

General Terms and Conditions

1. **Definitions.** The following definitions shall apply to this Agreement:
 - (a) **“Agreement”** means these general terms and conditions, the Purchase Order and the quotation, estimate or proposal of the Seller, if any. To the extent that a quotation, estimate, proposal or any other document is incorporated into this Agreement, it shall be noted on the Purchase Order. In the case of any inconsistency or conflict between the parts of the Agreement, the order of priority of documents from highest to lowest shall be the Purchase Order, these general terms and conditions and then any quotation, estimate or proposal of the Seller.
 - (b) **“Buyer”** means the Saint John Port Authority.
 - (c) **“Parties”** means the Buyer and Seller together, or individually a “Party”.
 - (d) **“Price”** means the total dollar amount, inclusive of applicable taxes, as it appears in the Purchase Order. The Price shall be in Canadian dollars, unless otherwise explicitly noted on the Purchase Order.
 - (e) **“Purchase Order”** means the purchase order issued by the Buyer to the Seller which may specify (i) the Goods or Services to be purchased; (ii) the quantity of the Goods or Services to be purchased; (iii) the payment terms; (iv) and the delivery location, among other things for the Work.
 - (f) **“Schedule Date”** shall mean the expected receipt date set out in the Purchase Order or the time for performance of the Agreement as otherwise specified in the Agreement.
 - (g) **“Seller”** means the party identified in the Purchase Order from whom the Buyer is acquiring good or services.
 - (h) **“Work”** means the goods, equipment, or other materials and any related services as described in the Purchase Order.

2. **Entire Agreement.** This Agreement constitutes the sole and entire agreement between the Buyer and the Seller with respect to the Work and supersedes all prior and contemporaneous understandings, agreements, representations, guarantees, or warranties, either written or oral, and implied or expressed, regarding the Work. Both the Buyer and Seller expressly reject any different or additional terms. Buyer is not obligated to any minimum purchase or future purchase obligations under this Agreement. Buyer reserves the right to purchase goods and/or services from other vendors at any time. This Agreement does not create any exclusive or preferential relationship between Buyer and Seller.

3. **Changes in the Work.** Any proposed changes in the Work or the Agreement, consisting of additions, deletions or other revisions may be made without invalidating the Agreement. When a change in the Work or Agreement is proposed, the Seller shall promptly present a method of adjustment or an amount of adjustment for the Price or the Schedule Date. The Buyer shall be under no obligation to accept a proposed change in the Work or Agreement.

4. **No Assignment or Subcontracting.** The Seller may not assign or subcontract the Agreement without the prior written consent of the Buyer, which shall not be unreasonably withheld.

5. **Independent Contractors.** The relationship between Seller and Buyer is solely that of vendor and purchaser and the Parties are independent contracting parties. Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the Parties. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party.

6. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or unenforceability of the remaining provisions hereof and each provision is hereby declared to be separate, severable and distinct.

7. **Waiver.** No waiver of any provision of this Agreement shall be enforceable against a Party unless it is in writing and signed by the waiving Party.

8. **Shipping Terms.** Seller warrants that all goods to be shipped hereunder will be properly classified, described, packaged, marked and labelled, and will be in the proper condition for transportation in accordance with all applicable laws or regulations.

9. **Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery and acceptance of any goods. Seller bears all risk of loss or damage to goods until delivery and acceptance by the Buyer.

10. **Delivery Date.** Seller shall promptly, and in any event within two business days of becoming aware of a delay, inform Buyer of any anticipated delay in the Schedule Date. If Seller fails to meet the Schedule Date, Buyer may, in its sole discretion, terminate the Agreement immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to meet the Schedule Date.

11. **Payment Terms.** Unless stated otherwise in the Purchase Order, all applicable taxes, duties, packaging, shipping and freight charges are included in the Price and are to the account of Seller, save and except the goods and services tax, harmonized sales tax, or any other value added taxes as may be applicable during the term of the Agreement. Seller shall submit invoices to Buyer's accounts payable at payables@sjport.com. Invoices shall include reference to the Purchase Order number, the Seller's name and address, the date of the invoice, the period during which services or materials were supplied, a description of the Work, the amount payable for the Work and, if applicable, the quantity supplied, any applicable taxes, and any other information that may be requested by the Buyer. Each invoice submitted by Seller must correspond to a single Purchase Order. Seller shall not combine multiple Purchase Orders into one invoice. The total amount of the invoice submitted by Seller shall not exceed the total amount of the corresponding Purchase Order. The Seller shall not invoice for any amount that is not authorized by the applicable Purchase Order.

12. **Sustainable Development.** Seller will observe the principles of sustainable development where its activities and operations affect the environment, and the Seller will ensure that it does not pollute, contaminate, or damage the environment and keep the Buyer's premises clean, tidy, and free of refuse during the delivery of Products.

