

## STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES ("Terms and Conditions")

### 1. ACCEPTANCE AND ENTIRETY

- (a) These Terms and Conditions shall form part of any agreement or purchase order which incorporates these Terms and Conditions by reference or to which these Terms and Conditions are attached (and these Terms and Conditions, the agreement or purchase order to which they are incorporated by reference or attached, and the specifications, drawings and documents attached hereto or thereto shall hereinafter be referred to collectively as the "**Purchase Order**"). Seller's written acceptance of this Purchase Order or the shipment of any Goods or performance of any Work shall constitute acceptance by Seller of this Purchase Order.
- (b) This Purchase Order constitutes the entire agreement between SDEL and Seller with respect to the subject matter of this Purchase Order and supersedes all prior communications, negotiations, representations, understandings and agreements (whether oral or written) which are made prior to the date of this Purchase Order. For greater certainty: (i) any invoice, acknowledgement or other communication issued by Seller in connection with this Purchase Order shall be construed to be for record and accounting purposes only; (ii) any terms and conditions stated in such communication shall not be applicable to this Purchase Order and shall not be considered to be Seller's exceptions to the provisions of this Purchase Order; and (iii) trade custom and/or trade usage is superseded by this Purchase Order and shall not be applicable in the interpretation of this Purchase Order.

### 2. DEFINITIONS AND INTERPRETATION

For purposes of this Purchase Order, capitalized words or expressions which are not defined in this Section 2 shall have the meanings given to them elsewhere in this Purchase Order and capitalized words or expressions which are defined in this Section 2 shall have the meanings hereby assigned to them below:

- (a) "**Claim**" means any claim, action, proceeding or demand and the resulting losses, liabilities, costs (including legal costs on a solicitor and his own client basis), expenses and damages, whether incurred through settlement or otherwise.
- (b) "**Goods**" means the goods, materials, supplies, equipment, methods, processes, designs, information, and any other items or things (whether tangible or intangible) to be supplied and delivered by Seller to SDEL pursuant to the terms and conditions of this Purchase Order.
- (c) "**including**" means including without limitation, and "**includes**" or other derivatives thereof shall have corresponding meanings.
- (d) "**Purchase Order**" has the meaning given such term in Section 1(a) of these terms and conditions.
- (e) "**SDEL**" means Sinopec Daylight Energy Ltd., together with its successors and permitted assigns.
- (f) "**SDEL Related Party**" means SDEL, its affiliates, and each of their directors, officers, employees, agents and representatives.
- (g) "**Seller**" means the party noted in the applicable Purchase Order, together with its successors and permitted assigns.
- (h) "**Seller Related Party**" means Seller, its affiliates, and each of their directors, officers, employees, agents and representatives.
- (i) "**Subcontractor**" means any entity to whom execution of any part of the Seller's obligations hereunder, including the supply of any Goods or performance of any Work, is subcontracted directly or indirectly by Seller or any of its subcontractors, and includes such entity's successors and permitted assigns.
- (j) "**Subcontractor Related Party**" means Subcontractor, its affiliates, and each of their directors, officers, employees, agents and representatives.
- (k) "**Work**" means all the work and services the Seller is required to carry out for SDEL pursuant to this Purchase Order.

For greater certainty, references in this Purchase Order to "SDEL" and "Seller" shall mean SDEL or Seller (as applicable) together with its successors and permitted assigns.

