

Purchase Order Terms and Conditions

K+S Potash Canada General Partnership agrees to purchase and Supplier agrees to supply the "Goods" and/or the "Services" described in the Purchase Order to which these Purchase Order Terms and Conditions are attached, subject to the following:

1. DEFINITIONS

- (a) "**KSPC**" means K+S Potash Canada General Partnership;
- (b) "**Child Labour**" means labour or services provided or offered to be provided by persons under the age of 18 years and that:
 - i. are provided or offered to be provided in Canada under circumstances that are contrary to the applicable Laws in Canada;
 - ii. are provided or offered to be provided under circumstances that are mentally, physically, socially, or morally dangerous to them;
 - iii. interfere with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely or requiring them to attempt to combine school attendance with excessively long and heavy work; or
 - iv. constitute the worst forms of child labour as defined in Article 3 of the *Worst Forms of Child Labour Convention, 1999*, adopted at Geneva on June 17, 1999.
- (c) "**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 or failure to comply with the warranties set forth in Section 18;
- (d) "**Delivery Date**" means the date on which the Goods are to be received by KSPC at the Ship to Point and/or the date on which the Services are to be performed, as specified in the Purchase Order;
- (e) "**Encumbrance**" means any security interest, mortgage, charge, pledge, lien, debt, encumbrance or other defects in title, whatsoever, howsoever created or arising;
- (f) "**Forced Labour**" means labour or service provided or offered to be provided by a person under circumstances that:
 - i. could reasonably be expected to cause the person to believe their safety or the safety of a person known to them would be threatened if they failed to provide or offer to provide the labour or service; or
 - ii. constitute forced or compulsory labour as defined in Article 2 of the *Forced Labour Convention, 1930*, adopted in Geneva on June 28, 1930.
- (g) "**Goods**" means the items of personal property to be supplied by Supplier to KSPC, as more particularly described in the Purchase Order;
- (h) "**Laws**" has the meaning set forth in Section 22;
- (i) "**Purchase Order**" means a purchase order issued by KSPC in KSPC's form respecting Goods and/or Services, which Purchase Order includes these Terms and Conditions and any other document incorporated into the Purchase Order by reference;
- (j) "**Services**" means the work to be performed by Supplier for KSPC, as more particularly described in the Purchase Order;
- (k) "**Ship to Point**" means the location to which Supplier is to ship the Goods;
- (l) "**Subcontractor**" means any person, firm or corporate entity engaged directly or indirectly by Supplier (except for employees of Supplier) in the supply of any portion of the Goods or Services;
- (m) "**Supplier**" means the party designated as such on the face of the Purchase Order; and

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(n) "Terms and Conditions" means these Purchase Order Terms and Conditions.

2. GOVERNING TERMS

Subject to Section 3, the Purchase Order constitutes the exclusive and entire agreement between KSPC and Supplier. **KSPC hereby gives notice that it objects to and rejects any terms or conditions contained in any document which has been or may in the future be supplied to it by Supplier which are in addition to, different from, inconsistent with or attempt to vary any of the terms of the Purchase Order, whether such terms or conditions are set forth in Supplier's bid, proposal, order acknowledgement, invoice or otherwise disclosed to KSPC.** KSPC's acceptance of Supplier's Goods and/or Services will not be construed as an acceptance of any terms or conditions contained in any document provided by Supplier. If the Purchase Order is deemed to be an acceptance of a prior offer by Supplier, such acceptance is conditional on Supplier's assent to all terms and conditions contained within the Purchase Order, including these Terms and Conditions.

3. SUPPLEMENTARY CONTRACTUAL TERMS AND CONDITIONS

Notwithstanding Sections 2 and 5, where and to the extent that KSPC and Supplier have reduced additional or supplementary contractual terms and conditions to writing (the "Additional Terms and Conditions") and those Additional Terms and Conditions conflict with the terms and conditions set out in this Purchase Order, the Additional Terms and Conditions shall govern.

4. ACCEPTANCE

The Purchase Order will be deemed accepted and will be a binding contract on Supplier, upon Supplier: (a) executing and delivering an executed copy of the Purchase Order to KSPC; (b) delivering any part of the Goods to KSPC and/or commencing performance of the Services; or (c) upon Supplier accepting any payment made by KSPC related to the Goods and/or the Services, whichever occurs first.

