

GENERAL TERMS AND CONDITIONS – GOODS AND SERVICES

ALL TRANSACTIONS ARE GOVERNED BY BUYER'S TERMS AND CONDITIONS OF PURCHASE. ANY PROPOSAL OR DOCUMENT FROM SELLER THAT INCLUDES DIFFERENT OR ADDITIONAL TERMS THAT VARY FROM ANY OF SOUTH ESSEX FABRICATING INC. ("BUYER") TERMS AND CONDITIONS OF PURCHASE ARE OBJECTED TO AND DISALLOWED. NOTWITHSTANDING THE FOREGOING, ANY SUCH COUNTERPROPOSALS BY SELLER SHALL NOT OPERATE AS A REJECTION OF THE CONTRACT OF PURCHASE, BUT AS A REJECTION OF THE ADDITIONAL OR DIFFERENT TERM(S).

- 1. Services.** Seller shall provide the services (the "Services") to Buyer as described in the SOW/PO/RFP to which these terms are attached and incorporated therein. The SOW/PO/RFP, together with these terms, shall collectively be referred to herein as the "Agreement." Seller acknowledges and agrees that time is of the essence with respect to Seller's obligations to Buyer, and that prompt and timely performance of all such obligations, including all performance dates, project milestones, testing, and other requirements is strictly required. The existence of this Agreement shall not be construed as imposing any obligation upon the Buyer to request or receive any Services from the Seller.
- 2. Compliance with Laws; Standards and Testing.** Seller represents and warrants that all materials furnished hereunder, and Seller's manufacturing thereof, complies with all applicable laws, ordinances, rules and regulations ("Laws"). Seller shall treat materials prior to shipment to Buyer in accordance with testing standards requested by Buyer and shall furnish Buyer certifications in support thereof.
- 3. Indemnity.** Seller will defend, indemnify and hold harmless Buyer, its affiliates, vendors, and their officers, directors, shareholders, employees, and agents from and against any and all loss, liability and expense by reason of: (i) any actual or alleged violation of Laws; (ii) any actual or alleged infringement of Intellectual Property Rights; (iii) injury, death or property damage resulting, in whole or in part, from any negligent act or omission on the part of the Seller or which may result from the installation, operation or use of the materials furnished hereunder; (iv) a defect in the manufacture or design of the materials supplied hereunder; or (v) any breach or alleged breach by Seller of any representation, warranty, or other provision of these terms and Conditions of Purchase. Upon notification, Seller shall promptly assume full responsibility for the defense of any suit or proceeding which may be brought against Buyer or any of its subsidiaries, affiliated companies, agents and vendors in connection with the above, of for alleged unfair competition resulting from similarity in design, trademarks, or appearance of the materials or equipment. Seller shall further indemnify and hold Buyer, its subsidiaries, affiliated companies, agents and vendors harmless from any and all expenses, losses, claims, royalties, profits, and damages, including court costs and legal fees, resulting from the bringing of such suits or proceedings or the threat thereof and from any settlement, decree or judgment therein.

Buyer reserves the right to control any such suit or proceeding.

4. Cover; Delivery. In case of default by Seller, Buyer may obtain materials and services from other sources and hold Seller responsible for any damages occasioned thereby. The dates of delivery and quantities specified herein are of the essence for this order and delivery must be effected within the specified time period. If deliveries are not made on time and in the quantities specified, Buyer reserves the right to cancel and to purchase the materials and/or services elsewhere and hold Seller accountable therefore. Seller shall cooperate with Buyer in respect to all customs formalities applicable to the import or export of the materials, shall be responsible for determining proper import or export classifications, and shall provide Buyer documentation to Buyer's satisfaction for such classifications.

