



PRICE INDUSTRIES LIMITED

# TERMS AND CONDITIONS OF SALE

The Customer's attention is particularly drawn to the provisions of clause 14 (Limitation of liability).

## 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Terms of and Conditions of Sale.

### 1.1. Definitions:

**Acknowledgement of Order:** the Supplier's acknowledgement of order issued after receipt of the Customer's Purchase Order, and more particularly described in clause 2.2.

**Business Day:** a day other than a Saturday, Sunday or public holiday in Canada or the United Kingdom.

**Charges:** the total cost of the Goods and Services (including any staged or interim payment) as set out on the Purchase Order.

**Commencement Date:** has the meaning given in clause 2.2.

**Confidential Information:** all information of a confidential nature concerning a Party's business or that of any affiliate of a Party including in relation to business processes or background information disclosed to the recipient Party or an affiliate of the recipient Party by the other Party or any of its affiliates, employees or agents or obtained from the other Party or any of its affiliates, employees or agents as a result of entering into or performing the Contract (including technical or commercial know-how, specifications, inventions, processes or initiatives) whether or not specifically identified as such.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Terms of Sale and which is made up of these Terms of Sale, the Quotation, the Goods Specification, the Services Specification, the Purchase Order and the Acknowledgement of Order, such Contract having been concluded in accordance with clause 2.2 by the Acknowledgement of Order issued by the Supplier.

**Customer:** the person or firm who purchases the Goods and/or Services from the Supplier and who is identified as the Customer on the Quotation.

**Delivery Address:** has the meaning given in clause 5.3.

**Delivery Date:** has the meaning given in clause 5.5.

**Force Majeure Event:** has the meaning given to it in clause 17.

**Goods:** the goods (or any part of them) supplied by the Supplier to the Customer as set out in the Goods Specification.

**Goods Specification:** the description or specification for the Goods, including any relevant plans or drawings, provided in writing by the Supplier to the Customer as part of the Quotation.

**Incoterms:** the International Commercial terms, eighth edition, or such other later edition as may issued in its place.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Quotation:** the Quotation issued by the Supplier for the Goods and/or Services.

**Party or Parties:** the Supplier and/or the Customer.

**Purchase Order:** the Customer's order for the Goods and/or Services, and more particularly described in clause 2.1, such Purchase Order referencing the Quotation to which it relates.

**Services:** the services supplied by the Supplier to the Customer as set out in the Service Specification.

**Service Specification:** the description or specification for the Services provided in writing by the Supplier to the Customer as part of the Quotation.

**Supplier:** Price Industries Limited incorporated pursuant to the laws of the Province of Manitoba, and whose registered and executive office is at 638 Raleigh Street, Winnipeg, Manitoba, R2K 3Z9.

**Supplier Materials:** has the meaning given in clause 10.1.9.

**Terms of Sale:** these terms and Terms and Conditions of Sale as amended from time to time in accordance with clause 25.

**Warranty for Goods:** the warranty for Goods given by the Supplier in favour of the Customer as set out in clause 6.

**Warranty For Services:** the warranty for Services given by the Supplier in favour of the Customer as set out in clause 9.

**Warranty Period for Goods:** has the meaning given to it in clause 6.1.

**Warranty Period for Services:** has the meaning given to it in clause 9.2.

## 1.2. Interpretation:

1.2.1. A **person** includes a natural person, a corporation, a partnership, a trust or unincorporated body (whether or not having separate legal personality).

1.2.2. A reference to a Party includes its successors and permitted assigns.

1.2.3. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.4. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.5. A reference to **writing** or **written** includes email, but not fax.

## 2. BASIS OF CONTRACT

2.1. The Supplier shall issue a Quotation together with a Goods Specification and, if applicable, a Services Specification setting out the details of the relevant Goods and Services to be provided by the Supplier to the Customer. Such Quotation shall be budgetary only, constitute an "invitation to treat" and shall be revocable at any time. The Customer shall then issue a Purchase Order, which shall constitute an offer by the Customer to purchase Goods and/or Services in accordance with these Terms of Sale, except as expressly varied as agreed to in writing by the Supplier. The Customer is responsible for ensuring that the terms of the Purchase Order and any applicable Goods and /or Services Specification are complete and accurate. Any statements on the Purchase Order or any other document issued by the Customer applying or attempting to apply terms and conditions other than these Terms of Sale (including the Customer's terms of purchase) shall have no effect even if such terms and conditions have not expressly been objected to and fulfilment of the Purchase Order does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms of Sale. Any ancillary agreement, any warranties or any modification of these Terms of Sale shall only be binding if expressly accepted in writing by the Supplier.