5. PURCHASE ORDER SUPERSEDES

Subject to Section 3, the Purchase Order supersedes all prior agreements, representations, correspondence, undertakings or commitments, whether oral or written, between Supplier and KSPC with respect to the Goods and/or the Services.

6. INDEPENDENCE

Supplier shall be independent and is not an employee, agent or representative of KSPC, and all employees and Subcontractors used by Supplier in the provision of the Goods and/or Services shall be solely the employees and Subcontractors of Supplier.

7. PRICE AND PAYMENT

The estimated price for each item of the Goods and/or the Services will be the price listed by KSPC in the column unit price included in the Purchase Order, and charged to KSPC as indicated in the Purchase Order. **Subject to Section 15 (Change Orders), Supplier will not exceed the price for the Goods and/or Services set out in the Purchase Order without prior written approval by KSPC in the form of a revision to the Purchase Order.** Unless otherwise stated in the Purchase Order, the price will include all taxes, duties, levies, imposts and packing and shipping charges of every nature and kind in connection with the Goods and/or the Services. Where taxes, duties, levies or imposts are applicable, Supplier will separately list the same in its invoices.

- a) Where applicable, payment of Supplier's invoices will be subject to compliance with the holdback provisions of *The Builders' Lien Act* (Saskatchewan) and Supplier providing appropriate clearance certificates regarding the payment of Saskatchewan Workers' Compensation assessments and Saskatchewan provincial sales tax.

Unless otherwise specified in the Purchase Order, and subject to KSPC's right to question in good faith Supplier's invoice, payment for the Goods and/or the Services will be due 45 days following the later of (a) the receipt by KSPC at the Ship to Point of all of the Goods and/or completion of the Services by Supplier; and (b) the receipt by KSPC of Supplier's invoice.

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8. FULL COMPENSATION

Except as otherwise provided in the Purchase Order, the amounts payable pursuant to the Purchase Order will be the only compensation payable from KSPC to Supplier for the supply of the Goods and/or the performance of the Services and the performance of Supplier's obligations under the Purchase Order.

9. TITLE AND RISK OF LOSS

Supplier warrants that title to the Goods and/or all inputs supplied in the course of performing the Services will pass to KSPC, free and clear of all Encumbrances upon KSPC's receipt and acceptance of such Goods and/or such inputs. In the event of breach of this warranty, Supplier will, at Supplier's sole expense, take all actions necessary to defend title or remove any Encumbrances.

Until KSPC's receipt and acceptance of the Goods, Supplier assumes all risk of, and liability for, any damage to or loss of the Goods and all risk of, and liability for, any damage or loss to persons or property caused by the Goods.

Supplier will indemnify and hold harmless KSPC in connection with any action by KSPC to remove or vacate any Encumbrance arising in contravention of Supplier's warranty provided in this Section 9.

10. SECURITY INTEREST

Upon Supplier acquiring rights in the Goods (or any portion thereof) and thereafter until such time as title to such Goods passes to or vests in KSPC in accordance with Section 9, and as security for the performance of Supplier's obligations pursuant to the Purchase Order, KSPC shall have and Supplier hereby grants to KSPC a first priority security interest in all of the Goods. Supplier acknowledges that KSPC has a purchase money security interest in all of the Goods, that KSPC gave value to Supplier for the Goods and that such value was used by Supplier to acquire the Goods. Supplier hereby waives the right to receive a copy of any financing statement or financing change statement issued by any registry that confirms the registration of a financing statement or financing change statement relating to these Terms and Conditions.

11. SEGREGATION/LABELING

At all times that any Goods remain in the possession of Supplier, Supplier shall segregate such Goods, keeping them separate and apart from, and not intermingled with, any products, materials or other goods the title of which rests with Supplier or any third party. Supplier shall also label all Goods so that they may be readily identified as goods that are subject to the terms and conditions of the Purchase Order.

12. SHIPPING

Supplier will ship the Goods in the most economic manner, unless otherwise instructed by KSPC. A complete packing list and bill of lading or freight or express bill must accompany each shipment.

Supplier will package and protect the Goods to the extent necessary in order to allow for the safe loading, transport and unloading of the Goods at the designated delivery location. The case, skid, crate or container into which the Goods are packed will be clearly marked with the designated delivery location and KSPC's purchase order number, will contain a complete set of packing lists and have one copy of the packing slip included on the inside and a second copy of the packing list firmly affixed to the exterior.