3. **SELLER COVENANTS**

- (a) **Performance.** Seller agrees to supply the Goods and perform the Work as specified in this Purchase Order. Seller shall diligently and carefully perform all Work and supply all Goods in a good, timely and workmanlike manner satisfactory to SDEL and in compliance with all applicable laws, rules and regulations, and shall furnish all labour, supervision, machinery, materials, equipment and supplies necessary therefor.
- (b) **Schedule and Delay.** Seller shall: (i) deliver the Goods to the delivery location specified in this Purchase Order, and by the delivery date specified therein, or of no such date is specified then within twenty-eight (28) days of the date on which Seller returns an executed copy of this Purchase Order to SDEL and (ii) perform and complete the Work within the time or times for completion specified in this Purchase Order. Time is of the essence for this agreement and SDEL shall have the right to cancel this Purchase Order, in whole or in part, if it is not filled or performed at the time or times specified. Seller shall promptly notify SDEL of any actual or anticipated delay in the delivery of Goods or the performance of the Work and shall take all reasonable steps to avoid or end delays without additional cost to SDEL.
- (c) **Subcontracting.** Seller shall not sublet or subcontract any portion of the supply of Goods or performance of Work without the prior written approval of SDEL, which may be withheld for any reason. Such approval, if given, shall not relieve Seller from responsibility for the conduct and work of all Subcontractors, and third party charges shall not be charged to SDEL.
- (d) **Applicable Law and SDEL's Policies and Standards.** In the supply of Goods and performance of the Work, Seller shall comply with all health and safety, environmental, ethics, business conduct, and all other policies and standards of SDEL published on SDEL's website at the following address: [www.sinopeccanada.com/contractors](http://www.sinopeccanada.com/contractors) and all applicable governmental laws, ordinances, rules and regulations, whether federal, provincial or municipal; and shall require like compliance by all its Subcontractors. If Seller is of the opinion that any drawings or specifications with respect to the Goods or the Work are at variance with any such laws, ordinances, rules or regulations, Seller shall promptly notify SDEL in writing and shall cease the supply of such Goods or the performance of such Work, as the case may be, until the discrepancy is resolved to the satisfaction of SDEL.
- (e) **Hazardous Materials.** Seller shall notify SDEL in writing if any Goods furnished or Work performed are subject to laws or regulations relating to hazardous or toxic substances, or when disposed of, to regulations governing hazardous wastes, or to any other environmental or safety and health regulation. Seller shall furnish: all appropriate shipping certification; labeling in compliance with the Workplace Hazardous Materials Information System; Material Safety Data Sheets in compliance with the Workplace Hazardous Materials Information System; and instructions for shipping, safety, handling, exposure and disposal in a form sufficiently clear for use by SDEL's non-technical personnel and sufficiently specific to identify all action which the user must take concerning the material. The following certification must be made on the bill of lading: "*This is to certify that the above named articles are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to any applicable transport regulations*".
- (f) **Shipping and Packing.** All Goods shall be shipped and packed to protect the Goods from damage during transit, and in accordance with the terms and conditions contained within this Purchase Order. Unless otherwise specified in writing, Seller shall have affixed to each case, skid, crate or container used to supply Goods to SDEL one copy of the packing slip firmly affixed to the exterior and a second copy included on the inside, with a copy of the complete set for packing lists for the entire shipment included and affixed to the first case, skid, crate or container in the shipment, which shall be properly marked and identified as containing same. On shipments not accompanied by an itemized packing list, SDEL's count of the Goods received shall be final and conclusive. Every signed original bill of lading or express receipt shall be retained by Seller and supplied to SDEL upon request.
- (g) **Damage or Non-conformities.** Upon delivery, if SDEL notifies Seller of any damage, shortages or non-conformities, Seller shall immediately take all necessary measures to rectify same.

4. **PRICE AND PAYMENT**

- (a) **Price and Payment.** As full consideration for the satisfactory performance by Seller of its obligations hereunder, SDEL agrees to pay to Seller compensation in accordance with the pricing provisions set forth in this Purchase Order, all at the times, in the manner and in accordance with the provisions of this Purchase Order, including this Section 4. No changes to the price stated in this Purchase Order are permitted without SDEL's written authorization. The time for payment of invoices or for accepting any discounts offered shall run from the date that proper and correct invoices are received by SDEL. Where the price is based in whole or in part on the cost to Seller as specified in a published price list, rate, fee, duty or tax and the Seller's cost is subsequently reduced, the price shall be reduced accordingly. Unless otherwise provided, all prices are in Canadian dollars. No payment made by SDEL hereunder shall be deemed to constitute acceptance by SDEL of the Goods delivered or of the Work or any part(s) thereof. Non-payment by SDEL of any amount in dispute shall not alleviate or modify in any respect Seller's obligations to perform as required by and in accordance with this Purchase Order.

- (b) **Invoicing.** Each invoice shall be prepared in the form, delivered in the format, and be accompanied by appropriate supporting documentation, as determined by SDEL.
- (c) **Right to Offset.** Notwithstanding any other term or provision of this Purchase Order, SDEL shall be entitled to deduct from any amounts due or owing by SDEL to Seller in connection with this Purchase Order, any and all amounts owed by Seller to SDEL.
- (d) **Right to Audit.** With respect to the cost of any Goods supplied or Work performed on a non-lump sum basis, including on a unit price (but only with respect to the number of units supplied), time and materials, cost reimbursable or cost plus basis, SDEL, upon notice in writing to Seller, shall have the right, at any time before and within twenty-four (24) months after completion of this Purchase Order, to audit Seller's accounts and records maintained in respect of the Goods supplied and Work performed. Seller shall maintain accurate and complete accounts and records and shall preserve such accounts and records until such time as any claims or discrepancies are resolved. Seller shall ensure that all Subcontractors provide SDEL with the same provisions and rights of audit.

