



## ROCKY VIEW COUNTY - SHORT FORM PURCHASE ORDER (PO)

These terms and conditions govern purchases made by the BUYER

### DEFINITIONS

"BUYER" shall mean Rocky View County (the "County"), "SELLER" shall mean the person or entity identified on the face of this purchase order, (together with that entity's affiliates, successors and assigns) who is providing Services or Products.

"Service(s)" shall mean any services or Deliverables (defined below) and any related Product(s) (defined below) provided by SELLER to BUYER under this Purchase Order.

"Deliverable" means any deliverable or other product of, or result from, the performance of services by the SELLER and includes any related Intellectual Property Rights.

"Delivery Date" means the targeted date of delivery of (a) Product(s) or of performance of (a) Service(s) as the case may be.

"Delivery Location" means the physical location at which the Services are performed or to which Product is shipped by SELLER.

"Intellectual Property Rights" means all intellectual and industrial property rights, including all patents, copyrights, trademarks, trade secrets and rights of a similar nature.

"Product(s)" shall mean materials, goods, supplies, equipment as well as data, documentation or software provided by SELLER to BUYER under this Purchase Order

"Purchase Order" or "PO" shall mean the terms and conditions set out below and any agreement or purchase or other document to which they are attached by the BUYER or into which they are incorporated by reference by the BUYER.

"Specifications" means the scope of work, requirements, specifications for the Products and/or Services that are set out in – or attached to - a Purchase Order. Specifications also include: (a) attributes, features and functionality of a Product, Service, Deliverables; (b) warranties, standards or levels of service performance for (a) Product(s) or (a) Service(s); and (c) any BUYER business requirements that are expressly set out in a Purchase Order.

### TERMS AND CONDITIONS

#### Order Acknowledgement

All Purchase Orders must be acknowledged by the SELLER in a written form of communication to the BUYER, (an "Order Acknowledgment") upon BUYER's receipt of a Purchase Order.

#### Acceptance of the Terms and Conditions of this PO

SELLER's communication of an Order Acknowledgement to the SELLER or SELLER's performance of all or a portion of Services or SELLER's shipment or provision of all or a portion of (a) Product(s), whichever occurs first, shall constitute an acceptance of BUYER's purchase order and these terms and conditions, without any additional or different terms.



### **Entire Agreement**

This Purchase Order constitutes the entire agreement between BUYER and SELLER with respect to the subject matter on the face of this Purchase Order and supersedes all prior communications, offers, proposals, negotiations, representations, understandings and agreements (whether oral or written) made prior to the date of this Purchase Order.

### **Battle of Forms**

For greater certainty, any proposal or attempted imposition of additional or different terms, whether in SELLER's quotation, Order Acknowledgement, invoice or SELLER form, document or communication made by SELLER in connection with this Purchase Order **are hereby objected to and rejected by BUYER**. For greater certainty any such additional or different terms shall be deemed to be for information or records purposes only.

### **Performance and Supply**

SELLER shall perform the Services, and/or supply the Product(s) as specified in this Purchase Order in a manner satisfactory to BUYER and in compliance with all applicable laws, rules and regulations and standards.

### **Quantity**

The entirety of the specific quantity ordered must be delivered. Unless otherwise agreed by BUYER and SELLER, any different quantity is subject to BUYER's rejection and return to SELLER at SELLER's risk and expense.

Products more than amount stated on purchase order may, at option of the BUYER: (a) be returned to SELLER, in which event, all expenses and charges, including freight to BUYER, packing, crating and cartage will be charged to SELLER's account; or, (b) be treated as if purchased under the order at the unit price therein named.

### **Shipping and Packing**

The Products shall be packed and shipped to protect them from damage during transport. SELLER shall attach at least one packing slip to the exterior of each package, pallet or container used to transport the Products to BUYER and – in the case of a container – at least one on the inside accompanied by an itemized packing list. On shipments not accompanied by an itemized packing list, BUYER's count of the Products received shall be final and conclusive. SELLER agrees to provide lot traceability to the source of all the items acquired on this Purchase Order.

