

Purchase Order Terms and Conditions (Canada)

ARTICLE 1 DEFINITIONS

1.1 In these Purchase Order Terms and Conditions, the following capitalized terms shall have the following meanings:

“Claim” or **“Claims”** means any one or more of the following, whether first party or third party: claims, demands, losses, consequential losses and damages, costs, liabilities, damages, liens, encumbrances, actions, suits or proceedings, together with legal costs on a solicitor-and-own-client basis.

“Company” means Quadra Pump Co. Ltd., a corporation incorporated pursuant to the laws of the Province of British Columbia, and **“Company Group”** means, collectively, Company, its affiliates and agents and their respective directors, officers, personnel and representatives.

“Delivery and Acceptance” means the delivery of the Goods by Seller in accordance with this Purchase Order and the acceptance of delivery of the Goods by Company.

“Documents” means those documents, materials and directions, including drawings and specifications, in whatever form whether hardcopy or electronic relating to the Goods or this Purchase Order.

“Goods” means all goods, materials, equipment, components and other tangible items required to be supplied by Seller in accordance with this Purchase Order. All materials provided by the Seller will be in accordance with their quality assurance program, jurisdictional requirements, applicable codes, standards, specifications, and Company requirements.

“GST” means the applicable federal goods and services tax.

“Mechanical Completion” means the point at which the Goods have been installed, inspected and pre-commissioned.

“Other Contractors” means any other contractors, consultants, sellers or suppliers which are retained directly by any member of the Company Group in connection with the Project, other than Seller.

“Party” means either Company or Seller, and **“Parties”** means both Company and Seller.

“Project” means the [As referenced on Purchase Order cover page].

“Project Site” means the site where the Project is located.

“PST” means the applicable provincial sales tax.

“Purchase Order” means, collectively, the purchase order issued by Company, these Purchase Order Terms and Conditions and all other Documents attached to or referenced in the foregoing.

“Seller” means the legal entity named in this Purchase Order as the supplier of the Goods to Company, which is an independent contractor and not an agent of Company, and **“Seller Group”** means Seller, its affiliates and Suppliers and their respective directors, officers, personnel and representatives.

“Supplier” means any subcontractor, supplier, manufacturer, vendor or agent, at any tier, to whom supply or provision of any part of the Goods is subcontracted directly or indirectly by Seller.

"Warranty Period" means the period commencing on the date of Delivery and Acceptance of the Goods to Company's site, and ending on the earlier of (i) 18 months from such date or 12 months after the date of Mechanical Completion, or such longer period as may be specified in this Purchase Order.

ARTICLE 2 INTERPRETATION

- 2.1 The interpretation of this Purchase Order shall be governed by the following rules:
- (a) all dollar figures shall mean Canadian dollars, unless expressly stated;
 - (b) all measurements shall be metric, unless otherwise noted; and
 - (c) where the term "includes", or some derivation thereof, is used, it shall mean "includes, but is not limited to" or the applicable equivalent derivation.
- 2.2 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 In the event of a conflict or inconsistency among or between the documents comprising this Purchase Order, the following priority, in descending order, shall govern:
- (d) this Purchase Order, not including these Purchase Order Terms and Conditions or Documents prepared by or for Company;
 - (e) these Purchase Order Terms and Conditions; and
 - (f) Documents prepared by or for Company.
- 2.4 If any term, covenant or condition of this Purchase Order, to any extent, is invalid or unenforceable, the remainder of this Purchase Order other than those provisions held invalid or unenforceable shall not be affected and each remaining term, covenant or condition of this Purchase Order shall be separately valid and shall be enforceable to the fullest extent permitted by Law.

ARTICLE 3 SCOPE AND CHANGES

- 3.1 Seller shall supply the Goods, in a diligent manner and in accordance with this Purchase Order.
- 3.2 No substitutions shall be made with respect to the Goods without the prior written consent of Company.
- 3.3 Company may, at any time, make changes to the Goods, including additions, deletions, rescheduling and acceleration or deceleration to all or any part of the Goods, and Seller agrees to perform its obligations under this Purchase Order as changed.
- 3.4 All Goods and other materials provided by the Seller will be in accordance with its quality assurance program, jurisdictional requirements, applicable codes, standards, specifications, export regulations, and Company requirements.

ARTICLE 4 INSPECTION AND TESTING

- 4.1 Company shall have access at all reasonable times to Seller's and its Suppliers' facilities 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 Company, or any omission or failure on the part of Company to inspect or test any of the Goods shall not be construed to be an acceptance of any of the Goods or as relieving Seller of any of its responsibilities pursuant to this Purchase Order or otherwise.

- 4.2 At Company's request, Seller shall promptly provide Company with unpriced copies of all purchase orders or other contracts issued or entered into by Seller for the supply of materials and components and all other records of Supplier with respect to the Goods.

ARTICLE 5 INSURANCE

- 5.1 Without limiting any of the obligations or liabilities under this Purchase Order, Seller shall obtain and maintain from the date hereof through to the date that is 12 months after expiry of the Warranty Period, at its own expense, suitable commercial general liability on an individual loss or occurrence basis, with a limit of not less than \$2,000,000.00 per loss or occurrence for bodily injury, including death, and property damage, and including contractual liability, completed operations liability, non-owned automobile liability, employer's contingent liability and cross liability.

