

**Ecodyne Limited Standard Terms & Conditions****1. Work**

For the purposes of this Order, "Work" shall mean all Materials, Services, and other deliverables being purchased by Buyer under this Order and includes and all obligations, duties and responsibilities assigned to or undertaken by Seller pursuant to this Order. Seller shall ensure that the Work is performed in strict accordance with the technical specifications, drawings, and other requirements of Buyer as set out or referenced in this Order. Seller shall maintain its standard quality assurance and quality control program with respect to the performance of the Work and shall submit such program to Buyer for verification promptly upon request.

**2. Quantity**

The quantity of Work as specified in this Order shall not be exceeded or otherwise varied without Buyer's prior written consent. In the event of such variance without Buyer's prior written consent, Seller shall immediately, and at no expense or risk to Buyer, correct such variance in such a manner as not to delay any delivery or completion dates specified in this Order. Notwithstanding the foregoing, Buyer may take action to correct such variance, and any such action, including returning any excess Material to Seller, shall be entirely at Seller's expense and risk, and any such expense incurred by Buyer shall be recoverable from Seller or may be deducted by Buyer from any monies due or which may become due to Seller.

**3. Changes**

Buyer may change this Order from time to time by notice to Seller in writing. Seller shall not undertake any changes to the Work without a written order from Buyer. Notwithstanding the foregoing, if the parties are unable to agree on the value of any changes to this Order, Buyer may nevertheless direct Seller to perform the change to the Work prior to such agreement, and Seller shall perform such change, on the basis that Buyer be responsible for the actual costs of such change, reasonably incurred and approved by Buyer in advance, and provided that Seller keep a detailed accounting subject to audit by Buyer.

**4. Responsibility for Buyer Materials**

Seller shall treat as confidential all designs, drawings, specifications, dies, jigs, patterns, moulds or templates or any machinery or equipment which are delivered by Buyer to Seller ("Buyer Materials"), and notwithstanding anything to the contrary, Seller shall be responsible for loss of or damage to Buyer Materials while in possession or control of Seller or enroute to or from Seller regardless of how such loss or damage occurs. Buyer Materials shall remain the exclusive property owned or licensed by Buyer, Seller shall safely store Buyer Materials separate and apart from Seller's other property. Seller shall only use Buyer Materials properly in connection with the performance of the Work and shall promptly return any Buyer Materials not consumed in such Work to Buyer upon completion, cancellation, or termination of this Order in the same condition as received, ordinary wear and tear alone excepted.

**5. Confidential Information**

Seller agrees that all of Buyer Materials, any other confidential information or trade secrets that may otherwise be disclosed to Seller by or on behalf of Buyer, or any Intellectual Property, information or documentation that Seller may develop for Buyer under this Order shall be deemed to be "Confidential Information", and may not be published, communicated or otherwise disclosed by Seller to any third party except as is required for the performance of the Work, and subject to said third party being restricted to using Confidential Information only for the performance of such Work. Seller acknowledges and agrees that it has a fiduciary duty of care in connection with its confidentiality obligations herein, and shall require a similar confidentiality covenant from all its employees, agents, contractors, and subcontractors at any tier in connection with the Work, provided that Seller shall remain liable to Buyer for any breach of confidentiality obligations. Upon the direction of Buyer, or the completion, cancellation, or termination of this Order, Seller shall return or destroy, and shall cause any third party recipient to return or destroy, all Confidential Information received by Seller or third party pursuant to this Order, and all copies and other reproductions thereof.

**6. Packing Responsibility**

Seller shall be solely responsible, at no expense to Buyer, for packing, boxing, containers, storage, cartage or for any other matter incidental to delivering Material to Buyer. In addition to any other requirements of this Order, Seller shall comply with the applicable laws and regulations of all applicable jurisdictions with respect to labeling, packaging and handling of Material. Where applicable, material safety data sheets (MSDS) must accompany all goods and be clearly identifiable. Notwithstanding any assumption by Buyer of risk of loss of Material pursuant to section 8 of these terms and conditions, the risk of loss of or damage to any Material resulting from improper preparation of Material for shipment shall remain solely with Seller, and any expenses incurred by Buyer in connection with such loss or damage shall be recoverable from Seller or may be deducted by Buyer from any monies due or which may become due to Seller.