13. PARTIAL SHIPMENTS

Partial shipments are not permitted unless otherwise agreed to in writing by KSPC. If partial shipments are permitted, a separate invoice must be rendered by Supplier for each shipment.

14. CUSTOMS DOCUMENTS

If Supplier makes shipment of any of the Goods from outside of Canada, Supplier must prepare and execute all documents required by Canadian authorities and promptly deliver same to KSPC or KSPC's designated import broker in order to facilitate customs clearance.

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15. CHANGE ORDERS

KSPC may from time to time instruct Supplier in writing to alter, omit, add to or vary the Goods and/or the Services and Supplier will carry out such changes in accordance with KSPC's instructions in the form of a revision to the Purchase Order.

16. SUSPENSION OF SUPPLY AND/OR PERFORMANCE

KSPC may require Supplier to suspend supply or performance if any cause should interfere with KSPC receiving, storing, using, requiring or acquiring the Goods and/or the Services called for by the Purchase Order. The supply and/or the performance will be resumed by Supplier within a reasonable time after KSPC advises Supplier that such cause has ceased to operate.

If an event of suspension under this Section 16 occurs without fault of Supplier, KSPC shall pay for reasonable costs and expenses directly and actually incurred by Supplier during the time of the stoppage and until written notice is given by KSPC for Supplier to resume supply or performance.

17. INSPECTION & REJECTION

All Goods and Services shall be subject to KSPC inspection, but neither KSPC's inspection or non-inspection shall relieve Supplier of its obligations pursuant to the Purchase Order. KSPC will have the right, exercisable on 48 hours' notice to Supplier, to enter any premises at which the Services are being performed or the Goods are being designed, manufactured or stored, for the purpose of inspecting the manner in which the Services are being performed or the Goods are being designed, manufactured or stored.

All Goods and/or Services are subject to KSPC's inspection and acceptance on delivery. If rejected, the Goods will be held for disposal at Supplier's risk and expense. No payment, inspection or acceptance of any part or all of the Goods will relieve Supplier from full responsibility of furnishing Goods conforming to the requirements of the Purchase Order.

18. WARRANTY

In addition to any other express or implied warranties, Supplier warrants that: (a) all Goods supplied by it pursuant to the Purchase Order will be in accordance with all applicable standards, specifications, drawings, descriptions and samples and other requirements of the Purchase Order; (b) all Goods supplied will be new; (c) all Goods will be of good industry standard material and workmanship, will be fit and suited for the purpose or use contemplated by the Purchase Order, and will be of merchantable quality; and (d) unless a longer period is specified elsewhere in the Purchase Order, all Goods supplied will be free from defects in material, design and workmanship for a period ending on the sooner of: (i) 12 months from the date of installation of the Goods; and (ii) 18 months following the date that KSPC receives the Goods at the Ship to Point.

In addition to any other express or implied warranties, Supplier warrants that: (a) all Services provided by it pursuant to the Purchase Order will be in accordance with all applicable standards, specifications, drawings, descriptions and samples and other requirements of the Purchase Order; (b) all Services will be performed in a good workmanlike manner and in accordance with normal standards for such Services in the industry; and (c) unless a longer period is specified elsewhere in the Purchase Order, all Services provided will be free from defects in material, design and workmanship for a period of 12 months from the date that the Services are completed.

19. DEFECTIVE GOODS AND/OR SERVICES

The Supplier must promptly rectify any and all Defect in the Goods or Services at its cost until the end of the warranty period set forth in Section 18. If, at any time prior to the expiry of the warranty periods set forth in Section 18, KSPC finds a Defect in the Goods or Services, the Supplier shall, at KSPC's option and at Supplier's expense, promptly repair or replace any Goods with a Defect and/or reperform any Services with a Defect and reimburse KSPC for all costs and expenses KSPC has incurred as a result of the Defect. Alternatively, and in addition to any other remedies KSPC may possess in this

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Purchase Order or at law, KSPC may rectify or engage another contractor to rectify the Defect at the Supplier's risk, and all reasonable costs and expenses incurred by KSPC will be a debt due and payable from the Supplier to KSPC; or KSPC may reject the Goods and/or Services with a Defect for a refund of the price already paid by KSPC for the Goods or Services and reimbursement of all reasonable costs and expenses incurred by KSPC as a result of the Defect.

The liability of Supplier with respect to the payment of costs, losses and damages pursuant to a breach of Warranty set out in Section 18 will not exceed the purchase price of the Goods and/or Services pursuant to the terms of the Purchase Order.