5. Fees and Expenses.

- (a) Fees. Subject to Seller's full and complete rendition of the Services and delivery of the Deliverables to Buyer's reasonable good faith satisfaction, Buyer agrees to pay Seller the applicable fees set forth in the SOW/PO/RFP (the "Fees").
- (b) Out-of-Pocket and Travel Expenses. In addition to the Fees, Buyer agrees to reimburse Seller for all Seller's actual, documented, and reasonable travel and other out-of-pocket expenses necessarily incurred by Seller in connection with its performance of the Services, but only if and to the extent that any such expenses were pre-approved in writing by Buyer

or are expressly set forth in the applicable [SOW/PO/RFP]. Additionally, any and all travel expenses must conform in all material respects to Buyer's travel policy (a copy of which is attached hereto and incorporated herein by this reference). Notwithstanding anything to the contrary contained in the Agreement, the following expenses are non-reimbursable by Buyer and shall be borne exclusively by Seller: (i) alcoholic beverages; (ii) personal items (e.g., toothpaste, dry-cleaning, valet service, etc.); (iii) general overhead, or employee or personnel expenses of Seller; and (iv) travel between Seller's and Buyer's offices.

- (c) Taxes. Seller is solely responsible for timely paying any taxes, including estimated taxes, incurred as a result of the compensation paid by Buyer to Seller hereunder. This includes, but is not limited to, any federal, provincial, or local income taxes, social security or unemployment tax, or any other taxes. Seller agrees to indemnify, defend, and hold Buyer, along with Buyer's affiliates, subsidiaries, parent, assigns, directors, shareholders, officers, employees, consultants, and agents, harmless from and against any damage, claim, losses, fee, assessment, interest charge, or penalty incurred by or charged to any of the aforementioned indemnitees and resulting, directly or indirectly, from any claim, cause of action, or assessment by any government agency for any non-payment or late payment by Seller of any tax or contribution

based on compensation paid hereunder to Seller or because Buyer did not withhold any taxes from compensation paid to Seller hereunder.

more favourable terms, conditions, or prices to any other person or business for the same or similar services during the term of this Agreement, Seller shall amend this Agreement to incorporate the more favourable terms, conditions, or prices, effective as of the date of Seller's offer of such to the other person or business.

6. Invoices and Pricing.

- (a) Goods. Orders shall not be filled at prices higher than those quoted or charged to Buyer or specified herein. Unless otherwise agreed in writing, prices include packaging, labeling, crating, taxes, and duties. Unless otherwise agreed in writing, all prices include shipping and delivery CIF.
- (b) Services. Seller shall issue invoices to Buyer pursuant to the timetable set forth in the SOW/PO/RFP. Buyer shall pay all properly invoiced and undisputed amounts within 60 days following Buyer's receipt of any such invoice, except for any and all amounts disputed by Buyer in good faith. If Buyer makes payment of any invoice within 15 days after receipt thereof, Buyer shall be entitled to a 2% discount.
- (c) Set-Off. Without prejudice to any other right or remedy it may have, Buyer may set-off at any time any amount or credit owing to it by Seller against any amount payable by Buyer to Seller hereunder.
- (d) Most Favoured Buyer. Seller represents and warrants that this Agreement contains the most favourable terms, conditions, and prices offered by Seller to any person or business for the same or similar services that Seller is providing to Buyer hereunder. Accordingly, should Seller offer

- 7. Inspection and Rejection.** Materials are subject to inspection, test, and acceptance by Buyer and the ultimate purchaser. Buyer shall have a reasonable number of days from the date of arrival to inspect the materials and notify Seller of any non-conformity to the order specifications (including quantity and delivery dates). Such inspection may not occur until final sale of the materials to Buyer's Buyers. Buyer reserves the right to reject any material, even after delivery and inspection at Buyer's site, which does not fulfill the specifications of the order or time of delivery and (i) return rejected materials to Seller at Seller's risk and expense for full credit at the order price without prejudice to any right to other damages for such breach; (ii) to require Seller at Seller's expense to replace rejected materials at the unit price of this order; or (iii) consider this order breached as to the rejected quantity and cancelled as to any unfulfilled portion of this order, and to hold Seller liable for such breach and cancellation. Seller is not relieved of the responsibility imposed by this clause, either as to proper packaging, quantity of materials or specifications, by reason of acceptance by Buyer.

