

*Supplier Terms & Conditions Dated 02-January-2023*

**1. Supply of Goods and/or Services:**

- 1.1. In consideration of payment of the Price by DER Solutions Inc., the Supplier shall supply the Goods and/or provide the Services to DER Solutions Inc. in accordance with, and as specified in, the Purchase Order.
- 1.2. Where this Purchase Order relates to Goods and/or Services that are the subject of a separate written agreement between the Supplier and DER Solutions Inc., the terms of that agreement apply to the extent of any inconsistency with these Supplier Terms and Conditions.
- 1.3. The Supplier must, in supplying the Goods or performing the Services:
  - a. not interfere with DER Solutions Inc. activities or the activities of any other person at the Delivery Point or Site.
  - b. be aware of and comply with, and ensure that the Supplier's Personnel are aware of and comply with all applicable laws, all DER Solutions Inc. policies, to the extent applicable to the supply of the Goods or performance of the Services by the supplier, and all lawful directions and orders given by DER Solutions Inc., representative or any person authorized by law or DER Solutions Inc. policies to give direction to the supplier.
  - c. ensure that the Supplier's Personnel entering the Site perform the Services or deliver the Goods in a safe manner and in a way that does not prejudice safe working practices, safety and care of property, and continuity of work at the Site.
  - d. upon request by DER Solutions Inc., provide to DER Solutions Inc. and its Personnel any information and assistance required to identify, evaluate, implement and report on any matter required by law in respect of anything used, produced or created in connection with the performance of the Supplier's obligations under this Purchase Order.
- 1.4. The Supplier shall not assign, delegate, or subcontract the Purchase Order or any interest herein without the consent of DER Solutions Inc.
- 1.5. The Purchase Order, including any attachments or references noted in the Purchase Order, constitutes the entire agreement relating to the subject matter hereof and supersedes all prior and contemporaneous understandings or statements unless expressly contained herein.
- 1.6. No modifications or alterations of the terms hereof shall be binding unless such modification or alteration is in writing and is signed by both DER Solutions Inc. and the Supplier.
- 1.7. Risk of loss of the Goods remains with the Supplier and title will not pass to DER Solutions Inc. until the Goods are delivered to and accepted by DER Solutions Inc. at the Delivery Point.

**2. Delivery:**

- 2.1. The Supplier shall supply the Goods and/or perform the Services to the Delivery Point by the Delivery Date. If no Delivery Date is specified, the Supplier shall supply the Goods and/or complete the Services within a reasonable time after the Supplier receives the Purchase Order. Time is of the essence of the Supplier's performance of the Purchase Order.
- 2.2. The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage and in compliance with any applicable laws.
- 2.3. Packages must be marked with the Purchase Order number, item number, Delivery Point, contents, quantity, date, and method of dispatch and weight of each package.

**3. Defective Goods and Services:**

- 3.1. All Goods and/or Services shall be received subject to DER Solutions Inc. inspection and approval.
- 3.2. If DER Solutions Inc. determines that any Goods provided by the Supplier, even if DER Solutions Inc. has already accepted them, do not comply with the tender documents, specifications or design intent, or are defective, then DER Solutions Inc. may:
  - a. Reject the Goods outright, return them (or require the Supplier to retrieve or undo them) at the Supplier's expense, and require the Supplier to replace them; or
  - b. Reject the Goods outright, return them (or require the Supplier to retrieve or undo them) at the Supplier's expense, and terminate this agreement.
- 3.3. In any case when DER Solutions Inc. requires replacement of Goods, the Supplier shall replace them immediately with no additional cost.
- 3.4. In any case when DER Solutions Inc. rejects goods, it shall not be responsible for any re-stocking charge.

- 3.5. The Supplier shall promptly correct defective work that has been rejected by DER Solutions Inc. as failing to conform to the Contract Documents.
- 3.6. Upon DER Solutions Inc. request, the Supplier shall re-perform, at the Supplier's expense, any portion of the Services which are defective until such non-compliance is corrected.
- 3.7. All or part of any payment under an invoice or any holdback may be withheld by DER Solutions Inc. or set-off against the payments owing to the Supplier until the Supplier has remedied any defects to DER Solutions Inc. satisfaction and at the Supplier's sole expense.

