

Terms and Conditions

1. Definitions

1.1 **Definitions.** Unless the context requires otherwise, the following capitalized terms mean:

- (a) **"Affiliate"** shall have the same meaning given to that term in the Canada Business Corporations Act, or any similar, replacement or supplemental Law in effect from time to time, which meaning shall, mutatis mutandis, apply to partnerships, limited liability partnerships and limited partnerships.
- (b) **"Claim"** or **"Claims"** mean, as the case may be, any one or more of: loss, damage, cost, expense, disbursement, penalty, fine, claim, demand, action, proceeding, lien (whether builders', mechanic's, construction or other type of lien), encumbrance, statutory obligation, liability, suit, judgment, award, decree, determination, adjudication, unpaid tax of any kind (including withholding tax), cost of investigation and any type of fee (including legal fees, on a solicitor-and-own-client basis), together with any interest in relation thereto at the applicable rate.
- (c) **"Confidential Information"** means all information of a confidential nature which the Seller or Suncor, directly or indirectly, acquires from the other party to the Purchase Order, including any information concerning or relating to the Seller or Suncor, including such party's business, affairs, financial position, assets, operations, activities, prospects or trade secrets, together with all analyses, evaluations, compilations, notes, studies or other Documents prepared by the Seller or Suncor, as the case may be, or their respective employees, officers, directors, advisors, containing or based upon such information.
- (d) **"Delivery"** shall be construed in accordance with Incoterms (ICC publication No. 2000 latest edition).
- (e) **"Documents"** includes, without limitation, diagrams, illustrations, specifications or drawings supplied directly or indirectly by Suncor to the Seller, or produced by the Seller or its Suppliers in connection with the supply of the Goods.
- (f) **"Event of Force Majeure"** means an event or circumstance, not reasonably within the control of a party to the Purchase Order, which restrains or delays the performance by a party of its obligations under the Purchase Order and, which by the exercise of due diligence and planning, the party was, or is, unable to prevent or overcome. Notwithstanding the generality of the foregoing, an Event of Force Majeure shall not include:
 - (i) strikes, lockouts or other industrial concerted action by workers of the Seller which may adversely impact the supply of the Goods;
 - (ii) shortage of labour, materials, equipment, transportation or utilities (unless caused by circumstances which are themselves an Event of Force Majeure).
- (g) **"Goods"** means all supplies, goods, materials, equipment, components, other tangible items and Services required to be supplied by the Seller in accordance with the Purchase Order.
- (h) **"IFRS"** means International Financial Reporting Standards.
- (i) **"Indemnitees"** means Suncor, its Affiliates and agents and their respective directors, officers, employees and agents.
- (j) **"Initial Operation"** means the first day on which the Goods are put into service under normal operating conditions.
- (k) **"Law"** or **"Laws"** means collectively all valid applicable common law, federal, provincial, state and municipal and other local laws, orders, rules, regulations and decisions of regulatory bodies, including, occupational health and safety, fire, employment insurance, workers' compensation, Hazardous Substance, transportation of dangerous goods and handling, environmental protection legislation, building codes, anti-bribery law or international convention, as may apply now or in the future, including but not limited to the Canadian Corruption of Foreign Public Officials Act, the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act and the OECD Convention on Combating Bribery of Foreign Public Officials, and any other governmental requirements, work practices and procedures prescribed by law and related to the Contractor, the Project or the Work.
- (l) **"Project"** means the project identified in the Purchase Order.
- (m) **"Purchase Order"** means the purchase order issued by Suncor, the Terms and Conditions of Purchase, the Site Services Terms and Conditions (where applicable) and all other attachments identified in the purchase order.
- (n) **"Records"** means the records of the Seller relating to the Purchase Order or the Goods, and which include, but are not limited to, paper and electronic copies, as the case may be, of:
 - (i) records of account for all Goods supplied or costs related to termination or suspension hereunder, and any other items of cost for which Suncor is obliged to reimburse the Seller; and
 - (ii) information relating to Seller's compliance with the Law and Suncor Policies and the Seller's use of Confidential Information.
- (o) **"Seller"** means the party named in the Purchase Order as the supplier of the Goods to Suncor.
- (p) **"Services"** means all labour, supervision, administration, supplies, tools, equipment and such other work and materials to be supplied or performed in connection with the Goods by the Seller at the Site in accordance with the Purchase Order.
- (q) **"Site"** means the site(s) where the Project is located.
- (r) **"Site Service Terms and Conditions"** means the Supplemental Site Services Terms and Conditions which, in addition to the Terms and Conditions of Purchase, shall apply to the Services.

