (including civil commotions, elements of nature, fires, floods, acts of God and war).
- 1.14 **"Governmental Authority"** means any international, federal, provincial or municipal government or other administrative, regulatory or legislative authority, commission, tribunal or court, or any of the respective agencies or departments of them, having jurisdiction over any aspect of the Materials, the Order or any matters related to them.
- 1.15 **"Law"** means common law, law of equity and all international, federal or provincial decrees, statutes or municipal by-laws, and all regulations, rules, orders, directives, codes, permits and licences under any of them, which apply to or otherwise affect any of: the Materials; the Order; Company; or Supplier.

- 1.16 **“Materials”** means materials, goods, supplies, machinery, equipment and fixtures supplied under the Order, title to which is intended to transfer to Company, including documents, software, intellectual property or other items (tangible or intangible) procured or provided by Supplier Group to fulfil the requirements of the Order.
- 1.17 **“Negotiator”** means a specified individual who has no direct operational responsibility for the subject matter of a Dispute, but holds full authority to settle the Dispute on behalf of their Party.
- 1.18 **“Notice”** means a formal written communication, issued from one Party to the other Party’s address specified in the header or Supplier section of the Order cover sheet, respectively, in respect of a matter which needs to be formally recorded as affecting the Order.
- 1.19 **“Order”** means, collectively, these Purchase Order documents, issued by Company to Supplier to authorize supply of Materials, once executed by authorized representatives of both Parties or deemed accepted, as may subsequently be amended by any Change Orders.
- 1.20 **“Party”** means Company or Supplier, and **“Parties”** means both Company and Supplier.
- 1.21 **“Person”** means any individual (including the individual’s heirs, executors, administrators or other legal representatives), partnership (including a limited partnership or limited liability partnership), corporation (including an unlimited liability company), trust, joint venture, unincorporated organization, Governmental Authority or any other legal entity and, as applicable, includes their respective Personnel.
- 1.22 **“Personnel”** means, in relation to any Person, that Person’s directors, officers, employees, contract personnel and representatives, all as applicable.
- 1.23 **“Supplier”** is the entity responsible for supply of Materials under this Order, as identified on the Purchase Order cover sheet.
- 1.24 **“Supplier Group”** means Supplier, its Affiliates, suppliers of any tier, agents and all their respective Personnel.
- 1.25 **“Warranty Period”** means the period during which Supplier is subject to performance of its warranty obligations under the Order, which will be the longest of: 24 months after the final Delivery date of the Materials; 18 months after the first day on which the Materials are put into service under normal operating conditions; or any longer period as may be available as a standard manufacturer warranty for Materials.

2. INTERPRETATION

- 2.1 If the Order requires an action to be performed or an obligation to be undertaken, the action or obligation shall be performed in a prompt and reasonable manner, unless otherwise specified.
- 2.2 Unless it is stated, or the context requires, otherwise:
- a) words importing the singular include the plural and vice-versa and words importing gender include the masculine, feminine and neuter genders;
 - b) use of reference numbers in the Order refers to the part of the Order in which the reference is contained, and includes all further sub-tiers of the referenced section, as applicable;
 - c) for documents revised and issued by either Party in accordance with the Order, the most recent revision issued will govern; drawings of larger scale govern over those of smaller scale of the same date; and figured dimensions on drawings govern, even if they differ from scaled dimensions;

- d) all dimensions are expressed in metric units, except where imperial units of measurement are in common use. Except as stated in the previous sentence, if an imperial unit is used and conversion to metric gives a result which differs from standard metric dimensions in common usage, the standard metric dimension will apply; and
- e) all monetary amounts referred to in the Order are expressed and payable in Canadian dollars.

2.3 The word “including” is not to be construed as limiting a general term or statement to the specific items or matters stated, or to similar items or matters, but rather as referring to all items or matters that could reasonably fall within the broadest possible scope of the term or statement.

2.4 Where words and abbreviations used in the Order have customary technical or trade meanings, they will be interpreted in accordance with those technical or trade meanings.

