

## **STANDARD PURCHASE ORDER TERMS AND CONDITIONS**

THESE STANDARD PURCHASE ORDER TERMS AND CONDITIONS are attached to and are part of a purchase order (the "Purchase Order") issued by SVANTE TECHNOLOGIES INC. ("Buyer") to the seller identified in the Purchase Order ("Seller"). Buyer and Seller are referred to herein as the "Parties" and each a "Party". The Purchase Order may, if so referenced therein, include product, manufacturing, and/or quality assurance specifications (collectively, the "Specifications") and additional plans, drawings, and other documents. As used herein: (a) "Agreement" means, collectively, the Purchase Order (including any such referenced Specifications, plans, drawings, or other documents) and these Terms and Conditions; (b) "Goods" mean, collectively, all equipment, products, goods, and other materials to be provided by Seller to Buyer under the Purchase Order; (c) "Work" means, collectively, all work, services, tasks, activities and labour to be provided by Seller to Buyer under the Purchase Order; (d) "Services" means, collectively, the Goods to be provided, and the Work to be performed, by Seller in accordance with the Purchase Order; and (e) if applicable, "Client" means the customer or end-user for whom Buyer has agreed to provide any product of the Services (as indicated in the Purchase Order).

### **1.0 APPLICATION; OFFER AND ACCEPTANCE**

- 1.1 The Purchase Order is an offer by Buyer to engage Seller to provide and perform the Services, all upon and subject to the terms and conditions contained in the Agreement.
- 1.2 The Purchase Order is not binding on Buyer until accepted by Seller. Acceptance of the Purchase Order occurs on the earliest date (the "Acceptance Date") upon which: (a) Seller returns a signed acknowledgment of the Purchase Order; (b) Seller notifies Buyer of its commencement of performance of any of the Services; (c) Seller accepts payment for any of the Services; or (d) if there is to be a separate written agreement between Buyer and Seller for the Services (a "Definitive Agreement"), upon the Parties' execution and delivery of such Definitive Agreement. The Purchase Order shall lapse if not accepted in the manner set out in this Section 1.2 within 15 days of the date of the Purchase Order. Buyer may revoke the Purchase Order at any time before it is accepted by Seller.
- 1.3 Acceptance of the Purchase Order shall be deemed to be an acceptance by Seller of all terms set out herein. Except as expressly contained in any Definitive Agreement (which agreement may by its terms supersede the Agreement): (a) the Agreement constitutes the entire agreement of the Parties with respect to the Services, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Purchase Order; and (b) the Purchase Order expressly limits Seller's acceptance to the terms contained in the Agreement, which prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with the Purchase Order. Buyer's receipt or acceptance of, or payment for, any of the Services shall in no way be deemed to imply its consent to any different or additional terms or conditions proposed by Seller.
- 1.4 The Agreement applies to any replacement Services provided by Seller hereunder. Buyer is not obligated to any minimum purchase or future purchase obligations under the Purchase Order.

### **2.0 PERFORMANCE OF SERVICES**

- 2.1 Seller shall have complete responsibility for the validity, accuracy, and reliability of the Goods and/or Work comprising the Services.
- 2.2 The Goods provided and/or Work performed in connection with the Services shall conform to any Specifications and all applicable laws, statutes, rules, codes, regulations, ordinances and other legal and governmental requirements of any federal, provincial, territorial, local or international jurisdiction, including any applicable professional licensing or permitting laws ("Applicable Law"), and the highest applicable standards under all internationally, nationally or provincially recognized codes, standards and rules ("Applicable Standards" and together with Applicable Law, "Applicable Law and Standards"). Seller shall comply with all Buyer's rules, regulations, policies and procedures as communicated by the Buyer to the Seller from time to time.
- 2.3 Review and approval by Buyer of Seller's drawings, samples, or other representations shall not relieve Seller of the obligation to provide and perform the Services in strict compliance with the requirements of the Specifications, the Agreement and Applicable Law and Standards.
- 2.4 Buyer reserves the right to inspect any or all of the Goods and/or Work comprising the Services at any time for the purpose of determining whether the Services are being performed in accordance with the Agreement. Seller shall control the specific conditions, time, details and means by which Seller performs the Services; provided that Buyer may implement a management system that shall address, among other things, general process, design, and schedule associated with delivery of the Services.
- 2.5 Seller shall comply with all Applicable Laws at all times during performance of the Services. Seller has and shall maintain in effect all licences, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Agreement.

## 3.0 PERFORMANCE DATE

- 3.1 Seller shall perform the Services by the date specified in the Purchase Order or as otherwise agreed in writing by the Parties (the "Performance Date"). Timely performance of the Services is of the essence of the Purchase Order and Agreement. Seller shall promptly notify Buyer of any delays in Seller's performance under the Agreement, but no such notification shall excuse or extend the time for performance otherwise required by the Purchase Order. Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to perform the Services by the Performance Date.
- 3.2 If Seller fails to satisfactorily perform the Services in full by the Performance Date, Buyer shall have the right, in its sole discretion and without prejudice to any other rights or remedies it may have under the Agreement, to take one or more of the following steps: (a) waive any such failure and require Seller to perform the Services by a future date specified by the Buyer; (b) assign one or more of its representatives to supervise and cooperate with Seller to correct and mitigate the effects of Seller's breach; (c) suspend Seller's right and obligation to complete its performance of the Services until such time as Seller is able to demonstrate to Buyer's satisfaction that it can satisfactorily meet its obligations under the Agreement; (d) immediately terminate the Purchase Order by providing written notice to Seller and: (i) return any Goods partially delivered and reject any Work partially performed, all at Seller's expense; or (ii) accept any Goods partially delivered and Work partially performed, with the Contract Price (as defined herein) of such Goods and/or Work being adjusted on a pro-rata basis for such partial performance; provided that in each case Buyer shall be entitled to withhold payment of any amounts otherwise due to Seller in a sufficient amount to set-off against any damages caused to Buyer as a consequence of Seller's breach.