## 5. TAXES AND DUTIES

- (a) **Taxes and Duties.** The purchase price for the Goods supplied and any Work performed pursuant to this Purchase Order shall be inclusive of all customs duties, sales taxes (other than GST), assessments and other like charges required to be paid by Contractor, any Subcontractor or the employees of Contractor or any Subcontractors on or in connection with such Goods or Work, but shall be exclusive of any GST which is payable in respect of the purchase price (or any part thereof).
- (b) **Canadian Residency.** In the event that Seller is or becomes a non-resident of Canada for purposes of the *Income Tax Act* (Canada), Seller shall notify SDEL in writing and SDEL shall then withhold all amounts required by applicable laws and regulations; provided that SDEL shall not withhold on any payments to the extent that Seller has obtained an exemption from the Canada Revenue Agency and provided SDEL with a copy of such exemption. Seller shall reimburse SDEL for any and all losses, damages, liabilities, costs, expenses, interest and penalties incurred by SDEL in respect of any such required withholdings. Unless Seller provides SDEL with written notice within ten (10) days of the effective date of this Purchase Order that it is a non-resident of Canada for purposes of the *Income Tax Act* (Canada), Seller shall be deemed to have represented and warranted to SDEL that it is not a non-resident for such purposes.

## 6. CHANGES

SDEL may, from time to time, make changes, issue additional instructions, require the rescheduling or acceleration or deceleration to all or any part of the Work or the Goods, require additional Work or Goods or direct the omission of Work or Goods previously ordered and the provisions herein shall apply to all such changes. No such change shall be binding unless in writing, signed by a duly authorized representative of SDEL and expressly made part of this Purchase Order. If Seller believes that such change affects the price or delivery date for such Work or Goods, Seller may request an adjustment to the price or time for performance of its obligations hereunder (including any committed delivery date(s)) from SDEL in writing (with adequate supporting documentation) within ten (10) days after receipt of notification of such change. Seller's request for any adjustment to the price or delivery date shall be deemed waived unless submitted in writing within such ten (10) day period. If released in writing by SDEL, Seller shall comply with and perform any change in respect of which the request for an adjustment was made in accordance with the terms of this Purchase Order during the time Seller and SDEL require to mutually agree upon an equitable adjustment. No agreement or understanding modifying the terms and conditions of this Purchase Order shall be binding upon SDEL, nor will extra compensation be paid by SDEL unless such agreement or understanding is made in writing.

## 7. INTELLECTUAL PROPERTY INFRINGEMENT

Seller shall indemnify and hold harmless SDEL and each SDEL Related Party from and against any and all loss, liability or expense by reason of any claim or suit for alleged infringement of any copyright, industrial design, trademark or patent resulting from or arising in connection with the manufacture, sale, normal use or other normal disposition of any Goods furnished, or the performance of any Work, and shall defend any such claim or suit and pay all costs and expenses incidental thereto; provided, however, that SDEL shall have the right, at its option, to participate in the defense of any such claim or suit without relieving Seller of any obligation.

## 8. PROPRIETARY INFORMATION

All drawings, blueprints, specifications, dies, patterns, and tools, whether supplied by SDEL or prepared or constructed by Seller as required for the completion of this Purchase Order and paid for by SDEL, shall be the property of SDEL and information therefrom shall be considered confidential and shall not be disclosed to any third party or made use of by Seller in connection with furnishing any goods, materials, supplies or equipment or performing any work outside the scope of this Purchase Order without written approval of SDEL and, upon the earlier of completion of deliveries or termination of this Purchase Order, shall be delivered to SDEL unless otherwise agreed to in writing.

9. **EXPEDITING AND INSPECTION**

SDEL or its authorized representatives may, in its or their discretion, expedite and inspect the Goods furnished and the Work performed under this Purchase Order at all reasonable times during manufacture, before delivery and within thirty (30) days after delivery to destination. SDEL shall be allowed reasonable access to Seller's facilities and those of its Subcontractors for purposes of expediting, inspection or ascertaining the status of the Work and the Goods. However, neither SDEL's inspection nor failure to inspect or reject shall relieve the Seller of any warranties or obligations. As required by SDEL, Seller and its Subcontractors shall supply schedules and progress reports and copies of Seller's unpriced purchase sub-orders for SDEL's use in expediting.