#### **4. Price:**

- 4.1. The Supplier shall supply the Goods and/or Services for the Price specified in the Purchase Order, Price to be in CAD (Canadian Dollars) unless explicitly stated otherwise in the Purchase Order.
- 4.2. The Price is inclusive of all of the following:
  - a. all charges for packaging, packing, insurance and delivery of the Goods and/or Services in accordance with this Purchase Order.
  - b. the cost of any miscellaneous services of a kind which are commonly provided with the Goods and any miscellaneous items of a kind which are commonly used or supplied in the performance of (and in conjunction with) the Services
  - c. the Supplier's compliance with its obligations under this Purchase Order
  - d. other than Harmonized Sales Tax (HST), or provincial sales tax imposed by the laws of a Canadian province (PST) applicable, the Contract Price is inclusive of all Taxes for which the Supplier is responsible under applicable laws.

#### **5. Invoicing and Payment:**

- 5.1. The Supplier may not charge DER Solutions Inc. amounts greater than the Price for the provision of the Goods and/or Services. Any increase in Price due to a change in scope must be approved in writing by DER Solutions Inc.
- 5.2. DER Solutions Inc. will pay the supplier the properly charged amounts for the Goods and/or Services, less any holdbacks required under the Contract Documents or the applicable lien legislation, within 30 days (or other explicitly stated duration given in the Contract Documents) after approval by DER Solutions Inc. of the invoice and applicable backup information.
- 5.3. Any invoice must include a reference to this Purchase Order and the relevant written agreement (if any), along with the Good and/or Services, broken down to reflect the same Price components as on this Purchase Order, including the amount applicable to HST.
- 5.4. DER Solutions Inc. may reduce any payment due to the Supplier under this Purchase Order by any amount which the Supplier must pay DER Solutions Inc., including costs, damages, expenses, and any debts owed by the Supplier to DER Solutions Inc. on any account whatsoever. This does not limit DER Solutions Inc. right to recover those amounts by other means.
- 5.5. Unless specified otherwise on this Purchase Order or in any attachments thereto, the Price is inclusive of, and the Supplier shall be solely responsible for and pay, all costs of delivering the Goods to the Delivery Point, including, without limitation, all shipping and freight costs and all duties, fees, tariffs or similar taxes on imports or exports of the Goods, e.g. customs duties.
- 5.6. Upon receipt from DER Solutions Inc. of amounts invoiced, the Supplier waives and releases all rights to, and at its sole cost shall obtain the prompt removal of, any mechanics', materialmen's, construction or any similar lien, encumbrance or claim fixed against DER Solutions Inc. or its assets, which then exist or which may thereafter arise for Goods furnished or Services performed.

#### **6. Quality of the Goods and/or Services:**

- 6.1. With respect to the Services, the Supplier warrants that:
  - a. the Services will be performed in a skilful and workmanlike manner that is consistent with the level of expertise, skill, diligence and care demonstrated by reputable and experienced service providers performing services of a similar nature
  - b. the Supplier shall conform with all laws applicable to the Services
  - c. to the extent that the Services are design Services, the work being designed will be fit for their intended purpose as described in this Purchase Order
- 6.2. With respect to the Goods, the Supplier warrants that:
  - a. if the Supplier gave DER Solutions Inc. a sample of the Goods before DER Solutions issued this Purchase Order, the Goods correspond with the sample provided.
  - b. the Supplier has good title to the Goods and the right to transfer title to the Goods free and clear of any encumbrances including liens.

- c. DER Solutions Inc. has the full benefit of any manufacturer's warranties that may be applicable, and the Supplier must pursue any manufacturer's warranties on DER Solutions Inc. behalf if DER Solutions Inc. so requests.