## 4.0 PRICES – PAYMENT TERMS

- 4.1 As full consideration for the complete, satisfactory, and timely performance by Seller of the Services in strict accordance with the requirements of the Agreement, Buyer shall pay to Seller the price(s) specified in the Purchase Order (the "Contract Price").
- 4.2 The Contract Price is firm and not subject to change, except: (a) as may otherwise be expressly outlined in the Purchase Order; (b) adjusted pro-rata for partial performance as provided in Section 3.0 (Performance Date); (c) according to a Change Order as provided in Section 10.0 (Change Orders); or (d) by an amendment to the Purchase Order signed by Buyer.
- 4.3 Unless otherwise specified in the Purchase Order, any expenses or costs incurred by Seller in connection with its performance of the Services shall be the sole responsibility of Seller.
- 4.4 Unless otherwise specified in the Purchase Order, Seller shall issue an invoice to Buyer on or any time after Buyer's acceptance of all of the Goods and/or Work comprising the Services. All invoices must include the associated Purchase Order number. All invoices must be in Canadian dollars. Discounts are calculated not earlier than the date each correct shipment or invoice reaches Buyer.
- 4.5 Buyer shall pay all properly invoiced amounts due to Seller within 30 days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. In the event of a payment dispute, Buyer shall deliver a written statement to Seller prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items. The Parties shall seek to resolve all such disputes in accordance with Section 25.0 (Dispute Resolution) and Seller shall continue performing its obligations under the Purchase Order notwithstanding any such Dispute.
- 4.6 Without prejudice to any other right or remedy it may have, Buyer reserves the right to set-off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller. Any amounts that are charged to Seller's account under the Agreement shall be credited and applied against any payments otherwise owed to Seller.

## 5.0 BUYER PROPERTY

- 5.1 Unless expressly agreed by the Parties in writing, all materials, equipment, components, supplies, facilities, tools, jigs, dies, fixtures, patterns and other items comprising any Goods or Work furnished to or paid for by Buyer in connection with the Services shall be property of Buyer (the "Buyer Property").
- 5.2 Seller shall bear the risk of loss of and damage to all Buyer Property in Seller's possession. All Buyer Property shall be suitably protected, segregated, and marked as the property of Buyer, free and clear of any liens or security interests, and shall not be moved from Seller's premises without Buyer's written approval, and shall be immediately delivered to Buyer upon request. Seller shall store such Buyer Property at Seller's facility identified in the Purchase Order at no expense to Buyer until the same is required by Buyer.

## 6.0 SECURITY INTEREST

Seller hereby grants to Buyer a security interest in all Buyer Property and work-in-progress. Buyer may prepare and file, and, at Buyer's request, Seller shall execute and deliver to Buyer, evidence of said security interest.

## 7.0 SELLER'S SUPPLIERS AND SUBCONTRACTORS

7.1 Seller shall be responsible for the acts and omissions of its suppliers and subcontractors. Buyer may contact Seller's suppliers and subcontractors to confirm performance commitments. On request of Buyer, Seller agrees to deliver to Buyer un-priced copies of all purchase orders, contracts, and other documentation issued by Seller to any of its suppliers and subcontractors on any of the Goods and/or Work comprising the Services or parts thereof. Buyer shall advise Seller before making direct contact with Seller's suppliers and subcontractors.

7.2 Seller hereby assigns to Buyer its rights to enforce the performance obligations of Seller's suppliers and subcontractors and to make claims against the performance bonds of Seller's suppliers and subcontractors. Buyer is not obligated to make any claims or otherwise take any action against Seller's suppliers and subcontractors and any claim made or other action taken by Buyer against Seller's suppliers and subcontractors shall in no way relieve Seller of its obligations under the Agreement nor from its responsibility for the performance of Services by such suppliers and subcontractors.

## 8.0 WAIVER OF LIENS

8.1 To the fullest extent permissible by Applicable Law, Seller hereby waives, on behalf of Seller, all its suppliers and subcontractors, and all of their respective heirs, personal and legal representatives, successors, and assigns, all claims, rights, and demands of lien (whether of mechanics, material, laborers, or others that may be imposed by law) upon Buyer, its Client, and any of their respective property (and any revenues, rents, issues, income, and profits arising therefrom) as a result of the furnishing of the Goods and/or Work comprising the Services.

8.2 Seller shall execute and deliver such documents, if any, as may be required under any Applicable Law to make the foregoing waiver effective and shall give all required notices to its suppliers and subcontractors concerning the foregoing waiver. If Buyer requires, Seller shall furnish waivers of liens from Seller and its suppliers and subcontractors as a condition of payment. Buyer may withhold from payments to Seller any amounts necessary to satisfy any claims against Buyer or any liens or threatened liens arising from the performance of Services.

## 9.0 DESIGN RESPONSIBILITY

9.1 If the Purchase Order provides that Seller has engineering, design, or detailing responsibility, such responsibility shall be performed per the Specifications and Applicable Law and Standards.

9.2 Where the Purchase Order requires that Seller obtain Buyer's review or approval of plans, drawings, or other documents, such review or approval shall not relieve or discharge Seller, either expressly or by implication, from any responsibility or obligation under the Agreement or Applicable Law and Standards. Any Goods requiring Buyer's approval prior to their manufacture, shipment or invoicing shall not be manufactured, shipped, or invoiced without the Seller having obtained such approval.