10. **WARRANTIES**

- (a) The Seller represents and warrants to SDEL that:
- (i) Seller has the experience and competence necessary for the proper supply of the Goods and the proper carrying out of the Work; and
  - (ii) all Goods supplied and Work performed: (A) shall be of the kind and quality specified in this Purchase Order; (B) shall comply strictly with the provisions of this Purchase Order, and all specifications, standards, drawings or other descriptions set forth herein (or hereafter furnished by SDEL and accepted by Seller); (C) shall be free from fault in design, workmanship and material; (D) shall be new, of good materials, of good design and workmanship, and of first rate quality; (E) shall be of the most suitable grade and fit for their intended purposes, as described by this Purchase Order, and (F) shall perform as specified and satisfactorily fulfill any operating conditions specified herein.
- (b) Seller shall, at its sole expense (including all costs of removal, packing, transportation and reinstallation), promptly repair or, at SDEL's option, replace Goods furnished to SDEL, or re-perform Work performed for SDEL, as the case may be, which fails to conform to the requirements of this Purchase Order, provided that such failure to conform is discovered by the earlier of: (i) that date which is twelve (12) months after operational start-up of the unit or facility of which the Goods or Work (as applicable) are a part or (ii) twenty-four (24) months after (as applicable) the delivery the Goods or the completion of the performance of the Work. SDEL may charge Seller for all costs incurred by SDEL with respect to repairs made by SDEL or Work re-performed by SDEL to correct Seller's failure to meet its warranty obligations as set forth herein when Seller has been given notice of such failure and thereafter has failed to take prompt and effective action to correct the failure in accordance with the foregoing.
- (c) Goods or Work which are repaired, replaced or re-performed pursuant to this Section 10 shall be warranted, according to the terms of this Section, for an additional twelve (12) months from the date of such repair, replacement, or re-performance, and the original warranty period for other Goods and Work shall be extended by the time period that such Goods or Work that cannot be used or are delayed due to such repairs, replacements or re-performance; provided that, in no event, shall the warranty period for such repaired, replaced or re-performed Goods or Work be shorter than the original warranty period set out in Section 10(b).
- (d) Goods delivered in error, rejected or delivered in overages in excess of trade practice shall be held at Seller's risk and shall be removed by Seller or returned by SDEL, at Seller's expense and risk. Full refund and credit on the original purchase price as well as storage and other reasonable costs shall be allowed on account of such returned or removed items.
- (e) THE WARRANTIES EXPRESSLY SET FORTH IN THIS PURCHASE ORDER ARE THE EXCLUSIVE WARRANTIES WITH RESPECT TO THE GOODS AND THE WORK, AND THE PARTIES AGREE THAT NO ADDITIONAL WARRANTIES SHALL APPLY WITH RESPECT TO EITHER THE GOODS OR THE WORK WHETHER IMPLIED, STATUTORY OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OR IMPLIED CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- (f) All warranties set forth in this Section 10 shall remain in effect notwithstanding termination of this Purchase Order by SDEL.

11. **LIENS**

Seller agrees to defend, indemnify and hold harmless SDEL from any and all claims, liens and encumbrances arising from the Work or Goods placed or furnished by or to the order of Seller under this Purchase Order. If at any time there shall be evidence of any such lien, claim or encumbrance for which, if established, SDEL might become liable or which might attach to property of SDEL, SDEL shall have the right to retain out of any payment then due or thereafter to become due to Seller, an amount sufficient to indemnify SDEL against such lien, claim or encumbrance and to satisfy any statutory requirements to establish a lien fund. Should there prove to be any such lien, claim or encumbrance after all payments are made, Seller shall refund to SDEL all monies that SDEL may be compelled to pay in discharging any such lien, claim or encumbrance.

Further and without limiting the generality of the foregoing, payment by SDEL of all invoices shall be subject to all statutory holdback provisions of the jurisdiction in which the Work is performed and the Goods supplied.

12. **ALLOCATION OF LIABILITY AND INDEMNIFICATION**

(a) **General Allocation of Liability**

(i) Seller shall be liable to SDEL for, and shall indemnify SDEL and hold it harmless from and against:

- (1) any and all losses, costs (including all reasonable legal and related expenses), damages and expenses whatsoever which SDEL or any SDEL Related Party may suffer, sustain, pay or incur; and
- (2) all Claims brought against, suffered, sustained, paid or incurred by SDEL or any SDEL Related Party;

including without limitation respecting any damage to property, any injury or death of persons or any loss or damage of any other kind, which directly or indirectly, in whole or in part, are caused by, arise out of or are in any way attributable or incidental to any breach of this Contract by Seller or to any acts or omissions by Seller, any Seller Related Party, any Subcontractor, or any Subcontractor Related Party in relation to this Contract which constitute negligence, gross negligence or wilful or wanton misconduct.

