

PURCHASE ORDER TERMS AND CONDITIONS

1 SUPPLY OF GOODS AND/OR SERVICES

- 1.1 In consideration of payment of the Price by the Company, the Contractor must supply the Goods and/or provide the Services to the Company in accordance with, and as specified in, this Purchase Order (which includes these Purchase Order Terms and Conditions).
- 1.2 To the extent permitted by Law and to the extent the Contractor's terms and conditions are supplied to the Company in respect of the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of this Purchase Order (even if any representative of the Company signs those terms and conditions or annexes the terms and conditions to this Purchase Order).
- 1.3 Where this Purchase Order relates to Goods and/or Services the subject of a contract between the Contractor and the Company, the terms of that contract apply to the extent of any inconsistency with these Purchase Order Terms and Conditions.
- 1.4 The Contractor must, in supplying the Goods or performing the Services:
 - (a) not interfere with the Company's activities or the activities of any other person at the Delivery Point or the Site;
 - (b) be aware of and comply with, and ensure that the Contractor's Personnel are aware of and comply with:
 - (i) all applicable Laws;
 - (ii) all Site Standards and Procedures, to the extent that these documents are applicable to the supply of the Goods or the performance of the Services by the Contractor; and
 - (iii) all lawful directions and orders given by the Company's representative or any person authorized by Law or the Site Standards and Procedures to give directions to the Contractor;
 - (c) ensure that the Contractor's Personnel entering the Site perform the Services or deliver the Goods in a safe manner and in a way that does not prejudice safe working practices, safety and care of property and continuity of work at the Site;
 - (d) provide all such information and assistance as the Company reasonably requires in connection with any statutory or internal health and safety, environment or community investigation in connection with this Purchase Order, the supply of the Goods or the performance of the Services; and

- (e) on request by the Company, provide to the Company and its Personnel any information and assistance required to identify, evaluate, implement and report on any matter required by Law in respect of anything used, produced or created in connection with the performance of the Contractor's obligations under this Purchase Order.

2 DELIVERY

- 2.1 The Contractor must deliver the Goods to the Delivery Point by the Delivery Date.
- 2.2 The Contractor must ensure that the Goods are suitably packed to avoid damage in transit or in storage and in such a way to comply with any applicable Laws.
- 2.3 Packages must be marked with the Purchase Order number, item number, Delivery Point, contents, quantity, date and method of dispatch and weight of each package.

3 TIME FOR PERFORMANCE OF THE SERVICES

The Contractor must perform the Services by the date specified in the Purchase Order.

4 TITLE AND RISK

- 4.1 The Company will have title to the Goods when the Company pays for those Goods.
- 4.2 The Company will bear risk in the Goods when the Company takes delivery of those Goods at the Delivery Point.

5 PRICE

- 5.1 The Company must pay the Contractor the Price for the Goods and/or Services at the time set out in this Purchase Order (subject to the requirements of clause 6 having been satisfied).
- 5.2 The Price is inclusive of:
 - (a) all charges for packaging, packing, insurance and delivery of the Goods in accordance with this Purchase Order;
 - (b) the cost of any miscellaneous services of a kind which are commonly provided with the Goods and any miscellaneous items of a kind which are commonly used or supplied in the performance of (and in conjunction with) the Services;
 - (c) the Contractor's compliance with its obligations under this Purchase Order; and
 - (d) all Taxes.

6 INVOICING AND PAYMENT

- 6.1 On delivery of the Goods and/or completion of the Services, the Contractor must provide to the Company:

- (a) a Contractor Reference Document; or
 - (b) if the Company directs, an Invoice which meets all the requirements of a valid invoice for Consumption Tax purposes in a relevant jurisdiction, which must include the information set out in clause 6.3.
- 6.2 The Contractor must provide the Contractor Reference Document or Invoice using an electronic invoicing system if directed to by the Company
- 6.3 Any Contractor Reference Document or Invoice must include the following details:
- (a) a reference to this Purchase Order and the relevant contract (if any) including the line item numbers on this Purchase Order and the contract number;
 - (b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services and the relevant quantity of the Goods and/or Services;
 - (c) an individual reference number for the Company to quote with remittance of payment;
 - (d) the Price relating to the Goods and/or Services, broken down to reflect the same Price components on this Purchase Order, including the amount of any applicable Consumption Tax; and
 - (e) Company operation, Site and Company contact name.
- 6.4 If the Company requests, the Contractor must provide the Company with all relevant records to calculate and verify the amount set out in any Contractor Reference Document or any Invoice.
- 6.5 The Company must pay all Contractor Reference Documents and Invoices that comply with clause 6.3 by electronic funds transfer to the Contractor's nominated bank account within 30 days (or by such other method or within such other period as the parties agree) of their generation or receipt (as the case may be), except where the Company:
- (a) is required by Law to pay within a shorter time frame, in which case the Company must pay within that time frame;
 - (b) exercises any right to retain, withhold, reduce or set-off any amount due to the Contractor;
 - (c) disputes the Contractor Reference Document or Invoice, in which case:
 - (i) to the extent permitted by Law, the Company may withhold payment of the disputed part of the Contractor Reference Document or Invoice pending resolution of the dispute; and

- (ii) if the resolution of the dispute determines that the Company must pay an amount to the Contractor, the Company must pay that amount upon resolution of that dispute; or
- (d) is required by Law to withhold a portion of payment for services rendered by a foreign contractor.

6.6 The Company may reduce any payment due to the Contractor under this Purchase Order by any amount which the Contractor must pay the Company, including costs, charges, damages and expenses and any debts owed by the Contractor to the Company on any account whatsoever. This does not limit the Company's right to recover those amounts in other ways.

7 CONDITIONS AS TO QUALITY OF THE GOODS AND THE SERVICES

The Contractor must ensure that:

- (a) the Goods and Services supplied by the Contractor match the description of the Goods and Services in this Purchase Order;
- (b) if the Contractor gave the Company a sample of the Goods before the Company issued this Purchase Order, the Goods correspond with the sample;
- (c) if the Contractor provided the Company with a demonstration of the Services before the Company issued this Purchase Order, the Services correspond in nature and quality with the Services demonstrated;
- (d) if the Contractor showed the Company a result achieved by the Services before the Company issued this Purchase Order, the Services correspond in nature and quality with the services that achieved that result;
- (e) the Services are performed with the professional skill, care and diligence expected of a skilled and experienced professional contractor;
- (f) the Goods and Services are fit for the purposes set out in, or which an experienced professional contractor would reasonably infer from, this Purchase Order;
- (g) the Goods are new and of merchantable quality;
- (h) to the extent that the Services are design Services, the works being designed will be fit for their intended purpose as described in this Purchase Order;
- (i) any items which the Contractor uses or supplies in conjunction with the Services are of merchantable quality and comply with any standards specified in this Purchase Order and are fit for their usual purpose and any purpose described in this Purchase Order; and

- (j) the Company has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Contractor must pursue any manufacturer's warranties on the Company's behalf if the Company so requests).

8 Acceptance and Change of a Purchase Order

- 8.1 The Contractor may request changes to this Purchase Order, by written notice to the Dominion Diamond contact specified in this Purchase Order, in response to which the Company may issue a changed Purchase Order. If the Company is unable to accept the requested changes, the Company will cancel this Purchase Order.

9 ENDING THIS PURCHASE ORDER

- 9.1 The Company may cancel this Purchase Order for any reason upon written notice to the Contractor, and:
 - (a) subject to clause 7, the Company must pay for any part of the Goods delivered or Services performed prior to the cancellation;
 - (b) if the Contractor has shipped any Goods before the cancellation but the Goods have not been delivered to the Delivery Point at the date of cancellation, the Company may either:
 - (i) subject to clause 7, accept those Goods when delivered, and pay the Price for them; or
 - (ii) return the Goods to the Contractor at the Company's expense;
 - (c) if the Contractor has not shipped the Goods at the time of cancellation, on receiving the written notice of cancellation the Contractor must stop manufacture of the Goods in accordance with and to the extent specified in the notice, and do everything possible to mitigate any costs incurred in relation to the Goods; and
 - (d) if clause 9.1(b)(ii) or 9.1(c) applies:
 - (i) to the extent that the Goods were manufactured or fabricated in accordance with any specification prepared by the Contractor for the Company, the Company must reimburse the Contractor in respect of any expenditure reasonably incurred by the Contractor prior to the date of the cancellation which is directly attributable to the placing of the Purchase Order and which the Contractor is not able to recoup in some other way; and
 - (ii) the Contractor is not entitled to the Price of those Goods or Services, or to any compensation for that cancellation other than as specified in this clause 9.1(a).