### **Delivery**

Time is of the essence in respect of this Purchase Order and BUYER shall have the right to cancel this Purchase Order, in whole or in part, if it is not performed to the satisfaction of the BUYER. Moreover, both early and late Delivery are subject to rejection and return or refusal by BUYER entirely at SELLER's risk and expense, including any trade credit or set-off BUYER may elect to receive from SELLER. Products shall be delivered to the BUYER's ship to address in the manner, quantities and on the dates specified in BUYER's Purchase Order ("Delivery"). In the event of failure of Delivery of Product, SELLER will make best efforts to immediately assure Delivery at SELLER's risk and expense including any premium freight cost. Services shall be performed in the manner and quantities and at the applicable Delivery Locations by the applicable Delivery Date. If SELLER anticipates or has knowledge that it will be unable to provide for Delivery in the manner required by the BUYER, SELLER shall immediately notify BUYER in writing of this and include in such notice, any new information about Delivery, including any new dates and locations. At any time prior to the Delivery Date, BUYER may, upon reasonable advance written notice to SELLER, cancel or change a Purchase Order, or any portion thereof, for any reason, including, without limitation, for the convenience of BUYER or due to failure of SELLER to comply with this Purchase Order.



### **Title**

Title in the Product and risk of loss shall not pass to BUYER until delivery of the Product's to the BUYER's location as set out in the Purchase Order. Title shall be free and clear of all charges, claims, liens, security interests and any other encumbrances upon payment of the SELLER's invoice for the Product or upon delivery, whichever occurs earlier. The transfer of title to the Product shall not affect the SELLER's obligations or BUYER's rights as set forth in any other provision of this Purchase Order.

### **Acceptance of Deliverables**

BUYER will have 10 business days ("Acceptance Period"), following the date of the initial delivery of a Deliverable to review and verify that such Deliverable conforms to the Specifications in this Purchase Order. By the end of the Acceptance Period, BUYER will notify SELLER in writing of any deficiencies that may cause rejection of a Deliverable. The SELLER will then have 10 business days to correct or replace the Deliverable such that it no longer contains any deficiencies (the "Cure Period"). Upon BUYER's receipt of the corrected or replaced Deliverable, BUYER shall have 10 more business days to re-review and re-verify that the corrected or replaced Deliverable no longer contains any the deficiencies that were the subject of the notification. This process of the acceptance by BUYER will continue until the earlier of acceptance of the Deliverable or the cancellation of the associated Purchase Order. No failure of the BUYER to provide a notification contemplated in this section, shall be interpreted to be deemed acceptance.

### **Inspection of Products**

BUYER shall have the right (and shall be allowed reasonable access by the SELLER to its facilities for this purpose), to inspect the Products (with prior, reasonable, written notice during SELLER's regular business hours) during the process of manufacture, before shipment and before delivery; within thirty (30) days after delivery to destination.

However, neither the BUYER's inspection nor a failure to exercise the right to inspect shall absolve the SELLER of the responsibility to provide the Product or the responsibility to ensure said Product conform to any Specifications. And moreover, regardless of whether the BUYER exercises its right to inspection or not, the BUYER's shall have the right to reject the Product. Product rejected shall (if applicable) be returned to the SELLER at SELLER's risk and expense.

Upon BUYER's notification to SELLER of the presence of any damage, shortage or non-conformities, SELLER shall immediately take all necessary measures to rectify them.

### **Hazardous Materials**

If any Product or related services provided hereunder are subject to laws or regulations relating to hazardous or toxic substances, or when disposed of, to regulations governing hazardous wastes, or to any other environmental or safety and health regulation, SELLER shall:

- (a) Notify BUYER in writing;
- (b) Provide BUYER with all appropriate shipping certification; labeling in compliance with the Workplace Hazardous Materials Information System (WHMIS), including Material Safety Data Sheets (MSDS);
- (c) Provide BUYER with instructions for shipping, safety, handling, exposure and disposal in a manner, form, and format sufficiently clear for use by BUYER's non-technical personnel and sufficiently specific to identify all actions that a user must take concerning the Product.

### **Applicable Law, Policies and Standards**

SELLER shall comply with all policies and standards of BUYER as may be communicated to SELLER by BUYER and all applicable laws, rules and regulations, whether federal, provincial or municipal; and shall require the same compliance by each its suppliers.



If SELLER suspects or has knowledge that the Service or Product are at variance with any laws, rules or regulations, SELLER shall immediately notify BUYER in writing and shall cease the supply of such Service or Product, until the non-compliance is resolved to BUYER's satisfaction.

#### **Price**

As consideration for the performance by SELLER of its obligations under this Purchase Order to the satisfaction of the, BUYER, the BUYER agrees to provide the SELLER with compensation pursuant to the pricing provisions set out on the face of this Purchase Order and to pay said compensation in accordance with to the payment provisions set out in this Purchase Order.

Unless otherwise provided, all prices are in Canadian dollars. No changes to the price stated in this Purchase Order are permitted without BUYER's express, written acceptance. If SELLER enters into an agreement or purchase order of similar scope with a third party for prices that are less than provided in this purchase order (a "Lower Priced Order"), then SELLER shall notify BUYER of such lower pricing and shall automatically extend such reduced prices to the BUYER, with such lower pricing retroactive to the date the prices in the Lower Priced Order took effect. Where the price is based in whole or in part on cost imposed on the SELLER, including an input price, fee, rate, tax or duty and that cost is subsequently reduced, the price shall be reduced accordingly.