3. NOTICES

3.1 All Notices shall be: delivered personally; delivered by registered mail or commercial courier; sent by fax; or sent by email transmission to the applicable counterparty address stated in the Order, with a copy emailed to “legaldept@brionenergy.com”.

3.2 A Notice will be deemed to have been given on the date on which it was delivered or transmitted, if delivered or transmitted on a Business Day during the regular business hours of the recipient. If a Notice is delivered or transmitted on a day that is not a Business Day or outside the regular business hours of the recipient, the Notice shall be deemed to have been delivered or transmitted on the following Business Day.

3.3 A Party may change any Notices information in the Order at any time by giving Notice of the change to the other Party. The change in information will be effective five Business Days after receipt of the Notice by the recipient, or any subsequent date stated in the Notice.

4. GENERAL PROVISIONS

4.1 The Order constitutes the entire agreement between the Parties with respect to, and supersedes all prior written or oral negotiations, representations or agreements relating to, the Materials. No terms or conditions which add to, vary from or conflict with any part of the Order (whether in written, oral or electronic form) will be or become part of the Order, unless specifically incorporated by Change Order. Except as required for close out activities, the Order is intended to expire on final Delivery.

4.2 The Order may be amended only by written agreement of the Parties, signed by authorized representatives of both Parties, and will enure to the benefit of, and be binding on, the Parties, their respective successors and permitted assigns.

4.3 A waiver of any right, power or privilege by a Party shall be in writing and signed by an authorized representative of that Party. The waiver will only be effective to the extent detailed and will not limit or affect that Party’s rights with respect to any subsequent or other failure, delay or breach.

4.4 Supplier shall neither assign nor novate the Order without prior written approval of Company. Company may assign and novate the Order, including all rights and obligations, at any time, by Notice to Supplier.

4.5 Notwithstanding termination or expiry of the Order, any terms, covenants, provisions or conditions which expressly or by their nature survive that termination or expiry will continue in full force and effect after, and will not be merged with, the termination or expiry until those terms, covenants, provisions and conditions are satisfied or by their nature expire.

- 4.6 If requested by a Party, the other Party shall execute and deliver, make or cause to be made, any further acts, deeds, assurances and items as may be required or necessary to implement and carry out the terms of the Order.
- 4.7 Time is of the essence in respect of supply of all Materials and obligations under the Order. If a Party fails to meet its obligations in a timely manner, the other Party may raise a Dispute.
- 4.8 All written and verbal communications between Company and Supplier, and all documents submitted to Company by Supplier Group, shall be in the English language.
- 4.9 Subject to GC 20.1, if there is a conflict or inconsistency between the provisions of the Order, the order of precedence, from highest to lowest, will be:
 - a) Change Orders;
 - b) Purchase Order cover sheets, except as stated otherwise in the Purchase Order Terms - Materials;
 - c) the Purchase Order Terms - Materials, which are denoted as "GC" when referenced in the Order; and
 - d) all other Attachments, in order of appearance in the Order.

5. REPRESENTATIONS OF SUPPLIER

Supplier represents and warrants to Company that:

- a) it has the experience, resources, capacity and ability to supply the Materials, using industry-approved techniques and sound practices and in accordance with the Order, applicable Company policies, standards and other requirements (which can be found at <http://www.brionenergy.com/suppliers>) and the Law;
- b) it shall comply with all obligations assumed in, and perform all measures necessary to maintain an approved status under, Company's online prequalification program, hosted by ISNetworkd;
- c) it is duly incorporated or registered, as the case may be, and validly existing under the laws of the jurisdiction(s) of its incorporation or registration and has all required permits, certifications, registrations, licences and authorizations necessary to carry on its business and to supply the Materials; and
- d) the Materials supplied directly or indirectly by Supplier Group shall be free from Defects, fit for purpose and of merchantable quality.