2.2. The Purchase Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Purchase Order (the **Acknowledgement of Order**) at which point, and on which date, the Contract shall come into existence (**Commencement Date**).

2.3. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.4. These Terms of Sale apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms of Sale.

2.5. All of these Terms of Sale shall apply to the supply of both Goods and Services except where application to one or the other is specified. The provisions relating to Services shall only apply where such Services are set out in the Purchase Order (or Quotation to which the Purchase Order relates) which is accepted by the Supplier.

2.6. Once the Purchase Order has been accepted by the Supplier issuing the Acknowledgement of Order the Customer may not cancel the Contract without the permission of the Supplier, which shall be in the Supplier's absolute discretion and may be subject to payment by the Customer of the Supplier's administrative costs, wasted costs and expenses, and loss of profit on the Contract.

### **3. REQUESTING A VARIATION OF GOODS OR SERVICES TO BE SUPPLIED**

3.1. Where the Parties have entered into a Contract for the supply of Goods and/or Services (by the Supplier issuing the Acknowledgement of Order) the Customer may request a variation to the Goods or Services by sending the Supplier a written request containing full details of the requested variation.

3.2. The Supplier shall consider the requested variation and notify the Customer in writing of whether (in its absolute discretion) the variation can be accommodated and, if it can, any resultant changes to the Delivery Date, Charges, or any other terms of the Contract.

3.3. If the Customer wishes to proceed with the proposed variation based on the revised terms notified in clause 3.2 above, it shall inform the Supplier accordingly in writing. The variation shall take effect from receipt by the Supplier of the notification sent under this clause 3.3, such notification having the effect of varying the Contract to include the revised agreed terms.

### **4. GOODS**

4.1. The Goods are described in the Goods Specification attached to the Quotation.

4.2. To the extent that the Customer has specified the design and/or construction of the Goods the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 4.2 shall survive termination of the Contract.

4.3. The Supplier reserves the right to amend the Goods Specification and all catalogue descriptions if required at any time, before or after a Purchase Order is accepted, to reflect any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer of any such change as soon as reasonably practicable.

4.4. It is the Customer's responsibility to ensure that the information set out in the Quotation and Purchase Order are accurate and that the Goods are suitable for its use and for the purpose for which it requires them. The Supplier shall not be liable to the Customer for any losses that it suffers if the Goods are not suitable for use with other parts purchased by the Customer, from the Supplier or elsewhere, nor for use by the Customer in a manner otherwise than as directed by the Supplier.

### **5. DELIVERY OF GOODS**

5.1. Unless stated to the contrary on the Quotation, delivery shall be subject to Incoterms, and the costs of and method of delivery shall be set out in the Quotation. Unless stated to the contrary on the Quotation, where there is a conflict between the Contract and Incoterms, the Contract shall apply and take precedence.

5.2. The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the type and quantity of the Goods (including the code number of the Goods, where applicable).

5.3. The Supplier shall deliver the Goods to the location set out in the Purchase Order or such other location as the Parties may agree (**Delivery Address**) at any time after the Supplier notifies the Customer that the Goods are ready.

5.4. Delivery of the Goods shall be completed at the delivery point indicated by the Incoterm selected for the specific order. For example. DAP - Delivery at Place shall be completed upon delivery of the goods at the delivery address, for the Customer to unload.

- 5.5. The Supplier shall notify the Customer of the date for delivery of the Goods and any change to that date (**Delivery Date**). Any dates quoted for delivery of the Goods, including the Delivery Date, are approximate only, and the time of delivery is not of the essence. In addition, the Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions, failure to provide access to the Delivery Address or any other instructions that are relevant to the supply of the Goods.
- 5.6. Further the Supplier shall not, in any circumstances, be liable to the Customer for delay in delivery of the Goods where
- 5.6.1. the Customer is entitled to an extension of time for completion of any works that it is contracted to provide to a third party, or
- 5.6.2. if, irrespective of the delay in delivery of the Goods, the Customer would have delayed its performance of its obligations to a third party under any contract with that third party for any reason, including the acts or omissions of any person.
- 5.7. If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any relevant instruction related to the supply of the Goods or the failure by the Customer to provide appropriate access to the Delivery Address for the Goods or any other act or omission of the customer.
- 5.8. If the Customer fails to accept delivery of the Goods on the Delivery Date, then except where such failure or delay is caused by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- 5.8.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the day following the Delivery Date; and
- 5.8.2. the Supplier, at its option, may store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance) and the costs of redelivery.
- 5.9. If ten (10) Business Days after the Delivery Date the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.
- 5.10. The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 6. WARRANTY FOR GOODS

