

## **PURCHASE ORDER TERMS AND CONDITIONS**

The goods and/or services described on the face page of the Purchase Order to which these terms and conditions are attached, are sold and/or supplied by the Vendor to the Purchaser subject to the terms and conditions below. Vendor and Purchaser agree to be bound by and comply with all of the terms and conditions. No other terms and conditions shall apply to this Purchase Order unless agreed to in writing by Vendor and Purchaser.

### **1.0 Purchase Price and Payment Terms**

All payments will be in Canadian currency unless otherwise specified in the Purchase Order and all invoices submitted by the Vendor shall be submitted to the Purchaser marked to the attention of its accounts payable department. Unless otherwise agreed to between the Vendor and the Purchaser, the Purchaser shall pay all non-disputed invoiced amounts within 30 days after receipt of a proper invoice and acceptance of the goods and/or services supplied. Under no circumstances shall the Purchaser be subject to or required to pay any interest charges, penalties or late payment fees for payments made within agreed upon terms. Purchaser shall also pay the sales tax, if any, described on the face page of this Purchase Order

### **2.0 Specifications**

All specifications, drawings and data submitted to the Vendor by the Purchaser in connection with this Purchase Order (the "Specifications") are incorporated and made a part of these terms and conditions.

### **3.0 Changes**

Purchaser may make changes to the Specifications under this Purchase Order where the goods are specifically built for the Purchaser. If any such change causes a change to the cost or the time required to build the goods and/or deliver the services, the Purchaser and the Vendor shall negotiate an adjustment in the purchase price or delivery schedule.

### **4.0 Cancellation**

This Purchase Order may be modified, reduced or cancelled altogether at any time by the Purchaser by written notice. In the event of any such notice being given to the Vendor, all goods and/or services completed and/or delivered by the Vendor before the giving of any notice, shall be paid for subject to acceptance by the Purchaser and the provisions of Article 1.0 hereof. The Purchaser's liability is strictly limited to work in progress and no further loss or liability will accrue.

### **5.0 Packaging**

Packages must bear the Purchaser's order number and show quantity and gross and net weights. No charges for packaging will be allowed by the Purchaser unless otherwise agreed in writing. The packing slip must be enclosed.

### **6.0 Delivery**

Delivery of the goods packaged by the Vendor shall be made and risk of loss thereto shall pass to the Purchaser on delivery of the goods to the "Ship To" address noted on the face page of this Purchase Order. The goods shall be shipped and delivered in strict accordance with this Purchase Order, including, without limitation, the shipper to be used. In the event that this Purchase Order does not include shipping instructions, the Vendor shall contact the Purchaser to obtain shipping instructions which the Vendor shall comply with as if set out in the Purchase Order. In the event the Vendor ships the goods via a different shipper than that which it was directed to use by the Purchaser, the Purchaser shall not be responsible to pay any shipping charges or costs whatsoever. Where the Vendor becomes aware of a potential or actual delay in the delivery of the goods to the Purchaser, the Vendor shall immediately provide written notice of such potential or actual delay to the Purchaser.

## **7.0 Title and Non-delivery, Loss or Damage or Defects**

- a. Title to the goods passes to the Purchaser upon delivery of the goods to the “Ship To” address noted on this Purchase Order.
- b. The Purchaser shall advise the Vendor in writing of any non-delivery, loss or damage of the goods.
- c. The Vendor shall promptly make good, free of charge to the Purchaser, any non-delivery, loss of or damage to or defects in the goods, where notice is given by the Purchaser.

## **8.0 Quality of Goods and/or Services**

The Vendor warrants that all goods and/or services delivered hereunder shall comply with the Specifications and all goods will be merchantable, of good material and workmanship and free from defect. Where the Purchaser has made known to the Vendor the intended use of the goods, the goods shall also be suitable for their intended use. If any quantity of the goods and/ or services is found not to comply with the Specifications or the goods are found not to be merchantable, or not of good material and workmanship, or not free from defect, or not suitable for their intended purpose, the Vendor shall promptly replace the non-conforming goods and/or services and, if required to do so by the Vendor upon written notice, the Purchaser shall return defective goods to the Vendor at the Vendor’s sole expense.