6. SUPPLY OF MATERIALS

- 6.1 Unless otherwise approved by Change Order, Supplier is not permitted to deviate from requirements in the Order. If Supplier supplies materials, or performs services or work, which do not form part of the specified supply of Materials, that supply or performance will be at Supplier's sole risk and expense.
- 6.2 At any time, Company may make a change in, addition to or deletion from the Materials or Delivery by providing Notice to Supplier. No more than five Business Days after receipt of this Notice, Supplier shall either: agree in writing to the changes in the Notice; or return Notice to Company that changes proposed in the Notice are not acceptable. Once the subject matter is agreed between the Parties, Company shall issue a Change Order recording the change.

- 6.3 The duties, liabilities and obligations of Supplier in respect of the Materials will not be deemed waived, released or relieved by payment for, or inspection, review or approval of, any part of the Materials by Company or its representatives.
- 6.4 Supplier shall be fully responsible for the Materials, regardless of which member of Supplier Group is responsible for supply of the Materials, and for the acts or omissions of all members of Supplier Group to the same extent as Supplier is for its own acts or omissions. Supplier shall ensure that all subcontract agreements include provisions that are materially similar to those in the Order.
- 6.5 Supplier shall co-operate fully with Company and all other parties who Supplier or Company may be involved with during supply of the Materials, acting in a manner which causes minimum inconvenience and no injury or damage to others.

7. SHIPPING, DELIVERY AND RETURN OF MATERIALS

- 7.1 All shipments must be packed or crated to protect the Materials from damage during transit, and in accordance with any other requirements in the Order or by Law. Export symbols, serial numbers, weights, measurements and other identification shall be clearly marked on each shipment, and all documentation related to the Materials shall be delivered to Company, prior to release for shipment.
- 7.2 A packing list shall accompany all shipments, indicating the Order number and fully describing all enclosed Materials, including all applicable MSDS information. On shipments not accompanied by an itemized packing list, Company's count of the Materials received shall be final and conclusive.
- 7.3 Every signed original bill of lading or express receipt shall be retained by Supplier and supplied to Company upon request.
- 7.4 Unless otherwise stated in the Order, Delivery of the Materials shall be to Company at the location and times specified in the Order.
- 7.5 If any Materials are delivered in error or are rejected for Defects on Delivery, Company may return those Materials at Supplier's expense and risk. Company shall provide advance written notice to Supplier of any Materials to be returned under this GC 7.5.

8. WARRANTY

- 8.1 Supplier warrants the Materials, including all workmanship and materials comprising part of the Materials, supplied directly or indirectly by Supplier Group shall be free from Defects. Company shall not be liable for any costs related to Materials that have Defects until those Materials are corrected or replaced, or for the costs of correcting or replacing those Materials.
- 8.2 Company shall have access to the Materials at all reasonable times and may arrange for inspection of the Materials on 24 hours' notice to Supplier. Additionally, Supplier shall continuously monitor and inspect the Materials for Defects prior to Delivery.
- 8.3 If a Defect is found at any point prior to expiry of the Warranty Period and Company provides Notice to Supplier of the Defect no more than 30 days after expiry of the Warranty Period, Supplier shall remedy the Defect and repair or replace anything damaged as a result, or by remedy, of the Defect, at its own risk and expense, without delay and in a manner satisfactory to Company. Supplier further warrants any remedial work performed on the Materials for a period equal to the Warranty Period, beginning on the day after completion of the remedial work.

- 8.4 If Supplier fails to remedy, or commence remedy of, a Defect within seven days after Company provides Notice of the Defect to Supplier, or otherwise at Company's option, Company may remedy any Defect and Supplier shall be liable for all reasonable costs and expenses incurred by Company in doing so. Company may invoice Supplier for those amounts or retain, set-off and deduct those amounts from payments or other monies due, or which may become due, to Supplier.
- 8.5 Supplier shall perform its warranty obligations in a manner that minimises disruption to Company's operations and coordinate with Company to determine a suitable time to perform warranty work.