9.3 Any expense incurred by Buyer through Seller's failure to comply with the terms under this Section 9.0 (Design Responsibility) shall be Seller's responsibility and may be charged to Seller's account or deducted from the Contract Price.

## 10.0 CHANGE ORDERS

10.1 Seller shall not make any substitutions or changes to the Goods and/or Work comprising the Services without prior written approval of Buyer. No change to the Purchase Order is binding upon Buyer unless it is in writing, specifically states that it amends the Purchase Order and is signed by an authorized representative of Buyer.

10.2 Buyer may, at any time, by written change order (a "Change Order") given to Seller, make changes or additions to the Purchase Order. If Seller determines that any such change or addition shall cause an increase in the cost of any of the Goods and/or Work comprising the Services or a delay in the delivery or performance of any of the Goods and/or Work comprising the Services, then, unless the Purchase Order includes an express adjustment mechanism to determine the cost increase or delivery date extension resulting from such change or addition, Seller must notify Buyer in writing of Seller's good faith estimate of the increase to Contract Price or extension to the Performance Date caused by such Change Order within 30 days following Seller's receipt of the Change Order; otherwise, no such increase or extension shall be allowed. If: (a) such written notice is given by Seller within said 30 day period, or (b) any such Change Order causes a decrease in the cost of any of the Goods to be delivered or Work to be performed in connection with the Services, or reduces the time required by Seller to deliver or perform any of the Goods and/or Work comprising the Services (and an express adjustment mechanism to determine the cost decrease or delivery date reduction resulting from such change or addition is not included in the Purchase Order), then an appropriate equitable adjustment shall be made in the Contract Price or the Performance Date, or both, by written modification of the Purchase Order. Nothing herein shall excuse Seller from proceeding with the performance of its obligations under the Agreement, as so changed by the Change Order.

## 11.0 SHIPPING

- 11.1 All Goods shall be suitably packed, marked, and shipped per Buyer's requirements or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition and in accordance with Applicable Law and Standards, and, unless otherwise specified in the Purchase Order, by common carriers, and in a manner to secure the lowest transportation costs. Unless otherwise specified in the Purchase Order: (a) no additional charge shall be made or allowed for packing and shipping; and (b) Buyer's name and the Purchase Order number shall be shown on all shipping documents, shipping labels, packing slips, bills of lading, invoices, correspondence and any other documents pertaining to the Purchase Order.
- 11.2 Seller shall provide Buyer with detailed shipment documentation showing the Purchase Order number, the quantity of pieces in the shipment, the number of cartons or containers in the shipment, Seller's name, the bill of lading number and the country of origin. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material, the return of which shall be made at Seller's sole cost and expense.
- 11.3 Shipments shall occur in the order or sequence requested for arrival on the date specified. Shipments of more than one load shall all arrive within 72 hours of the date specified for the first shipment to arrive at the designated location, or as required by Buyer's shipping schedule.
- 11.4 All Goods to be delivered as part of the Services shall be delivered in accordance with the Incoterms (to the location) specified in the Purchase Order or as may otherwise be agreed by the Parties in writing. Seller shall give written notice of shipment to Buyer when the Goods are delivered to a carrier for transportation. Seller shall provide Buyer all shipping documents, including the commercial invoice, packing list, bill of lading, and any other documents necessary to release Goods to Buyer.
- 11.5 Seller shall comply with all export and import laws of all countries involved in the sale of Goods under the Purchase Order. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. Buyer may terminate the Purchase Order if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties or any other penalties on the Goods.

## 12.0 TITLE AND RISK OF LOSS

Unless otherwise specified in the Purchase Order, title and risk of loss to all Goods shall pass to Buyer only upon delivery to the location specified in the Purchase Order and Seller bears all risk of loss or damage until such time.

## 13.0 DOCUMENTATION AND RECORDS

Seller shall maintain complete and accurate support, manufacturing and quality documentation for all Goods and/or Work (including records of the time spent and materials used by Seller), in form and content satisfactory to Buyer. Seller shall deliver copies of all such records to Buyer upon final inspection and certification of all Goods and/or Work comprising the Services.

## 14.0 INSPECTIONS AND REJECTION OF SERVICES

- 14.1 Buyer may have a representative present at all locations and at all times during which any Work is being performed or any Goods are in production or during any related pre-production or post-production activities (including quality assurance procedures).
- 14.2 Seller shall be responsible for final inspection and certification of all Goods and/or Work before completion of the Services. No Goods shall be released from manufacturing and/or shipped, and no notice of completion of Work shall be issued, until satisfactory completion or waiver of Buyer's (and/or, if applicable, Client's) product inspection and release requirements. Any factory tests or inspection, or any waiver thereof by Buyer, shall not relieve Seller from full responsibility for the requirements of the Agreement nor prejudice any claim, right, or privilege which Buyer (or, if applicable, the Client) may regarding defective or unsatisfactory Goods and/or Work comprising the Services.
- 14.3 Buyer reserves the right to attend and observe all testing, final assembly, and final inspection of Goods and/or Work comprising the Services. Seller shall notify Buyer in writing, at least 15 days before any testing, final assembly, or final inspection (or, if applicable, preliminary or intermediate tests or inspections) of any Goods and/or Work comprising the Services. Seller's notification of readiness for inspection must state: (a) the Goods and/or Work ready for inspection; (b) the Purchase Order number; (c) the location at which the Goods and/or Work shall be inspected; and (d) Seller's contact personnel.
- 14.4 Buyer, at its sole option, may inspect all or a sample of the Goods and/or Work comprising the Services, and may reject all or any portion thereof if it determines the Goods and/or Work are non-conforming or defective. Buyer shall advise Seller of any defects (other than latent defects) observed by Buyer within a reasonable time after inspection of the Goods and/or Work and all records required to be furnished therewith. Buyer shall notify Seller of Buyer's (and/or, if applicable, Client's) acceptance of Goods and/or Work comprising the Services within 30 days of Seller's final inspection and certification of all Goods and/or Work comprising the Services. Acknowledgment of delivery or payment for any or all of the Services shall not constitute acceptance by Buyer.

