

## Purchase Order Terms and Conditions

The following terms and conditions are incorporated into and form part of the purchase order (the "**Purchase Order**") and, collectively with the terms and conditions herein, the "**Agreement**") submitted by Western Forest Products Inc. (the "**Buyer**") to Seller or the other contracting party to the Purchase Order (the "**Seller**"). Seller's acceptance of the Purchase Order is deemed sufficient to constitute Seller's acceptance of the terms and conditions herein. ANY DIFFERENT OR ADDITIONAL TERMS WILL NOT BE BINDING UNLESS AGREED TO BY THE PARTIES IN WRITING.

In the event of any conflict or inconsistency between the Purchase Order and these terms and conditions, the Purchase Order will govern to the extent of the conflict or inconsistency, unless otherwise specified herein.

**1. Purchase and Sale.** Seller will sell and Buyer will purchase all items, materials or services (the "**Goods**" or "**Services**") set out in the Purchase Order, free and clear of all encumbrances.

"Goods" or "Services", as used in the Agreement, includes:

- (a) products, materials, work, services, articles, equipment, supplies, drawings, data and documentation used or required in providing the Goods or Services;
- (b) all other services, including design, delivery, installation, inspection, testing and expediting that are necessary in providing the Goods or Services and;
- (c) any specific warranties, performance guarantees and other rights and related entitlements, specified in or required under the Purchase Order.

**2. Price and Terms of Payment.** Buyer shall pay to Seller the purchase price, as set out in the Purchase Order (the "**Price**"), within 30 days following the later of: (i) acceptance of the Goods and/or Services that comply with the Purchase Order specifications by Buyer at the site specified in the Purchase Order (the "**Site**"); or (ii) Buyer's receipt of Seller's invoice. The Price for the Goods and/or Services shall, unless otherwise expressly stated, be in Canadian currency.

**3. Escalation.** Except as otherwise specifically provided in the Purchase Order, all Prices are final and not subject to escalation.

**4. Taxes and Duties:** Except as otherwise specifically provided in the Purchase Order, all Prices are inclusive of all taxes, fees, duties or charges imposed by any governmental authority on the Goods and/or Services. Seller will indemnify and hold harmless Buyer, its affiliates and their directors,

officers, employees, agents, and representatives (collectively, the "**Indemnified Parties**") from any liability, loss, damage, claim, demand, action, proceeding, cost or expense (including without limitation, legal fees on a solicitor and own client basis) (collectively, "**Losses**") based on or relating to Seller's duty or failure to pay such taxes, fees, duties or charges.

**5. Packing:** Except as otherwise specifically provided in the Purchase Order all Prices are inclusive of all charges for packing, boxing, crating or cartage and loading. Seller shall suitably pack and mark all Goods for shipment. Damages to any Goods resulting from improper packing will be charged to Seller's account.

**6. Buyer May Change.** Buyer may, by written change order, make changes in specifications or drawings of, or increase or decrease the quantities of the Goods or the scope of the Services originally ordered. If any such change alters the amount due or the time of performance, then Seller must immediately notify Buyer in writing and the parties will agree to an equitable adjustment to the Price or the time of the performance, as applicable.

**7. Delivery and Performance.** Time shall be of the essence in the Purchase Order. Seller shall deliver the Goods and/or perform the Services in accordance with any schedules or dates specified in the Purchase Order or, if there are no schedules or specified dates, within a reasonable time. Buyer may cancel the Purchase Order, without liability, in whole or in part, if deliveries are not made or Services are not performed in accordance with this Section 7.

**8. Performance of Services.** All Services performed by Seller shall be performed in accordance with the Agreement, including any written instructions received by Seller from Buyer (who shall act reasonably in providing such instructions). Seller shall ensure that all Services are performed by individuals possessing the training, skill, knowledge and expertise required to capably perform the Services. Where the Services, or any part of them, are to be performed by a person required by law to possess a license, designation or certification, Seller shall ensure that the person performing such Services is properly so licensed, designated or certified.