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- (s) **"Suncor"** means Suncor Energy Services Inc. by its authorized agent, Suncor Energy Oil Sands Limited Partnership.
- (t) **"Suncor Policies"** means the current version of all of Suncor's standards, procedures, policies and guidelines, issued from time to time, relating to the supply of the Goods, including those available on Suncor's website at www.suncor.com, as updated from time to time or as may be provided by Suncor from time to time.
- (u) **"Supplier"** or **"Suppliers"**, as the case may be, means one or more of the Seller's subcontractors, suppliers, manufacturers, vendors or agents, whether or not an Affiliate of the Seller to whom supply of any part of the Goods is subcontracted directly or indirectly by the Seller.
- (v) **"Tax"** and **"Taxes"** means all present and future taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings, dues and other charges of any nature imposed by any governmental authority together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of those taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings, dues and other charges.
- (w) **"Terms and Conditions of Purchase"** means this document entitled "Terms and Conditions of Purchase" and forming part of the Purchase Order.
- (x) **"Warranty Period"** means the period of time commencing upon Delivery of the Goods to Suncor's site, and continuing until 24 months after Delivery or 12 months after Initial Operation, whichever comes first, or such longer period as may be available for a warranty for Goods procured by the Seller.

2. Interpretation

- 2.1 **Interpretation.** The interpretation of the Purchase Order shall be governed by the following rules:
 - (a) headings contained in the Purchase Order are for convenience and reference only and are not to be considered in the interpretation of, or affect the meaning of, any of its provisions; and
 - (b) all dollar figures shall mean Canadian Dollars, unless otherwise specifically referenced.
- 2.2 **Statutes.** Any reference to a statute shall include such statute and the corresponding regulations, together with all amendments made and in force from time to time, and any statute or regulation that may be passed which has the effect of supplementing or superseding the statute referred to or the corresponding regulations.
- 2.3 **Precedence.** In the event of a conflict or inconsistency among or between the documents comprising the Purchase Order, the following priority, in descending order, shall govern:
 - (a) Site Service Terms and Conditions, where applicable;
 - (b) Terms and Conditions of Purchase;
 - (c) for documents as revised by either party and approved by Suncor, the latest revisions shall govern;

- (d) the Purchase Order, exclusive of the Terms and Conditions of Purchase, Site Services Terms and Conditions, where applicable, and attachments;
- (e) technical specifications; and
- (f) drawings.

2.4 **Severability.** If any term, covenant or condition of the Purchase Order, to any extent, is invalid or unenforceable, the remainder of the Purchase Order other than those provisions held invalid or unenforceable shall not be affected and each remaining term, covenant or condition of the Purchase Order shall be separately valid and shall be enforceable to the fullest extent permitted by Law.

2.5 **Adverse Rule of Construction Not to Apply.** The words in the Purchase Order shall bear their natural or defined meaning. The parties have each had full opportunity of obtaining legal advice and accordingly any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of the Purchase Order.

3. Scope of Supply

- 3.1 **Goods.** The Seller shall supply the Goods, in accordance with the Purchase Order.
- 3.2 **Time.** The Seller acknowledges that timely supply of the Goods is a matter of paramount importance to Suncor.
- 3.3 **Errors, Omissions or Inconsistencies.** If the Seller discovers any errors, omissions or inconsistencies in the Documents, or any inconsistencies between the Documents and the Law, it shall resolve all such errors, omissions or inconsistencies with Suncor before proceeding with the affected portion of the Goods.

4. Return of Goods

- 4.1 **Return of Goods.** In the event any Goods are:
 - (a) delivered in error;
 - (b) rejected as not being in accordance with the Contract; or
 - (c) an overage in excess of trade practice;
 Suncor shall have the right to return such Goods at the Seller's expense and risk.