- 14.5 If Buyer rejects any portion of the Goods and/or Work, Buyer shall have the right, in its sole discretion and without prejudice to any other rights or remedies it may have under the Agreement, to take one or more of the following steps: (a) assign one or more of its representatives to supervise and cooperate with Seller to correct and mitigate the effects of such rejected Goods and/or Work; (b) suspend Seller's right and obligation to complete its performance of the Services until such time as Seller is able to demonstrate to Buyer's satisfaction that it can satisfactorily meet its obligations under the Agreement; (c) accept all or part of the Goods and/or Work at a reduced price mutually agreed by the Parties; (d) reject all or part of the Goods and/or Work and require replacement and/or reperformance thereof by a date determined by the Buyer acting reasonably or otherwise mutually agreed by the Parties (with all related costs, including transportation charges for the return of defective goods and the delivery of replacement Goods, and costs of reperforming any defective Work at Seller's sole cost and expense); (e) immediately terminate the Purchase Order by providing written notice to Seller and: (i) return any deficient or non-conforming Goods and reject any deficient or non-conforming Work, all at Seller's expense; or (ii) accept any deficient or non-conforming Goods and/or Work at a reduced price mutually agreed by the Parties; provided that in each case Buyer shall be entitled to withhold payment of any amounts otherwise due to Seller in a sufficient amount to set-off against any damages caused to Buyer as a consequence of Seller's breach.
- 14.6 If Buyer elects to require Seller to deliver replacement Goods or reperform Work and Seller fails to deliver or perform by such reasonable date determined by the Buyer or otherwise mutually agreed by the Parties, Buyer may engage a third party to remedy such defects and charge Seller the cost thereof.
- 14.7 Any inspection or other action by Buyer under this Section 14.0 (Inspections and Rejection of Services) shall not reduce or otherwise affect Seller's obligations under the Purchase Order or the Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

## 15.0 WARRANTIES

- 15.1 As used herein, "Warranty Period" means: (a) concerning any Goods, the period commencing upon acceptance of all of the Goods by Buyer (and the Client, if applicable) and ending on the first to occur of (i) 18 months following acceptance of all of the Goods by Buyer (and the Client, if applicable), or (ii) 12 months following the date on which such Goods are placed in service by Buyer or the Client (if applicable); and (b) concerning any Work, an 18 month period commencing upon acceptance of the Work by Buyer (and the Client, if applicable).
- 15.2 Seller warrants to Buyer that all Goods shall: (a) be merchantable, of good quality and workmanship, free from any defects in workmanship, material and design, and fit and sufficient for the use intended; (b) conform to the requirements of the Agreement (including, without limitation, all applicable Specifications, plans, drawings, or other documents referenced in the Purchase Order); (c) be free and clear of all liens, security interests or other encumbrances; (d) not infringe or misappropriate any third party's patent or other intellectual property rights; and (e) except as to any Goods for which the Specifications specifically provide need not be new, be new (not used or reconditioned and not of such age or so deteriorated as to impair their usefulness or safety).
- 15.3 Seller warrants to Buyer that all Work shall be performed: (a) in accordance with the terms and subject to the conditions set forth in the Agreement (including, without limitation, all applicable Specifications, plans, drawings, or other documents referenced in the Purchase Order); (b) using personnel of required skill, experience and qualifications; (c) in a timely, workmanlike and professional manner; (d) in a manner that does not infringe or misappropriate any third party's patent or other intellectual property rights; (e) in accordance with Applicable Law and Standards; and (f) to the Buyer's satisfaction.
- 15.4 The warranties set out in the Agreement continue during the Warranty Period and survive any delivery, inspection, acceptance or payment of or for the Services by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the non-compliance of the Goods and/or Work comprising the Services.
- 15.5 If during the Warranty Period, Buyer gives Seller notice that any of the Goods delivered and/or Work performed in connection with the Services are defective in design, material, or workmanship, fail to conform to the requirements of the Agreement (including, without limitation, all applicable Specifications, plans, drawings, or other documents referenced in the Purchase Order), or are otherwise non-compliant with the Agreement, as determined by Buyer, then, notwithstanding any contrary industry or business practices and in addition to its other rights and remedies, Buyer may, at its option, elect to: (a) reject any Goods and return them at Seller's expense, such returned Goods to be replaced by Seller on demand; (b) correct or modify any Goods and/or Work as necessary, the costs of such correction or modification being payable by Seller and chargeable to Seller's account, or (c) allow Seller to enter onto the property of Buyer or another to correct or modify such Goods and/or Work, as necessary, at Seller's expense. If any Goods are rejected, the cost of removal, hoisting, temporary replacement, transportation, shipping, unpacking, examining, repacking, reshipping, and all like expenses shall be payable by Seller and chargeable to Seller's account. If any Work is rejected, the cost of reperformance of such Work shall be payable by Seller and chargeable to Seller's account.