**9. Shipping.** Except as otherwise specifically provided in the Purchase Order, all Prices are exclusive of broker's fees and freight. Seller shall suitably ship Goods in accordance with Buyer's instructions and all applicable laws, and, if so instructed by Buyer, shall meet the transportation requirements of common carriers to secure the lowest transportation costs. Seller shall attain appropriate carrier insurance and will be liable for resulting damage

to the Goods by reason of failure to comply with this Section 9. Seller shall send Buyer, as soon as the Goods have been forwarded, a notice of shipment number, a car number (if any), and a brief description of the Goods; otherwise, Seller shall be liable for any demurrage charges incurred. If the quantity ordered is sufficient, railcars and trailer units shall be loaded to their maximum legal capacity; otherwise, Seller shall pay the excess freight.

**10. Plastic Control.** It is Buyer's policy to control and minimize the presence and quantity of plastic materials at the Site. Seller shall ship all Goods without plastic or Styrofoam packaging. Any exceptions must be agreed to by Buyer in writing in advance of shipment. Any components containing plastic packaging that are shipped without Buyer's prior written approval may be returned unused to Seller at Seller's expense.

**11. Inspection.** Prior to acceptance of the Goods and/or Services by Buyer, Buyer may inspect the Goods and/or Services. Seller shall provide Buyer with access at all reasonable times to inspect the Goods and/or Services.

Goods and/or Services may be deemed unsatisfactory (including if the Goods and/or Services are damaged during delivery or performance or if Buyer has concerns with either the Goods or the workmanship in providing the Services) at the sole discretion of Buyer, acting reasonably.

Neither inspection, nor failure to make inspection, nor acceptance of the Goods and/or Services releases Seller from any of the warranties or other provisions contained in the Purchase Order, nor impairs Buyer's right to reject unsatisfactory Goods and/or Services in accordance with Section 12.

**12. Rejection by Buyer.** If the Goods are not delivered or Services are not performed as set out in the Agreement, or if Buyer finds the Goods and/or Services to be unsatisfactory in accordance with Section 11, then Buyer may reject the Goods and/or Services ("**Rejected Goods and/or Services**") and may, in its sole discretion: (i) require Seller to provide replacement of such Goods and/or Services (the "**Replacement Goods and/or Services**"), in which case Seller shall promptly deliver the Replacement Goods and/or Services to Buyer on the original terms and conditions, except that if the price for the Replacement Goods and/or Services at the time they are ordered is less than the Price, Buyer shall have the benefit of the lower price; or (ii) terminate the Agreement, in whole or in part, in which case Buyer shall have no obligations to Seller, other than for that part of the Price reasonably corresponding to those Goods and/or Services that were accepted by Buyer. Seller shall be responsible for all delivery costs, both to and from the Site, for Rejected Goods and/or Services and Replacement Goods and/or Services.

If Services were performed, Seller will:

- (a) remove its machinery, equipment and supplies from the Site; and
- (b) if required by Buyer, remove or discontinue the Services performed.

If the above is not complete within seven business days then Buyer may complete such removal or dismantling without liability and at Seller's expense.

**13. Termination.** This Agreement may be terminated:

- (a) by written mutual consent of the parties;
- (b) by Buyer on written notice to Seller (the "**Notice**") if the project or program that the Goods and/or Services are ordered for is cancelled, substantially modified or delayed, and
  - (i) Buyer will have no further liability with regards to Goods not delivered or Services not performed prior to Seller's receipt of the Notice;
  - (ii) Buyer will pay Seller for standard manufactured items delivered to or Services performed for Buyer prior to Seller's receipt of the Notice; and
  - (iii) Seller will stop all work on speciality manufactured Goods on receipt of Notice, unless otherwise directed by Buyer; and
  - (iv) Buyer will pay reasonable costs directly incurred by Seller prior to Seller's receipt of the Notice in connection with the Purchase Order.
- (c) immediately and without liability to Buyer if Seller:
  - (i) does not ship its order or perform the Services on or before the agreed shipping or performance date;
  - (ii) defaults under the Agreement; or
  - (iii) becomes insolvent, a receiver is appointed, or is petitioned or assigned into bankruptcy or otherwise seeks protection under the bankruptcy laws.
- (d) immediately and without liability if the presence of Seller's employees, agents, contractors, subcontractors, workers or invitees (collectively, the "**Seller's personnel**") causes or threatens to cause labour unrest or disturbance at Buyer's premises.

Unless otherwise agreed by the parties, Seller will continue to provide Goods and/or Services until the effective termination date of the Agreement.

In addition to the foregoing, Buyer will have such rights and remedies as provided by law.