## **9.0 Inspection and Verification of Goods and/or Services**

Goods and/or services to be provided by the Vendor are subject to inspection by the Purchaser upon delivery to or at the “Ship To” address. Purchaser may reject the goods and/or services and require their replacement if the goods and/or services are damaged, incomplete or otherwise not in compliance with their description or the Specifications. If the Vendor is unable to replace the goods pursuant to Article 8.0 hereof, the Purchaser may terminate this Purchase Order with no further liability or obligation to the Vendor. Vendor will reimburse the Purchaser for all transportation and any costs associated therewith in respect of the delivery of the rejected goods that may have been paid by the Purchaser.

## **10.0 Intellectual Property**

Specifications or other technical information furnished by the Purchaser to the Vendor under this Purchase Order will not become the property of the Vendor and will be used only to fulfill the obligations imposed on the Vendor by the Purchase Order.

## **11.0 Product Warranty and Indemnity**

The Vendor agrees to unequivocally and unconditionally indemnify the Purchaser from and against any loss arising from claims against the Purchaser, its officers, directors, agents and servants and its affiliates and their officers, directors, agents and servants against any and all liability, loss, expense, damage, claim, licence and encumbrance including legal expenses or other expenses of any kind or nature whatsoever, imposed on or assumed by, or incurred by or asserted against, the Purchaser, its officers, directors, agents and servants and its affiliates and their officers, directors, agents and servants in any way relating to or arising out of the supply of the goods and/or services by the Vendor to the Purchaser or in defending or prosecuting any suit, action or other proceeding brought in connection therewith or in obtaining or attempting to obtain a release from liability in respect thereof, whether or not it be claimed or proven that there was negligence or breach of common law or statutory duty or both. The Purchaser agrees to give the Vendor prompt notice of any liability, loss, expense, damage, claim, licence or encumbrance indemnified against. The Vendor agrees that it will reimburse the Purchaser on demand for or pay over to the Purchaser all sums of money which the Purchaser or its affiliates shall pay or become legally liable to pay by reason of any of the foregoing and will make such payments to the Purchaser as soon as the Purchaser or its affiliates shall become liable therefor whether or not the Purchaser or its affiliates shall have paid out such sums or any part thereof.

## **12.0 Intellectual Property Indemnities**

- a. The Vendor will indemnify the Purchaser against any claim or infringement of patent, registered design, trade mark, copyright or other intellectual property right, by the use or sale of the goods supplied by the Vendor to the Purchaser and against all costs and damages which the Purchaser may incur in any action for such infringement or for which the Purchaser may become liable in any such action,

provided always that this indemnity shall not apply to any infringement which is due to the Vendor having followed a design or instruction furnished or given by the Purchaser. The Purchaser shall have the right to be represented by counsel of its own selection at its own expense;

- b. This indemnity is conditional on the Purchaser giving to the Vendor prompt notice in writing of any claim being made or action threatened or brought against the Purchaser and on the Purchaser permitting the Vendor at the Vendor's own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim. The Purchaser on its part warrants that any design or instruction furnished or given by it shall not knowingly be such as will cause the Vendor to infringe any patent, registered design, trademark, copyright or other intellectual property right, in fulfilling the terms of this Purchase Order;
- c. In the event of any claim of infringement, the Purchaser may (but shall not be obliged to) require the Vendor at the Vendor's expense to either procure for the Purchaser the right to continue using the goods or replace the goods with non-infringing goods or modify the goods so it becomes non-infringing providing always that the standard of quality of the goods is not adversely affected; and
- d. All patents, design rights, copyrights and other intellectual property rights relating to the goods, which are not proprietary to the Vendor's manufacturing process, are and shall remain the property of the Purchaser. Therefore, the Vendor agrees that any modification to the design of the goods and any drawings based thereon or incorporating any designs or information provided by the Purchaser shall be the property of and vest in the Purchaser.