10 CONFIDENTIAL INFORMATION

10.1 The Contractor must not, and must ensure that the Contractor's Personnel do not, without the prior written approval of the Company:

- (a) use Confidential Information other than as necessary for the purposes of fulfilling the Contractor's obligations under this Purchase Order; or
- (b) disclose the Confidential Information, other than to the Contractor's Personnel who need the information to enable the Contractor to perform this Purchase Order, to the Contractor's legal advisors, accountants or auditors, or where disclosure is required by Law (including disclosure to any stock exchange).

10.2 The rights and obligations under this clause 10 continue after the termination of this Purchase Order.

11 INTELLECTUAL PROPERTY

11.1 Subject to the terms and conditions of this clause 11, a party's Background IP remains vested in that Party.

11.2 The Contractor grants the Company a non-exclusive, perpetual, royalty-free, irrevocable, transferable license (with the right to assign and sub-license) to use the Contractor's Background IP to the extent necessary to use the Goods and/or Services and assigns to the Company all Project IP upon the creation of that Project IP.

11.3 The Company grants the Contractor a non-exclusive, royalty-free, revocable, non-transferable license to use the Project IP and the Company's Background IP to the extent required to perform the Contractor's obligations under this Purchase Order.

12 DEFECTS

12.1 If, during the Defects Correction Period, the Company finds any Defect in the Goods or Services (other than a Defect caused by the negligence of the Company), the Company may:

- (a) reject the Goods with the Defect and return them to the Contractor, in which case the Contractor must replace the Goods free of charge and reimburse the Company for any expenses incurred;
- (b) reject the Services with the Defect, in which case the Contractor must re-perform the Services free of charge; or
- (c) make good or engage another contractor to make good the Defect, in which case the Contractor must reimburse the Company for any expenses incurred.

12.2 If the Contractor does not replace the Goods pursuant to clause 12.1(a) or re-perform the Services pursuant to clause 12.1(b) and:

- (a) the Company has already paid the Contractor for the Goods or Services with the Defect, the Contractor must repay the Company the Price for those Goods or Services; or
- (b) the Company has not already paid the Contractor for the Goods or Services with the Defect, the Company is not liable to pay the Contractor for those Goods or Services.

12.3 The acceptance of any Goods or Services with a Defect by the Company will not bind the Company to accept any other Goods or Services with a Defect and does not affect any of the Company's other rights under this Purchase Order or at Law.

12.4 Where the Contractor has made good any Defect under this clause, those Goods or Services will be subject to the same Defects Correction Period as the original Goods or Services, from the date the Contractor made good the Defect.

13 ANTI-CORRUPTION OBLIGATIONS

13.1 The Contractor represents, warrants and agrees that neither the Contractor, any of its related entities nor the Contractor's Personnel authorized, offered, promised or gave or will authorize, offer, promise or give anything of value to:

- (a) any:
 - (i) individual who is employed by or acting on behalf of an Authority, government, government-controlled entity or public international organization;
 - (ii) political party, party official or candidate;
 - (iii) individual who holds or performs the duties of an appointment, office or position created by custom or convention; or
 - (iv) individual who holds himself out to be the authorized intermediary of any person specified in paragraphs (i), (ii) or (iii) above, (each, a "Government Official"), in order to influence official action relating to either, or both, the Company or this Purchase Order;
- (b) any person (whether or not a Government Official) to influence that person to act in breach of a duty of good faith, impartiality or trust ("acting improperly") in relation to either, or both, the Company or this Purchase Order, to reward the person for acting improperly or in circumstances where the recipient would be acting improperly by receiving the thing of value; or
- (c) any other person while knowing, or while he or she ought reasonably to have known, that all or any portion of the money or other thing of value that was authorized, offered, promised or given or will be offered, promised or given to:

- (i) a Government Official in order to influence or reward official action relating to either, or both, the Company or this Purchase Order; or
- (ii) any person in order to influence or reward such person for acting improperly.

13.2 The Company may terminate this Purchase Order for default, if the Contractor breaches this clause 13 or any Applicable Anti-corruption Laws in performing its obligations under this Purchase Order.