5. Changes

- 5.1 **Substitutions.** No substitutions shall be made with respect to the Goods without the prior written consent of Suncor.
- 5.2 **Suncor Change.** Suncor may, at any time, make changes to the Goods including, without limitation, additions, deletions, rescheduling and acceleration or deceleration to all or any part of the Goods, and the Seller agrees to perform its obligations under the Purchase Order as changed.
- 5.3 **Compensation for Change.** In the event a change directly or indirectly causes an increase or decrease in the time or cost to perform its obligations under the Purchase Order, the Seller shall, within 10 days of receiving such notice of the change, submit to Suncor detailed information, substantiating its impact. An equitable adjustment shall be made to schedule or compensation, or both, and the Purchase Order shall be modified in writing accordingly.

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5.4 **Performance.** The Seller shall proceed diligently with the supply of the Goods, pending final resolution of any request for relief, dispute, Claim, appeal or action arising under the Purchase Order.

6. Independent Contractor

6.1 **Independent Contractor.** The Seller is an independent contractor and not an agent of Suncor.

7. Inspection and Testing

7.1 **Inspection.** Suncor shall have access at all reasonable times to the Seller's and its Suppliers' manufacturing shops and warehouses for purposes of inspecting, testing or witnessing any part of the production of the Goods. Any inspection, testing or witnessing of any of the Goods by Suncor, or any omission or failure on the part of Suncor to inspect or test any of the Goods shall not be construed to be an acceptance of any of the Goods or as relieving the Seller of any of its responsibilities pursuant to the Purchase Order or otherwise.

7.2 **Purchase Orders.** At Suncor's request, the Seller shall promptly provide Suncor with unpriced copies of all purchase orders or other contracts issued or entered into by the Seller for the supply of materials, components or services associated with the Goods.

7.3 **Suncor's Count.** Suncor's count of the Goods received shall be final and conclusive on shipments not accompanied by the Seller's itemized packing list.

8. Ownership of Documents

8.1 **Ownership.** Ownership of any and all Documents shall at all times rest with Suncor, and Suncor shall have the unlimited right to their use. All Documents shall be considered Confidential Information, and shall be returned or delivered to Suncor prior to final payment to the Seller.

9. Representations

9.1 **Seller's Performance Representations and Warranties.** The Seller acknowledges Suncor is relying on the Seller's skill, knowledge and expertise in the supply of the Goods in accordance with the Purchase Order. The Seller represents and warrants with respect to the Goods supplied by the Seller that:

- (a) the Seller and its Suppliers have the necessary qualified personnel, with the skills and expertise, to supply the Goods and are experienced, ready and willing to supply the Goods in accordance with the terms and provisions of the Purchase Order;
- (b) the Seller has all required permits, licences and authorizations necessary to carry on its business and to be obtained by it to supply the Goods;
- (c) the Goods shall be free from all latent and other defects or deficiencies, of merchantable quality, and shall be fit for the purpose for which the Goods have been manufactured or fabricated; and
- (d) the Goods, are now, and shall continue to be, free and clear of all liens, encumbrances, any adverse Claims, demands or other interests.

10. Warranty

10.1 **Remediation of Defective or Deficient Goods.** If a defect or deficiency in the Goods, or in any portion of the Goods:

- (a) is discovered during the Warranty Period; and
- (b) if Suncor has notified the Seller in writing of such defect or deficiency no later than 30 days after the expiry of the Warranty Period,

the Seller shall, at its own risk and expense, including all costs to access the Goods, but subject to the limit specified in Paragraph 13.1 Limitation of Liability for the Seller:

- (i) remedy without delay, and in a manner satisfactory to Suncor, such defect or deficiency in the Goods;
- (ii) repair, replace or re-perform any portion of the Goods damaged or required to be remedied as a result of such defective or deficient Goods, or damaged or required to be remedied by the remedy of such defective or deficient Goods; and
- (iii) repair, replace or re-perform all other equipment, materials, work or property of Suncor, or others, damaged or required to be remedied as a result of such defective or deficient Goods, or damaged or required to be remedied by the remedy of such defective or deficient Goods.

10.2 **Indemnification by Seller to Suncor for Remediation.** Should the Seller fail to promptly remedy the defects or deficiencies in accordance with Paragraph 10.1 Remediation of Defective or Deficient Goods, Suncor may proceed with any activities necessary to remedy the defects or deficiencies and the Seller shall indemnify and hold harmless the Indemnitees from any Claim suffered, sustained, paid or incurred by the Indemnitees in remedying or rectifying such defects or deficiencies.