20. DEFECTIVE GOODS

All repairs or replacements of defective goods by supplier will be warranted by supplier for a further period equivalent to the warranty period for goods that is set forth in section 18. Property and goods insurance.

In any case where the Purchase Order is for the supply of Goods, Supplier shall maintain and pay for insurance coverage that adequately protects its plant, the Goods, materials and tools from all usual risks of loss or damage. Supplier will maintain and pay for insurance coverage that adequately protects the full value of the Goods from all usual risks of loss or damage until the Goods are delivered to KSPC.

21. FORCE MAJEURE

For these Terms and Conditions, a "**Force Majeure**" means any act or event beyond the reasonable control of a party (the "**Affected Party**") that could not reasonably have been anticipated and that prevents or delays the performance by the Affected Party of its obligations under the Purchase Order, including but not limited to acts of God; expropriation or confiscation of land or personal property; compliance with any applicable Laws, request, recommendation or requirement of any governmental authority, body or agency; war; riot; rebellion; sabotage; flood; fire; or unusually severe weather that could not reasonably have been anticipated; and for greater clarity, a Force Majeure cannot be caused by the fault, negligence, lack of diligence, shortage or supervisors or labour, inefficiencies, or the financial inability to perform of the Affected Party and will only include a default by a third party with which the Affected Party has contracted, if the third party's default was caused by a Force Majeure affecting it.

If the Affected Party is prevented from performing or meeting any of its duties or obligations under the Purchase Order by a Force Majeure, such non-performance will be deemed to not constitute a breach of the Purchase Order, and the Affected Party will not be liable for damages to, or subject to any other right of action by, the other party for such non-performance. Further, the time for meeting or performing such duties or obligations will be extended for such period of time as the Force Majeure persists.

The Affected Party will promptly give the other party written notice of the occurrence of a Force Majeure and its anticipated effect on the Affected Party's performance under the Purchase Order. Furthermore, the Affected Party will give further written notices of any significant change in the nature of such occurrence, any progress made in eliminating such occurrence, the termination of such occurrence and of the anticipated date of resumed performance of contractual obligation.

The Affected Party will use all reasonable diligence to minimize or eliminate the Force Majeure but will not be required to settle a strike, lockout, work slow down, work stoppage, or other labour dispute, and will otherwise fulfill its obligations as soon as reasonably possible after the elimination of the Force Majeure.

If a Force Majeure lasts for more than twenty (20) days, KSPC may, by written notice, terminate the Purchase Order except for the obligation to pay the reasonable costs and expenses incurred by Supplier in the course of its performance of its obligations under the Purchase Order prior to such notice of termination.

22. COMPLIANCE WITH LAWS AND CODE OF CONDUCT

- a) Supplier warrants and agrees that at Supplier's expense all Goods supplied and/or Services

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provided under the Purchase Order will comply with all applicable federal, provincial and local laws, regulations, ordinances, rules, codes and permits (collectively, the "**Laws**") in force at the time of supply and/or performance including, without limitation, all Laws affecting the price, production, use, classification, handling, transportation, storage, sale or delivery of any Goods supplied and/or Services provided under the Purchase Order and all applicable occupational health and safety and environmental Laws. Supplier will obtain all necessary permits and/or licences for the supply of the Goods and/or the performance of the Services. Supplier will ensure compliance with the foregoing by its agents, employees and any Subcontractors.

- b) The Supplier acknowledges that it has access to the policy developed by KSPC's parent company, entitled K+S Group Supplier Code of Conduct ("Code of Conduct"), which can also be found on KSPC's parent company website: www.kplus.com. The Supplier is expected to read, understand, and adhere to the Code of Conduct as applicable from time to time.

23. KSPC SPECIFIED PROPERTY

If KSPC provides to Supplier any equipment or other property (collectively, the "**Equipment**") to assist Supplier in performing its obligations under the Purchase Order, Supplier shall have and be deemed for the purposes of the Purchase Order to have the care, custody, and control of, and shall protect from loss and damage, the Equipment until the Equipment is delivered back to KSPC. Supplier shall upon completion of Services or upon earlier request of KSPC, deliver the Equipment to KSPC in the same condition as when delivered to Supplier. Supplier shall be solely responsible for operation of the Equipment and shall operate it in accordance with the instructions and recommendations of the relevant manufacturer and KSPC and in accordance with good operating procedure. Supplier shall pay the cost of repairing any damage to the Equipment not caused by ordinary wear and tear.

