

## **SITE INSTALLATION/START-UP SUPERVISION**

### **TERMS AND CONDITIONS**

#### **Supplementary Terms and Conditions - For Provision of Supervisory, Commissioning, Training and/or Remedial Services**

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#### **WARNING**

Equipment, tanks, vessels, or piping in or on which work is to be performed may contain hazardous or toxic substances or chemicals. Seller is solely responsible for determining the nature and scope of risks and without limitation, assumes all responsibility and liability in connection therewith.

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These Terms and Conditions supplement the General Terms and Conditions of Purchase governing the supply of the Materials, in connection with which the Buyer requires the attendance of the Seller at the Buyer's premises where the project is being constructed. In addition to the definitions appearing in the General Terms and Conditions of Purchase, the following additional definitions are relevant to these Supplementary Terms and Conditions.

1. **DEFINITIONS:** (a) **"Services"** means that aspect of the Order which requires the Seller to attend the Buyer's premises to provide technical services, assistance and direction to the Buyer during the installation, commissioning, start-up and testing of the Materials or to undertake remedial activities to the Materials for whatever reason whether such services are to the Buyer's account or not and whether such services are subject of a separate Order or by way of a modification to the Order.

(b) **"Worksite"** means the place where the project is to be constructed and such additional areas as may be allocated by the Buyer for temporary use during the construction of the project.

2. **ACCEPTANCE:** In accepting the Order, Seller accepts that any Services, whether foreseen at the time of acceptance of the Order or not, provided in connection with the Materials shall be in accordance with the General Terms and Conditions of Purchase and these Supplementary Terms and Conditions, and if the Services are the subject of a separate order the Seller agrees to accept and to execute such separate order in its own name.

3. **PERFORMANCE AND SAFETY:** Seller shall perform all work hereunder diligently and carefully in a good and workmanlike manner, and shall furnish all skills, labour, supervision, equipment, materials and supplies required therefore.

Seller shall perform, and shall ensure that all of its employees and servants, as well as all employees and servants of Seller's Suppliers, perform all work in strict compliance with applicable laws and regulations relating to occupational health and safety, as well as in accordance with the Buyer's environmental, health and safety policies and procedures and in the case of differences between the requirements of applicable laws and regulations and the Buyer's policies and procedures, the stricter or higher standard shall apply. Seller's work at the Worksite shall not interfere with the Worksite operations of the Buyer or other contractors. On completion of the work, Seller shall leave the Worksite clear of all tools, equipment and rubbish.

Seller shall conduct the Services in accordance with all of the Buyer's standards, procedures and guidelines from time to time relating to performance of the Services at the Worksite, including without limitation, the Buyer's internal policies known as "Suncor's Standards of Business Conduct", copies of which have been provided to Seller.

4. **WORK CHANGES:** Seller shall not make any alterations or substitutions in the work or perform extra work without the Buyer's prior written authorization. The Seller is not entitled to any payment for unauthorized work.

5. **INDEPENDENT CONTRACTOR:** Seller represents and warrants that it is fully experienced, properly qualified, registered, licensed, equipped, organized and financed to

perform the work under this contract. Seller shall act as an independent contractor and not as an agent for Buyer in performing this contract, maintaining complete control over its employees and all of its lower tier suppliers and subcontractors. Nothing contained in this contract or any lower tier purchase order or subcontract awarded by Seller shall create any contractual relationship between any lower tier supplier or subcontractor and Buyer. Seller shall perform the work herein in accordance with its own methods subject to compliance with the contract.

6. **INSURANCE REQUIREMENTS:** Unless otherwise specified in this Order, Seller shall, at its sole expense, comply with the insurance requirements set forth in Exhibit "A" hereto.

7. **PERSONNEL:** Seller shall provide suitably qualified, fully trained and fully prepared with suitable safety clothing, English speaking personnel, and shall advise the Buyer no later than two (2) weeks in advance of the arrival of its personnel at the Worksite, the full names, dates of birth and social security number of each of its nominated personnel. Buyer reserves the right to demand the removal and replacement by the Seller at the Seller's expense of any of the Seller's personnel whose conduct or whose standard of work is considered unacceptable by the Buyer. Seller's personnel must report to the Buyer immediately on arrival at the Worksite and will attend any Buyer's required induction courses on industrial relations, work safety and security matters. While on the Worksite the Seller's personnel shall coordinate their activities through the Buyer.