- 6.1. Subject to clause 6.2, the Supplier warrants to the Customer that for a period of twenty four (24) months from the date of shipment of the Goods (**Warranty Period for Goods**), the Goods shall conform in all material respects with the Goods Specification (**Warranty for Goods**). For the sake of clarity, the Warranty for Goods does not apply to delivery costs or to any Services.
- 6.2. The Warranty for Goods does not apply to components or items supplied which may be warranted separately by the manufacturer of the component or item. Further the Warranty for Goods does not apply to factory mounted controls and components supplied and owned by third parties for mounting by the Supplier.
- 6.3. Subject to clauses 6.7 and 6.8, where there is a breach of the Warranty for Goods the Supplier shall, at its option, repair or replace the defective Goods, if:
- 6.3.1. the Customer gives notice in writing during the Warranty Period for Goods within a reasonable time of discovery, that some or all of the Goods do not comply with the Warranty for Goods; and
- 6.3.2. the Supplier is given a reasonable opportunity of examining such Goods; and
- 6.3.3. the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's risk and cost.
- 6.4. Where there is a breach of the Warranty for Goods and the Supplier is not, in its absolute discretion, and whether before, during or after attempting to repair or replace the Goods, able to repair or replace the Goods it may refund in full the price for the Goods to the Customer, subject to deduction of a reasonable and proportionate amount which reflects use made by the Customer of the Goods.

- 6.5. Where, following examination of the Goods the Supplier determines, acting reasonably, that there is no breach of the Warranty for Goods, the costs of repair or replacement (including any costs of returning the Goods to the Supplier) shall be the responsibility of the Customer.
- 6.6. In all circumstances, the Customer shall provide the Supplier with
  - 6.6.1. full details of the alleged breach of the Warranty for Goods, together with any other relevant information, and
  - 6.6.2. all necessary access and cooperation to enable the Supplier to carry out the repair or replacement.
- 6.7. The Supplier shall be under no obligation to take any of the action set out in clauses 6.3 or 6.4 if the Customer has failed to make any payment for any part of the Charges in accordance with the Contract.
- 6.8. The Supplier shall not be liable for the Goods' failure to comply with the Warranty for Goods in any of the following events:
  - 6.8.1. the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.3.1;
  - 6.8.2. the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - 6.8.3. the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
  - 6.8.4. the Customer alters or repairs such Goods without the written consent of the Supplier;
  - 6.8.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - 6.8.6. the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 6.9. These Terms of Sale shall apply to any repaired or replacement Goods supplied by the Supplier and the balance of the Warranty Period for Goods which applied to the original Goods shall apply to any repaired or replacement Goods.
- 6.10. Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the Warranty for Goods. The warranties and liabilities set forth in this clause 6, are the only warranties or liabilities given by the Supplier in relation to the Goods, and are in lieu of all other warranties and liabilities, express or implied, whether arising from contract or negligence, in law or in fact. Further the Supplier makes no warranties of merchantability or fitness for particular purpose or use.
- 6.11. The remedies set out in this clause 6 are the Customer's sole remedy for breach of the Warranty for Goods and this clause shall survive termination of the Contract.

## **7. TITLE AND RISK**

- 7.1. The risk in the Goods shall pass to the Customer on completion of delivery, save that where, according to Incoterms and the Customer's chosen method of delivery, risk passes prior to delivery, Incoterms shall prevail.
- 7.2. Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) of all Charges and for any other goods that the Supplier has supplied to the Customer in which case title to the Goods shall pass at the time of payment of all such sums.
- 7.3. Until title to the Goods has passed to the Customer, the Customer shall:
  - 7.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - 7.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 7.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full value on the Supplier's behalf from the date of delivery;
  - 7.3.4. notify the Supplier immediately if it becomes subject to any of the events listed in clause 15; and

7.3.5. give the Supplier such information relating to the Goods as the Supplier may require from time to time.