24. INTELLECTUAL PROPERTY

Supplier warrants that the Goods to be supplied and/or the Services to be provided under the Purchase Order, and the use thereof, will not infringe on any existing or pending patent, copyright, industrial design or other intellectual property right. Supplier will indemnify and hold KSPC harmless from any claim, cost or expense, including legal fees on an attorney/client basis, which may result because any of the Goods and/or the Services supplied or provided infringe or are claimed to infringe any existing patent, copyright, industrial design or other intellectual property right. Supplier guarantees KSPC the continuous use of all such Goods and/or Services at all times, and grants KSPC a non-exclusive, worldwide, irrevocable, perpetual, royalty-free, assignable license to access, use, copy, or modify the Supplier's intellectual property as reasonably necessary for KSPC to receive and benefit from the Goods and Services.

25. CONFIDENTIALITY

Any data, plans, specifications, designs, patterns, samples or other similar items or other technical, commercial or financial information relating to KSPC's business (the "**Information**") which Supplier may obtain in connection with the Purchase Order will be deemed to be confidential. Supplier will not use the Information for its own purposes (other than for fulfilling its obligations under the Purchase Order), nor will Supplier disclose the Information to any third party except as specifically authorized by KSPC in writing. The obligations of confidentiality in this Article 25 shall survive the termination of this Purchase Order.

26. USE OF INFORMATION

KSPC will have the right to make copies of or otherwise use for its own purposes (including duplicating any components of any Goods and/or duplicating any acts of any Services) any drawing or other information provided by Supplier in the course of its performance under the Purchase Order.

27. DELAY

Time is of the essence in this Purchase Order. Subject to Section 16 (Suspense of Supply and/or Performance) and Section 21 (Force Majeure), Supplier agrees that it will complete delivery of the Goods and/or performance of the Services according to the times specified in the Purchase Order. Subject to

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Section 16 and Section 21, Supplier will commence the design and manufacture or supply of the Goods and/or performance of the Services promptly in accordance with the date indicated in the Purchase Order, and will thereafter prosecute the same diligently and to KSPC's satisfaction and will deliver the Goods and/or complete the Services on or before the Delivery Date.

Within 14 days of the receipt of the Purchase Order, Supplier will provide KSPC with a progress schedule, to be updated monthly, which will include the status of the manufacture of the Goods, the expected shipping date, and/or the progress in the performance in the Services, and will notify KSPC in writing if the supply of the Goods and/or the performance of the Services should for any reason be delayed, indicating the cause and extent of the delay. This will not, however, relieve Supplier of Supplier's obligation to deliver the Goods and/or perform the Services as required by the Purchase Order.

28. OTHER OBLIGATIONS OF SUPPLIER

If Supplier is party to a collective agreement or becomes party to a collective agreement during the supply of the Goods and/or performance of the Services, then:

- a) supplier must confirm in writing to KSPC that the collective agreement will not expire until after the Goods have been supplied and/or the Services have been completed; and
- b) supplier must obtain from its union a written waiver of any non-affiliation, reservations, or similar provisions of the collective agreement that would permit union members to refuse to work with other workers or honour another union's picket line, for the duration of the supply of the Goods and/or the performance of the Services.

If Supplier is party to a collective agreement or becomes certified by a union during the supply of the Goods and/or the performance of the Services, then there must be no strike or lockout or other interruption of work related to any labour relations or collective bargaining issues for the duration of the supply of the Goods and/or the performance of the Services.

If the supply of the Goods and/or the performance of the Services is expected to require camp accommodation to be provided by KSPC for Supplier's personnel, Supplier must ensure that its terms of employment or any collective agreement to which it is, or becomes, a party is not in conflict with the standard of camp accommodation and meals that will be provided.

Supplier must include in all subcontracts with any Subcontractor:

- a) terms that provide for and are substantially in the form of the terms contained in Section 28; and
- b) appropriate contractual provisions that will minimize and avoid labour disputes, disruptions, strikes, picketing and legal or illegal work stoppages in relation to the supply of the Goods and/or the performance of the Services.