(ii) SDEL shall be liable to Seller for, and shall indemnify Seller and hold it harmless from and against:

- (1) any and all losses, costs (including all reasonable legal and related expenses), damages and expenses whatsoever which Seller or any Seller Related Party may suffer, sustain, pay or incur; and
- (2) all Claims brought against, suffered, sustained, paid or incurred by Seller or any Seller Related Party;

including without limitation respecting any damage to property, any injury or death of persons or any loss or damage of any other kind, which directly or indirectly, in whole or in part, are caused by, arise out of or are in any way attributable or incidental to any breach of this Contract by SDEL or to any acts or omissions by SDEL or any SDEL Related Party in relation to this Contract which constitutes negligence, gross negligence or wilful or wanton misconduct.

(iii) If any Claims, losses, costs, damages or expenses for which a Party is liable hereunder pursuant to subsection 12(a)(i) or 12(a)(ii) above is attributable to the acts or omissions of both SDEL (or any SDEL Related Party) and Seller (or any Seller Related Party, Subcontractor or Subcontractor Related Party), the Parties shall share liability in respect thereof in the proportions that their respective acts or omissions contributed to such liability, provided, however, that if one Party's acts or omissions constitute gross negligence or wilful or wanton misconduct, there shall be no sharing of liability on the part of the other Party.

(b) **Indirect, Incidental, Consequential and Punitive Damages**

(i) Notwithstanding any other provision of this Contract, neither Seller nor any Seller Related Party shall be liable to SDEL, and neither SDEL nor any SDEL Related Party shall be liable to Seller, for any indirect, economic, consequential, incidental, special, punitive or exemplary damages which may be suffered or incurred by SDEL or by Seller, as the case may be, and which arise out of or in connection with the performance of the Work, including loss of profits and overhead, loss of product, loss of production, loss of business, or mineral rights or business interruptions; provided that this Section 12(b)(i) shall not apply in respect of any breach of, or liability arising pursuant to Section 21 hereof, or the intellectual property indemnification provisions which are set forth herein.

(ii) Seller shall require each of the Subcontractors to provide a waiver of indirect, economic, consequential, incidental, special, punitive and exemplary damages in favour of SDEL and all SDEL Related Parties which is substantially similar to the waiver provided by Seller in Section 12(b)(i) above, and Seller hereby agrees to indemnify, and hold harmless, SDEL and each SDEL Related Party from and against any and all Claims with respect to any such damages suffered or incurred by any Subcontractor.

13. **INSURANCE**

- (a) Without limiting its obligations or liabilities hereunder, Seller shall, during the performance of this Purchase Order and the duration of any warranty period, obtain and maintain, at its sole cost and expense, as a minimum, with insurance companies satisfactory to SDEL, all insurance required by applicable law or that SDEL (acting reasonably) deems necessary, as well as the following insurance:
- (i) Workers Compensation Insurance covering all personnel engaged in the performance of the obligations hereunder in accordance with all applicable statutory requirements;
  - (ii) Commercial General Liability Insurance, on a per occurrence basis, with a limit of loss of not less than FIVE MILLION DOLLARS (\$5,000,000.00) inclusive for bodily injury including death and/or property damage (including loss of or loss of use of property) per occurrence and otherwise on terms consistent with industry practice have regard to the nature of the obligations hereunder;
  - (iii) Automobile Liability Insurance covering all motor vehicles owned, leased or licensed by Seller and engaged in the supply of Goods or performance of Work under this Purchase Order, with limits of not less than TWO MILLION DOLLARS (\$2,000,000.00) for injury or death of one or more persons, or damage to or destruction of property as a result of any one accident;
  - (iv) if aircraft are used, aircraft liability insurance covering all aircraft owned, leased or licensed by Seller, with limits of not less than TEN MILLION DOLLARS (\$10,000,000.00) for injury to or death of one or more persons, or damage to or destruction of property as a result of any one accident;
  - (v) if watercraft are used, marine protection and indemnity insurance covering all watercraft owned, leased or licensed by Seller, including marine pollution coverage, with limits of not less than TWO MILLION DOLLARS (\$2,000,000) for injury to or death of one or more persons, or damage to or destruction of property as a result of any one accident;
  - (vi) all risk property insurance covering loss of or damage to all construction equipment, if any, and any equipment, materials and supplies to be provided by the Seller, if any, on a replacement basis;
  - (vii) if professional services are provided, Professional Liability (Errors & Omissions) insurance with limits of not less than TWO MILLION DOLLARS (\$2,000,000) for injury to or death of one or more persons, or damage to or destruction of property as a result of any one accident; and
  - (viii) if transportation of product or equipment is provided, Marine/Motor Cargo Liability insurance with limits of not less than TWO MILLION DOLLARS (\$2,000,000) covering loss of or damage to all product and equipment to be transported by the Seller.
- (b) The Seller shall, upon request by SDEL and prior to the supply of any Goods or performance of any Work, provide SDEL with a certificate of insurance as evidence that the insurance required under this Section 13 has been obtained. The Seller shall require each of its Subcontractors and common carriers to provide like insurance to that set forth herein. Seller, its Subcontractors, and its common carriers shall provide SDEL with an insurance certificate evidencing the insurance required and shall require its insurers to provide notice to SDEL of any material change in the insurance provided.