**14. Surviving Obligation.** The provisions of the Agreement that are intended to survive the termination of the Agreement, including, without limitation all expressed limitations of liability, indemnities, confidentiality, and warranties for the Goods and/or Services, will survive the termination of this Agreement and continue as valid and enforceable obligations of the parties.

**15. Title, Encumbrances and Risk of Loss.** Seller represents to Buyer that it has good and marketable title to the Goods and/or Services, free and clear of all liens, charges, security interests and any other encumbrances.

Seller will indemnify and hold harmless the Indemnified Parties against any Losses, patent litigation, infringement, material or material men's or labourer's liens, or any claims by third parties in or to the Goods and/or Services supplied by Seller.

Seller will bear the risk of loss or damage to the Goods and/or Services until the Goods and/or Services are delivered to and accepted by Buyer at the Site, at which time title shall pass to Buyer. Notwithstanding the foregoing, title to any Goods or portions of Goods that have been paid for by Buyer in advance of delivery shall at all times be vested in Buyer. The risk of loss for such items shall remain with Seller until delivery to Buyer.

**16. Warranties.** Seller warrants that the Goods and/or Services will:

- (a) comply with all specifications as set out in the Purchase Order;
- (b) conform to any samples provided to Buyer;
- (c) be free from all defects and faults in design, manufacture, workmanship and materials;
- (d) be new and of the best quality, unless otherwise specified in writing in the Purchase Order;
- (e) be of merchantable quality and fit and safe for use consistent with the particular purpose intended by Buyer;
- (f) be at least equal to nationally recognized standards or codes
- (g) not infringe upon, violate or misappropriate the intellectual property rights of any person;
- (h) comply with all applicable laws.

Seller shall assign to Buyer the benefit of all suppliers, manufacturers or third party warranties and will ensure that all such warranties given by a supplier, manufacturer or third party are assignable to Buyer without the consent of the supplier, manufacturer or third party. Any such assignment of warranties will not relieve Seller of any of its obligations under the Agreement.

In no circumstance shall the warranty be less than the later of:

(j) one year from the date upon which the Goods and/or Services are put into use at the Site, or

(k) 18 months from the date the Goods and/or Services were received at the Site,

(collectively (j) and (k) are the "**Warranty Period**").

If the Goods and/or Services or any part thereof do not conform to the warranties in this Agreement, or if any defect develops under normal or proper operation as per Seller's instructions, Buyer may notify Seller within a reasonable time after such discovery, and, subject to any other remedies that may be available to Buyer, Seller will promptly repair, correct or replace the nonconforming or defective Goods and/or Services, all at Seller's sole cost and expense. Goods and/or Services used to correct nonconformities or defects shall be similarly warranted for a period expiring 12 months after the date of completion of the repair, correction or replacement. This warranty survives any inspection, delivery or acceptance of, or payment by Buyer for the Goods and/or Services.

This general warranty is independent of and without prejudice to any specific warranty or service guarantee offered by Seller in connection with the Goods and/or Services. The warranties in this Agreement are in addition to any and all warranties of Seller arising by operation of law, and nothing contained in the Agreement shall be construed as limiting or restricting such warranties.

Except as otherwise provided in the Purchase Order, Seller's liability will extend to all reasonable damages caused by a breach of warranties by Seller, and Seller agrees to indemnify and save harmless the Indemnified Parties from any Losses based on or relating to Seller's breach thereof.

**17. Expediting.** If at any time it becomes apparent to Buyer that the Goods will not be delivered by the date(s) specified in the Agreement, then Buyer may require Seller to expedite the work (including by adding additional shifts and equipment or by subcontracting), and any additional costs will be borne by Seller.

**18. Drawings and Manuals.** Seller will provide Buyer with all drawings and manuals in accordance with Agreement, or, if not specified in the Agreement, promptly after the date of the Purchase Order. Buyer's review of drawings does not constitute approval and will not relieve Seller of responsibility for compliance with all specifications, laws, codes or regulations.