14 CONTRACTOR TO MAINTAIN BOOKS AND RECORDS

14.1 The Contractor will keep and maintain accurate and reasonably detailed books and financial records in connection with its performance under, and payments made in connection with, this Purchase Order.

14.2 The Contractor will, upon request, permit the Company to audit and examine any books and financial records necessary for the verification of compliance with the Contractor's representations, warranties and undertakings under this Purchase Order.

15 LANGUAGE

If by Law the parties are required to translate this Purchase Order into another language, then to the extent permitted by Law, the English language text of this Purchase Order will prevail over any inconsistencies or differences of interpretation with any other language. In the event of any such inconsistency or difference, the parties must amend the text in any other language to remove the inconsistency or difference.

16 DEFINITIONS

In this Purchase Order (unless the context otherwise requires):

Applicable Anti-corruption Laws means any anti-corruption Laws that are applicable to the Company, the Contractor or this Purchase Order, including Canada's Corruption of Foreign Public Officials Act, the US Foreign Corrupt Practices Act and the UK Bribery Act.

Authority means any national, state, provincial, regional, territorial, local or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body.

Background IP means any intellectual property owned or licensed by a party which that party makes available, contributes, brings to or uses in connection with this Purchase Order.

Company means the entity named as such in this Purchase Order.

Confidential Information means the terms of this Purchase Order and the Company's information made available to the Contractor at any time in connection with this Purchase and the Goods and/or the Services, together with any information that concerns the business,

operations, finances, plans or customers of the Company (or the Company's related entities) disclosed to or acquired by the Contractor (including any information that is derived from such information) whether before or after the date of this Purchase Order and whether in written, oral or visual form or in any other media, but does not include information which:

- (a) is or becomes public knowledge other than by a breach of this Purchase Order;
- (b) is in the Contractor's possession without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Contractor; or
- (c) has been independently developed by the Contractor or acquired from a source which was not subject to a duty of confidentiality to the Company.

Consumption Tax means value-added Tax, sales Tax, goods and services Tax or any Tax analogous thereto, but excludes any statutory late payment interest or penalties.

Contractor means the party or parties named as such in this Purchase Order.

Contractor Reference Document means a delivery document, dispatch note, time sheet, claim form or such other document which evidences the delivery of the Goods or the performance of the Services.

Defect means any aspect of the Goods or Services not in accordance with this Purchase Order, or any damage, deficiency, fault or inadequacy in design, performance, workmanship, quality or makeup of the Goods or Services.

Defects Correction Period means the period of 24 months from the date of delivery of the Goods and/or 12 months from the date on which a Service is last performed.

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

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

Goods means the goods, if any, specified as such in this Purchase Order (including any part of the goods specified).

Invoice means an invoice submitted by the Contractor in accordance with clause 6.1.

Law means all legislation including regulations, bylaws, orders, awards and proclamations with which a party is legally required to comply, together with all Authority requirements, guidelines, consents, certificates, licenses, permits and approvals (including conditions in respect of those consents, certificates, licenses, permits and approvals) with which a party is legally required to comply.

Personnel means directors, employees, agents, contractors or subcontractors, but a reference to the Company's Personnel excludes the Contractor.

Price means the price or rates specified as such in this Purchase Order.

Project IP means all intellectual property created, discovered or coming into existence as a result of, for the purpose of, or in connection with the performance of this Purchase Order.

Purchase Order means this purchase order for Goods and/or Services issued by the Company to the Contractor from time to time containing, amongst other things, a description of the Goods and/or Services.

Services means the services, if any, specified as such in this Purchase Order (including any part of the specified services and any ancillary services).

Site means the place described as such in this Purchase Order as the place for the use or storage of the Goods by the Company or for the performance of the Services.

Site Standards and Procedures means all the Company's standards, policies and procedures that are of general application at the Site in relation to matters concerning safety, health, the environment, industrial relations and personal conduct.

Tax:

- (a) includes all present or future taxes, fees, levies, duties, imposts, assessment royalties, tariffs, fees and charges imposed or assessed in respect of this Purchase Order by all Authorities including income tax, payroll tax, statutory pension or superannuation contributions and workers' compensation payments and contributions, customs duty, excise, and stamp duty, as well as interest, penalties and additions thereto; but,
- (b) does not include Consumption Tax.