- 15.6 If the Services to be supplied by Seller involve Goods manufactured or Work performed by third parties: (a) warranties outlined in this Section 15.0 (Warranties) shall be included in all purchase orders (and any related agreements) issued by Seller to its suppliers and subcontractors unless waived in writing by Buyer; and (b) the Seller agrees to transfer and assign to Buyer or the Client (if applicable and so directed by Buyer) all third party warranties on such Goods and/or Work, and Seller shall cooperate with Buyer in the enforcement thereof (including, if so requested by Buyer, prosecuting any warranty claims on behalf of Buyer and the Client, if applicable).
- 15.7 Seller expressly warrants that the use or sale of the Goods shall not infringe upon or misappropriate any Canadian or foreign patent, copyright, trademark, trade secret, or other intellectual property rights or similar rights of any foreign jurisdiction.
- 15.8 The warranties outlined in or referenced by this Section 15.0 (Warranties) are in addition to all other rights and remedies available to Buyer (and the Client, if applicable), including, without limitation, any implied warranties available under the Uniform Commercial Code. All warranties in respect of Services shall continue in full force and effect for the applicable Warranty Period notwithstanding any suspension or termination of the Purchase Order.

## 16.0 INSURANCE

- 16.1 During the term of the Purchase Order and any Warranty Period, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) with financially sound and reputable insurers with limits no less than the greatest of: (a) the amount required under Applicable Law; (b) customary amounts under Applicable Standards; or (c) a per occurrence amount equivalent to the Contract Price plus 10%. Seller shall insure all Buyer Property for its full value and shall be responsible for any loss or damage while in Seller's possession.
- 16.2 Upon Buyer's request, Seller shall provide Buyer with a certificate or memorandum of insurance from Seller's insurer evidencing the insurance coverage specified in the Agreement. Any failure to provide such certification shall in no way relieve Seller from any responsibility under this Section 16.0 (Insurance). Buyer may require that the certificate of insurance name Buyer as an additional insured. Seller shall provide Buyer with 30 days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer or the Indemnitees (as defined herein).

## 17.0 INDEMNIFICATION

- 17.1 To the fullest extent permitted by Applicable Law, Seller agrees, at its own cost and expense, to: (a) defend Buyer, the Client, each of Buyer's and the Client's affiliates, successors and assigns, and all of their respective officers, directors, managers, employees, representatives, and agents (each an "Indemnitee" and collectively the "Indemnitees"), against any and all claims, suits, and proceedings; and (b) indemnify and hold harmless the Indemnitees from any liability, claim, loss, injury, death, damage, deficiency, action, judgment, interest, award, penalty, fine, cost, or expense (including, without limitation, reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) suffered or incurred by them (collectively, the "Indemnified Amounts"), that result from, relate to, or arise out of: (v) any actual or alleged infringement or misappropriation of any patent, copyright, trade secret or other intellectual property right of any third party; (w) any act or omission of Seller, or any of its employees, suppliers and subcontractors, agents, or representatives, in the performance of the Services (including, without limitation, entering onto the property of Buyer, the Client, or any third party); (x) any breach of any of the warranties provided by Seller under the Agreement; (y) Seller's failure to pay any of its suppliers and subcontractors; or (z) any breach of the Agreement.
- 17.2 Without limitation of any other rights or remedies that may be available to Buyer under the Agreement or Applicable Law, Buyer shall have the right to retain any amounts that may otherwise be payable to Seller under the Agreement or otherwise and set-off such amounts in satisfaction of any Indemnified Amounts. In no event shall Seller enter into any settlement of a claim involving or applicable to the Indemnitees without their prior written consent.

## 18.0 LIMITATION OF LIABILITY

- 18.1 IN NO EVENT SHALL BUYER, NOR ANY OF ITS AFFILIATES, SUCCESSORS AND ASSIGNS OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND (INCLUDING ANY LOST OR ANTICIPATED DATA OR PROFITS) RELATED TO OR ARISING OUT OF THE PURCHASE ORDER OR BUYER'S PERFORMANCE OR NON-PERFORMANCE OF ITS OBLIGATIONS UNDER THE AGREEMENT, REGARDLESS OF THE FORM OF CLAIM OR ACTION AND WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHER THEORY OF LIABILITY AND EVEN IF BUYER HAS BEEN ADVISED OR OTHERWISE MADE AWARE OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.
- 18.2 The aggregate liability of Buyer for any claims and actions under or related to the Agreement shall be limited to the direct, actual damages suffered or incurred by Seller as a result thereof in an aggregate amount not to exceed the total compensation then due and payable to Seller for the Services actually performed under the Purchase Order.

## 19.0 CONFIDENTIALITY

- 19.1 As used herein, “Proprietary Information” means any non-public, confidential, or proprietary information including Specifications, drawings, sketches, patterns, designs, documents, models, samples, tools, technical information, methods, processes, techniques, shop practices, formulas, compounds, compositions, research data, marketing and sales information, business operations, customer lists, pricing, discounts or rebates, plans, know-how, trade secrets, or data, written, oral or otherwise, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential”, but shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.
- 19.2 Any Proprietary Information furnished by Buyer to Seller is confidential, shall remain the confidential information of Buyer, and shall be used by Seller solely for the purpose of performing the Services under the Purchase Order and for no other use whatsoever. Seller shall not disclose any Proprietary Information to any third party, except to the extent necessary in performing Seller’s obligations under the Agreement and provided that such third party is under obligations of confidentiality to protect the Proprietary Information that are no less strict than as are contained in this Section 19.0 (Confidentiality) and Seller shall be liable to Buyer for any disclosure of Proprietary Information by such third party.
- 19.3 At Buyer’s request and to the extent so requested by Buyer at any time or from time to time, Seller shall, at its own cost and expense, promptly: (a) return any copies of Proprietary Information in written, graphic, or other tangible forms to Buyer; (b) destroy (including purging from Seller’s computers and any related storage devices) any copies of Proprietary Information in electronic, magnetic, or other intangible forms; (c) require any third party that has been provided Proprietary Information to comply with the foregoing subsections (a) and (b); and (d) certify in writing to Buyer that Seller has complied with the requirements under this Section 19.3.
- 19.4 Buyer shall be entitled to injunctive relief for any violation of this Section 19.0 (Confidentiality).