**7. Shipping Notices**

For all Materials, Seller shall prepare three (3) shipping notices showing, for each shipment, the Order number, quantity, full description, Buyer's item number specified in this Order and weight of Material. One copy of the shipping notice shall be packed inside each shipment, the second copy of the shipping notice shall be securely attached to the outside of each shipment, and the third copy of the shipping notice shall be delivered on the date of shipment to Buyer's Purchasing Department. Each container, package or piece in a shipment shall be marked "1 of 6, 2 of 6", etc., with export symbols, country of origin, serial numbers, weights, measurements and all other identification as directed by Buyer without charge to Buyer. Shipping notices shall clearly indicate the container or package number in which each item of Material can be located. Material arriving without proper notices may be held by Buyer until the desired information is furnished and all demurrage thus accruing incurred by Buyer shall be recoverable from Seller or may be deducted by Buyer from any monies due or which may become due to Seller. The Order number and job number where applicable shall appear on all Bills of Lading and correspondence and shall be marked on or tagged to all Material shipped.

**8. Delivery**

Routing shall follow INCOTERMS 2000 or international commercial terms as published by the International Chamber of Commerce (ICC), as specified in this Order, and such delivery terms shall also govern the risk of loss to the Materials, unless otherwise set out in this Order. When terms of delivery are ex-works, then all Material shall be forwarded by Seller in accordance with Buyer's routing instructions. Unless otherwise expressly set out in the delivery terms, Seller shall be the importer of record of all items delivered to Buyer.

**9. Presence on Site**

For any Work performed at Buyer's designated site (the "Site"), Seller agrees as follows:

- (a) Seller has the requisite experience and proper qualifications to perform the Work, and has ascertained the nature and location of the Work, the general character and accessibility of the Site and Site conditions, the location and character of existing or adjacent work or structures, and other general and local conditions and laws applicable to its performance of the Work or the cost thereof;
- (b) Seller shall provide all necessary supervision and shall employ a competent supervisor and necessary assistants who shall be in attendance at all times at the Site while the Work is being performed. The supervisor shall not be changed except for valid reason. Seller will give Buyer's representative prior written notice prior to changing the supervisor. The supervisor shall represent Seller at the Site and notices, information and instructions given to the supervisor by Buyer's representative and/or Buyer shall be held to have been received by Seller. Seller shall use all commercially reasonable efforts in the employment of labour and subcontractors (whether directly or indirectly employed) so as not to cause any conflict or interference with relations between the various trades, or any delay in the performance of Buyer's obligations;
- (c) Seller shall at all times keep the Site free from waste materials or rubbish caused by its or its subcontractors' activities. Seller shall ensure that the performance of the Work does not unreasonably interfere with the work of others. As soon as practicable, Seller shall remove Seller's equipment and, to the extent generated by the Work, all waste material and rubbish from the Site and from the surrounding areas;

- (d) Seller shall comply with the safety, health and project regulations, policies or directives of Buyer and promptly remove from the Site, any person under the control of Seller who violates any of the aforesaid safety, health, or plant regulations, policies or directives or upon reasonable request of Buyer;
- (e) Seller shall comply with the requirements of the *Workplace Safety and Insurance Act* (Ontario), the *Occupational Health and Safety Act* (Ontario) or any related or similar acts of the province or territory in which the Work is being performed, or federal acts of application to the Work or the performance of the Work, and shall comply with all other environmental protection legislation in effect at the time the Work is performed. Seller shall, if so required, furnish to Buyer satisfactory evidence that this clause is being complied with;
- (f) prior to commencing the Work and prior to receiving payment in respect of each progress draw, Seller shall provide evidence of compliance with the requirements of the *Workers' Compensation Act* (Ontario) or any related or similar acts of the province or territory in which the Work is being performed, or federal acts of application to the Work or the performance of the Work. At any time Seller shall provide such evidence of compliance by itself and its Subcontractors, upon request by Buyer; and
- (g) title to Work, other than Materials that are delivered in accordance with section 8 of these terms and conditions, shall pass when and to the extent that such Work is performed.
- (h) If requested by Buyer, Seller shall act as a limited representative of the Buyer solely for purposes of relaying information between Buyer and the customer from time to time, provided that Seller shall advise customer that is not the agent of the Buyer and has no authority to bind the Buyer or amend any terms of the order for the customer.