29. DEFAULTS AND REMEDIES

Subject to Section 16 (Suspense of Supply and/or Performance) and Section 21 (Force Majeure), if a party (the "**Defaulting Party**") commits or suffers any of the following events ("**Events of Default**"):

- a) subject to KSPC's right under Article 7 to question Supplier's invoice, if a Party fails to pay any amount due hereunder when due and such failure continues for a period of 30 days from and after the original due date;
- b) fails to make or take delivery of the Goods or the Services within 10 business days of the Delivery Date;
- c) fails to cure a breach of a material term of the Purchase Order or breaches of other terms of the Purchase Order which, in the aggregate, constitute a material breach of the Purchase Order within a period of 30 days after receipt of a notice from the other Party (the "**Non-Defaulting Party**") advising of such breach;
- d) voluntarily commences or becomes subject to a case or proceeding under applicable bankruptcy,

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insolvency, reorganization or other similar law or becomes subject to the appointment of, or taking possession by a custodian, receiver, trustee, liquidator or similar official of the Defaulting Party of all or substantially all its property or assets, or makes an assignment or attempted assignment for the benefit of its creditors, or becomes generally unable or admits in writing its inability to generally pay its debts as they become due, or takes corporate action in furtherance of any such action, or is the subject of an entry by a court having jurisdiction of a decree or order for relief in an involuntary case or proceeding under any such law or a decree or order making such an appointment;

- e) utilizes any law or governmental regulation relating to bankruptcy, insolvency, liquidation, dissolution, arrangement, winding-up or composition or adjustment of debts in any jurisdiction;
- f) has any governmental entity or other third party seize, expropriate or confiscate all or a substantial part of its property or assets; or
- g) institutes any proceedings for the cessation of its business or corporate existence;

then the Non-Defaulting Party will have the right to terminate the Purchase Order by delivering written notice to the Defaulting Party that specifies the effective date of termination. Exercise of such option by the Non-Defaulting Party will be without prejudice to any other rights or remedies the Non-Defaulting Party may have at law or in equity as a result of such breach of the Purchase Order by the Defaulting Party.

30. DAMAGES FOR SUPPLIER'S DEFAULT

If, as a consequence of an Event of Default under Section 29, KSPC terminates the Purchase Order prior to receiving delivery of any item(s) of the Goods and/or Services from Supplier, KSPC may purchase (or otherwise procure) from another source any substitute Goods or Services on the most favorable terms, conditions and prices reasonably available to KSPC in the circumstances, and KSPC will, without prejudice to any other of its rights, be entitled to damages from Supplier of one or more of the following:

- a) the amount, if any, by which the price paid by KSPC for the substitute Goods and/or the substitute Services exceeds the purchase price set forth in the Purchase Order; and
- b) the amount of any charges or expenses reasonably incurred by KSPC with third parties in connection with procuring the substitute Goods and/or Services, including, without limitation, all extra transportation, installation and insurance costs and all reasonable administrative and legal fees and expenses.

If KSPC purchases substitute Goods and/or Services, Supplier's obligation to deliver the Goods and/or Services will automatically terminate.

31. SUPPLIER INDEMNITY

Supplier will indemnify and hold KSPC harmless from and against any all claims, demands, damages, losses, expenses, costs (including legal fees), fines and penalties sustained or incurred by or asserted against KSPC arising from or in connection with any negligent act or omission of Supplier or Supplier's officers, employees, agents or Subcontractors in the course of fulfilling the Purchase Order.

32. DAMAGES FOR KSPC'S DEFAULT

If, as a consequence of an Event of Default under Section 29, Supplier terminates the Purchase Order prior to delivering or providing any item(s) of the Goods or Services to KSPC, Supplier may sell the Goods and/or Services to an alternate customer on the most favorable terms, conditions and prices reasonably available to Supplier and Supplier will, without prejudice to any other of its rights, be entitled to damages from KSPC in the amount, if any, it can prove to the satisfaction of KSPC it has incurred as a result of KSPC's Default, subject to compliance with Supplier's obligations pursuant to Section 33.

33. DUTY TO MITIGATE

Either party, upon being informed or becoming aware of any actual breach of the Purchase Order by the other party, will use all commercially reasonable efforts to avoid or minimize any loss or damage that in

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the ordinary course of events would naturally and directly flow to it as a result of that breach by the other party.