8. **RELEASE AND INDEMNITY:**

8.1 Notwithstanding anything to the contrary contained herein or in Section 12.0 of the General Terms and Conditions, Seller shall indemnify the Buyer, its affiliates and their respective successors, assignees, directors, officers, employees, agents and representatives in respect to any personal injury or death incurred or suffered in connection with the risks identified in the "WARNING" prefacing these Supplemental Terms and Conditions. Seller at its sole expense shall defend all claims or suite in respect to the foregoing, but the Buyer may participate in the

defense thereof without relieving Seller of any obligation hereunder.

8.2 The Seller assumes responsibility for and releases, indemnifies and holds the Buyer harmless from any loss of or damage to property owned or leased by the Seller, including without limitation tools and equipment which are used or intended for use in the performance of the work under the Order, however such loss or damage shall occur.

9. **SELLER'S ACCOUNT AND LIENS:** Seller shall promptly pay all debts incurred by Seller for labour, services, equipment, materials use in performance of the work, and shall not be entitled to the final ten (10) percent of the supervisory, commissioning and/or remedial services Order value until the Seller has provided the Buyer with evidence satisfactory to the Buyer of the full payment of such debts and 45 days have passed since substantial completion of the Services. If any lien or charge is registered in respect of the work, Seller at its sole expense, shall promptly effect its discharge. Seller may apply for payment of the final ten (10) percent of the supervisory commissioning and/or remedial services Order value after Buyer has certified final completion and provided a release and certification of final payment.

10. **PERMITS:** Seller shall obtain and maintain all permits including but not limited to Worksite permits, and licenses required to authorize it to perform the work.

11. **REIMBURSEMENT:** **11.1** If Services are requested by the Buyer and agreed, by both parties, to be to the Buyer's account, the Buyer agrees to reimburse the Seller at the agreed rates to the extent of time and expenses approved by the Buyer but not the extent that such time and expenses arise as a result of the Sellers correction of defects in the Materials at any time prior to the expiry of the warranty period and not to the extent that such time and expenses arise as a result of inadequate qualifications of the Sellers personnel. **11.2** Travel between the servicemen's home base and the Worksite will only be reimbursed for the actual method of transport specified and where the Seller's invoice is supported by the transportation receipts or mileage travelled. Such

travel shall be by the most economical means and air travel shall be limited to journeys in excess of 250 miles each way and to economy class. No other costs for or associated with travelling will be reimbursed. (The hourly or daily rate shall be deemed to include for incidental expenses while travelling and all daily local travel costs.)

**11.3** The Seller is responsible for obtaining suitable accommodation for its' personnel, which will be reimbursed at cost to a maximum daily amount agreed upon. Invoices must be supported by receipted hotel bills. Notwithstanding the foregoing, while the Seller's personnel are performing services at the Worksite, Owner will provide room and board at its own cost through its' camp facilities; the Seller's personnel shall utilize such room and board, and the Seller shall not be reimbursed for any costs for room and board. **11.4** The hourly or daily rate shall include all other living expenses and the Seller and/or Owner will not reimburse any telephone, telex, facsimile courier or postal costs incurred by the Sellers personnel. **11.5** Reimbursement will be made only for hours worked and no reimbursement will be made for daily travel time to and from the Worksite. **11.6** Overtime rate will apply only to services performed with the Buyer's and/or Owner's prior written authorization and in excess of the standard hourly workweek at the Worksite. While the Seller's personnel are performing services at the jobsite, Owner will provide room and board through it's camp facilities and no additional costs will be considered.

- 12. COMPLETION:** On completion of Services, or where Buyer has in writing agreed to a termination of Seller's personnel prior to completion of Services, on such termination of Services Seller shall provide a written report to the Buyer's resident construction manager describing Services performed and, where the Services have not been completed, the nature of the incomplete Services and remedial or other action required to be taken by the Seller and /or Buyer in order to complete Services. Where the Seller's personnel are supervising the installation and/or commissioning of Materials supplied by the Seller, it is deemed, unless specifically stated to the contrary in such written report and agreed to by Buyer that the condition of the Materials is such that the Seller's warranty obligations under the Order remain unchanged.