## 10. Schedule

Seller shall prepare and submit on a timely basis upon request a schedule which shall be designed to have the Work completed on a timely basis by Buyer's specified deadlines (the "**Project Schedule**"), and keep the Project Schedule updated. If the Work may not reasonably be completed by Buyer's specified deadlines, Seller agrees to develop and follow a recovery plan to use all required efforts at no expense of Buyer to mitigate the delay to complete the Work by Buyer's deadlines.

## 11. Performance, Default, and Termination

- (a) Time is of the essence in this Order and Seller guarantees performance of the Work within the time(s) specified in this Order. If Seller fails or refuses to perform the Work in strict accordance with all terms and conditions contained herein, defaults in the performance of any of its other obligations hereunder, or is adjudged bankrupt or makes a general assignment for the benefit of creditors or a receiver is appointed for Seller, then Buyer, at its option, may terminate this Order in whole or in part by written notice to Seller without incurring any liability to Seller on account thereof in which case Buyer may, at its option, take possession of any Material or tools and equipment used for the performance of Work in Seller's possession or control without regard to its stage of completion and complete the Work or procure goods and/or services similar to the Work and charge any excess cost occasioned thereby to Seller.
- (b) Notwithstanding the foregoing, the performance of any obligations of either party may be delayed or suspended at any time but only so long as such party is prevented from performance by reason of any cause whatsoever beyond its reasonable control and other than through its fault or negligence, including, without limitation, fire, lightning, flood, explosion, the elements, acts of God, civil or military authorities or government authorities, riots, general industry strikes or other general industry labour disturbances or embargoes and such party shall not incur any liability or be required to indemnify the other party from any loss, damage or inconvenience sustained by the other party as a result of such delay in or suspension of performance. The period during which performance of any such obligation is delayed, or suspended shall be added to the remainder of the applicable delivery or work schedule. Notwithstanding the foregoing, such delay in or suspension of performance shall not constitute cause for termination of this Order unless the amount of delay in or suspension of performance persists for more than ten (10) calendar days, in which case Buyer at its option may terminate this Order, in whole or in part by written notice to Seller upon the same conditions concerning termination set out in section 11(c) below.

- (c) Notwithstanding anything to the contrary, Buyer for any reason at any time may terminate this Order, in whole or in part, by written notice to Seller in which case Seller may claim its reasonable costs actually incurred hereunder prior to the effective date of and to the extent of such termination provided, however, that the total sum so payable shall not exceed the Order price reduced by payments previously made, which price shall be prorated in the event that this Order is terminated only in part, and further provided that in no event shall Seller be entitled to any special, incidental, indirect or consequential damages because of such termination (including, without limitation, loss of profits, loss of opportunity or loss of productivity). As to partially completed work or raw materials included in Seller's costs, Seller shall hold the same disposition in accordance with Buyer's instructions.
- (d) If Buyer fails to pay Seller any undisputed amount due within thirty (30) days after the amount became payable, or Buyer fails to observe or perform any of its material covenants or agreements contained in this Order, then, in any such case, if Buyer fails to commence to correct such condition within thirty (30) days of receipt of written notice from Seller to Buyer stating the nature of the condition and requiring Buyer to remedy the same, Seller may, after giving Buyer seven (7) calendar days' notice thereof, terminate this Order. Any such termination shall be without prejudice to any existing rights, powers or remedies of either party under this Order provided that in no event shall Seller be entitled to any special, incidental, indirect or consequential damages because of such suspensions or withdrawals of suspension (including, without limitation, loss of profits, loss of opportunity or loss of productivity). Notwithstanding the foregoing, this section 11(d) shall not apply to any amounts withheld by Buyer under section 25.