**19. Licence.** If any equipment comprising of Goods that contain internal system code that executes below the external user interface and that is integral to the operation of the equipment (the "**Firmware**"), Seller represents and warrants it owns, or Seller's suppliers own, all Firmware and operating systems, and that Seller has the full right and authority to grant a licence to use the Firmware. Seller hereby grants Buyer a non-

transferable, non-exclusive, sub-licensable, perpetual fully paid up license or sublicense, as applicable, to use the Firmware as part of the normal operation and maintenance of the equipment. Such license or sublicense shall survive termination of the Agreement. Seller represents and warrants that Buyer is not required to obtain any separate third party licence with respect to the Firmware or equipment.

**20. Indemnity - Patent.** Seller will indemnify and hold harmless the Indemnified Parties from and against any Losses resulting from any allegation or charge that any Goods and/or Services, or the use thereof for the purpose for that the Goods and/or Services are purchased by Buyer, constitutes an infringement of any patent, copyright, or other intellectual property right. Seller shall assume the defence of Buyer against any such allegation or charge at Seller's expense. This indemnity will not apply to the extent Buyer provided the design and Seller is not otherwise negligent.

Buyer will promptly notify Seller of any infringement allegation or charge and will provide Seller, at Seller's request and Seller's expense, all assistance and pertinent information reasonably available to Buyer. Buyer will have the right to be represented by counsel of Buyer's own selection at Buyer's own expense. Within 90 days after the final adjudication that such infringement exists Seller will, at Buyer's reasonable discretion and at no expense to Buyer:

- (a) alter the Goods and/or Services to make them non-infringing, provided that such altered nonconforming Goods and/or Services fulfill substantially the same function as they fulfilled prior to such alteration;
- (b) exchange the Goods and/or Services with non-infringing Goods and/or Services that fulfill substantially the same function for the infringing Goods and/or Services;
- (c) obtain a license permitting Buyer's use of the infringing Goods and/or Services;
- (d) remove and repurchase the infringing Goods and/or Services from Buyer at Buyer's straight-line depreciated costs plus the costs of transportation, installation and removal; or
- (e) any of the above, or any combination thereof, at Buyer's option.

**21. Indemnity - General.** Seller agrees to indemnify and save harmless the Indemnified Parties from and against any Losses based on or relating to:

- (a) the use or operation of the Goods and/or Services;
- (b) Seller's failure to comply with any and all laws, statutes, regulations, bylaws, judgments, decrees, orders, injunctions, rules, guidelines, ordinances, regulations, requirements, permits, remediation orders and directions of any governmental authority with respect to the Goods and/or Services (collectively, the "**applicable laws**");
- (c) Seller's breach of the Agreement; or

- (d) the negligence or any other act or omission of Seller,

to the extent that such Losses were not a result of the gross negligence or wilful misconduct of Buyer. Any limitation of Seller's obligation to indemnify Buyer, either by provisions of Seller's delivery slips or other instruments, is void.

**22. Seller's Liability.** Seller will be liable for all Losses that Buyer, its affiliates and their directors, officers, employees, agents and representatives may be subject to as a result of, incidental to or in connection with this Agreement and that result from the acts and omissions of Seller, its affiliates or their employees, directors, officers, agents or subcontractors, to the extent that such Losses were not a result of the gross negligence or wilful misconduct of Buyer.

**23. Limits of Buyer's Liability.** Notwithstanding anything else in the Purchase Order, Buyer shall not be liable to Seller or anyone claiming through or under it, whether by way of indemnity, breach of contract, tort (including liability for negligence and breach of statutory duty), or on any other legal or equitable basis for Seller's:

- (a) special, indirect or consequential loss or damage;
- (b) loss of present or prospective profits, revenue, overhead, expenditures, investments, or commitments made in connection with the Purchase Order or on account of any other reason or cause; or
- (c) loss of any contract or other work.

**24. Builders' Liens.** Seller will not, by reason of the Agreement or anything done by it or Seller's personnel under the Agreement, acquire any rights, interest or title in Buyer's property or the Site. Seller will not permit, directly or indirectly, any liens to attach to Buyer's property or against the Site. Any liens filed by anyone engaged by or through Seller in connection with the Agreement will be removed by Seller within five business days of receipt of notice to do so from Buyer. If Seller fails to do so, Buyer may, in its sole discretion: (a) pay the amount of the lien into court, plus such amount as the court may order for security for costs; or (b) negotiate and settle the lien claim with the lien claimant and pay the lien claimant directly, in which case the full amount paid into court or paid to the lien claimant, as applicable, together with all costs of Buyer associated therewith, are to be deducted from any amounts due from Buyer to Seller or, if such amounts exceed the amount due, then Seller on demand shall immediately reimburse Buyer for such payment. Seller agrees to indemnify and hold harmless the Indemnified Parties from any and all Losses based on or relating to liens filed by anyone engaged by or through Seller.