## 20.0 INTELLECTUAL PROPERTY

- 20.1 As used herein, “Invention” means any invention, device, discovery, improvement, concept, or idea, whether or not patentable, made by Seller or any of its suppliers and subcontractors, either solely or jointly with one another or with Buyer, in the course of the performance of the Services, including but not limited to processes, methods, software, tangible research products, formulas and techniques, improvements thereto, and know-how related thereto.
- 20.2 All Inventions, and all intellectual property rights therein, shall be the sole and exclusive property of Buyer. Seller hereby assigns to Buyer all of Seller’s and its suppliers’ and subcontractors’ entire right, title, and interest in and all Inventions, together with any intellectual property rights therein. Both during the performance of the Services and thereafter, Seller agrees to take all such actions and to sign all such applications, assignments, waivers, consents, and other documents as may be reasonably requested by Buyer from time to time to protect Buyer’s right, title, and interest in the Inventions and/or to obtain or maintain any intellectual property rights therein. Seller shall impose like obligations on its suppliers and subcontractors.
- 20.3 Seller shall promptly disclose to Buyer any Inventions and shall, upon request of Buyer, promptly execute a specific assignment of title to Buyer and do anything else reasonably necessary to enable Buyer to secure for itself, patent, trade secret or any other proprietary rights in Canada or other countries. It shall be conclusively presumed that any patent applications relating to a Purchase Order, Proprietary Information of Buyer, or which otherwise relate to any task assigned to Seller by Buyer and which Seller may file within one year after termination or completion of any Purchase Order, shall belong to Buyer, and Seller hereby assigns same to Buyer, as having been conceived or reduced to practice during the term of the Agreement.
- 20.4 All writings or works of authorship, including, without limitation, program codes, documentation, and databases, produced or authored by Seller in the course of performing Services for Buyer, together with any associated copyrights, are the exclusive property of Buyer. For clarity, the Agreement shall constitute an irrevocable assignment by Seller to Buyer of the ownership of and all rights of copyright in, such items, and Buyer shall have the right to obtain and hold in its own name, rights of copyright, copyright registrations, and similar protections which may be available therein. Seller further waives in favour of Buyer, all moral rights it may have in all writings or works produced or authored by Seller in the course of performing the Services for Buyer, including in all program codes, documentation, or databases. Seller shall give Buyer or its designees all assistance reasonably required to perfect such rights.
- 20.5 If for any reason, including incapacity, Buyer is unable to secure Seller’s signature on any document needed to apply for, perfect or otherwise acquire title to the intellectual property rights granted to it under this Section 20.0 (Intellectual Property), or to enforce such rights, Seller hereby designates Buyer as Seller’s attorney-in-fact and agent, solely and exclusively to act for and on Seller’s behalf to execute and file such documents with the same legal force and effect as if executed by Seller and for no other purpose.
- 20.6 It is agreed that all Inventions and any information with respect thereto shall be considered to be Proprietary Information and subject to the confidentiality obligations outlined in Section 19.0 (Confidentiality).

## 21.0 SUSPENSION OF SERVICES

Buyer may, at any time and from time to time, require Seller to suspend performance under the Agreement, completely or partially, for whatever length of time Buyer may elect. Buyer shall not be liable for any direct, incidental, consequential or other damages suffered by Seller due to any such suspension.

## 22.0 TERMINATION FOR NON-PERFORMANCE OR BREACH

- 22.1 Buyer may terminate the Purchase Order, in whole or in part, upon written notice to Seller in the event of: (a) Seller's breach of the Agreement (including, without limitation, failure to deliver the Services as and when required by the Agreement); (b) Seller's insolvency (however evidenced); (c) the filing of a voluntary bankruptcy petition by Seller or the filing of an involuntary bankruptcy petition against Seller (and, in the case of an involuntary petition, such petition is not withdrawn or vacated within thirty (30) days after the date it is filed); or (d) an assignment by Seller for the benefit of its creditors.
- 22.2 If Buyer terminates the Purchase Order for any reason under this Section 22.0 (Termination for Non-Performance or Breach), Seller's sole and exclusive remedy is payment for the Services performed and accepted by Buyer prior to the termination.
- 22.3 Any termination under this Section 22.0 (Termination for Non-Performance or Breach) shall be in addition to and without limitation of any other rights or remedies that may be available to Buyer at law or in equity, including the right to collect damages. If any termination by Buyer under this Section 22.0 (Termination for Non-Performance or Breach) is determined not to satisfy the categories under Section 22.1, then such termination shall be deemed to be a termination for convenience by Buyer under Section 23.0 (Termination for Convenience).