#### **7. Liability, Indemnification and Governing Law:**

- 7.1. To the extent permitted by law, DER Solutions Inc. liability to the Supplier arising out of or in connection with this Purchase Order is limited to the total Price paid or payable by DER Solutions Inc. under this Purchase Order.
- 7.2. The Supplier agrees to indemnify and hold harmless DER Solutions Inc. and its Personnel from and against any and all liability that DER Solutions Inc. or its Personnel may suffer, sustain or incur, and any claims against DER Solutions Inc. or its Personnel, including legal fees incurred in defending any claim, arising as a result of, in respect of, a Supplier's performance, non-performance or breach of the Purchase Order, except to the extent caused by the negligence of DER Solutions Inc. or its personnel; provided however, the Supplier shall not be relieved of any allocation of liability or fault imposed by applicable laws.
- 7.3. This Purchase Order and any dispute arising out of or in connection with it or its subject matter or formation will be governed by, construed and take effect in accordance with the laws in force in the Province of Ontario and the laws of Canada applicable therein.

#### **8. Warranty:**

- 8.1 The Seller warrants that, for a period of 12 months from commissioning or 18 months after delivery, whichever date is sooner, (the Warranty Period), the Goods will be of factory standard.
- 8.2 The Seller will, at its option, repair, replace or refund the price of defective Goods, provided that and subject to clause 8:
  - a. the Buyer informs the Seller in writing during the Warranty Period and promptly on discovery that some or all of the Goods do not comply with clause 8.1;
  - b. the Buyer gives the Seller a reasonable opportunity to examine the defective Goods;
  - c. the Buyer returns the defective Goods to the Seller at the Buyer's expense.
- 8.3 These Conditions will apply to any Goods repaired or replaced under clause 8.2 provided that any defective repaired or replaced Goods fall within the Warranty Period. For the avoidance of doubt, the Warranty Period will not start anew from the delivery of any repaired or replaced Goods and the Seller will have no liability under clause 8 after the Warranty Period in connection with the Goods.
- 8.4 The Seller will not be liable for any failure of the Goods and/or Services to comply with clause 8.1:
  - a. where such failure arises by reason of fair wear and tear, wilful damage, negligence, abnormal working conditions, or could be expected to arise in the normal course of use of the Goods;
  - b. to the extent caused by the Buyer's failure to comply with the Seller's instructions in relation to the Goods and/or Services, including any instructions on installation, operation, storage and maintenance;
  - c. to the extent caused by the Seller following any specification or requirement of the Buyer in relation to the Goods and/or Services;
  - d. where the Buyer modifies any Goods without the Seller's prior written agreement or, having received such agreement, not in accordance with the Seller's instructions; or
  - e. where the Buyer uses any of the Goods after notifying the Seller that it does not comply with clause 9.1.
- 8.5 Except as set out in this clause 8:
  - a. the Seller gives no warranty in relation to the Goods or Services; and
  - b. will be under no liability for their failure to comply with the warranty in clause 8.1

#### **Definitions:**

**"Defect"** or **"Defective"** with respect to:

- a. Goods: means non-conformity to the quantity, quality, specifications and/or other requirements set out in this Purchase Order; and
- b. Services: means non-conformity to Section 6.1

**"Delivery Date"** means the delivery date specified on the Purchase Order.

**"Delivery Point"** means the place for delivery of the Goods specified on the Purchase Order.

**"Goods"** means supplies, materials, equipment or other things specified in the Purchase Order, including any part of the goods specified.

**"Personnel"** means directors, officers, employees, agents, suppliers, subcontractors or any other entity that forms part of that person's supply chain, but a reference to DER Solutions Inc. personnel excludes the Supplier.

**"Price"** means the price or rates specified in the Purchase Order.

**"Services"** includes but is not limited to the labour, work, efforts, repairs, maintenance, quality control, quality assurance, transportation, administration and services specified in this Purchase Order, including any part of the specified services and any ancillary services.

**"Supplier"** means the party or parties to whom the Purchase Order is issued.