**25. Insurance.** Unless other limits are specified in the Purchase Order, prior to commencement of any Services at the Site, Seller will obtain comprehensive

general liability insurance with limits not less than \$1,000,000 per occurrence. Seller will also ensure that the policy (a) names Buyer as an additional insured; (b) contains a cross liability clause; (c) expressly waives subrogation against Buyer; (d) states that the policy may only be cancelled or materially changed with 30 days' notice to Buyer; and (e) contains any additional provisions specified in the Purchase Order.

If requested by Buyer, Seller will provide Buyer evidence of all insurance. Seller will maintain the insurance until title to the Goods passes to Buyer, all Services are completed and approved by Buyer, and all of Seller's materials and equipment have been removed from the Site.

**26. Workers' Compensation.** Seller will, and will require Seller's personnel to, be registered and in good standing with all legislation governing workers' compensation. If requested by Buyer, Seller will provide evidence of such registration and standing for itself and for Seller's personnel.

**27. Condition of the Site.** Seller acknowledges that Buyer has not provided any representation or warranty as to the nature or condition of the Site. Seller hereby releases Buyer from any and all liability relating thereto.

**28. Health and Safety.** Seller acknowledges that Buyer's premises and the Site is used for industrial operations and maintained only to standards required for such use. Seller will:

- (a) be responsible for the safety of the individuals engaged in completing the Services and ensure that such persons have good and sufficient reason to attend the Site;
- (b) comply with and cause Seller's personnel to comply with all applicable laws relating to employment standards, occupational health and safety and hazardous materials governing the Services;
- (c) comply with Buyer's rules and health and safety programs at the Site (including drug and alcohol abuse);
- (d) promptly report all injuries, accidents, property damage or other incidents to Buyer; and
- (e) be solely responsible for the safety of its employees, agents, contractors, subcontractors, invitees and equipment at the Site.

**29. Compliance with Laws.** Seller will, and shall require Seller's personnel to, comply with all applicable laws.

**30. Environmental.** Seller will, and will require Seller's personnel to, comply with all environmental laws and Buyer's environmental programs at the Site. Seller will assume any environmental liabilities and perform any environmental obligations that result from the contravention of any environmental law by Seller or

Seller's personnel, including the cost of complying with any remediation order and any liability for clean-up of any substance or material that does not occur naturally in the environment or that falls within the definition of "contaminant", "pollutant", "waste", "special waste", "deleterious substance", "hazardous chemical", "hazardous waste", "dangerous good", "toxic substance", and variations of such terms or any terms of similar import in any environmental law (collectively, a "**Pollutant**"). Seller will immediately report to Buyer all inspections and investigations by governmental officials of any events of non-compliance or potential non-compliance with environmental laws.

**31. Hazardous Substances.** Seller will not, and will require Seller's personnel to not, bring, install, keep, maintain or use in or on any facility or cause, authorize or permit any person to bring, install, keep, maintain or use any substances, materials, equipment or apparatus that is likely to: cause material damage to any facility; cause the generation, accumulation and/or migration of any Pollutant; or cause an adverse effect on the health or well-being of Buyer's employees, representatives agents and subcontractors.

Seller will not, and will require Seller's personnel to not, bring, install, keep, maintain or use any Pollutant on the Site without the prior written consent of Buyer. Seller will ensure, and will cause Seller's personnel to ensure, that all Pollutants used or stored on the Site will be kept in accordance with all applicable laws, good industry practices and properly and securely labelled and stored under appropriate supervision, and used only by the appropriately trained and competent staff. Seller will not allow the unlawful generation, accumulation, discharge, emission and/or migration of any Pollutant, whether at or from any facility or into any conducting media or device serving any facility.

Seller assumes full responsibility and will indemnify and hold harmless the Indemnified Parties from and against any Losses based on or relating to Seller's unloading, discharge, storage, handling, use in the performance of the Services or disposal of any Pollutant or container therefore, including the use of such Pollutant or container alone or in combination with other substances.