9. OWNERSHIP OF, & TITLE TO, THE MATERIALS

- 9.1 Irrespective of any Incoterm or other requirement in regard to Delivery which may be specified in the Order, title to Materials passes to Company on the earlier of: payment for the item by Company; or Delivery. Supplier warrants that title to all Materials (whether completed or in the course of manufacture) shall be free of all Claims. Transfer of title to the Materials will not prejudice Company's right to refuse the Materials for any Defect subsequently discovered. Supplier shall have full care, custody and control and risk of loss of the Materials until transfer of title to Company, unless stipulated otherwise in the Incoterm applicable to Delivery.
- 9.2 All rights in respect of pre-existing or independently created intellectual property will remain vested in the Party providing that intellectual property in connection with the Order.
- 9.3 Supplier grants Company an irrevocable, royalty-free, worldwide, non-exclusive license to use pre-existing intellectual property provided under the Order for, or in connection with, the Materials. All proprietary rights to intellectual property created in supply of the Materials will become the property of Company.
- 9.4 Supplier shall be liable for, and shall release and indemnify each member of Company Group from and against any Claims arising out of, or resulting from, the actual or alleged infringement or misappropriation of any intellectual property rights in respect of the Materials. At its own expense, Supplier may: provide substitute, non-infringing Materials; modify the Materials so they become non-infringing; or obtain necessary licenses to use the infringing Materials, but only if those substituted and modified Materials meet all the requirements of the Order.

10. CONFIDENTIALITY & PUBLICITY

- 10.1 Supplier Group shall keep all Confidential Information in confidence and shall not: disclose it to others without the prior written consent of Company; or use Confidential Information, except to the extent required for supply of the Materials.
- 10.2 GC 10 will survive expiry or earlier termination of the Order for a period of three years.
- 10.3 No member of Supplier Group is permitted to use the name, or registered or unregistered trademarks, of Company or its Affiliates in any slogans, advertising, promotional materials or information or publicity releases, without prior written consent of Company's corporate communications department.

11. FORCE MAJEURE

- 11.1 Neither Party will be liable for losses, delays, failures, errors or interruptions occurring, directly or indirectly, by reason of an Event of Force Majeure.

- 11.2 The following circumstances are not considered to give rise to an Event of Force Majeure: the financial incapability or insufficiency of funds of any Person; adverse weather conditions which can be reasonably anticipated as occurring in a location or during a season, due to historical experience; or delays arising due to inefficiencies of, or caused by the acts or omissions of, Supplier Group.
- 11.3 Either Party may claim an Event of Force Majeure has occurred by giving the other Party verbal notice within 48 hours of the occurrence and providing Notice within 72 hours of the occurrence. If Company confirms an Event of Force Majeure has occurred, a mutually acceptable corrective action plan will be developed, implemented and performed by the Parties to minimize and mitigate the effect of the Event of Force Majeure. Supplier will not be permitted to submit any Claim in respect of the time that supply of the Materials is subject to suspension due to an Event of Force Majeure.
- 11.4 If an Event of Force Majeure continues for a period in excess of 90 consecutive days and results in the supply of the Materials being stopped or suspended during that period, Company may terminate the affected part of the Order, and shall pay Supplier for Materials delivered to the date of termination. On partial termination of the Order under this provision, Supplier shall continue to supply any Materials unaffected by the Event of Force Majeure.

12. DELAYS

Supplier shall provide Notice to Company of any delays or potential delays of which it becomes aware and which may have any impact on schedule for Delivery. If Supplier is responsible for a delay in Delivery or will fail to complete Delivery in accordance with the Order, Supplier shall provide a recovery plan within five days of its awareness of the delay and perform all acts required or requested by Company to make up lost time and avoid further delay in Delivery, all at Supplier's own expense.

13. SUSPENSION OR TERMINATION

13.1 Without Cause

13.1.1 In addition to other rights Company may have under the Order or in Law, and at any time, Company may suspend or terminate any part of the Order without cause by giving Notice to Supplier specifying the nature, scope and effective date of the suspension or termination. Supplier shall continue to supply all Materials which have not been suspended or terminated by Company.