10.3 **Warranty for Warranty Repairs.** The Seller further warrants any and all corrective actions and additional Goods that it supplies in respect of defects or deficiencies appearing during the Warranty Period for a period of 12 months from completion of the corrective actions or supply of such Goods.

11. Insurance

11.1 **Insurance Coverage.** Without limiting any of the obligations or liabilities under the Purchase Order, the Seller shall obtain at its own expense and cost, a policy of Commercial General Liability Insurance suitable to Suncor in an amount of not less than \$5 million per occurrence covering Products and Completed Operations Liability. This policy will respond to property damage to Suncor's existing facilities.

12. Liability and Indemnification

12.1 **Liability of Seller.** Except as otherwise provided in the Purchase Order, the Seller agrees that it shall be liable to and indemnify and hold harmless the Indemnitees for all Claims whatsoever which the Indemnitees may suffer, sustain, pay or incur as a result of and to the extent of: (i) the negligence; or (ii) breach of contract; of the Seller, arising out of or incidental to the performance or non-

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performance of the Seller's obligations under the Purchase Order or the provision of the Goods.

13. Limitation of Liability

13.1 **Limitation of Liability for the Seller.** Subject to Paragraph 13.2 Gross Negligence and Willful Misconduct and the Seller's obligations to indemnify pursuant to Article 14 Third Party Claims, Article 21 Confidentiality, Article 23 Intellectual Property, Article 25 Liens and Article 26 Taxes which shall not be limited in any way, the Seller's liability under this Purchase Order shall be limited to the greater of:

- (a) all amounts of applicable coverage under policies of insurance required to be maintained under the Purchase Order, or;
- (b) the Purchase Order price.

13.2 **Limitation of Liability for Suncor's Existing Facilities.** Subject to Paragraph 13.2 Gross Negligence and Willful Misconduct, the Seller's liability under this Purchase Order for any loss of or damage to any of Suncor's existing facilities or property shall be limited to the greater of the Commercial General Liability Insurance limits that the Seller carries or is required to carry under this Purchase Order.

13.3 **Gross Negligence and Willful Misconduct.** The limitation of the Seller's liability, specified in Paragraph 13.1 Limitation of Liability for the Seller and Paragraph 13.2 Limitation of Liability For Suncor's Existing Facilities, shall not apply in respect of liability of the Seller arising from, or connected to, its gross negligence or willful misconduct.

14. Third Party Claims

14.1 **Third Party Claims.** The Seller shall indemnify and hold harmless the Indemnitees from all Claims whatsoever by any third party which may be brought or made against the Indemnitees or which the Indemnitees may sustain, pay or incur as a result of and to the extent of the acts, faults, errors, omissions or negligence of the Seller.

15. Consequential Damages

15.1 **Consequential and Punitive Damages Exclusion.** Subject to Paragraph 15.2 Exception to Consequential and Punitive Damages Exclusion and except for coverage that may be available under insurance policies required to be maintained under the Purchase Order by the Seller, the Seller shall not be liable to the Indemnitees and the Indemnitees shall not be liable to the Seller or its Suppliers, or their respective directors, officers or employees, for:

- (a) consequential damages;
- (b) punitive damages; or
- (c) damages for losses of profits, revenue, business, reputation or financing and lost opportunity.

15.2 **Exception to Consequential and Punitive Damages Exclusion.** Paragraph 15.1 Consequential and Punitive Damages Exclusion shall not apply to the Seller's obligation to indemnify the Indemnitees pursuant to Paragraph 14.1 Third Party Claims, Paragraph 21.3 Confidentiality Indemnification and Paragraph 23.2 Intellectual Property Indemnification.

16. Force Majeure

16.1 **Event of Force Majeure.** Subject to compliance with this Article, if, due to an Event of Force Majeure, either party cannot fulfill its obligations under the Purchase Order, then that party's obligations shall be suspended during the period of time and to the extent that the Event of Force Majeure continues to prevent such performance of the obligations; except that a party to the Purchase Order shall not be entitled to the benefit of this Article if the failure to observe or perform the obligation was caused by such party's failure to act in a reasonable and prudent manner in the circumstances or failure to remedy the condition and resume the performance of the obligation with reasonable dispatch.