## 12. Suspension

Buyer may at any time, and from time to time, by notice to Seller, suspend further performance of this Order for any reason whatsoever. Upon receiving such notice of suspension, Seller shall promptly suspend further performance of this Order to the extent specified, and during the period of such suspension shall properly care for and protect all work in progress and materials, supplies, and equipment Seller has on hand for performance of this Order and generally use its best efforts to utilize its materials, labour and equipment in such a manner as to mitigate costs associated with such suspension. Buyer may at any time withdraw the suspension as to all or part of the suspended performance by written notice to Seller specifying the effective date and scope of withdrawal, and Seller shall, on the specified date of withdrawal, resume diligent performance of the part of this Order for which the suspension is withdrawn. Seller shall provide Buyer with written notice of any impact to the cost or schedule under the Order, if applicable, resulting directly from suspension by Buyer under this section, within seven (7) days of Seller receiving notice of the suspension. Failure to provide written notice shall be deemed to be acceptance by Seller that there is no impact to the cost or schedule under this Order resulting directly from suspension by Buyer under this section.

## 13. Inspection and Rejection of Work

All Work shall be subject, at Buyer's option, to review and inspection at all times and at all places as to progress, materials and workmanship by Buyer and/or its authorized representatives. Seller shall provide proper access and allow for adequate time as required by Buyer for all such reviews and inspections. If any such review or inspection reveals, in Buyer's sole opinion, that any Work is not in accordance with the description or the latest issue of applicable drawings, specifications or designs stipulated in and forming part of this Order, Buyer shall notify Seller of its rejection of such Work and shall hold same at Seller's risk subject to Seller's disposition instructions, with all charges accruing to Seller as a result of such rejection. Seller shall pay all transportation charges for rejected Material to and from its destination. Any review, comment, approval, inspection or acceptance of or failure to inspect, discover or reject any defective and/or non-compliant Work by Buyer shall not imply acceptance of any Work, and shall not relieve Seller of any responsibility with respect to any of the Work. Buyer reserves the right upon rejecting any defective and/or non-compliant Work to treat this Order as breached or, without limiting Buyer's rights under this Order, to demand continued performance by Seller in whole or in part.

**14. Invoices and Payment**

- (a) Seller's invoices for Work shall state the applicable INCOTERMS, discounts, taxes, Order number, quantity, full description and Buyer's item number specified on this Order, and shall also be accompanied by a copy of the relevant Bill of Lading, packing slip, or other receipt to substantiate any charges where applicable, and shall also include a schedule of values, payment receipts, and relevant timesheets, and such supporting documentation and additional data (including a statutory declaration confirming that all subcontractors have been paid for lien purposes) as Buyer may reasonably require to substantiate Seller's right to payment. Invoices shall be sent to Buyer's Accounts Payable Department only after the date of actual shipment and/or completion of Work. No partial invoicing will be accepted unless otherwise stated on this Order and/or authorized in writing by Buyer. Failure by Seller to follow instructions for rendering invoices shall result in postponement of payment until defects are remedied to Buyer's satisfaction. Seller's invoices shall be returned to Seller for correction.
- (b) Buyer shall pay to Seller within thirty (30) days following the date Buyer receives each invoice and supporting information under section 14(a), the full undisputed amount specified in such invoice, net of any applicable holdback to such extent due to Applicable Lien Legislation and subject to any applicable withholding under this Order.

**15. Taxes**

Except for any value added taxes calculated on the Order price as set out on page 1 of this Order, all prices on this Order are deemed to include all applicable sales, use, excise, value added, gross receipts, consumption, franchise or similar taxes, duties or similar charges imposed by any federal, state, provincial, or local government unless otherwise indicated herein. If any taxes, duties or similar charges paid by Buyer to Seller were not required to be paid, Seller shall promptly apply for a refund thereof and forward same to Buyer upon receipt. All value added taxes calculated on the Order price as set out on page 1 of this Order shall be shown separately on each Seller's invoice.

All amounts payable under this Order shall also be subject to the *Income Tax Act* (Canada) (including, without limitation, applicable deductions from payments by Buyer on account of withholding against tax). Notwithstanding anything to the contrary, if any applicable law in Canada or any province requires that any taxes or other amounts be deducted or withheld from any payments to be made by Buyer under this Order, Buyer will deduct such taxes or other amounts from the amounts payable under this Order and remit such taxes or other amounts directly to the applicable taxing authority and shall not be required to gross up any amounts paid to Seller or compensate or otherwise indemnify Seller with respect to such taxes or other amounts.