**13. GOVERNING LAWS AND REGULATIONS:**

Seller's personnel must at all times while at the Worksite comply with the laws and regulation of the country and Province of the Worksite and with the security, safety and operating regulations as laid down by the Buyer.

**14. SELLER WARRANTIES:**

Seller warrants that (a) it has or shall provide the necessary qualified personnel, skill and expertise to perform and complete the Services and is experienced, ready and willing to perform the Services in accordance with the terms of the Order, (b) the Services shall be performed in a professional and workmanlike manner, in accordance with the terms of the Order, and (c) all work performed hereunder shall be of good and merchantable quality, free of defects and fit and suitable for the purpose stated on the Order. The provisions of Article 9.0 (Warranty) of the General Terms and Conditions, including without limitation the length of the warranty period, shall apply to the foregoing warranties. Seller is hereby given notice that Buyer and Owner will be relying on the accuracy, competence and completeness of Seller's Services hereunder.

**15. SUSPENSION:**

Buyer may, by written notice to Seller, suspend further performance of the Services in whole or in part at any time. Upon receipt of such notice, the Seller shall discontinue work to the extent specified in the notice; continue to protect and maintain the work; and take any other steps to minimize costs associated with such suspension. In such event, Seller shall be paid by Buyer for all Services performed up to the effective date of the suspension along with all reasonable costs necessary to suspend the Services, but in no event shall Buyer be liable to Seller for any damages of any kind, including consequential damages and loss of anticipated profits, as a result of the suspension. Buyer later may, by written notice to Seller, withdraw all or part of the suspension and Seller shall immediately resume performance under the Order to the extent required in the notice. Any scheduled time of completion of the Services shall be extended by the duration of the suspension.

**Exhibit "A"**  
**Insurance Requirements**

1. Without limiting any of its other obligations or liabilities herein and prior to commencing the Services, Seller, at its own cost and expense, shall take out and thereafter maintain during the performance of the Services, with a reputable insurance company or companies, the following insurance in a form acceptable to the Buyer:
  - (a) Comprehensive General Liability including Contractual Liability, Tortuous Liability, Non-owned Automobile Liability, Cross Liability, Broad Form Property Damage Liability, Use and Occupancy of Premises liability, in an amount not less than Five Million Dollars (\$5,000,000) (combined single limit each occurrence);
  - (b) "All Risk" replacement cost value insurance covering loss of or damage to equipment and tools including office furniture and computer equipment, whether owned or rented by the Seller;
  - (c) Automobile public liability and property damage insurance covering all vehicles owned or leased, operated and/or licensed, with a single combined limit of not less than Five Million Dollars (\$5,000,000) for each occurrence involving bodily injury, death or property damage;
  - (d) If aircraft are used by Seller in performance of the Services, Aircraft Liability Insurance covering all aircraft owned, non-owned, leased, operated and/or licensed by Seller and used in performance of the Services, with a combined bodily injury, death and property damage limit of not less than Five Million Dollars (\$5,000,000) for any one occurrence; and
  - (e) Employer's liability Insurance covering each employee engaged in the Services hereunder to the extent of Five Million Dollars (\$5,000,000) where such employee is not covered by the Worker's Compensation Act.
2. The following requirements shall apply:
  - (a) All liability insurance policies provided by Seller above shall be primary and name Buyer, its affiliates and each of their respective directors, officers, employees and agents as additional insureds, and shall contain a cross-liability or severability of interest clause.
3. Seller hereby acknowledges that the above insurance and in particular the monetary amounts thereof, shall not be construed as limiting or restricting in any manner whatsoever the liability of Seller under this Order except as otherwise specified in this Order.
  - (b) All property insurance policies provided by Seller above shall contain a waiver of subrogation against Buyer, its affiliates and each of their respective directors, officers, employees and agents.
  - (c) Any deductibles payable on any of the above insurances shall be borne by Seller.
  - (d) The amounts of insurance required above may be satisfied by Seller purchasing coverage in the amounts specified, or by any combination of primary and excess insurance, so long as the total amount of insurance meets or exceeds the requirements specified above.
  - (e) Upon Buyer's request, Consultant shall furnish Buyer for its approval and retention, certificates of insurance evidencing that the required coverages are in effect and providing thirty (30) days advance written notice in the event of material change in or cancellation of the insurance required and, if requested, Seller shall provide Buyer with copies of insurance policies referred to above and any other relevant information.