16.2 **No Compensation.** In no circumstances shall a party be entitled to any compensation as a result of an Event of Force Majeure and this Article shall only be available to extend the period of time for a party claiming an Event of Force Majeure under this Article to perform its obligations.

17. Title Transfer

17.1 **Title Transfer.** Title to the Goods or part thereof shall be vested in Suncor when the first of the following events occurs:

- (a) the Goods, or a portion thereof, are first identifiable as being appropriated to the Purchase Order;
- (b) Suncor pays for the Goods, or part thereof; or
- (c) the Goods or part thereof are dispatched from the Seller's place of manufacture to the Site.

17.2 **Refusal of the Goods.** Any transfer of title to the Goods shall be without prejudice to Suncor's right to refuse the Goods in case of non-conformity with the requirements of the Purchase Order.

17.3 **Shop Work Number.** All Goods shall be marked so as to be identifiable as the property of Suncor.

17.4 **Risk of Loss.** Notwithstanding Paragraph 17.1 Title Transfer, care, custody, control and risk of loss of the Goods remains with the Seller until Suncor takes physical possession and accepts Delivery of the Goods.

18. Payment

18.1 **Payment.** Subject to the terms and conditions herein, payment shall be made in accordance with the Purchase Order.

18.2 **Withholding.** Notwithstanding any other provision, an amount otherwise due to the Seller may be withheld, without payment of interest, if, in the opinion of Suncor, it is necessary to protect Suncor from loss on account of the Seller:

- (a) failing to provide the Goods in accordance with the terms of this Purchase Order;
- (b) being in material default of any condition of the Purchase Order, including without limitation, quality assurance;
- (c) not promptly remedying defective or deficient Goods; or

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- (d) failing to promptly and satisfactorily pay any Claim for labour performed or materials or equipment furnished;

and if and when the cause of the withholding of any amount is removed and satisfactory evidence of such removal is furnished to Suncor, Suncor shall promptly pay the amount withheld to the Seller pertaining to such cause.

19. Set-Off

- 19.1 **Set-Off.** Notwithstanding any other provision in the Purchase Order, Suncor may, from time to time, without prejudice to any other right or remedy it may have at Law, under the Purchase Order or under any other contract Suncor or its Affiliates has or may have with the Seller, deduct and set-off any amounts owed by the Seller to Suncor under the Purchase Order, howsoever arising, from any amount due or owing by Suncor or its Affiliates under any contract Suncor or its Affiliates has or may have with the Seller.

20. Suspension or Termination

- 20.1 **Suspension or Termination by Suncor.** Suncor may, at any time, without cause, suspend or terminate the Purchase Order for any reason on 30 days written notice.

- 20.2 **Compensation.** In the event of suspension or termination under Article 20 Suspension or Termination, Suncor shall pay the Seller the following in full satisfaction of all Claims the Seller may have in relation to, or arising from, the suspension or termination:

- (a) that portion of the work in relation to the Goods satisfactorily performed as of the date of suspension or termination, including reimbursement for reasonable overhead and profit on such work; and
- (b) all third party cancellation charges incurred by the Seller due to the suspension or termination, provided that such charges were approved in writing by Suncor, prior to the Contractor entering into the subcontract giving rise to such charges;

to the extent such Claims are substantiated by documentation satisfactory to and verified by Suncor.

- 20.3 **No Loss of Anticipated Profit, Revenue or Overhead.** In the event of suspension or termination under Paragraph 20.1, the Contractor waives all Claims for loss of anticipated profit, revenue and overhead arising from such suspension or termination.

- 20.4 **Resumption of Suspended Supply of Goods.** If Suncor requests the Seller to resume the supply of the Goods, the Seller shall resume the supply of the Goods as requested in accordance with the terms of the Purchase Order.

- 20.5 **Overpayment.** If, as of the date of suspension or termination, the amount paid by Suncor to the Seller under the Purchase Order exceeds the amount payable under Paragraph 20.2 Compensation, then the amount of such overpayment shall be promptly returned to Suncor.