8. Representations and Warranties of the Seller. Seller represents and warrants to Buyer as follows:

- (a) that it is duly organized, validly existing, and in good standing in its state of incorporation and in all jurisdictions in which it will perform the Services, and has the full power and authority to enter into this Agreement and fulfill its obligations hereunder;
- (b) that it will fulfill its obligations hereunder in compliance with all applicable laws, rules, and regulations, as well as in compliance with all of Buyer's standard policies and procedures as communicated from time to time to Seller;
- (c) that it will obtain and maintain, at its own expense, all permits and licenses required in connection with its provision of the Services;
- (d) that in performing the Services hereunder, it will not violate any contractual obligation or confidential relationship which it may have to or with any third party;
- (e) that compliance with the SEF Safety Policy is a condition of any Services performed under each SOW/PO/RFP and that the Seller has received a copy of such Safety Policy;
- (f) that it will fulfill its obligations using personnel of sufficient skill, experience, and qualifications, and in a professional and workmanlike manner in accordance with best industry standards for similar services, and shall devote adequate resources to meet its obligations under this Agreement in accordance with the terms hereof, any attachment hereto, and all reasonable instructions received from Buyer from time to time;
- (g) that, subject to the terms hereof, any Deliverables resulting from the Services and provided hereunder to Buyer will be delivered to Buyer free and clear of any and all encumbrances and liens of any kind;
- (h) that the Deliverables will be free from any computer viruses or other similarly disabling features of any kind;
- (i) that with respect to all materials, supplies and equipment (herein collectively referred to as "materials") delivered and services furnished hereunder: (i) title shall be good, merchantable, rightful and the materials free of any security interest, lien or encumbrance; (ii) that materials will be new, free from defects in material and workmanship, be of quality, size, description and dimension required by Buyer, be fit for the purpose for which they are purchased and will meet the specifications, if any, and that Seller's services will be performed in a skillful and workmanlike manner; and (iii) the materials, the process by which they are made, the use for which they are designed by Seller and Buyer's use of the materials will not infringe any patent, trademark, copyright or other rights of any third parties ("Intellectual Property Rights"). This express warranty shall not be deemed waived by reason of either or both the receipt of the materials

and payment therefore by Buyer. The foregoing is in addition to any and all other express or implied warranties applicable to the materials purchased hereunder.

- (j) that the Deliverables, to the best of Seller's knowledge: (i) are true and accurate in every respect; and (ii) do not violate the third-party rights of any person or entity in any way (including without limitation any copyright, trademark, patent, privacy, defamation, and/or publicity rights); and
- (k) that the Deliverables shall be free from faults and defects of design, function, material, and workmanship for a period of 6 months. This warranty shall extend to all of the necessary costs of repairs and replacements, as well as to any and all consequential damages resulting from such faults or defects of design, function, material, and/or workmanship. Buyer will promptly inform Seller of any breach of this warranty related to the Deliverables, and Seller agrees that it will promptly take any and all measures reasonably required to satisfy its warranty obligations to correct any faults or defects, without any additional cost or expense to Buyer. In the event Seller fails to properly meet its warranty obligations as stated herein, Buyer may perform all or part of same or obtain substitute services and charge Seller for the fair and reasonable cost of doing so.

9. Governing Law; Venue. This Agreement shall be construed, and the respective rights and duties of Buyer and

Seller shall be determined, according to the laws of the jurisdiction of Ontario, without giving effect to its principles of conflicts of laws. The UN Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Parties hereby agree that any action arising out of this Agreement will be brought solely in any court located in Windsor, Ontario. Both Parties hereby submit to the exclusive jurisdiction and venue of any such court.