## 23.0 TERMINATION FOR CONVENIENCE

- 23.1 Buyer may terminate the Agreement and/or any of the Services, in whole or in part, at any time or from time to time, for its own convenience by written notice to Seller (a "Termination for Convenience Notice") specifying the extent to which the Agreement and/or the Services are being terminated and the date upon which such termination is effective.
- 23.2 Upon its receipt of a Termination for Convenience Notice, Seller shall, except to the extent otherwise directed by Buyer: (a) immediately discontinue performing Services on the date and to the extent specified in the Termination for Convenience Notice and place no further orders for materials (other than as may be necessary to complete any portion of the Services under the Agreement that have not been terminated); (b) continue with its performance of such part of the Services which have not been terminated; (c) promptly make every reasonable effort to either obtain cancellation on terms satisfactory to Buyer of all orders to Seller's suppliers and subcontractors or, if so requested, assign those orders to Buyer; and (d) if so requested, assist Buyer in maintaining, protecting, and disposing of materials, equipment, components, or other items acquired by Buyer under the Agreement.
- 23.3 Seller shall, within 30 days of its receipt of a Termination or Convenience Notice, provide Buyer with a written report concerning the portion of the Services that were terminated by such Termination for Convenience Notice and identifying the status thereof, including: (a) all Buyer Property and other materials, equipment, components, or other items in Seller's possession that pertain to the terminated Services; (b) a breakdown of the Services, showing which are complete and which are in progress (and, as to the latter, the extent to which the same have been completed); and (c) all materials, equipment, components, or other items that have been ordered but not yet received. Seller shall immediately transfer and deliver to Buyer, free of any security interests, liens, and other encumbrances, all Buyer Property and, subject to Buyer's payment to Seller under Section 23.4(b), any other materials, equipment, components, or other items that pertain to the terminated Services, whether completed or in progress, as may be requested in writing by Buyer.
- 23.4 Buyer shall pay to Seller, as full compensation for any Services terminated under a Termination for Convenience Notice: (a) all amounts due and not previously paid to Seller for Services completed in accordance with Agreement prior to such Termination for Convenience Notice, including a pro-rated amount to account for any partial performance of Services up to the date of the Termination for Convenience Notice; (b) actual costs incurred by Seller in connection with acquiring, or ordering under non-cancellable arrangements, of any materials, equipment, components, or other items specifically for the purpose of performing the Services so terminated if delivered to Buyer under a request pursuant to Section 23.3, or if not delivered to Buyer under a request pursuant to Section 23.3, less a reasonable salvage value and deduction for amounts recoverable by Seller (provided, that no such adjustment shall be made in favor of Seller with respect to any materials, equipment, components, or other items which are Seller's standard stock); and (c) reasonable costs of settling and paying claims arising out of any supplier and/or subcontractor orders that were canceled by Seller pursuant to the Termination for Convenience Notice. If any portion of the Services under the Agreement that have not been terminated pursuant to the Termination for Convenience Notice, Buyer shall continue to pay for any Services by Seller after the date of Termination for Convenience Notice as specified therein.
- 23.5 The total sum to be paid to Seller under this Section 23.0 (Termination for Convenience) shall not exceed the total Contract Price, less any payments made by the Buyer to the Seller, less the portion of the Contract Price for any Services not terminated. The amounts payable by the Buyer under this Section 23.0 (Termination for Convenience) shall not include any consideration for loss of anticipated profits on the terminated Services, all claims for which Seller hereby waives.

## 24.0 OTHER REMEDIES

In addition to any rights provided by any other provision of the Agreement or any Applicable Law, Buyer shall have the right to retain any money in its possession due to Seller under the Agreement to reimburse Buyer for any amounts payable by Seller to Buyer under, or any damage, loss, liability, cost, or expense caused by or attributable to the acts or omissions of Seller concerning, the Agreement or any other agreement between the Parties, including but not limited to Seller's late delivery, breach of warranty, breach of guarantees, negligence, or any other contractual breach. Failure of Buyer to withhold payment shall in no event be construed as a waiver of any right of Buyer to assert any claim for breach of any obligation under the Agreement or any other agreement between the Parties. If Seller violates any provision of the Agreement, Buyer shall, in addition to any damages to which it is entitled, be entitled to immediate injunctive relief against Seller prohibiting further actions inconsistent with Seller's obligations under the Agreement. In the event Buyer commences a legal action or proceeding of any nature due to Seller's breach, default, or failure to comply with the terms of the Agreement, Seller shall be liable for the reasonable costs and expenses (including attorney's fees) incurred by Buyer in pursuing such action or proceeding.

## 25.0 DISPUTE RESOLUTION

- 25.1 The Parties agree that, both during and after the performance of their responsibilities under the Agreement, each of them shall use their best efforts to conduct any dispute resolution procedures as efficiently and cost-effectively as possible and make *bona fide* efforts to resolve any controversy or claim arising out of or relating to the Agreement, or the breach thereof, or in respect of any legal relationship associated with or derived from the Agreement (a "Dispute") by amicable negotiations and provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate those negotiations.
- 25.2 Any Dispute between the Parties may be referred to and finally resolved by arbitration administered by the Vancouver International Arbitration Centre ("VanIAC") pursuant to its applicable Rules. The place of arbitration shall be Vancouver, British Columbia, Canada. Seller and Buyer shall each pay one-half of the cost of the arbitration and shall also pay the fees and expenses of its attorneys and experts; provided, however, that the arbitrator(s) shall be entitled to assess the non-prevailing Party with all or any portion of the prevailing Party's share of the arbitration costs and/or the fees and expenses of the prevailing Party's attorneys and experts. Any award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Neither this arbitration provision nor a pending arbitration shall prevent either Party from seeking injunctive or other equitable relief for any matter from a court of competent jurisdiction at any time.