- 20.6 **Termination for Cause.** Should the Seller be in default of any provision of the Purchase Order, and if the Seller fails to commence to rectify or cause to be rectified the thing or matter giving rise to such notice within 5 days of receipt of a written notice from Suncor, Suncor may immediately terminate the Purchase Order.

- 20.7 **Suppliers.** Suncor, in its sole discretion, may require that agreements between the Seller and any of its Suppliers be assigned to Suncor, and the Seller hereby authorizes and consents to any such assignment.

21. Confidentiality

- 21.1 **Confidential Information.** Any and all Confidential Information received by a party to the Purchase Order shall be received in the strictest confidence and shall not be: (i) disclosed to any third party or (ii) used in any manner whatsoever directly or indirectly for any purpose other than for the purposes of supplying the Goods, except in accordance with Article 21 Confidentiality and with the prior consent of the party who provided the Confidential Information, which consent may be arbitrarily withheld.

- 21.2 **Exempt Disclosure.** Despite any other provision of Article 21 Confidentiality, a party is entitled to disclose Confidential Information to the extent necessary:

- (a) to its employees, officers or directors who have a need to know the Confidential Information in connection with the supply of the Goods and who have been informed of the confidential nature of such Confidential Information;
- (b) with respect to Suncor, to its advisors or other contractors including third parties acting as a project manager, construction manager, "buyer" or individuals working under a personal services contract for and on behalf of Suncor;
- (c) to any third party associated with the Purchase Order who has a need to know the Confidential Information in connection with the supply of the Goods if, prior to disclosure, such third party executes an agreement in form and substance acceptable to Suncor, in its sole discretion, respecting the confidential nature of the Confidential Information, and provided prior approval of disclosure is obtained from Suncor, in its sole discretion, which approval may be unreasonably withheld;
- (d) to acknowledge to third parties that the Purchase Order exists between the parties; or
- (e) to comply with the Law.

If any party to the Purchase Order is required by Law to disclose any of the Confidential Information, the disclosing party shall provide the party who provided the Confidential Information with a prompt notice so that the providing party may seek either a protective order or other appropriate remedy, and in the event such protective order or other appropriate remedy is not obtained, the disclosing party shall furnish only that portion of the Confidential Information which in the reasonable opinion of its counsel is legally required. Each party to the Purchase Order agrees to be responsible for any breach of Article 21 Confidentiality by any person to whom it has provided the Confidential Information.

- 21.3 **Confidentiality Indemnification.** Without limitation and in addition to any other rights or remedies Suncor may have, the Seller acknowledges that it shall be liable to and shall indemnify and hold harmless the Indemnitees from all inter-party and third party Claims brought against or suffered, sustained, paid or incurred by the Indemnitees arising out of

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or resulting from a breach of Article 21 Confidentiality by the Seller.

21.4 Further Relief. It is understood that a breach of any of the promises or provisions contained in this Article may cause the other party to suffer a loss for which it could not be adequately compensated by monetary damages. In addition to claiming damages or an indemnity, the affected party shall be entitled as a matter of right to seek an injunction and enforce the terms and provisions of this Article. The parties agree that the affected party will suffer irreparable harm as a result of a breach of any of the promises or provisions contained in this Article, and the other party consents to any preliminary or ex parte applications for such relief to any court of competent jurisdiction, including equitable relief such as injunctive relief and specific performance. The foregoing rights shall be cumulative and shall be in addition to any other remedies which may be available to the affected party.

21.5 Term. The obligations under this Article 21 Confidentiality shall continue for a period of 5 years following the date the Purchase Order becomes a binding agreement in accordance with Paragraph 33.6 Binding Agreement.

22. Publicity

22.1 Advertising. The Seller acknowledges that Suncor shall not provide any endorsement of the Seller, its Suppliers or the Goods supplied pursuant to the Purchase Order. The Seller agrees that it shall not erect any sign or advertising, use any Suncor trademark, logo or device in any sign or advertisement or issue any statement to a news media organization regarding the existence of the Purchase Order, the Project or the supply of the Goods without Suncor's prior written consent, which consent may be arbitrarily withheld.

23. Intellectual Property

23.1 Rights of Parties. Subject to any rights, title or interests expressly granted by the Purchase Order, neither party shall acquire any right, title, or interest in or to any patents, trade secrets, copyright or other intellectual property of the other party in existence prior to the execution of the Purchase Order.