14. **SUSPENSION OF PERFORMANCE**

- (a) SDEL may at any time, and from time to time, by written notice to Seller, suspend further performance of all or any portion of this Purchase Order by Seller. Such suspensions shall not exceed more than one hundred eighty (180) consecutive calendar days each nor aggregate more than two hundred seventy (270) calendar days. Upon receiving any such notice of suspension, Seller shall promptly suspend further performance of this Purchase Order to the extent specified, and during the period of such suspension shall properly care for and protect all Goods, work in progress, materials, supplies and equipment Seller has on hand for performance of this Purchase Order. Seller shall use its best efforts to utilize its material, labour and equipment in such a manner as to mitigate costs associated with suspension. SDEL 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 supply of the Goods and performance of the Work for which the suspension is withdrawn.
- (b) SDEL shall reimburse Seller for reasonable and verifiable out-of-pocket costs incurred by Seller as a direct result of suspension of all or any portion of this Purchase Order by SDEL pursuant to Section 14(a), and Seller shall be entitled to reasonable extensions to the delivery dates or time or times for completion specified in this Purchase Order which are reasonably required as a direct result of suspension of all or any portion of this Purchase Order by SDEL pursuant to Section 14(a).

15. **TERMINATION WITHOUT CAUSE**

SDEL shall have the right to terminate this Purchase Order in whole or in part at any time for its convenience and without cause by giving written notice to Seller. On the date of such termination stated in the notice, Seller shall discontinue the performance of all Work, shall place no additional orders, and shall, pending SDEL's instructions, preserve and protect all Goods which it has on hand (which were purchased for or committed to this Purchase Order), work in progress, and completed work product (whether located in Seller's or its supplier's plant or facility), and shall make the same available to SDEL or dispose of same in accordance with SDEL's instructions. In the event of any such termination, Seller shall receive as payment for the Goods supplied and Work performed by Seller and accepted by SDEL, such proportion, as reasonably determined by SDEL, of the total Purchase Order price as the portion of such Goods supplied and Work performed bears to the entire Goods to be supplied and Work to be performed pursuant to this Purchase Order, less any amount previously paid to Seller on account of same, together with any actual out-of-pocket costs reasonably incurred by Seller as a direct result of such termination. Seller shall not, in any event, be entitled to any damages (including loss of profits or anticipated profits) because of such termination. Upon any such termination, SDEL may remove from Seller's possession all Goods, materials, supplies and equipment for which SDEL has paid (whether fabricated or not) without hindrance by Seller or anyone claiming through Seller.

16. **TERMINATION FOR DEFAULT**

(a) In the event that:

- (i) a petition for bankruptcy shall be filed by or against Seller;
- (ii) Seller shall be adjudged a bankrupt;
- (iii) Seller shall make a general assignment for the benefit of creditors;
- (iv) a receiver shall be appointed on account of the insolvency of Seller;
- (v) Seller shall, except as the result of an event of Force Majeure, neglect to supply enough properly skilled workers or proper, goods, materials, supplies or equipment for the proper supply of the Goods or execution of the Work; or
- (vi) Seller shall fail to meet any delivery schedule hereunder, fail to supply the Goods or perform the Work in accordance with any schedule hereunder, or fail in any material respect to comply with or perform any of the terms of this Purchase Order, and any such failure continues for a period of five (5) days after the date of receipt of written notice from SDEL to remedy or cure such failure;

SDEL may immediately terminate this Purchase Order by written notice to Seller.

(b) Upon any such termination, SDEL shall be relieved of all further obligations with respect to this Purchase Order except the obligation to pay such proportion of the total Purchase Order price, as determined by SDEL, as the proportion of the Goods supplied and Work which is completed and accepted bears to the entire Goods to be supplied and Work covered by this Purchase Order, less any amount previously paid to Seller on account of same and any claims that SDEL may have against the Seller, and Seller shall be liable to SDEL for all costs in excess of the Purchase Order price herein specified incurred by SDEL in completing or procuring the completion of performance specified in this Purchase Order. Upon any such termination, SDEL may remove from Seller's possession all Goods, materials, supplies and equipment for which SDEL has paid (whether fabricated or not) without hindrance by Seller or anyone claiming through Seller.