34. CANCELLATION WITHOUT CAUSE

KSPC may cancel the supply of any Goods and/or the performance of any Services or any part thereof at any time without cause at its sole option by giving written notice to Supplier. Upon such cancellation without cause, KSPC will reimburse Supplier for its actual direct costs incurred in respect of the Purchase Order prior to the effective date of notice of cancellation, together with any actual direct costs resulting from such cancellation, less the reasonable recoverable value of any Goods and/or Services or partially completed Goods and/or Services, if applicable. Reimbursement for such actual direct costs will be Supplier's exclusive remedy, and will constitute satisfaction of any and all liabilities of KSPC, with respect to any cancellation of the Purchase Order.

35. SET-OFF

KSPC may withhold, set-off or deduct from any amount otherwise payable to Supplier under the Purchase Order, such amount as may be reasonably necessary to reimburse, indemnify or protect KSPC from any amount owing by Supplier to KSPC pursuant to the Purchase Order, or for any loss or damage that may be due to the default by Supplier in any obligation under the Purchase Order or from claims by third parties against KSPC in respect of the Goods and/or the Services.

36. WAIVER OF CONSEQUENTIAL DAMAGES

In no event will Supplier be liable for consequential damages for loss of profits, loss of revenue or loss of anticipated business suffered or incurred by KSPC as a result of Supplier's failure to supply the Goods and/or provide the Services in accordance with the Purchase Order; provided that this limitation will not apply in respect of any willful or intentional misconduct of Supplier or its agents, Subcontractors or employees.

37. CUMULATIVE REMEDIES

Except as otherwise expressly provided in the Purchase Order, any rights and remedies specified in the Purchase Order are cumulative and are in addition to any other rights or remedies available to KSPC at law.

38. MODIFICATION

No revision, modification or waiver of the terms and conditions contained within the Purchase Order, including these Terms and Conditions, will be binding on KSPC unless such revision, modification or waiver is expressly agreed to in writing signed by a signing officer of KSPC. No waiver of any provision of the Purchase Order shall imply a waiver of that provision for the future or of any other provisions in the Purchase Order.

39. SUBCONTRACTORS

Supplier shall not subcontract any Goods or Services to be provided hereunder, or any part thereof, without prior written consent of KSPC. If KSPC consents to a Subcontractor, Supplier will:

- a) be fully responsible for the acts and omissions of the Subcontractor;
- b) incorporate into its subcontract the terms and conditions of the Purchase Order, as far as is applicable to the work of the Subcontractor, and ensure that the Subcontractor is bound to them;
- c) include in its subcontract a statement to the effect that the subcontract is subject to all rights and remedies of KSPC against Supplier hereunder; and
- d) upon request, provide KSPC with a copy of any subcontract.

40. CAPACITY OF THE PARTIES

Each of the parties represents and warrants as follows:

- a) that it is a corporation duly incorporated and in good standing in its jurisdiction of incorporation and

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that it is qualified to do business and is in good standing in those jurisdictions where necessary in order to carry out the purposes of the Purchase Order;

- b) that it has the capacity to enter into and perform its obligations set forth in the Purchase Order and that all corporate and other actions required to authorize it to enter into and perform same have been properly taken;
- c) that it will not breach any other agreement or arrangement by entering into or performing its obligations pursuant to the Purchase Order; and
- d) that the Purchase Order has been duly executed and delivered by it and is valid and binding upon it in accordance with its terms.

41. ASSIGNMENT

Any assignment of the Purchase, including the proceeds thereof, by Supplier without the prior written consent of KSPC will be void.

42. GOVERNING LAW

Trade terms used in the Purchase Order will be interpreted in accordance with the ICC's Incoterms, latest version. The laws of the Province of Saskatchewan (excluding Saskatchewan's conflict of laws rules and the United Nations' Convention on Contracts for the International Sale of Goods) will apply to and govern the interpretation, validity and enforceability of the Purchase Order. Supplier hereby attorns to the jurisdiction of the courts of the Province of Saskatchewan.

43. CURRENCY

Unless otherwise specified in the Purchase Order, all amounts and sums of money payable pursuant to the Purchase Order will be paid in lawful money of Canada, and all sums of money referred to in the Purchase Order are expressed in Canadian dollars.

44. ATTENDANCE AT KSPC SITE

When any aspect of the Purchase Order involves attendance at or the performance of Services at the KSPC project site, the following additional provisions will apply.

- a) Supplier and its officers, employees, agents and Subcontractors will comply with all reasonable site rules and safety and security regulations established by KSPC.