**16. Warranty**

- (a) Seller warrants to Buyer that:
- (i) in performing the Work and its obligations under this Order, Seller shall, and shall cause its subcontractors and suppliers to, at all times exercise the degree of diligence, manufacturers and care and skill that ought to be exercised by experienced and competent contractors in performing work of the nature contemplated herein in an expeditious manner, and that Seller has the necessary experience, skill and expertise required to enable it to fulfill its obligations, duties, liabilities, and responsibilities herein;
  - (ii) all Materials delivered or Services performed hereunder, as the case may be, shall (1) be fit for the purpose intended (of which purpose Seller shall be deemed to have been advised by Buyer), (2) be new and merchandise quality and free from defects in workmanship and materials, (3) in every respect strictly conform to description and the latest issue of applicable drawings, specifications and design and (4) in every respect strictly comply with all applicable federal, provincial and local laws, rules regulations and the like (and Seller shall upon request furnish Buyer with a certificate to such effect in such form as Buyer may require from time to time);
  - (iii) all Work shall be complete and finished in every aspect; and
  - (iv) all warranties in section 16(a) shall remain in effect for a period of eighteen (18) months from delivery of Materials or completion of the Services, as the case may be.

If Seller is in breach of this warranty, Buyer upon written notice to Seller shall have the right, at Buyer's option, to repair such defective Work at Seller's expense or require Seller to promptly correct or replace same at Seller's expense and Seller shall indemnify Buyer from any loss, including economic loss, and indirect, special consequential and liquidated damages and penalties occasioned thereby.

- (b) Any repaired, corrected or replaced Work furnished under this warranty shall carry warranties on the same terms as set forth above, except that the applicable warranty period for the repaired/corrected/replacement Material or re-performed Service shall be for twelve (12) months from the date of such repair, correction, replacement or re-performance.
- (c) The rights and remedies of Buyer contained in this Order shall not be exclusive but shall be cumulative and in addition to all other rights and remedies existing at law or in equity available to Buyer.

## 17. Intellectual Property

- (a) Seller hereby irrevocably assigns and shall cause each contractor and subcontractor to assign to Buyer all right, title, and interest in and to the Transferred I.P. immediately upon the development of such Transferred I.P. "Transferred I.P." means any Intellectual Property that was developed by Seller or any contractor or subcontractor and is used in the performance of the Work or incorporated into the Work. Seller grants to Buyer, Buyer's affiliated companies, and Buyer's customers an irrevocable, perpetual, transferable, non-exclusive, worldwide, royalty-free license to any Intellectual Property that is not Transferred I.P. so that Buyer, Buyer's affiliated companies, and Buyer's customers shall have the full right to use, copy and modify such Intellectual Property for any and all purposes related, whether directly or indirectly, to developing, constructing, commissioning, licensing, operating, maintaining, repairing, improving, modifying, expanding, and decommissioning of the project in which the Work is incorporated.
- (b) Seller warrants that any Work delivered under this Order or the use of same by Buyer or any customer of Buyer, shall not infringe any right in Intellectual Property. Seller at its sole expense shall defend any claim, action or demand brought against Buyer, Buyer's affiliated companies, and Buyer's customers, and each of their respective directors, officers, shareholders, agents, servants, employees, and representatives and those for whom any of them are responsible, and shall indemnify them for all claims, demands, losses, liabilities, fines and penalties, damages, obligations, payments, costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements and compromises relating thereto and lawyers' fees and disbursements in connection therewith, arising out of any alleged or actual infringement of any right in Intellectual Property resulting from the use or sale of the Work, in whole or in part, purchased hereunder. If the sale or use of any Work is enjoined, Seller at its sole expense shall procure, if possible, for Buyer, its affiliated companies and its purchasers the right to continue to sell and use the Work. If this is not possible, at Buyer's option, Seller shall replace the Work with equivalent non-infringing Work, modify the Work in a manner acceptable to Buyer so that it becomes non-infringing or refund to Buyer its purchase price and its cost of transportation and installation, if any.
- (c) "Intellectual Property" means, whether foreign or domestic, all knowledge, know-how, trade secrets, methodology, data, patents and patent applications, trade-marks and trade-mark applications, trade names, certification marks, copyrights, computer software, computer programs, any computer system comprising any combination of hardware, software, firmware, middleware, software libraries and software tools, in object and source code format, information technology, inventions, works, designs including without limitation industrial designs and other design rights, formulae, processes, procedures, and any other similar property including all registrations and applications for registrations in connection with the foregoing.