17. **TITLE TO GOODS**

- (a) Title to all Goods furnished by Seller pursuant to this Purchase Order shall pass to SDEL upon such Goods first being identified in respect of this Purchase Order. SDEL's title to all such Goods shall be free and clear of all liens, claims, charges, security interests and encumbrances whatsoever upon the earlier of payment by SDEL of any Seller's invoice, submitted in accordance with this Purchase Order, covering such Goods or part thereof or upon delivery of such Goods hereunder. Seller shall, regardless of whether title to such Goods has transferred to SDEL, be responsible for the care, custody, control and security of such Goods, maintain and service such Goods, make good on any loss or damage that may occur to such Goods, and exercise due care with respect thereto, all until satisfactory delivery of such Goods as set forth in this Purchase Order. The cost of making good any such pre-delivery loss or damage shall be borne solely by Seller. The transfer of title to Goods shall in no way affect Seller's obligations or SDEL's rights as set forth in any other provision of this Purchase Order.
- (b) Seller shall ensure that all Goods furnished by Seller pursuant to this Purchase Order, as soon as identifiable in respect of this Purchase Order, are set apart at the premises of the party in possession and are clearly and visibly marked, in accordance with any procedures which may be stipulated by SDEL, individually or in sets as being the

property of SDEL and their destination being SDEL's worksite. For the purpose of protecting SDEL's interest in all such Goods with respect to which title has passed to SDEL but which remain in possession of another party, Seller shall take or cause to be taken all steps necessary under the laws of the appropriate jurisdiction(s) to protect SDEL's title and to protect SDEL against claims by other parties with respect thereto, including consulting with SDEL and attending to (or assisting SDEL with) all personal property registry registrations which SDEL deems necessary to protect SDEL's interests. Seller shall provide SDEL with all certificates and documentation in respect of the title to and identification of such Goods upon delivery of such Goods to SDEL's worksite.

18. **FORCE MAJEURE**

- (a) Neither party to this Purchase Order shall be in default by reason of any delay or failure in the supply of the Goods or prosecution of the Work to the extent that such delay or failure is due to acts, delays or failures which are caused by reason of matters not within Seller's reasonable control ("**Force Majeure**"), provided that the following shall not constitute an event of Force Majeure:
- (i) strikes, lockouts or other industrial concerted action by workers of the Seller or any Subcontractor for which may adversely impact the the performance of Seller's obligations hereunder;
  - (ii) failure of equipment that could have been prevented by normal maintenance;
  - (iii) shortage of materials, equipment, transportation or utilities (unless caused by circumstances which are themselves an event of Force Majeure);
  - (iv) lack of finances or inability to perform because of a party's financial condition; or
  - (v) climactic weather and subsurface conditions reasonably expected to occur within the geographic area where any worksite is located.
- (b) Should Seller be delayed in the supply of the Goods or the prosecution and completion of the Work because of any event of Force Majeure, the time herein fixed for completion shall be extended for a period equivalent to the time so lost, which extended period shall be determined and fixed by SDEL, but no such extension shall be made unless a claim for such an extension is presented in writing to SDEL within forty-eight (48) hours after commencement of the delay. Seller shall not, due to an event of Force Majeure, be excused from performance hereunder where alternate sources of supply of goods, materials, supplies, equipment or service are available, or be entitled to claim any additional amounts from SDEL.

19. **THIRD PARTY DISPUTES**

In the event that SDEL is required to litigate or arbitrate a dispute with a third party, which dispute arises out of this Purchase Order or is in any way connected with this Purchase Order or Seller, Seller agrees to join in such litigation or arbitration proceeding as SDEL may direct and shall submit to such jurisdiction and be finally bound by the judgment rendered with respect thereto.

20. **ASSIGNMENT**

- (a) Seller shall not assign this Purchase Order or any interest herein (including any payment due or to become due) to any party without the prior written consent of SDEL, which consent may be withheld in SDEL's sole and absolute discretion. Any assignment of this Purchase Order or any interest herein in violation of the foregoing shall be null and void.
- (b) SDEL shall not assign this Purchase Order or any interest herein to any party without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed, save and except that nothing herein will restrict SDEL from assigning, in whole or in part, any of its interest in this Purchase Order, upon prior notice to Seller, to any of its affiliates, provided that SDEL shall not be released from its obligations hereunder.
- (c) No assignment of this Purchase Order or any interest herein shall be valid until this Purchase Order or such interest, as the case may be, shall have been assumed by the assignee. When duly assigned in accordance with this Section 20, this Purchase Order or such interest, as the case may be, shall be binding upon and shall inure to the benefit of the assignee.