### **13.0 Insurance**

- a. In order to remain on the Purchaser's preferred vendor list, the Vendor agrees to maintain in full force and effect with financially responsible insurance carriers, the following insurance which shall take effect as of the date first set out in this Purchase Order and shall remain in effect until the Vendor has completed all of its obligations under this Purchase Order:
  - i. A comprehensive general liability insurance policy with an inclusive limit of not less than FIVE MILLION (\$5,000,000.00) DOLLARS per occurrence, in respect of bodily injury, including injury resulting in death, and property damage; and the policy shall specifically include, but not be limited to the following:
    - Blanket Contractual Liability;
    - Damage to the property of the owner including loss of use thereof;
    - Products & Completed Operations to be continuously maintained through the operational liability insurance;
    - Employer's Liability;
    - Non-Owned Automobile Liability.
    - Name Purchaser as an additional insured;
    - Contain a "cross liability" clause which shall have the effect of insuring each person, firm or corporation named in the policy as an Insured in the same manner and to the same extent as if a separate policy had been issued to each; and
  - ii. Employers' Liability Insurance (for employees not covered under the Workers' Compensation Act or similar legislation in place in the jurisdiction in which the Vendor operates from) shall be required with a limit of not less than TWO MILLION (\$2,000,000) per occurrence.

- b. The Vendor shall furnish the Purchaser with a certificate of insurance completed by a duly authorized representative of its respective insurers within seven (7) days of receipt of this Purchase Order certifying that at least the minimum coverages required herein are in effect and that the coverage will not be cancelled, non-renewed, restricted or reduced without thirty (30) days' advance written notice by registered mail.

The certificate of insurance shall be sent to:

Price Industries Limited  
638 Raleigh Street  
Winnipeg, MB R2K 3Z9  
Attention: wpgpurchasing@priceindustries.com

#### **14.0 Confidentiality**

In the purchase of goods and/or services under this Purchase Order the Vendor may have access to proprietary and confidential information of the Purchaser including, but not limited to, Specifications, formulae, or other information of a business or technical nature ("Confidential Information"). Vendor agrees to use such Confidential Information only for purposes related to the purchase of the goods under this Purchase Order. The Vendor will not otherwise use or disclose the Purchaser's Confidential Information to any other party without the written consent of the Purchaser.

Confidential Information does not include:

- a. Information in the public domain;
- b. Information independently developed by the receiving party; or
- c. Information received from a third party whose rights to disclose such information are without restrictions.

#### **15.0 Freedom of Action**

This Purchase Order shall not be construed to limit the Purchaser's right to obtain goods or services from other sources, to prohibit or restrict the Purchaser from independently developing or acquiring competitive materials, to restrict the Purchaser from making, having made, using, leasing, licensing, selling or otherwise disposing of any goods or services whatsoever, and shall not be construed to limit either party's right to deal with any other vendors, suppliers or customers.

#### **16.0 Workers' Compensation**

The Vendor will qualify under and comply with all workers' compensation laws of all jurisdictions in which any work or portion thereof to be performed by the Vendor in connection with this Purchase Order. Evidence of such qualification and compliance shall be furnished to the Purchaser on request.

#### **17.0 Health and Safety**

The Vendor will comply with environmental, health, safety and transportation requirements under local, provincial/state and federal legislation in operating its facilities and in the manufacture and supply of the goods and/or services. The Vendor will ensure that the Vendor's employees are properly trained to comply with such legislation.

#### **18.0 Hazardous Materials**

- a. Where necessary, the goods must be marked by the Vendor with a Workplace Hazardous Material Information System (WHMIS) symbol(s), or such symbol(s) as may be required under any successor or similar hazardous materials law(s), regulations and agreements, and display the name of the material. Transport and other documents must include declaration of the hazard and name of the material. The goods must be accompanied by emergency information in the form of written instructions, labels or markings. The Vendor shall observe the requirements of Canadian and international laws, regulations and agreements relating to the packing, labeling and carriage of hazardous materials;

- b. All information known, held by or reasonably available to one party regarding any potential hazards known or believed to exist in the transport, handling or use of the goods shall be promptly communicated to the other party; and
- c. The material name, transport documents and emergency information shall be printed in both the English and French languages.