23.2 Intellectual Property Indemnification. Except to the extent that Goods manufactured or fabricated by the Seller are made entirely to Suncor's design, specifications or instructions, the Seller shall be liable to and, in addition, shall indemnify and hold harmless the Indemnitees from and against any and all Claims arising out of or resulting from the actual or alleged infringement or misappropriation of any rights under patents, trade secrets, copyright or other intellectual property rights or any litigation based thereon in respect of Goods supplied by the Seller. The Seller, if requested to do so by Suncor, shall, at its sole expense, promptly defend against the Claim. Suncor shall notify the Seller upon becoming aware of the Claims. The Seller shall have the right at its own expense to substitute non-infringing Goods or to modify such Goods so they become non-infringing, or to obtain the necessary licenses to use the infringing Goods only if such substituted and modified Goods shall meet all the requirements and be subject to all the provisions of the Purchase Order.

23.3 License. The Seller grants to Suncor a fully sub-licensable worldwide, irrevocable, royalty-free, perpetual, non-exclusive right and license:

- (a) to use any and all patents, industrial designs, copyrights and technology related to the Goods; and
- (b) to repair, maintain, replace and use the Goods supplied by the Seller under the Purchase Order.

24. Compliance with Laws and Suncor Policies and Procedures

24.1 Compliance with Law. The Seller shall be fully knowledgeable of the Law applicable to the supply of the Goods and shall comply with the Law.

24.2 Compliance with Suncor Policies. The Seller shall and shall ensure that its employees and its Suppliers comply with Suncor Policies at the cost and expense of the Seller. In the case of any difference between the requirements of Suncor Policies and the Law, the stricter or higher standard shall apply.

25. Liens

25.1 If Lien Filed. If a lien in respect of the Goods is filed against the Project, the Site or any of Suncor's property, including leases (excluding any valid liens of the Seller), Suncor may immediately withhold payment of any monies owing to the Seller until the Seller discharges the lien.

25.2 Seller to Discharge or Release Liens. The Seller shall promptly discharge or release or cause to be discharged or released any and all builders', construction, mechanics' material, warehousemen's or similar liens which are registered, filed, recorded or brought by any party and which are in any way related to the Goods, against the Project, the Site or any property of Suncor forming part of or connected in any way with the Project in respect of the Goods.

25.3 Suncor's Right to Remove Liens and Indemnification by Seller. Upon the Seller's failure to comply with the requirements, set out in Paragraph 25.2 Seller to Discharge or Release Liens, Suncor may remove such liens, and the Seller shall indemnify the Indemnitees from all inter-party and third party Claims brought against or suffered, sustained, paid or incurred by the Indemnitees in connection with the removal or handling of such liens.

26. Taxes

26.1 Tax Responsibility. With the exception of goods and services tax/harmonized sales tax (as defined in the Excise Tax Act (Canada)), payable on amounts due to the Seller, payment of which shall remain the responsibility of Suncor, the Seller shall:

- (a) be responsible for and pay all Taxes in relation to the Goods under the Purchase Order in compliance with all Law relating to the collection and remittance of any and all Taxes; and
- (b) be responsible for assessing its liability, impact on its operations and to fully assess the impact of tax withholding, exemptions, waivers, tax credits and the like which may be available under reciprocal agreements with non-Canadian countries.

26.2 Tax Indemnity. The Seller shall indemnify and save harmless the Indemnitees from any and all Claims which may be made or assessed against Suncor and its Affiliates in respect of the Seller's obligations described in Paragraph 26.1 Tax Responsibility.

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27. Audit

- 27.1 **Records.** The Seller shall maintain a complete set of Records during the Term and for a period of at least 5 years after Initial Operation, and, where applicable, such Records shall be maintained in accordance with IFRS.
- 27.2 **Audit.** At any time during normal business hours until 5 years after Initial Operation, Suncor or its nominees shall have the right to inspect and audit the Seller's Records. The Seller shall provide Suncor with proper access and facilities to enable Suncor or its nominees to undertake such inspection and audit. The Seller shall allow Suncor to make copies as reasonably required.
- 27.3 **Limitation Period.** The parties agree that the limitation period to commence any Claims that have been identified as a result of a Suncor audit will commence on the date that Suncor issues the final audit report to the Seller.