**32. Electrical Safety.** All electrical equipment provided by Seller in performance of the Agreement will be certified by an accredited certification organization (such as the Canadian Standards Association), and will comply with all applicable electrical code requirements. All equipment that is intended for use in hazardous locations will comply with all Canadian Electrical Code and BC Electrical Code requirements.

**33. Permits.** Seller will, at its own cost, obtain and comply with all permits, licences, certificates and approvals required to supply the Goods and/or Services.

**34. Withholding.** If the Purchase Order includes installation supervision, start-up, training, performance testing or any other services by Seller, and if Seller is a non-resident of Canada, then Buyer is required to deduct a 15% withholding under Regulation 105 of the *Income Tax Act* (Canada) from each payment for such services and to remit such amount(s) to the Canada Revenue Agency. Buyer will, before the end of February of the year following the year of payment, forward to Seller a Form T4A-NR summarizing the amounts withheld. Buyer is not required to withhold on the reimbursement of receipted travel expenses, the purchase of equipment, or for services Seller renders in Seller's country of residence. To avoid withholding on these charges, such charges must be separately detailed on invoices.

**35. Confidentiality.** Any information (whether written, oral, digital or photographic) relating to the operations, processes, products, techniques, procedures, business, strategies, pricing, personnel, customers or suppliers of Buyer (including its affiliates) is collectively the "**Proprietary Data**". Any Proprietary Data disclosed by Buyer to Seller may not be copied or reproduced without the express written authorization of Buyer. None of Buyer's ownership rights or title to any of the Proprietary Data is intended to be sold, transferred, licensed, or assigned to Seller under the Agreement and all Proprietary Data will at all times remain the property of Buyer.

Seller shall keep all provisions of the Agreement and all Proprietary Data (collectively, the "**Confidential Information**") confidential, and shall protect the Confidential Information from unauthorized use, access, disclosure and duplication, and agrees not to disclose any Confidential Information to third parties without Buyer's prior written consent, except to the extent that such information:

- (a) is or becomes generally available to the public, other than as a result of disclosure by Seller in violation of this Agreement;
- (b) was or becomes available to Seller from a third party, provided that such third party, to the best of Seller's knowledge after reasonable inquiry, was not and is not bound by a confidentiality agreement prohibiting it from disclosing such information; or
- (c) was known to Seller on a non-confidential basis before its disclosure by Buyer, and that not acquired by Seller directly or indirectly from Buyer or anyone under an obligation of confidentiality to Buyer.

If Seller is required by law to disclose Confidential Information, it shall provide Buyer with written notice and cooperate with Buyer to obtain any protective order or other remedy that might be available.

Seller may disclose the Confidential Information only to those employees and agents who have a need to know such information and who have agreed to

confidentiality obligations no less onerous than those set out herein. Seller will be responsible for any breach of Section 35 by Seller's personnel.

Upon termination of the Agreement, or at any time at the request of Buyer, Seller will return all Confidential Information to Buyer.

**36. Publicity.** Seller may not use Buyer's name, logo, product photographs or trademark without Buyer's prior written consent.

**37. Dispute Resolution.** A dispute that arises under the Agreement will:

- (a) in the first instance, be referred to representatives of the parties for resolution by negotiation within 10 business days of the dispute being referred to the representatives;
- (b) if the dispute is not been resolved under (a), it may, upon agreement of the parties, be submitted to nonbinding mediation through the use of a mutually agreeable dispute resolution process. The costs of any mediator will be shared equally between the parties and the parties shall use commercially reasonable efforts to reach a resolution within a further 10 business days; and
- (c) if the dispute is not resolved under (b) or if the parties do not agree to mediate the dispute, it may be submitted by either party for determination through arbitration under the *Arbitration Act* (British Columbia). The arbitration will be governed by the British Columbia International Commercial Arbitration Centre in accordance with its "Domestic Commercial Arbitration Rules of Procedure" (the "**BCIAC Rules**"). The arbitration shall be conducted by a single arbitrator appointed in accordance with BCIAC Rules in Vancouver, British Columbia, and the award of the arbitrator including any award as to costs will be final and binding on the parties.

In the event of a dispute Seller shall not stop or delay production of the Goods and/or Services, but Seller may give notice to Buyer promptly upon becoming aware that a dispute exists that Seller is performing under protest, in which case performance by Seller does not prejudice any of its legal rights in relation to that dispute.