## 18. Assignment

This Order, including any money to be payable hereunder, shall not be assigned or subcontracted in whole or in part by Seller without prior written consent of Buyer and then only to subcontractors or assignees acceptable to Buyer. Any attempted assignment or subcontract without Buyer's consent shall render this Order voidable at Buyer's option. Notwithstanding Buyer's consent pursuant to this section, Seller shall remain fully responsible for the Work of any assignee or subcontractor of Seller hereunder. Buyer may assign this Order to an assignee without the prior consent of Seller, but Buyer shall provide written notice of such assignment.

**19. Course of Dealing**

Seller shall strictly comply with the terms and conditions in this Order, notwithstanding any usage of trade or course of dealing to the contrary.

**20. Waiver**

No waiver of any provision of this Order shall be deemed to be made by Buyer unless agreed to in writing, executed by Buyer and delivered to Seller. No such waiver by Buyer shall extend to or be taken to affect any other breach or default or any other rights of Buyer.

**21. Insurance**

Seller shall maintain at its sole expense all necessary and appropriate insurance, including standard commercial general or umbrella liability insurance coverage, of the type and in such amounts that are satisfactory to Buyer in connection with the Work, and shall furnish certificates of such insurance to Buyer prior to the commencement of the Work and any time thereafter. Where a loss occurs to Seller which is covered in whole or part by Seller's insurance, Buyer shall not be liable to Seller to the extent such loss is covered by such insurance, no matter how the loss was caused.

**22. Indemnity**

Seller shall indemnify and hold harmless Buyer and their respective directors, officers, employees and agents from and against any and all claims, demands, liens, losses, costs, damages, penalties actions, suits or proceedings including agency fees and legal fees on a substantial indemnity basis (all of which hereinafter called "Claims") arising or resulting from (a) injuries to property or persons including death, and from any other claims or liability as a result of any act or omission of Seller, or any of its directors, officers, agents, employees, servants, material suppliers, subcontractors or assignees; or (b) any breach or alleged breach of the obligations and responsibilities of Seller hereunder.

**23. Further Covenants**

Seller further covenants: (a) to pay all employees and third parties in respect of the performance of the Work, and to pay all taxes, imposts, levies, assessments, premiums, fees or union dues relating thereto directly or indirectly, and to satisfy Buyer thereupon whenever demand is made, and to indemnify Buyer against and save it harmless from, and forthwith to discharge, any and all Claims therefor; (b) to comply with the provisions of the applicable construction lien or builder's lien legislation applicable in the province in which the Work is performed including, without limitation, any trust provisions thereof (the "Applicable Lien Legislation"); (c) to obtain and pay for all permits, licenses and official inspections made necessary by this Order or the performance of the Work, and to comply with all laws, ordinances, orders, permits, regulations and rules of any governmental authority applicable to this Order or the Work; (d) to carefully examine all work of others near to or necessary to the Work, detect and notify Buyer of all defects or delays therein, and cooperate with Buyer and others in order to ensure that such other work is properly integrated and functions properly; and (e) to assume the risk of loss of or damage to the Work not fully or finally accepted by Buyer, or to materials, supplies, equipment or scaffolds used or consumed in the performance of this Order.

**24. Liens**

If a lien pursuant to the Applicable Lien Legislation arising from the Work is registered against the Site or other property in relation to the Work, or given to Buyer, Seller shall within seven (7) calendar days, at its sole expense, vacate or discharge the lien. In the event that Seller fails or refuses to vacate or discharge the lien within the time prescribed above, Buyer shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs and expenses incurred by Buyer in so doing (including, without limitation, all legal fees and disbursements and the amount and cost of any security to vacate the lien) shall be for the account of Seller, and Seller shall immediately reimburse Buyer for all such costs. Seller shall indemnify Buyer, and the owner and lessee of any lands subject to any lien, and each of their respective directors, officers, employees and agents, in respect of any lien that is Seller's responsibility hereunder.