Without limiting the generality of the foregoing, Supplier must adhere, and shall require all Subcontractors to adhere, to meet and abide by KSPC's safety, sanitary, medical or fire prevention requirements, programs, policies, directives, standards and precautions, as same may be amended from time to time (the "**Safety Standards**"). Supplier specifically acknowledges and agrees that notwithstanding the existence of the Safety Standards, and the agreement of Supplier to participate in same, it shall remain solely responsible for the taking of all safety, sanitary, medical and fire prevention precautions respecting its employees, representatives, agents and officers, and those of its Subcontractors, and in respect of the Services, and for the compliance with all Laws.

- b) Supplier will have complete control and responsibility for the safety and health of its officers, employees, agents and Subcontractors while engaged in the Services at KSPC's project site, and will take all necessary precautions to prevent the occurrence of any injury to person or damage to property during any attendance at the KSPC site.
- c) Supplier will obtain all necessary permits and/or licenses and give all necessary notifications for the fulfillment of its obligations under the Purchase Order.
- d) Supplier will notify KSPC in advance of any hazardous materials that it intends to bring onto KSPC's project site and provide KSPC with the appropriate Material Safety Data Sheets for such materials.
- e) Supplier will maintain and ensure that its agents and Subcontractors maintain, at its own expense,

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the following insurance and will, upon request, provide KSPC with a copy of such insurance coverage for approval, which approval shall not be unreasonably withheld:

- i. commercial general liability insurance (and umbrella/excess liability insurance as required), including blanket contractual liability, products and completed operations liability, contingent employers liability, non-owned automobile liability (unless coverage for non-owned automobiles is provided under the Supplier's automobile liability insurance), a cross liability and severability of interests clause with a limit of not less than \$5 million per occurrence for bodily injury (and death) and property damage. This insurance coverage will include KSPC as additional insured, shall provide that the insurance is primary and non-contributing with any insurance carried by KSPC with respect to the Services, and will be endorsed to provide that the insurers will have no right of subrogation against KSPC;
 - ii. employers liability insurance (for employees not covered under *The Workers' Compensation Act, 1979* (Saskatchewan) or, to KSPC's satisfaction, under legislation for jurisdictions with a comparable insurance scheme) with a limit of not less than \$5 million per occurrence;
 - iii. automobile liability insurance, with a combined single limit of not less than \$5 million for each occurrence of bodily injury (including passenger hazard), death, and property damage. Such insurance shall cover all vehicles owned or leased by the Supplier as well as non-owned automobiles (unless coverage for non-owned automobiles is provided under the Supplier's commercial general liability insurance);
 - iv. all risks physical damage insurance, covering loss or damage to equipment and materials owned, leased or rented by the Supplier and used in conjunction with the Services. This insurance coverage will be endorsed to provide that the insurers will have no right of subrogation against KSPC;
 - v. if the Services require the Supplier to provide any engineering, design, or other professional services, errors and omissions/professional liability insurance, with a limit of not less than \$5 million per claim and in the annual aggregate; and
 - vi. Any other insurance which the Supplier is required by law to carry or which KSPC may reasonably require having regard to the Work to be performed.
- f) Supplier's access to the project site shall be deemed to give Supplier such limited access as shall be necessary to perform the Services but shall not be deemed to confer a right of exclusive possession.
- g) Failure of Supplier's employees, or those of its Subcontractors, to comply with, and failure of supervisory employees of Supplier to enforce, the Safety Standards or any Laws, shall constitute cause for removal of such employees from the project site.
- h) Supplier is responsible for reporting all non-conformances, accidents, injuries, deaths and near miss incidents immediately to KSPC.
- i) Supplier shall ensure that each of its and its Subcontractors' employees acknowledges that KSPC has no responsibility or liability for any loss or damage to their personal effects, and Supplier shall inform each such employee that KSPC has no such responsibility or liability.

45. NON-EXCLUSIVITY

Under no circumstances shall this Purchase Order be construed or interpreted as an exclusive dealing agreement. KSPC is free to contract for any goods and services, including those similar to the Goods or Services, from any third party at any time, and from time to time.

46. MODERN SLAVERY

Supplier agrees that as a condition of this Purchase Order, that Supplier nor any of its officers, agents,

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employees, or sub-contractors:

- a) have been convicted of any offence involving Child Labour or Forced Labour anywhere in the world;
- b) to the best of the Supplier's knowledge, have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with Child Labour or Forced Labour; or
- c) will use or allow its subcontractors to use Child Labour or Forced Labour.