13.1.2 Company may authorize resumption of supply of Materials by giving Supplier Notice specifying the nature, scope and effective date of that resumption. Supplier shall resume supply of Materials to the extent specified in the Notice.

13.1.3 On suspension or termination under GC 13.1, Company shall reimburse Supplier for Materials supplied in accordance with the Order to the date of suspension or termination and for reasonable and verifiable costs, including any cancellation charges pre-approved by Company, incurred by Supplier as a direct result of the suspension or termination.

13.2 With Cause

13.2.1 Without limiting the generality of GC 13.1, Company may give Notice if Supplier breaches a material term of the Order or cannot, in Company's opinion, meet Delivery.

13.2.2 In the event of Notice under GC 13.2.1, Supplier will have two Business Days following issue of the Notice to remedy the breach or prepare a remedial plan satisfactory to Company and commence to prosecute a remedy. If Supplier fails to act as contemplated, Company may terminate any part of the Order by Notice to Supplier.

13.2.3 Company may also immediately terminate the Order by Notice to Supplier, if: Supplier becomes insolvent, makes a general assignment or enters into a plan of arrangement for the benefit of its creditors or otherwise acknowledges its insolvency; a bankruptcy or receiving order is filed or made against Supplier; an order is made or resolution passed for the winding up or liquidation of Supplier; a custodian, receiver, manager or other officer with similar powers is appointed in respect of Supplier or any of Supplier's property; Supplier ceases to carry on business in the ordinary course; or a creditor takes possession of any of Supplier's property or if a distress, execution or any similar process is levied or enforced against that property and remains unsatisfied. Supplier shall provide Notice to Company as soon as possible after any of the events noted occurs.

13.2.4 If termination occurs pursuant to GC 13.2 by reason of the default of Supplier: Company will not be liable for any costs incurred by Supplier as a result of the termination; Company shall pay Supplier for Materials supplied to the date of termination, less any additional Claims Company incurs, suffers or sustains, including any amount Company must pay to obtain supply of affected Materials by others, for which Company may withhold and offset payment in accordance with GC 16; and Company will not be liable for any penalties, damages or loss of profits as a result of the termination of any part of the Order.

13.3 However termination occurs, Company may immediately take possession of the Materials, in whatever state and from whatever location those Materials exist, at termination. GC 8 will survive termination, with warranty commencing on, and applying to Materials supplied at, the date of termination.

14. INVOICING

14.1 Supplier shall submit an invoice in a format acceptable to Company no more than 45 days after final Delivery, unless the Order or a Change Order provides otherwise.

14.2 Each invoice shall identify the following information and will not include any amount for Materials not supplied and received at the Worksite, unless progress payment is specifically detailed in the Order:

- a) Invoice number;
- b) Supplier federal GST number;
- c) Date of the invoice –written out, spelling the month: numeric formats may cause delays;
- d) Supplier legal name, as stated in the Order;
- e) Company legal name, as stated in the Order;
- f) Supplier fiscal address – if “remit to” address is different, please specify;
- g) Supplier invoicing contact name, title, telephone number and e-mail address;
- h) Order number;
- i) Order line item number, which should reference the material master number;
- j) Change Order number, if applicable;
- k) Date(s) of Delivery;
- l) Description of the Materials, as detailed in the Order;

- m) Quantity of Materials provided;
- n) Unit price of each item, as detailed in the Order;
- o) Total value of the Materials;
- p) Separate detail of any deductions of price or remuneration, discounts, credits or holdbacks;
- q) Clear statement of the sub total, net taxable price, subject to application of GST;
- r) Currency of the invoice;
- s) GST owing (5%); and
- t) total amount invoiced, i.e. the combined amount of the Work and GST, representing the total amount to be paid.