7.4. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 15, then, without limiting any other right or remedy the Supplier may have the Supplier may at any time:

7.4.1. require the Customer to deliver up all the Goods; and

7.4.2. if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 8. SUPPLY OF SERVICES

8.1. The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

8.2. The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. The Customer shall respond promptly to any request from Supplier to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Supplier to perform the Services in accordance with the Service Specification.

8.3. The Supplier reserves the right to amend the Service Specification, before or after acceptance of a Purchase Order if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer as soon as reasonably practicable.

## 9. WARRANTY FOR SERVICES

9.1. The Supplier warrants to the Customer it shall provide the Services using reasonable skill and care (**Warranty for Services**).

9.2. The Supplier shall have no liability or obligation for breach of the warranty at clause 9.1 above unless it has received written notice of the breach of Warranty for Services within ninety (90) days of completion of the Services (or where the Services are delivered in stages, from completion of the delivery of that stage of the Services) (**Warranty Period for Services**).

9.3. Subject to clauses 9.6 and 9.7, where there is a breach of the Warranty for Services to which clause 9.2 applies, the Supplier shall reperform the Services at its cost if:

9.3.1. the Customer gives notice in writing during the Warranty Period for Services and within a reasonable time of discovery, that some or all of the Services do not comply with the Warranty for Services; and

9.3.2. the Supplier is given a reasonable opportunity of investigating the allegation.

9.4. Where, following investigation of the allegation the Supplier determines, acting reasonably, that there is no breach of the Warranty for Services, any costs expended by the Supplier in relation to the allegation shall be borne by the Customer.

9.5. In all circumstances, the Customer shall provide the Supplier with

9.5.1. full details of the alleged breach of the Warranty for Services, together with any other relevant information, and

9.5.2. all necessary access and cooperation to enable the Supplier to investigate the allegation and conduct any work under clause 9.3.

9.6. The Supplier shall be under no obligation to take any of the action set out in clause 9.3 if the Customer has failed to make any payment for any part of the Charges in accordance with the Contract.

9.7. The Supplier shall not be liable for the Services' failure to comply with the Warranty for Services in any of the following events:

9.7.1. the Customer makes any further use of such Services after giving a notice in accordance with clause 9.3.1;

9.7.2. the breach arises because the Customer failed to follow the Supplier's oral or written instructions as to the use of the Services;

9.7.3. the breach arises as a result of the Supplier following any instructions of the Customer;

9.7.4. the Customer alters or repairs such Services without the written consent of the Supplier;

- 9.7.5. the breach arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 9.7.6. the Services differ from the Services Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 9.8. These Terms of Sale shall apply to any reformed Services and the balance of the Warranty Period for Services which applied to the original Services shall apply to any reformed Services.
- 9.9. Except as provided in this clause 9, the Supplier shall have no liability to the Customer in respect of the Services' failure to comply with the Warranty for Services. The warranties and liabilities set forth in this clause 9, are the only warranties or liabilities given by the Supplier in relation to the Services, and are in lieu of all other warranties and liabilities, express or implied, whether arising from contract or negligence, in law or in fact. Further the Supplier makes no warranties of merchantability or fitness for particular purpose or use.
- 9.10. The remedies set out in this clause 9 are the Customer's sole remedy for breach of the Warranty for Services and this clause shall survive termination of the Contract.

## 10. CUSTOMER'S OBLIGATIONS

- 10.1. The Customer shall:
  - 10.1.1. ensure that the terms of the Purchase Order and any Quotation to which it relates are complete and accurate and comply with same;
  - 10.1.2. co-operate with the Supplier in all matters relating to the supply of the Goods and the Services;
  - 10.1.3. provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Delivery Address (including Customer's premises, office accommodation and other facilities) as reasonably required by the Supplier to deliver the Goods and provide the Services;
  - 10.1.4. provide the Supplier with such information and materials as the Supplier may reasonably require in order to deliver the Goods and supply the Services, and ensure that such information is complete and accurate in all material respects;
  - 10.1.5. prepare the Delivery Address for the delivery of the Goods and the supply of the Services;
  - 10.1.6. assume responsibility for goods upon unloading and is responsible for any job site damages that may result.
  - 10.1.7. obtain and maintain all necessary licences, permissions and consents which may be required for the delivery of the Goods and the supply of Services before the date on which the Services are to start;
  - 10.1.8. comply with all applicable laws, including health and safety laws;
  - 10.1.9. keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorization; and
  - 10.1.10. comply with any additional obligations as set out in the Service Specification and the Goods Specification.
- 10.2. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
  - 10.2.1. without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend delivery of the Goods and/or performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - 10.2.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 10; and
  - 10.2.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.