**38. Set-off.** Buyer will have the right to satisfy any amount from time to time owing by Seller to Buyer under the Agreement or pursuant to any other agreement or obligation existing between them by way of set-off against any amount from time to time owing by Buyer to Seller.

**39. Rights and Remedies.** Any rights and remedies of a party specified in the Agreement are in addition to, and not in substitution for, or in any manner limiting, the rights and remedies of that party available at law or in equity.

**40. Headings.** The headings in this Agreement are for convenience only, are not a part of this Agreement and do not affect its interpretation.

**41. Waiver.** Any waiver or exception of any of the terms and conditions of the Agreement by Buyer must be made in writing to be valid and any waiver by Buyer of any term or provision of the Agreement shall not prevent a subsequent enforcement of such term or any other term herein.

**42. Force Majeure.** Neither Buyer nor Seller shall be deemed in breach of the Agreement if its failure to perform, or its delay in performing, any obligation hereunder is due to war, riot, fire, flood, explosion, strike, lock-out, labour disturbance, act of governmental authority or any other event that has not been caused by an act, omission or negligence of, and is beyond the reasonable control of, Buyer or Seller, as applicable (the "**Force Majeure Event**"). For greater certainty, lack of funds is not considered a Force Majeure Event.

A party claiming to be relieved from its obligation under this Section 41 shall give prompt written notice to the other party (the "**Non-Force Majeure Party**") and will, as soon as practicable, provide the Non-Force Majeure Party with an estimate of when the obligations will be performed. The parties shall explore all reasonable alternatives to avoid or mitigate delays under this Section 41 and the parties shall each bear their own costs associated with such delays. Unless the parties otherwise agree, the time for performing the obligations will be extended for a reasonable period of time; however, if the Force Majeure Event extends for a period of more than 90 days, then the Non-Force Majeure Party may terminate the Agreement without liability.

**43. No Relationship.** It is the intent of Buyer and Seller that the relationship established between the parties pursuant to this Agreement is only that of seller and purchaser of the Goods and/or Services. Neither party shall hold itself out to be the agent, employee, employer, joint venture or partner of the other party.

**44. Notice.** The parties will deliver all notices required under the Agreement in writing by hand, facsimile, e-mail or prepaid courier to the party at the address, e-mail address or facsimile number set out in the Agreement, or at such other address, e-mail address or facsimile number as either party may stipulate by notice to the other party. Any notice delivered by hand or prepaid courier is deemed to be received on the date of actual delivery. Any notice sent by facsimile is deemed to have been received on the Business Day following the day the sender receives the facsimile confirmation sheet confirming delivery to the recipient. Any notice sent by e-mail is deemed to be received upon sending if the sender requests and receives a delivery receipt or delivery is otherwise confirmed.

**45. Entire Agreement.** The Agreement, including these terms and conditions and any specification sheets and attachments consistent with the terms of the Agreement, constitute the entire agreement between the parties relating to the purchase and sale of Goods and/or Services. Seller's quotation is made a part of the Purchase Order only to the extent of specifying the nature and description of the Goods and/or Services ordered, and only to the extent that such terms are consistent with the Agreement. No other terms or conditions shall be binding upon Buyer unless expressly accepted by it in writing.

**46. Amendments.** No provision of this Agreement may be amended, modified, waived or changed, unless made in writing and signed by the parties. Seller will not, without prior written consent of Buyer, add or change any subsupplier, subcontractor or place of origin.

**47. Enurement.** This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators and successors.

**48. Assignment.** Seller shall not assign any rights or obligations under this Agreement without Buyer's prior written consent (which may be withheld at Buyer's sole discretion). Any assignee consented to by Buyer must deliver a binding undertaking in favour of Seller, whereby it undertakes to comply with all provisions of this Agreement as if it were an original signatory hereto.

**49. Severability.** If any term of this Agreement is determined to be invalid or unenforceable, in whole or in part, the invalidity or unenforceability will attach only to that term or that part of the term, and the remaining part of the term and all other terms of this Agreement will continue in full force and effect.

**50. Governing Law.** The Agreement shall be governed by the laws of British Columbia and the laws of Canada applicable therein, except that the parties agree that the 1980 United Nations Convention on Contracts for the International Sale of Goods does not apply.