14.3 All invoices shall be accompanied by supporting documents that substantiate the Materials included in the invoice to Company's satisfaction. Supporting documentation must clearly reconcile to the items listed in the invoice body or a revision will be required. Where appropriate, invoice supporting documentation shall include:

- a) packing list and signed delivery ticket / Materials receiving report, in respect of Materials;
- b) legible copies of all Subcontractor invoicing, which must include reference to Company and the Order number, with any Supplier markup permitted under the Order clearly and separately stated; and
- c) all documents (for example, requisitions, emails or other correspondence) demonstrating Company's approval of invoiced charges.

14.4 Unless otherwise directed by Company in writing, invoices will be: emailed as a pdf attachment to "invoices@brionenergy.com" AND carbon copy the Brion Personnel listed in the "Issued By" field in the Order; or mailed "Attention: Accounts Payable" to Company's address for invoices in the Order.

14.5 Invoices should always be sent under separate cover from any other correspondence with Company. All queries on invoice status should be submitted to "accountspayable@brionenergy.com", ensuring always that the Order number is quoted on all correspondence.

14.6 Any invoice received more than 90 days after Delivery will be rejected and Company will have no obligation or liability to render payment in respect of those Materials.

15. PAYMENT

15.1 The Contract Price is stated in the Order and covers all costs incurred by Supplier in supplying the Materials, including packing, crating, labelling, storage, insurance, freight and all customs duties or tariffs, all as applicable. No separate or additional monies will be paid by Company to Supplier for the Materials, unless noted in the Order or approved by Change Order.

15.2 Company shall remit payment no more than 45 days after approval of an invoice received in accordance with the Order. Accrual of time for payment shall be placed on hold during the period taken to resolve any Dispute in respect of an invoiced amount and non-payment by Company of an invoice subject to a Dispute shall not alleviate, diminish or modify in any respect Supplier's obligations to perform as required by, and in accordance with, the Order. Any submitted invoice which fails to meet Order requirements will be rejected and the period for payment of the invoice will only be triggered once a compliant invoice is subsequently re-submitted.

- 15.3 On request, Supplier will confirm in writing that, on final payment of the amount applied for, Supplier has no further Claim against Company for the Materials, except to the extent of any Claims which Supplier has previously provided Notice to Company.
- 16. SET OFF & WITHHOLDING**
- 16.1 Company may set off at Law any amount owing from Supplier to Company against any amount due or owing to Supplier with respect to the Order.
- 16.2 If there are any Defects or any Claim is made against Company, Company may withhold from, and offset against, any payment due or becoming due to Supplier under the Order those amounts Company determines are sufficient to cover the cost of remedy or resolution, until the Defects are remedied or the Claim is resolved. The value of remedy or resolution shall be estimated by Company and a value equivalent to three times that amount may be withheld from payment. Subject to Company's other rights, any remaining balance of the holdback amount shall be paid to Supplier after remedy of the applicable Defects.
- 16.3 If indicated in the Order that the supply of Materials falls under the jurisdiction of the Builders' Lien Act (Alberta), Company shall retain an amount equal to 10% of the invoiced value from all payments due and payable to Supplier under the Order and shall subsequently release the holdback amount under the Order to Supplier, all as required by that Act.
- 17. TAXES**
- 17.1 Supplier shall be responsible for ensuring each member of Supplier Group pays, in compliance with the Law, all taxes in relation to the Order. Supplier shall indemnify Company Group from all Claims made or assessed against Company Group in respect of taxes for which Supplier is responsible. Any interest, penalties or other liabilities arising from Supplier's failure of its obligations in this GC 17 shall be the sole responsibility of, and be paid for by, Supplier.
- 17.2 Supplier's invoice shall indicate applicable sales and use taxes as separate amounts, Supplier's fiscal registration number, net taxable value (including all applicable discounts) and shall clearly identify any amounts which are subject to non-resident withholding provisions under the Income Tax Act (Canada), to facilitate Company's withholding and submission to fiscal authorities on Supplier's behalf.
- 18. LIENS**
- 18.1 Supplier shall not allow any lien or charge to be registered against the Materials or any other Company property as a result of failure by Supplier to pay any *bona fide* Claims in respect of the Materials and Supplier shall indemnify Company against all applicable charges and liens.
- 18.2 No assignment to any other Person by Supplier of any payment due to Supplier shall have any force or effect until all *bona fide* Claims incurred in connection with the Materials have been completely discharged.
- 18.3 If Supplier fails to discharge a Claim as described in GC 18.1 when notified by Company in accordance with the Law, Company may, but will not be obliged to, discharge or otherwise deal with the Claim and Supplier shall reimburse all costs and expenses incurred by Company in doing so.
- 18.4 If Company becomes aware of a potential Claim affecting title to the Materials or any other Company property, Company has the right, but not the obligation, to:

- a) withhold all payment from Supplier until the Claim has been discharged, released or removed; and
- b) discharge or otherwise deal with the Claim and Supplier shall reimburse all costs and expenses incurred by Company in doing so.

19. AUDIT

- 19.1 Supplier shall preserve its financial records in respect of the Materials in accordance with International Financial Reporting Standards and, on ten Business Days' Notice from Company, allow representatives of Company to review those records for a period of two years after final Delivery, for the purposes of verifying: Supplier's compliance with all terms of the Order; any Claims; and all Materials supplied and payments made for those Materials.
- 19.2 As permitted by Section 7 of the Limitations Act (Alberta), each limitation period under that Act applicable to a Claim arising in connection with an audit will be extended to two years beyond the end of the stated audit period, and Supplier shall ensure contractual agreements with all subcontractors allow for this extension. Each Party waives the benefit of the limitations period under the Act for any Claim sought within the extended period.

20. LIABILITY

- 20.1 This GC 20 will govern over all other provisions of the Order.
- 20.2 All releases and indemnities provided in the Order will apply whether a Claim arises by breach of contract, breach of duty (statutory or otherwise), negligence or any other legal theory, but only in connection with rights and obligations arising from the Order.
- 20.3 Supplier shall be liable for, and shall release and indemnify each member of Company Group from and against any Claim: in respect of any personal injury sustained or alleged; and for physical damage to or loss of any real or personal property, whether owned, rented, leased, on hire or otherwise held, including environmental contamination of such property, to the extent a member of Supplier Group causes or contributes to the Claim in connection with, or arising from, the Materials.
- 20.4 Each Party releases the other Party from all Claims for Consequential Losses arising between them, except for Consequential Losses arising from or related to a Claim regarding: Consequential Losses of a third party arising from a third party Claim as against one Party, for which the other Party may be responsible or liable; or Supplier's obligation to supply the Materials in accordance with GCs 9.4 or 10, which are not released.
- 20.5 Supplier shall defend any Claim on behalf of Company and, at Supplier's sole cost, Company shall assist Supplier in defending, settling or mitigating the Claim. Supplier is not permitted to settle or compromise any Claim without the prior written consent of Company, if that settlement or compromise: causes Company to part with any property right or interest, assume any obligation or make any payment not indemnified; or subjects Company to any injunction.

21. INSURANCE

- 21.1 Without limiting any obligations and liabilities under the Order, at its sole cost and in addition to any insurance coverage required by Law, Supplier shall obtain, and maintain during the period of the Order (and after, where applicable), commercial general liability insurance with a limit of not less than \$5,000,000 per occurrence, to cover third party legal and contractual liability for personal injury and property damage arising out of or in connection with Supplier's performance under the Order. The policy shall include Company Group as additional insureds, and waive all rights of subrogation against Company Group to the extent of releases or indemnities provided, or other obligations assumed, by Supplier in the Order and will include a cross liability clause.
- 21.2 Supplier shall be responsible for all deductibles, retentions and exclusions under insurance policies.

22. INDEPENDENT CONTRACTOR

Supplier is an independent contractor in all respects and no member of Supplier Group will be deemed for any purpose to be an employee, agent or representative of Company under the Order. No member of Supplier Group has authority to make any statement, representation or commitment, or to take any action, which may bind Company. Nothing in the Order will create any contractual relationship between Company and any other member of Supplier Group, except as provided in the Order.

