

PURCHASE ORDER TERMS AND CONDITIONS



1. DEFINITIONS

The following words shall have the following meanings where appearing in this Purchase Order.

- (a) **Manual** means any manuals, directions, specifications or other documents relating to the use, operation, installation or manufacture of the Merchandise specified in this Purchase Order or customarily supplied with the Merchandise.
- (b) **Merchandise** means the goods specified in this Purchase Order, any items or parts to be supplied by the Vendor in the course of performing the Services, and any variations made in accordance with clause 5.
- (c) **Purchaser** means the entity so named in this Purchase Order, and if no entity is named then Purchaser is Energy Developments Inc.
- (d) **Services** means any services specified in the Purchase Order including the installation of Merchandise if required by Purchaser.
- (e) **Vendor** means the person, firm or corporation to whom this Purchase Order is addressed.

2. AGREEMENT

This Purchase Order with any specifications or other document attached to it or incorporated in it by reference constitutes the entire agreement between the parties. Changes to the Purchase Order will be binding only if in writing and signed by Purchaser and Vendor.

3. DELIVERY AND PERFORMANCE

- 3.1 Vendor shall submit program and progress schedules in the form and frequency required by Purchaser.
- 3.2 Vendor must promptly commence and proceed to supply and deliver Merchandise and/or perform Services with due expedition and without delay. Delivery of the Merchandise and/or performance of the Services shall be made within the time stipulated, and in accordance with, this Purchase Order and in this respect time shall be of the essence.
- 3.3 If any delay in delivering the Merchandise or performing the Services occurs or is foreseen, Vendor must immediately notify Purchaser of the cause and anticipated length of the delay. If Vendor fails to deliver Merchandise and/or perform Services within the time specified, Purchaser may terminate this Purchase Order, or such parts of it affected by the delay, without liability to Vendor.
- 3.4 Vendor shall give 48 hours' notice prior to delivery of Merchandise to Purchaser's nominated premises.
- 3.5 All Merchandise shall be delivered with applicable Manuals and a packing list detailing Purchase Order number, item number and tag number. One copy of the packing list shall be included with the Merchandise, and one copy handed to Purchaser on or before delivery.
- 3.6 All items and part items shall be clearly tagged and numbered as shown on this Purchase Order. Each package or crate shall be clearly identified with Vendor's name, Purchaser's name, Purchase Order number, and catalog number (if any).
- 3.7 Vendor must supply all suitably qualified personnel, materials, equipment and tools necessary for the performance of the Services in accordance with this Purchase Order, and must arrange transportation to and from the Site for all personnel, materials, equipment and tools.

4. INSPECTION

- 4.1 Purchaser shall be entitled to inspect and test all materials, services and workmanship, and to monitor work in progress, at Vendor's premises, Vendor's suppliers' premises or Purchaser's nominated premises. Purchaser shall be entitled to reject Merchandise or Services which do not comply with this Purchase Order and to direct Vendor to promptly repair, replace or reperform at Vendor's own expense, any rejected Merchandise or Services at Vendor's premises or Purchaser's nominated premises. If Vendor fails to have such rectification carried out promptly, Purchaser may have rejected Merchandise or Services repaired, replaced or reperformed at Vendor's expense.
- 4.2 Vendor shall, at its cost, promptly remove rejected Merchandise and bear all risk associated with the removal and transport of such Merchandise.
- 4.3 Neither payment for Merchandise or Services nor inspection by or on behalf of Purchaser shall negate any of the conditions set out in this Purchase Order, evidence acceptance of the Merchandise or Services, or otherwise relieve Vendor of any of its liabilities under this Purchase Order.

5. CHANGE ORDERS

- 5.1 Purchaser may alter, amend, omit, add to or otherwise vary the Merchandise or the Services by a notice in writing to Vendor (**Change Order**). Vendor shall supply the Merchandise or perform the Services in accordance with this Purchase Order as varied by the Change Order provided that:
 - (a) delivery of the Merchandise has not at the date of the Change Order, been made or commenced to be made or performed;
 - (b) the Change Order extends the time for delivery of the Merchandise or performance of the Services as is reasonable having regard to the nature of the variations required by the Change Order; and
 - (c) Purchaser shall pay to Vendor such amount as parties agree is reasonable in respect of the Change Order.
- 5.2 In determining the amount to be paid under clause 5.1(c) the parties shall have regard to, among other things, the original price of the Merchandise or Services and to increases in the cost of labor and materials between the date of the Purchase Order and the date of the Change Order.

6. CONDITIONS AND WARRANTY

- 6.1 It shall be a condition of this Purchase Order, and Vendor warrants that:
 - (a) Vendor has title to and the right to sell the Merchandise to Purchaser;
 - (b) title in the Merchandise, when it passes to Purchaser under clause 7 will be free and clear of any and all liens, restrictions, reservations, security interests and encumbrances;
 - (c) the Merchandise is of a description which is in the course of Vendor's business to supply (whether Vendor is the manufacturer or not);
 - (d) the Merchandise will comply in all respects with all requirements of the Purchase Order, applicable laws, government requirements and applicable codes and standards;
 - (e) the Merchandise will be fit for the purpose for which it is required, of merchantable quality and free from all defects and imperfections affecting performance;
 - (f) it will at all times be suitably qualified and experienced to perform the Services; and
 - (g) the Services will be performed in accordance with applicable laws, government requirements, applicable codes and standards, and best practice standards of diligence, skill, care and efficiency to be expected of a competent contractor performing services of a similar nature to the Services.
- 6.2 Vendor must rectify or replace defective Merchandise, or reperform defective Services, identified in the 12-month period commencing when Purchaser obtains first beneficial use of the Merchandise or the Services are performed (as the case may be).
- 6.3 Vendor's obligations under this warranty are limited to repair or replacement of the defective Merchandise or reperformance of the defective Services at no cost to Purchaser.