#### **Taxes and Duties**

The compensation (in the form of a purchase price) for the Services or Product provided pursuant to this Purchase Order shall be *inclusive* of all taxes (with the exception of GST) duties and other like charges required to be paid by SELLER, or its suppliers, agents, representatives or employees on or in connection with the Services or Products, but shall be exclusive of any GST which is payable in respect of the purchase price (or any part thereof). GST and any other taxes SELLER are required by Canadian law to collect from BUYER and to remit to a legitimate government authority shall be separately stated on SELLER's invoice.

#### **Invoicing and Payment**

The SELLER shall prepare a correct and accurate invoice for the Services or Products provided under this Purchase Order in a form and format specified by the BUYER and deliver said invoice in the manner specified by the BUYER and such invoice shall be accompanied by supporting documentation in a form and format specified by the BUYER. Any payment made by the BUYER shall be neither deemed nor construed as acceptance by the BUYER of the Services or Products. The BUYER may dispute the accuracy of all or part of an invoice. The SELLER acknowledges and agrees that non-payment by the BUYER of any amount in dispute shall neither release nor modify the SELLER's obligation set out in the Purchase Order. BUYER shall be entitled to set off any amount due or owing by SELLER against any amount payable by BUYER under this Purchase Order.

#### **Independent Contractor**

Independent Contractors. SELLER will perform its obligations under the Purchase Order as an independent contractor and in no way will SELLER or its employees be considered employees, agents, partners, fiduciaries, or joint ventures of BUYER. SELLER and its employees will have no authority to represent BUYER or bind BUYER or its affiliates in any way, and neither SELLER nor its employees will hold themselves out as having authority to act for BUYER or its affiliates.

#### **Termination for Cause and Convenience**

BUYER shall have a right to *immediately* terminate this purchase order in full or in part, without liability, if:

- (a) the SELLER fails to provide the Service or Product; or
- (b) the SELLER fails to meet a Delivery Date; or

- (c) the SELLER provides Services or Product that fails to conform to any warranty or Specification in this Purchase Order; or
- (d) the SELLER provides Services or Product in a manner that fails to conform to the obligations in this Purchase Order.

In addition, BUYER may terminate this purchase order in full or in part, without liability if: (a) SELLER makes a general assignment for the benefit of creditors, (b) SELLER ceases doing business as a going concern, (c) SELLER becomes insolvent, (d) a voluntary or involuntary petition for bankruptcy is filed by or against the SELLER, (e) a trustee, receiver or liquidator of SELLER is appointed on account of the insolvency of the SELLER or (f) the SELLER is adjudged a bankrupt.

BUYER shall have a right to terminate this purchase order in full or in part, at any time for its convenience and without cause by giving written notice. Upon receipt of such notice, SELLER shall halt its provision of the Product or Services, including the completion of any unfinished Deliverables and procure no additional products or services from its suppliers in connection with this Purchase Order. SELLER shall also preserve and protect all Deliverables which were created in connection with this Purchase Order, and shall make the same available to BUYER in accordance with BUYER's instructions.

In the event of any such termination, SELLER shall receive payment for those Services and Deliverables supplied and accepted by BUYER up and until the date of the notice of termination, together with any actual costs reasonably incurred by SELLER as a direct result of such termination. However, in no event shall SELLER be entitled to any damages (including loss of profits or anticipated profits) because of such termination. Upon payment all Deliverables shall become the property of the BUYER and BUYER may remove it from the SELLER's possession without hindrance by the SELLER or anyone claiming through or on behalf of the SELLER.

### **Services Warranty**

SELLER shall perform all Services provided under the Purchase Order: (i) exercising that degree of professionalism, skill, diligence, care, prudence, judgment, and integrity which would reasonably be expected from a skilled and experienced service provider providing services under the same or similar circumstances as the Services under this Purchase Order. ii) in accordance with all Specifications and all BUYER policies, guidelines, by-laws and codes of conduct applicable to SELLER; and (iii) using only personnel with the skills, training, expertise, and qualifications necessary to carry out the Services. BUYER may object to any of the SELLER's personnel engaged in the performance of Services who, in the reasonable opinion of

BUYER, are lacking in appropriate skills or qualifications, engage in misconduct, constitute a safety risk or hazard or are incompetent or negligent, and the SELLER shall promptly remove such personnel from the performance of any Services upon receipt of such notice, and shall not re-employ the removed person in connection with the Services without the prior written consent of BUYER.