23. COMPLIANCE WITH LAW

- 23.1 The Order is governed by and construed in accordance with the Laws of Alberta and applicable federal Laws of Canada and, subject to GC 24, the Parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Alberta and applicable courts of appeal from them.
- 23.2 Application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.
- 23.3 If a court of competent jurisdiction determines any provision of the Order is invalid or unenforceable, that will not affect the validity or enforceability of the remaining provisions.
- 23.4 Reference to a statute includes regulations and other subordinate legislation made pursuant to that statute and includes any amendment, consolidation, re-enactment, substitution or replacement of all or any part of the statute, regulation or subordinate legislation, as may be enacted from time to time.
- 23.5 No provision of the Order shall be interpreted or applied so as to require Company or Supplier to do, or refrain from doing, anything which would constitute a violation of, or result in a loss of economic benefit under, anti-competition, anti-corruption, anti-boycott or other applicable export Laws.
- 23.6 At its sole cost and expense and in a timely manner, Supplier shall obtain from Governmental Authorities or other Persons those licences, permits, certifications, registrations and approvals required by Law or the Order to supply the Materials, except those licences, permits, certifications, registrations and approvals stipulated in the Order to be obtained by Company.

24. DISPUTE RESOLUTION

- 24.1 Negotiation
- 24.1.1 If a Dispute is not resolved by dialogue between directly responsible representatives of the Parties, the Party initiating the Dispute shall give Notice to the other Party, outlining relevant information on the Dispute in reasonable detail. No more than five Business Days after receipt of this Notice, Negotiators from both Parties shall meet and attempt to resolve the Dispute.

24.1.2 If the Dispute is not resolved after expiry of twenty Business Days after the date of the Notice, or any extended period as may be agreed in writing by the Parties, the negotiation is deemed to have failed and the Dispute shall be referred to final and binding arbitration.

24.1.3 All negotiations under this GC 24 are performed "without prejudice" in furtherance of settling a Dispute. Accordingly, the Negotiators, and any other participants involved in the negotiations, cannot be subpoenaed or otherwise compelled to give evidence in respect of the content of the negotiations in arbitration or any other proceedings arising in relation to that Dispute.

24.2 Arbitration Procedures

24.2.1 Arbitration shall be conducted pursuant to the Rules for Arbitration of CCDC 2 Construction Disputes, available on Company's website and included by reference in the Order, as expressly amended, varied or supplemented by the Order (the "**Arbitration Rules**").

24.2.2 In the event of any conflict between the Arbitration Rules and the Arbitration Act (Alberta) R.S.A. 2000 c. A-43 (the "**Arbitration Act**"), the Arbitration Rules will prevail, subject to the provisions of section 3 of the Arbitration Act.

24.2.3 References to the following terms in the Arbitration Rules shall be deemed, for all purposes, to be amended as follows:

- i) "the Contract" shall mean the Order;
- ii) "Place of the Work" shall mean Company's head office;
- iii) "law" shall mean the governing Laws of the Order; and
- iv) there shall be no neutral appointing authority.

24.2.4 All arbitration proceedings shall be conducted in the English language in Calgary, Alberta, unless the Parties agree otherwise in writing.

24.2.5 Any arbitration decision or award shall be final and binding on the Parties as to the questions submitted and the Parties will have no right of appeal from arbitration, including the right to appeal to a court on a question of law, a question of fact or a question of mixed fact and law.

24.2.6 Except with the prior written consent of the other Party, or as otherwise required by Law, each Party shall:

- i) keep all information related to arbitration confidential, including the subject matter of the Dispute, the result of arbitration, the award and all documents and other materials obtained from the other Party; and
- ii) not use information related to the arbitration for any purpose beyond the arbitration.

24.3 While a Dispute remains unresolved, except as otherwise permitted by this Order or if Company issues a Notice that specified obligations are suspended pending resolution of the Dispute, each Party shall continue to fulfill its obligations under the Order in a timely manner.