### **19.0 Forced Labour**

Vendor shall comply with Purchaser's Supplier Code of Conduct ("Code of Conduct"), a copy of which can be found at [www.priceindustries.com](http://www.priceindustries.com). Without limiting the generality of the foregoing, Vendor shall not, and shall ensure that its suppliers, subcontractors, and other business partners involved in the production of the goods and/or services ("Subcontractors") do not, use any form of convict, indentured, or forced labor, including forced or indentured child labor ("Forced Labour") at any stage of the production process for the goods or any of its components. Upon Purchaser's request, Vendor agrees to promptly provide a certificate in form and substance satisfactory to Purchaser certifying Vendor's compliance with the requirements set forth in the Code of Conduct. Purchaser and its agents shall have the authority to enter upon Vendor's premises or any premises used in the production of the goods for the purposes of inspection for determining such compliance. If Purchaser determines that Vendor is in violation of the terms of this Article, Purchaser shall have the right to: (a) immediately cancel the affected purchases and terminate any agreement and/or Purchase Order without any liability or further obligation to Vendor; or (b) require Vendor to implement corrective measures within the time set forth in the corrective action plan. Purchaser shall have the right to suspend or cancel purchases while Vendor implements corrective measures. If Vendor does not implement corrective measures to the satisfaction of Purchaser within the required time period, then Purchaser may immediately cancel the affected purchases and terminate any agreement and/or Purchase Order without any liability or further obligation to Vendor.

### **20.0 Compliance with Other Laws**

The Vendor shall comply with all other applicable laws that govern the work or any portion thereof to be performed under this Purchase Order.

### **21.0 Conflicts in Documentation**

In case of any conflict between this Purchase Order and any prior agreements or other documents on the same subject, the order of precedence shall be determined by the Purchaser.

### **22.0 Assignment**

This Purchase Order may not be subcontracted, transferred or assigned, in whole or in part, by the Vendor without the prior written consent of the Purchaser, which consent may be arbitrarily denied.

### **23.0 Force Majeure**

Neither party will be responsible or liable to the other party for failure or delays due to causes beyond its reasonable control ("Force Majeure"). Vendor will provide Purchaser with prompt notice of a Force Majeure event when it becomes likely, and take all reasonable action to minimize the delay. If the delay in delivery of the goods continues beyond a reasonable period of time, Purchaser may cancel this Purchase Order in which event neither party will have any further obligation or liability to the other.

### **24.0 Notices**

Notices may be sent by email to the addresses specified on the face of the Purchase Order, and will be effective on the same day where a notice of receipt has been received or after five (5) business days where no such notice of receipt is received.

### **25.0 Governing Law**

This Purchase Order shall be governed by and construed in accordance with the laws of the Province of Manitoba and the laws of Canada applicable thereto, other than rules regarding conflict of laws. The courts of the Province of Manitoba shall have exclusive jurisdiction to entertain any legal proceedings arising under this Purchase Order.

**26.0 Entire Agreement**

This Purchase Order, including these terms and conditions, constitute the entire agreement between the parties with respect to its subject matter and supersedes all prior or other agreements, understandings and representations between the parties.

**27.0 Severability**

It is intended by the parties that all provisions of this Purchase Order, including these terms and conditions, shall be fully binding and effective between the parties, but in the event that any particular provision or provisions or a part of one is found to be void, voidable or unenforceable for any reason whatsoever, then the particular provision or provisions or part of the provision shall be deemed severed from the remainder of this Purchase Order and all other provisions shall remain in full force.

**28.0 Binding Effect**

This Purchase Order, including these terms and conditions and any schedules attached hereto, shall ensure to the benefit of and bind the parties and their respective successors and permitted assigns.