SELLER further warrants to BUYER that at all times all Services (including any Deliverables) will not be in violation of or infringe any Intellectual Property Rights of any person.

Within 10 day(s) of a notice from BUYER to SELLER of SELLER's breach of a warranty in this Section and without prejudice to any other right or remedy available to BUYER, SELLER shall at BUYER's option, re-perform the affected Services. All associated costs, including costs of re-performance and the BUYER's costs to review and evaluate any associated Deliverables, will be borne by SELLER. In respect of re-performed Services, the warranties in this provision will continue as to the re-performed Services or corrected or replaced Deliverable for a period commencing on the date of Acceptance of the re-performed Services or corrected or replaced Deliverable by the BUYER.

**Product Warranty**

SELLER warrants to BUYER that during the Product Warranty Period, all Products provided shall be: (i) of merchantable quality; (ii) fit for the purposes intended; (iii) unless otherwise agreed to by BUYER, new; (iv.) free from defects in design, material and workmanship; (v) in strict compliance with the Specifications; (vi.) free from any liens or encumbrances on title; (vii) in conformance with samples provided to the BUYER; and (viii) compliant with all applicable federal, provincial and municipal laws, regulations, standards and codes. For the purposes of this provision, the Product Warranty Period shall be, the longer of: (i) the express written warranty period by the SELLER; and (ii) the period commencing on the date of the post-inspection acceptance of the Product and ending on the date that is one (1) year from that date.

**Subcontracting**

The SELLER shall not subcontract the Purchase Order, in whole or in part, without BUYER's express, prior written consent. The SELLER's subcontracting will not release the SELLER of its obligations under this Purchase Order, and it will remain jointly and severally liable with its subcontractor(s) for the performance of Services or provision of Products, respectively. The act or omissions of any subcontractors of the SELLER shall be deemed to be acts and omissions of the SELLER.

**PO Changes**

BUYER may make changes to a Purchase Order by giving notice to SELLER and subsequently confirming such changes in writing. If such changes affect the cost of the Services or Products, or the time required for performance of the Purchase Order, an appropriate equitable adjustment shall be made by the BUYER. SELLER may not make changes to a Purchase Order without written approval of BUYER.

**GENERAL****Assurances**

Each party shall, upon the reasonable request of the other party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Purchase Order.

**Notices**

Any notices or other communications required under this Purchase Order to be made between the parties ("Notice") shall be in writing and shall be delivered by courier or by registered mail addressed to the addresses set out on the face of the Purchase Order or may be delivered by electronic mail at the e-mail address set out on the face of the Purchase Order. If the notice is delivered by courier, it shall be considered to have been received by the addressee on the actual date of receipt (or the next business day if sent on a holiday or a non-business day of the recipient).

**Enurement and Assignment**

This Purchase Order will be binding on and shall enure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Purchase Order, express or implied, is intended to or shall confer upon any other person any legal or equitable right or benefit of any nature whatsoever. The SELLER shall not assign any rights under this Agreement, in whole or in part, without the County's prior written consent.

**Interpretation**



The headings in this Purchase Order are inserted for convenience or reference only and are in no way intended to describe, interpret, define, affect the construction of or limit the scope, extent or intent of this Purchase Order or any provision of this Purchase Order. Unless context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders. Where a Purchase Order uses the word "including", it means "including without limitation"; and where it uses the word "includes", it means "includes without limitation".

#### **Amendment and Waiver**

Any amendment to this Purchase Order must be in writing and executed by both parties. No waiver by any party of any of the provisions hereof shall be effective unless it is set in writing and signed by the waiving party. No waiver of any provision in this Purchase Order shall be deemed or constitute a waiver of any other provision.

#### **Governing Law and Attornment**

This Purchase Order shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. Each party irrevocably submits to the exclusive jurisdiction and venue of the courts located in the Province of Alberta in any legal suit, action or proceeding arising out of or based upon this Purchase Order or the Products or Services provided hereunder. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Purchase Order.

#### **Severability**

If any term or provision of this Purchase Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall apply to the term or provision only to the extent of that invalidity or unenforceability, and shall not affect any other term or provision of this Purchase Order.

#### **Survival**

Any provision in this Purchase Order which expressly or by implication from its nature is intended to survive the termination, expiry or completion of the Purchase Order will continue in full force and effect after any the termination, expiry or completion.

#### **Entire Agreement**

This Purchase Order, together with any other documents attached or incorporated herein by reference constitutes the sole and entire agreement of the parties to this Purchase Order with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

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