7. PROPERTY AND RISK IN THE MERCHANDISE

Property and risk in the Merchandise shall pass to Purchaser on acceptance of same by Purchaser at the point of delivery specified in this Purchase Order. Acceptance shall not occur until Purchaser is satisfied that the Merchandise complies with all requirements of this Purchase Order.

8. SAFETY

Vendor:

- (a) acknowledges the importance that Purchaser places on maintaining high standards in relation to workplace health and safety and the protection of the environment;
- (b) when on Purchaser's premises, must comply with all relevant laws, government requirements, regulations, codes of practice and other requirements relating to workplace health and safety and the protection of the environment, including Purchaser's manuals and policies, which will be Vendor's responsibility to obtain from Purchaser; and
- (c) must report any incident relating to workplace health and safety or the environment to Purchaser as soon as reasonably possible and in any event prior to leaving Purchaser's premises on the day of such incident and provide Purchaser with all reasonable assistance in investigating any such incident.

9. COMPLIANCE WITH LAWS

Vendor shall strictly comply with all laws and standards applicable, to the supply of the Merchandise and/or the Services and upon request by Purchaser, Vendor shall furnish such evidence of compliance as Purchaser may require at the time.

10. INSURANCE

- 10.1 Vendor must take out and maintain at its cost, commercial general liability insurance against third party claims for amounts that are not less than USD5,000,000.00 for products and completed operations aggregate and USD5,000,000.00 per occurrence for bodily injury and property damage.
- 10.2 Vendor must, at its cost, insure Merchandise for the period when it is in transit to the point of delivery, against all loss or damage arising from any insurable cause, for a limit of not less than the full replacement cost of the Merchandise.
- 10.3 Vendor must also take out and maintain at its cost any other insurances required by law, including but not limited to workers compensation insurance.
- 10.4 Vendor must provide to Purchaser proof of insurance coverage upon request by Purchaser.

11. INDEMNITY

- 11.1 Vendor must indemnify Purchaser against all losses, damages, costs, charges, expenses, penalties, interest and fines, including those arising as a result of claims, demands, actions, proceedings or suits by any person (**Losses**) arising in connection with:
 - (a) any damage to Purchaser's premises, the Merchandise or any property, or the death of or injury to any person;
 - (b) a breach by Vendor or its personnel of any law in the course of, or caused by, the performance of its obligations under this Purchase Order;
 - (c) any actual or alleged infringement of any intellectual property rights, caused by performance by Vendor or its personnel of its obligations under this Purchase Order including the use of any process, work, material, matter, thing or method used or supplied by Vendor or its personnel; and
 - (d) the breach by Vendor of an obligation under this Purchase Order or a warranty contained in clause 6, if the Losses arise in connection with any act, error or omission of Vendor or its personnel.
- 11.2 The indemnity given by Vendor under clause 11.1 is a continuing obligation, separate and independent from the other obligations of Vendor and survives the termination of this Purchase Order.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 Vendor warrants, and it is the condition of this Purchase Order, that the sale or use of the Merchandise and the acceptance of Services does not infringe upon any patent, trademark or copyright or any other intellectual property right.
- 12.2 If the merchandise is manufactured in accordance with the designs of Purchaser, any intellectual property rights arising from such manufacture shall be owned by Purchaser.

13. TERMS OF PAYMENT

- 13.1 Vendor warrants that the cost of delivery has been included in the price and shall be to Vendor's account.
- 13.2 Unless otherwise specified in this Purchase Order, Purchaser shall make payment 30 days from the later of the date of Vendor's invoice and delivery of the Merchandise and related documents or performance of the Services in accordance with clause 3.
- 13.3 All claims for Change Orders and rise and fall shall be shown separately and supported with such documents and detailed calculations as Purchaser may require.

14. TAXES AND OTHER CHARGES

- 14.1 Vendor agrees that any sales tax excise, customs duty or other charges imposed by law on or in respect of the supply of the Merchandise shall be paid by Vendor unless specifically stated otherwise in this Purchase Order.
- 14.2 Vendor agrees that any cost incurred due to a variation in exchange rates in respect of the Merchandise shall be borne by Vendor unless specifically stated otherwise in this Purchase Order.

15. CONFIDENTIALITY

- 15.1 All plans, drawings, specifications, and other documents supplied by Purchaser to Vendor in connection with the supply of the Merchandise and/or the Services (**Purchaser's Documents**) shall remain the property of Purchaser.
- 15.2 Purchaser's Documents, any information derived from them and any other confidential information relating to the Merchandise, the Services or Purchaser's business or operations communicated to Vendor shall be regarded by Vendor as secret and confidential and shall not without the consent in writing of Purchaser, be published or disclosed to any third party or made use of by any Vendor except in connection with this Purchase Order or with the written consent of Purchaser

16. ASSIGNMENT

This Purchase Order shall not be assigned or sublet by Vendor except with the written consent of Purchaser. Purchaser may assign this Purchase Order or any rights, benefits or warranties under it to an affiliate at any time.

17. GOVERNING LAW

The Contract is governed by and must be construed and enforced in accordance with the laws of Michigan and the parties unconditionally submit to the exclusive jurisdiction of the courts of Michigan (and courts of appeal from them).