13. **Insurance.** Seller represents and warrants to Buyer that it has in place with reputable insurers such insurance policies with limits that would be maintained by a prudent Seller of goods

and services. In the event that the Work requires that the Seller have its own forces on or around the Buyer's lands then, at a minimum, the Seller shall provide the following insurance:

- (a) Workers' compensation coverage for all employees of the Seller in accordance with the laws of the Province of New Brunswick;
- (b) commercial general liability insurance, insuring against liabilities arising from bodily injury, death and property damage with limits of at least two million dollars per occurrence, arising out of or in consequence of the Seller's performance of the Work;
- (c) If the Seller will use any vehicles in the performance of the Work then automobile liability insurance, insuring against liabilities arising from bodily injury, death, property damage, with limits of at least two million dollars per occurrence, for any and all motor vehicles, owned, leased, rented, operated or used by or on behalf of the Seller; and
- (d) If the Seller is providing professional services then errors and omissions insurance with limits of at least one million dollars per occurrence.

14. **Conditions and Warranties.** Seller warrants to Buyer that for a period of one year following the Schedule Date, all Work provided hereunder shall be: (i) of merchantable quality; (ii) fit for the purposes intended; (iii) unless otherwise agreed to by Buyer, new; (iv) free from defects in design, material and workmanship; (v) in compliance with applicable specifications, drawings, designs, samples and other requirements specified by Buyer; (vi) free from any liens or encumbrances on title whatsoever, and (vii) not infringe or misappropriate any third party's patent or other intellectual property rights. Seller shall assign to Buyer all manufacturer's warranties for Work not manufactured by or for Seller, and shall take all necessary steps as required by such third party manufacturers to effect assignment of such warranties to Buyer. These warranties survive any delivery, inspection, acceptance, or payment for the Work by Buyer. If Buyer gives Seller notice of non-compliance with this section, without prejudice to any other right or remedy available to Buyer, Seller will, at Buyer's option and Seller's expense, refund the Price for, or at Seller's own cost and expense, promptly replace or repair the defective or non-conforming Work and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or non-conforming Work to Seller and the delivery of repaired or replacement products to Buyer.

15. **General Indemnification.** Seller shall defend, indemnify and hold harmless Buyer, its subsidiaries, affiliates, successors, or assigns and their respective directors, officers, shareholders, and employees and Buyer's customers (collectively, the "Indemnitees") from and against any claims, fines, losses, actions, damages, expenses, legal fees and all other liabilities brought against or incurred by the Indemnitees or any of them arising out of: (a) death, bodily injury, or loss or damage to real or tangible personal property resulting from the use of or any actual or alleged defect in the Work, or from the failure of the Work to comply with the warranties hereunder; (b) any claim that the Work infringes or violates the intellectual property rights or other rights of any person; (c) any intentional, wrongful or negligent act or omission of Seller or any of its affiliates, subcontractors or Sellers; (d) Seller's breach of any of its obligations under this Agreement; or (e) any liens or encumbrances relating to the Work.

16. **Limitation of Liability.** In no event shall the Buyer be liable to the Seller for any indirect, incidental, consequential or punitive damages, under any circumstances, including but not limited to any lost profit, lost production, lost revenue, whether due to or arising out of delay, breach of

contract or warranty, tort, including but not limited to negligence, or any other cause arising or resulting from this Agreement.

The Buyer's liability under this Agreement, whether in contract, tort or any other remedy, shall be limited to the lesser of the Price or the amount actually paid to the Seller.

17. **Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick and the federal laws of Canada. The Parties hereto irrevocably and unconditionally attorn to the jurisdiction of the court of King's Bench of New Brunswick in the City of Saint John, or in the case of a matter which is wholly within federal jurisdiction, the Federal Court in the City of Fredericton.

18. **Dispute Resolution.** In the event of a dispute the Parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide frank, candid and timely disclosure of relevant facts, information and documents to facilitate such negotiations. If the dispute cannot be resolved by negotiation, the Buyer, in its sole discretion, may refer any dispute to arbitration and the Parties shall be bound by such referral. Such arbitration shall be final and binding, conducted by a single arbitrator chosen by the Buyer and the venue shall be Saint John, New Brunswick. The procedure shall be set by the arbitrator or otherwise prescribed by the *Arbitration Act* of New Brunswick.

19. **Termination.** Notwithstanding any other rights the Buyer may have in this Agreement, the Buyer may terminate the Agreement at any time and for any reason. In such event, the Buyer shall pay for the Work performed up to the date of termination and for any additional, verifiable direct costs related directly to such termination which are a reasonable consequence of the termination. The Buyer shall not be liable to the Seller for any other costs or damages whatsoever arising from such termination of the Agreement, including, without limitation, any indirect, consequential, or special damages, such as loss of profits, loss of opportunity or loss of productivity. In the event of a termination, the Seller shall, upon the written request of the Buyer, execute such documents and take such other action as the Buyer may reasonably require to assign to the Buyer any agreement, warranties or guarantees entered into by the Seller for the Work and execute such other documents as may be required by the Buyer.

20. **Compliance with Law.** In carrying out its obligations under the Agreement, Seller, at its own expense, shall comply with all applicable federal, provincial, territorial, municipal and local statutes, rules of law, ordinances, codes, rules, regulations and regulatory orders. Seller shall obtain, at its own expense, all licenses, permissions, authorizations, consents and permits required to carry out its obligations under the Agreement.