21. **CONFIDENTIALITY**

Seller shall maintain in confidence all information which is acquired from (or prepared for) SDEL that was not previously known to Seller, in the public domain, or lawfully obtained from a third party not under an obligation of confidence and shall not disclose it to any third party or use such information for any purpose other than the performance of its obligations under



the Purchase Order. Seller shall not release any advertising copy mentioning SDEL's name or the Work, or quoting the opinion of SDEL's employees, without prior written approval by SDEL.

22. **NOTICES**

All notices, reports, and other communications to be given by Seller or SDEL under this Purchase Order shall be in writing, and shall be given by hand delivery, courier, facsimile or e-mail to SDEL or Contractor, as the case may be, at the applicable address, facsimile number or e-mail address shown on the face page of this Purchase Order. Any notice delivered pursuant to this Section 22 shall be deemed to have been delivered on the date of its receipt, unless such notice is received after 5:00 p.m. (Calgary time) or on a non-business day, in which event the notice shall be deemed received on the next business day.

23. **GRATUITIES**

- (a) SDEL may, by written notice to the Seller, terminate the right of the Seller to proceed or continue under this Purchase Order if it is found that gratuities (in the form of entertainment, gifts or otherwise), were offered or given by the Seller, or any agent or representative of the Seller to any officer, employee, agent or representative of SDEL with a view toward securing this Purchase Order or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this Purchase Order.
- (b) In the event this Purchase Order is terminated as provided in this provision, SDEL shall be entitled to pursue the same remedies against the Seller as it could pursue in the event of a material breach of this Purchase Order by the Seller.

24. **MISCELLANEOUS TERMS**

- (a) **Waiver.** No relaxation, forbearance, or delay by either Party in enforcing any of the terms of this Purchase Order shall prejudice or affect any other rights of that party under this Purchase Order, nor shall any waiver by either party of any breach of this Purchase Order operate as a waiver of any subsequent or continuing breach of this Purchase Order. Any waiver of a party's rights or remedies must be in writing. For greater certainty: (a) failure of SDEL to insist upon strict performance of the terms of this Purchase Order shall not operate as a waiver of Seller's obligations; (b) neither failure of SDEL to exercise (or delay by SDEL in exercising) any rights or remedies provided herein or by law, nor failure by SDEL to properly notify (or delay by SDEL in properly notifying) Seller in the event of breach hereunder, nor delay by SDEL in the acceptance of or payment for any Goods or Work, shall be deemed to be a waiver of any right of SDEL to insist upon strict performance; and (c) SDEL's payment for or acceptance of any Goods or Work shall not constitute a waiver of any of the provisions of this Purchase Order.
- (b) **Limitation Periods.** The parties agree that the two (2) year period for seeking a remedial order under section 3(1)(a) of the *Limitations Act* (Alberta), including any amendments thereto or replacements thereof, for any claim (as defined in such Act) arising in connection with this Purchase Order is extended to: (a) for claims disclosed by an audit, two (2) years after the last day this Purchase Order permits such audits to be performed, as set forth in Section 4(d) hereof; (b) for claims relating to the enforcement of any provision or obligations relating to tax, seven (7) years; and (c) for all other claims, four (4) years.
- (c) **Governing Law.** The governing law of this shall be the laws of the Province of Alberta and the federal laws of Canada applicable therein, without regard to any conflicts of laws principles that could require application of any other law, and Seller and SDEL irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Alberta, and any and all courts of appeal therefrom, with respect to any matters set forth herein. For greater certainty, the *United Nations Convention on Contracts for the International Sale of Goods* does not apply to this Purchase Order.
- (d) **Amendment.** No amendment or other modification of this Purchase Order shall be effective unless it is in writing and signed by a duly authorized officer of each of the parties hereto.
- (e) **Independent Contractor.** The Seller is an independent contractor and is solely responsible for all persons employed or subcontracted in the performance of Seller's responsibilities pursuant to this Purchase Order, and for the manner in which such responsibilities, including any Work, are performed.
- (f) **Severability.** Should any provision of this Purchase Order be deemed in contradiction with applicable laws or otherwise unenforceable, this Purchase shall remain in force in all other respects.
- (g) **Survival.** The provisions of this Purchase Order which expressly survive, or by their nature are intended to survive, the termination, cancellation, completion or expiration of this Purchase Order, including each other provision necessary for interpretation or enforcement, shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

- (h) **Rights and Remedies Cumulative.** All rights and remedies under this Purchase Order are cumulative and in addition to other rights or remedies available under the Purchase Order or applicable laws or at equity.