10.3. For the sake of clarity, any failure by the Customer to make any payment on the due date for that payment (including any interim or milestone payments) shall constitute a Customer Default and shall entitle the Supplier to take any of the steps set out in clause 10.2, or any other remedies available to the Supplier in law.

## 11. CHARGES AND PAYMENT

11.1. The price for Goods:

11.1.1. shall be the price set out in the Quotation as confirmed by the Purchase Order; and

11.1.2. shall, unless clearly stated to the contrary on the Quotation be exclusive of all costs and charges of packaging, delivery, insurance, transport of the Goods and fitting or erecting the Goods.

11.2. Subject to clause 11.3 the charges for Services shall be the price set out in the Quotation and confirmed by the Purchase Order.

11.3. The Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days. The Supplier shall be entitled to charge an overtime rate of two hundred per cent (200%) of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in this clause. In addition, the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the delivery of the Goods or supply of the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Contract, and for the cost of any materials.

11.4. The Supplier reserves the right to:

11.4.1. increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

- (a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

11.5. Unless stated to the contrary on the Quotation or otherwise agreed to in writing by the Supplier, the Supplier shall invoice the Customer in respect of both Goods and Services upon shipment of the Goods.

11.6. The Customer shall pay each invoice submitted by the Supplier:

11.6.1. within thirty (30) days of the date of the invoice; and

11.6.2. in full and in cleared funds to a bank account nominated in writing by the Supplier, and

11.6.3. time for payment shall be of the essence of the Contract.

11.7. The Supplier does not accept payment to it being conditional upon the Customer having received payment from a third party.

11.8. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**) (e.g. GST and HST). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

11.9. If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 15 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 11.9 will accrue each day at 5% a year.

11.10. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **12. INTELLECTUAL PROPERTY RIGHTS**

12.1. All Intellectual Property Rights in or arising out of or in connection with the Goods and Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

12.2. The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

12.3. The Customer shall ensure that it obtains, in favour of the Supplier and its affiliates, waivers of all moral rights related to any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## **13. CONFIDENTIALITY**

13.1. Each Party undertakes that it shall not at any time during the Contract, and for a period of two years after termination of the Contract, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted by clause 13.2.

13.2. Each Party may disclose the other Party's Confidential Information:

13.2.1. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the Party's obligations under the Contract. Each Party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other Party's Confidential Information comply with this clause 13; and

13.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority, or for bona fide corporate governance.

13.3. Neither Party shall use the other Party's Confidential Information for any purpose other than to exercise its rights and to perform its obligations under the Contract.

13.4. Where the Customer has, prior to entering into the Contract, entered into a non-disclosure agreement with the Supplier, the non-disclosure agreement shall take precedence over this clause 13.

## **14. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

14.1. Nothing in these Terms of Sale shall limit or exclude the Supplier's liability for:

14.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors or;

14.1.2. fraud or fraudulent misrepresentation.

14.2. Subject to clause 14.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

14.2.1. loss of profits;

14.2.2. loss of sales or business;

14.2.3. loss of agreements or contracts;

14.2.4. loss of anticipated savings;

14.2.5. loss of use or corruption of software, data or information;

14.2.6. loss of or damage to goodwill; or

14.2.7. any indirect or consequential loss whether or not the possibility of such losses has been disclosed in advance by Customer or could have been reasonably foreseen by Supplier.

14.3. Subject to clauses 14.1 and 14.2, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the total charges paid by the Customer under the Contract in the twelve (12) months prior to the date of the alleged action or inaction which gave rise to the liability.

14.4. This clause 14 shall survive termination of the Contract.

## **15. TERMINATION**

15.1. The Contract shall commence on the date of issue of the Acknowledgement of Order and end

15.1.1. where the Contract relates solely to the supply of Goods, on the date of delivery of the Goods, and

15.1.2. where the Contract includes supply of Goods and Services, on completion of the Services.