**25. Withholding of Payment**

Buyer may withhold payments from Seller to such extent as may be considered necessary by Buyer to protect Buyer from loss on account of defective Work not remedied, or failure of Seller to perform any of its obligations hereunder. Seller hereby acknowledges and agrees that Buyer may set-off against any payment obligation of Buyer to Seller, and that Buyer's obligation to pay Seller shall be reduced by any claim of any nature or kind by Buyer against Seller, whenever arising, whether for a liquidated amount or not, whether or not arising from or related to this Order and including any claim against Seller by any other person which has been assigned to Buyer. Any right which Seller may have to assign rights under this Order shall be subject to Buyer's right of set-off as aforesaid and any rights acquired by any assignee shall be subject to such Buyer's right of set-off, irrespective of whether any claim by Buyer against Seller arises before, upon or after the assignment to the assignee, or before, upon or after Buyer is notified of such assignment.

**26. Dispute Resolution**

Buyer may, at any time by notice to Seller, dispute that the Work or Seller's performance thereof is in compliance with the terms of this Order. Any claim, dispute, or other matter may, if agreed to by both parties, be settled in accordance with the provisions of the *Arbitration Act, 1991* (Ontario), with the arbitration to be held in Toronto, Ontario or such other location as the parties may agree in writing. As time is of the essence, Seller shall continue performance of the Work notwithstanding any such dispute and shall ensure its subcontractors and suppliers also do so, it being understood that by so doing Seller will not jeopardize any claim it may have. Accordingly, in the event of a dispute, any work stoppage by Seller or by any others for whom Seller is responsible will constitute a breach of this Order entitling Buyer to damages on account of any delay affecting the performance of the Work.

**27. Hazardous Materials**

Seller will take all reasonable precautions to ensure that no toxic or hazardous substances are present in the Work. Seller will notify Buyer in writing, in addition to the obligations regarding hazardous materials in section 6 of these terms and conditions, should it become aware of any toxic or hazardous substances present in the Work, or which Seller or anyone for whom Seller is responsible intends to utilize in the performance of the Work. Seller will take all reasonable steps necessary to ensure that no person's exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by applicable legislation. Seller shall, if so required, furnish to Buyer satisfactory evidence that the terms of this clause are being complied with.

**28. Miscellaneous**

- (a) In performing the Work hereunder, Seller shall at all times be an independent contractor and shall have sole responsibility for and control over the details and means and methods of performing the Work, subject to the provisions of this Order.
- (b) Except as otherwise expressly set out in this Order, the rights and remedies of the parties set out in this Order are cumulative and are not in substitution for any other right or remedy otherwise available to the party. This Order may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by both parties.
- (c) The indemnities set forth in this Order shall survive the completion of the Work, the payment of all portions of the contract price, and any termination of this Order.
- (d) This Order shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

**29. Applicable Law**

This Order and the agreement herein contained shall be construed in accordance with and governed by the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario. Subject to the provisions of section 26 of these terms and conditions, the parties voluntarily submit to the jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.



**30. Entire Agreement**

This Order is expressly limited to these terms and conditions, and any provision in any bid, acknowledgement, acceptance, shipping document or other instrument inconsistent with or in addition to these terms and conditions is hereby objected to by Buyer, and shall be waived by Seller and shall not be binding upon Buyer notwithstanding performance of the Work to Buyer or the retention and/or acceptance thereof or payment therefor by Buyer. This Order is the entire agreement between the parties relating to the Work and replaces any earlier quotations or agreements, and the parties agree that there are no other agreements, representations, collateral agreements or warranties other than those expressed herein. This Order shall only be modified in writing by agreement of the parties. In the event of any conflict or inconsistency with respect to these terms and conditions and the cover page of this Order, such conflict or inconsistency shall be resolved in favour of the cover page of this Order. Clerical and typing errors and omissions are excepted and are subject to correction.