## 26.0 FORCE MAJEURE

- 26.1 Neither Party shall be liable to the other Party or responsible for any direct or indirect costs or consequences suffered or incurred by the other Party, nor be deemed to have defaulted under or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement (except for any obligations to make payments to the other Party hereunder), when and to the extent such Party's ("**Impacted Party**") failure or delay is caused by or results from the following force majeure events ("**Force Majeure Event(s)**") first occurring or arising after the Acceptance Date: (a) acts of God; (b) flood, tsunami, fire, earthquake, explosion; (c) epidemics and pandemics; (d) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (e) government order, law or actions; (f) embargoes or blockades; (g) national or regional emergency; (h) strikes, lockouts, labour stoppages or slowdowns, labour disputes, or other industrial disturbances; (i) shortage of adequate power or telecommunications or transportation facilities; (j) failure of any governmental or public authority to grant a necessary licence or consent; and (k) other similar events beyond the reasonable control of the Impacted Party.
- 26.2 The Impacted Party shall give notice within five (5) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 30 days following written notice given by it under this Section 26.0 (Force Majeure), the other Party may thereafter terminate the Purchase Order upon 10 days' written notice. The rights and obligations of the Parties under Section 23.0 (Termination for Convenience) shall apply *mutatis mutandis* to any termination of the Purchase Agreement under this Section 26.0 (Force Majeure).

## 27.0 RELATIONSHIP OF THE PARTIES

The relationship between the Parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever. No relationship of exclusivity shall be construed from the Agreement. Seller shall not be eligible for and shall not be eligible to participate in any employee benefits or compensation plans offered by Buyer to its employees, including, without limitation, any payment under any employment standard legislation. Buyer shall have no liability or responsibility for withholding or remitting any income, payroll, or other federal or provincial taxes, including employment insurance remittances, Canada Pension Plan contributions or employer health tax, or worker's compensation insurance premiums for Seller's personnel. Seller is responsible for these withholding, remitting, and registration obligations, and shall indemnify Buyer from and against any order, penalty, interest, taxes, or contributions that may be assessed against Buyer due to the failure or delay of Buyer to make any such withholdings, remittances, or registration, or to file any information required by any law, and shall be solely responsible for the payment of all taxes, unemployment insurance contributions, and all similar taxes and fees relating to the fees earned by Seller hereunder.

## **28.0 SUCCESSORS AND ASSIGNS; NO THIRD-PARTY BENEFICIARIES**

The Agreement is binding on and enures to the benefit of the Parties to the Agreement and their respective successors and assigns. The Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Agreement.

## **29.0 GOVERNING LAW**

All matters arising out of or relating to the Purchase Order and the Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein, without giving effect to any choice or conflict of law provision or rule (whether of the Province of British Columbia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Province of British Columbia. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to the Purchase Order.

## **30.0 CHOICE OF FORUM**

Subject to Section 25.0 (Dispute Resolution), any legal suit, action, litigation or proceeding of any kind whatsoever in any way arising out of, from or relating to the Agreement, including all exhibits, schedules, attachments, and appendices attached to the Purchase Order, and all contemplated transactions, shall be instituted in the courts of the Province of British Columbia, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, litigation or proceeding. Service of process, summons, notice, or other document by mail to such Party's address set forth in the Purchase Order shall be effective service of process for any suit, action, litigation or other proceeding brought in any such court. Each Party agrees that a final judgment in any such suit, action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

## **31.0 SEVERABILITY**

Each provision of the Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law. If there is any conflict between any provision of the Agreement and any term of Applicable Law, the latter shall prevail; provided, that any such conflicting provision shall be curtailed and limited to the minimum extent necessary to bring it within the legal requirements and the remainder of the Agreement shall not be affected thereby.

## **32.0 WAIVER**

No waiver by Buyer of any of the provisions of the Purchase Order or the Agreement shall be effective unless explicitly set forth in writing and signed by Buyer. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Purchase Order or the Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

## **33.0 ASSIGNMENT**

Seller may not assign the Purchase Order or any of Seller's obligations or rights (including, without limitation, any monies due or to become due to Seller) under the Agreement without Buyer's prior written consent, which consent may be withheld by Buyer in its sole discretion. Any attempted assignment without such written consent from Buyer shall be void. No assignment or delegation shall relieve Seller of any of its obligations hereunder. Buyer may assign the Agreement or any of Buyer's obligations or rights in respect of the Services upon notice to Seller.

## **34.0 NOTICE**

All notices, request, consents, claims, demands, waivers and other communications under the Agreement shall be in writing and addressed to the Parties at the addresses set forth on the Purchase Order or to such other address that may be designated by a Party in writing. Notices sent in accordance with this Section 34.0 (Notice) shall be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email (in each case, with confirmation of transmission) if sent during the addressee's normal business hours, and on the next business day if sent after the addressee's normal business hours; and (d) on the third day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid.

## **35.0 SURVIVAL**

Provisions of the Agreement which by their nature should apply beyond their terms shall remain in force after any termination or expiration of the Purchase Order including, but not limited to, the following provisions: Section 2.0 (Performance of Services); Section 5.0 (Buyer Property); Section 7.0 (Seller's Suppliers and Subcontractors); Section 8.0 (Waiver of Liens); Section 9.0 (Design Responsibility); Section 15.0 (Warranties); Section 16.0 (Insurance); Section 17.0 (Indemnification); Section 18.0 (Limitation of Liability); Section 19.0 (Confidentiality); Section 20.0 (Intellectual Property); Section 24.0 (Other Remedies); Section 25.0 (Dispute Resolution); Section 27.0 (Relationship of the Parties); Section 28.0 (Successors and Assigns; No Third-Party Beneficiaries); and Section 35.0 (Survival).