15.2. Without affecting any other right or remedy available to it, either Party may terminate the Contract with immediate effect by giving written notice to the other Party if:

15.2.1. the other Party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within fourteen (14) days after receipt of notice in writing to do so;

15.2.2. the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

15.2.3. the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

15.2.4. the other Party's financial position deteriorates to such an extent that in the terminating Party's reasonable opinion the other Party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

15.3. Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

15.3.1. the Customer fails to pay any amount due under the Contract on the due date for payment,

15.3.2. there is a change of control of the Customer.

15.4. Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clauses 15.2 or 15.3 or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## **16. CONSEQUENCES OF TERMINATION**

16.1. On termination of the Contract:

16.1.1. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

16.1.2. the Customer shall, at the Supplier's option, return all of the Supplier Materials or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

16.2. Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

16.3. Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## 17. FORCE MAJEURE

17.1. Neither Party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (each a **Force Majeure Event**).

17.2. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

## 18. EXPORT CONTROL

18.1 The Customer acknowledges that the Goods are subject to United States and other applicable export control, economic sanctions, customs and anti-boycott laws, regulations, and executive orders (**Export Controls**). The Customer certifies that (i) the Goods will not be exported, re-exported, imported, or otherwise transferred (including in-country) in contravention to applicable Export Controls; (ii) the Goods will not be (re-)exported or otherwise transferred to Iran, Syria, North Korea, or Crimea or to any other destination subject to a U.S. embargo where that act would be in breach of the terms of that embargo; (iii) the Customer is not listed on, or owned or controlled 50% or more directly or indirectly by one or more persons listed on a restricted parties list issued by the U.S. Departments of Commerce, Treasury, or State, including but not limited to the Specially Designated Nationals and Blocked Persons List, the Sectoral Sanctions Identifications (SSI) List, and the Entity List (a **Prohibited Person**); (iv) the Customer will not (re-)export or otherwise transfer any Goods to a Prohibited Person wherever located; (v) the Goods will be exclusively used for non-military, peaceful purposes, and that the Goods will not be used for any prohibited purpose, including, but not limited to any purpose connected with the research on, or the development, production, or any other use of chemical, biological or nuclear weapons, rocket systems, or any nuclear explosive activity, unsafeguarded nuclear activity or any nuclear fuel cycle activity, and with respect to Russia that the Goods will not be used directly or indirectly in, or in support of, exploration for, or production of, oil or gas in Russian deepwater or Arctic offshore locations or shale formations in Russia or in maritime areas claimed by Russia and extending from its territory; and (vi) the facts and certifications contained herein are true and correct to the best of the Customer's knowledge. The Customer will promptly send a supplemental statement to the Supplier disclosing any change of facts or intentions.

## 19. ASSIGNMENT AND OTHER DEALINGS

19.1. The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

19.2. The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

## 20. NOTICES

20.1. Any notice or other communication (not including any oral instruction given to the Customer by the Supplier, its employees, agents or Associates, as contemplated herein) given to a Party under or in connection with the Contract shall be in writing and shall be delivered by hand, e-mail (if an e-mail address has been provided) or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

20.2. Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by e-mail on the Business Day following the sending of the e-mail; and if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

20.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

## **21. SEVERANCE**

21.1. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

## **22. WAIVER**

22.1. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## **23. NO PARTNERSHIP OR AGENCY**

23.1. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party the agent of the other, or authorize either Party to make or enter into any commitments for or on behalf of the other Party.

## **24. ENTIRE AGREEMENT**

24.1. The Contract, together with any pre-existing contract between the Supplier and the Customer with respect to the purchase of Goods and Services by the Customer from the Supplier, constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

24.2. Each Party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

24.3. Nothing in this clause shall limit or exclude any liability for fraud.

## **25. VARIATION**

25.1. Except as set out in these Terms of Sale, no variation of the Contract shall be effective unless it is agreed in writing and signed by the Parties (or their authorized representatives).

## **26. GOVERNING LAW AND JURISDICTION**

26.1. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of the Province of Manitoba, Canada, and the United Nations Convention on Contract for the international Sale of Goods is excluded in its entirety.

26.2. Each Party irrevocably agrees that the courts of Manitoba, Canada shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.