28. Dispute Resolution

- 28.1 **Unresolved Dispute.** In the event of a dispute arising between the parties under or in connection with the Contract, the parties may agree to submit the dispute to arbitration pursuant to Paragraph 28.2 Arbitration or either party may, within the limitation periods prescribed by Law, commence litigation with respect to the dispute.
- 28.2 **Arbitration.** Should the parties agree to resolve the dispute by arbitration, then the dispute shall be submitted for arbitration before a single arbitrator with the costs associated with the arbitrator and other costs of the arbitration shared equally between Suncor and the Seller and each party bearing their own costs of the arbitration.
- 28.3 **Forum.** The parties consent to the arbitration being conducted in the province where the Project is located.

29. Notices

- 29.1 **Notices.** Notices shall be given in writing and shall be addressed to the party in question at the address set forth in the Purchase Order. Notices may be delivered in person, by courier or transmitted by facsimile.
- 29.2 **Service of Formal Litigation Proceedings.** The address and procedure for service of notices under Article 29 Notices shall not apply to the service of any document pursuant to formal litigation proceedings.

30. Survival

- 30.1 **Survival.** In addition to those provisions of the Purchase Order which by their nature survive the termination or expiry of the Purchase Order, the following Articles shall survive termination or expiration of the Purchase Order: Article 6 Independent Contractor, Article 9 Representations, Article 10 Warranty, Article 12 Liability and Indemnification, Article 13 Limitation of Liability, Article 21 Confidentiality, Article 23 Intellectual Property, Article 27 Audit, Article 28 Dispute Resolution and Article 32 Governing Law.

31. UN Convention on the Sale of Goods

- 31.1 **Exclude the Application.** The parties hereto expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

32. Governing Law

- 32.1 **Governing Law and Jurisdiction.** The Purchase Order shall be governed by and construed in accordance with the Laws of the province where the Project is located and the parties agree, subject to Article 28 Dispute Resolution, to accept and submit to the exclusive jurisdiction of the courts of the Province where the Project is located.
- 32.2 **Forum.** The parties waive any objection based on venue or forum non conveniens with respect to any Claim arising under the Purchase Order or in any way connected to or related to or incidental to the dealings of the Seller and Suncor in respect of the Purchase Order or any related transactions, in each case whether now existing or hereafter arising and whether in contract, tort, equity or otherwise.

33. General Matters

- 33.1 **Assignment.** Neither party may assign the Purchase Order without the prior written consent of the other party, which consent may be arbitrarily withheld. Notwithstanding the foregoing, Suncor may assign the Purchase Order to any of its Affiliates or to any third party that amalgamates or merges with Suncor or which acquires all or substantially all of the assets of Suncor, conditional upon the successor covenanting and agreeing to be bound to the Seller by the provisions of the Purchase Order. Subject to the foregoing, the Purchase Order shall enure to the benefit of and be binding upon the parties and their respective successors and, in the case of Suncor, its assigns.
- 33.2 **Subcontracting.** The Seller shall not subcontract any portion of the Purchase Order without the prior written consent of Suncor, which consent shall not unreasonably be withheld.
- 33.3 **Entire Agreement.** The Purchase Order constitutes the entire agreement between the parties and shall supersede and replace any and all prior agreements between the parties with respect to the Goods.
- 33.4 **Amendments.** No amendment to the Purchase Order shall be binding on Suncor and the Seller, unless made in writing and signed by the authorized representatives of both parties.
- 33.5 **No Waiver.** Suncor's failure to insist on performance of any term, condition or instruction or failure to exercise any right or privilege, or its waiver of any breach or default shall not thereafter waive any such term, condition, instruction, right or privilege.
- 33.6 **Binding Agreement.** The Purchase Order shall become a binding agreement upon the Seller signing and returning an executed copy of the Purchase Order or upon the Seller otherwise acknowledging acceptance of the Purchase Order or commencing performance of the Purchase Order, whichever occurs first.
- 33.7 **Exclusions.** Any reference to the Seller's quotation, bid, or proposal does not imply acceptance of any terms, conditions, or instruction contained in such document.

END OF DOCUMENT