10. Indemnification. Seller shall indemnify, defend, and hold harmless Buyer, along with Buyer's employees, officers, directors, shareholders, contractors, agents, subsidiaries, parent, affiliates and assigns, from and against any and all costs, damages, or expenses of any kind or nature, including without limitation attorney's fees and related costs, arising directly or indirectly (i) out of a breach or default by or on behalf of Seller of any of its obligations under this Agreement (including without limitation its representations and warranties); (ii) Seller's (or any party acting on its behalf's) negligence or willful misconduct; or (iii) any allegation that the Services or Deliverables violate any applicable law, rule, regulation or judicial order, or alleging that the Services or Deliverables (or Buyer's use of the Services or Deliverables) infringes any third party's patent, trade secret, copyright, trademark or other intellectual property right or misappropriates a third party's confidential information. With respect to any claim made hereunder, Buyer shall provide Seller with prompt written notice of its existence, give control of its defense and settlement to Seller, and shall cooperate in all reasonable respects with Seller, its insurance company, and its legal counsel

in its defense thereof, at Seller's sole expense. Seller may not settle any potential suit hereunder without Buyer's prior written approval, with such approval not to be unreasonably withheld, conditioned, or delayed. If Seller fails to assume the defense of a claim or Buyer reasonably determines that Seller has failed to diligently assume and maintain a prompt and vigorous defense of any claim, Buyer may assume sole control of the defense of any claim and all related settlement negotiations with counsel of its own choosing, and Seller will pay all reasonable costs and expenses (including reasonable outside attorneys' fees) incurred by Buyer in such defense within 30 days of each of Buyer's written requests therefor.

11. Force Majeure. If the manufacture, transfer or receipt or use by either party of any materials covered hereby is prevented, restricted or interfered with by reason of any event beyond the reasonable control of the party so affected, such party, upon prompt notice to the other party (and in the case of Buyer, prior to actual shipment), shall be excused from making or taking deliveries hereunder to the extent of such prevention, restriction or interference but, at Buyer's option, deliveries so omitted shall be made upon notice thereof to Seller, upon cessation of such contingency.

12. Assignment. Seller may not assign this purchase order or any of Seller's obligations hereunder without Buyer's written consent.

13. Insurance. Seller shall maintain at its own expense at all times while performing hereunder occurrence-based

liability insurance and product-liability insurance with a reputable and financially responsible carrier(s) satisfactory to Buyer for coverage in amounts not less than \$1,000,000 (CDN), and all other insurance required by applicable law. Seller shall furnish insurance certificates as directed by Buyer, satisfactory in form and substance to Buyer, showing the above coverages, and providing for at least 10 days prior written notice to Buyer by the insurance company of cancellation or material modification.

14. Seller's Representatives. If Seller's employees, subcontractors, consultants, or other representatives under Seller's control perform any services at Buyer's premises or at Buyer's direction at the premises of others, (i) such persons shall comply with all rules and regulations of such premises; and (ii) Seller shall keep materials and the premises on which the work is performed free and clear of all liens for material and labor incident to the performance of Seller's services hereunder.

15. Termination. In the event of (i) any proceeding voluntary or involuntary in bankruptcy or insolvency by or against Seller, or in the event of an appointment of a receiver or assignee for the benefit of creditors, with or without Seller's consent; or (ii) any change in control and/or ownership of Buyer, Buyer may cancel any unfilled part of this order without any liability whatsoever on Buyer's part.

16. Buyer's Property. All tools, dyes, patterns, designs, molds, drawings, specifications, and other data or papers, and the like furnished by Buyer to Seller

in connection with this order by Buyer remains the property of Buyer. In the event materials furnished by Buyer to Seller include any intellectual property of Buyer, Seller is granted a non-exclusive, non-transferable, non-sublicensable and non-assignable license required only for the production of materials under this order and shall use Buyer's intellectual property only for that purpose. Except for this license, no right, interest, ownership or privilege of use of Buyer's intellectual property shall inure to the benefit of Seller.