ARTICLE 6 SHIPPING, DELIVERY, TRANSFER OF TITLE AND RETURN OF GOODS

- 6.1 All shipments must be packed or crated to protect the Goods from damage during transit and must be accompanied by packing lists indicating this Purchase Order number and fully describing all enclosed Goods. Supplier shall: (a) clearly mark all Goods to be identifiable as property of Company all shipments with serial numbers, measurements and other identification prior to transit; and (b) provide Company every signed original bill of lading or express receipt on request. Company's count of the Goods received shall be final and conclusive on shipments not accompanied by Seller's or Suppliers' itemized packing list.
- 6.2 No extra charges for shipping shall be allowed, unless specified in this Purchase Order or agreed to by Company in writing.
- 6.3 Unless otherwise stated in this Purchase Order, the Goods shall be shipped DDP (within the meaning of the Incoterms® 2020) as specified for delivery by Seller in this Purchase Order.
- 6.4 Unless otherwise agreed in writing by Company, invoices shall not be issued for Goods unless Delivery and Acceptance has occurred.
- 6.5 Title to the Goods and responsibility for care, custody, control and risk of loss of the Goods, or portion thereof, shall pass to Company upon the earlier of Delivery and Acceptance of the Goods, and payment for the goods in full.
- 6.6 Company shall have the right to return the Goods at Seller's expense and risk in the event any Goods are: (a) delivered in error; (b) rejected as not being in accordance with this Purchase Order; or (c) less than or in excess of the amount ordered.

ARTICLE 7 DELAY

- 7.1 Time is of the essence in respect of the supply of the Goods under this Purchase Order.
- 7.2 Seller shall promptly notify Company of any actual or anticipated delay in the Delivery and Acceptance of Goods and shall take all reasonable steps to avoid or mitigate delays and, when requested by Company, prepare a written mitigation plan, all without additional cost to Company.

ARTICLE 8 PAYMENT, TAXES AND INVOICING

- 8.1 The fixed price and payment milestones payable by Company for the Goods is as set out in this Purchase Order, which excludes GST and PST, but includes (a) packing, crating, labelling, storage and insurance of the Goods, (b) freight and delivery of the Goods, and (c) all customs duties and excise and sales taxes other than GST and PST.
- 8.2 Seller acknowledges that the timely invoicing of Company for the provision of the Goods is a requirement of the Purchase Order so that Company can administer its supply management procedures and practices prudently and in accordance with the Company's policies. Unless this Purchase Order specifies otherwise, invoices shall

be rendered to Company for all Goods for which Delivery and Acceptance has occurred under this Purchase Order during the previous month and each invoice shall fully describe the Goods and identify all other relevant information. Seller's invoice shall include its GST and PST registration numbers on each invoice.

- 8.3 Seller shall be responsible for and pay all taxes in relation to the Purchase Order, other than GST and PST which shall be the responsibility of Company to pay to Contractor and Contractor shall remit such GST and PST in accordance with applicable law.
- 8.4 Invoices shall be payable by Company: (a) following performance of all of Seller's obligations under this Purchase Order; (b) subject to Company being entitled at all times to set off at law and/or in equity any amount owing from Seller to Company against any amount due or owing to with respect to this Purchase Order; and (c) within 30 days of receipt of a proper invoice. Seller must submit all invoices in accordance with applicable Law.
- 8.5 At any time during normal business hours until 2 years after Delivery and Acceptance of the Goods, Company or its nominee shall have the right to audit Seller's records for purposes of verifying invoices provided to Company by Seller.

ARTICLE 9 CONFIDENTIALITY AND PUBLICITY

- 9.1 Seller shall keep all Confidential Information in confidence and: (a) shall not disclose it to others without the prior written consent of Company; (b) shall not use Company's Confidential Information except in connection with the supply of the Goods; and (c) shall ensure that all members of the Seller Group are bound by similar terms of confidentiality and shall, upon the request of Company, provide written evidence of the same.
- 9.2 This Article 9 shall survive the expiry or earlier termination of this Purchase Order for a period of 5 years.
- 9.3 Seller shall ensure that no member of the Seller Group uses any trademark or name of Company in any slogans or otherwise in any advertising, promotional materials or information or publicity releases or disclose the existence of this Purchase Order, the Project or the supply of the Goods, without Company's prior written consent.
- 9.4 For the purpose of this Purchase Order, Confidential Information shall mean all information (whether written or oral) which is disclosed (whether before or after the date hereof) by Company or its directors, officers, employees, affiliates, representatives, including without limitation, financial advisors, attorneys, consultants, and accountants (each referred to as a "Representative", and collectively referred to as "Representatives") to Seller or its directors, officers, employees, affiliates, representatives, including without limitation, financial advisors, attorneys, consultants and accountants (each referred to as a "Representative", and collectively referred to as "Representatives"), and all notes, analyses, compilations, forecasts, studies or other documents prepared by the parties or their Representatives in connection to this Purchase Order or the Goods hereunder. Without limiting the generality of the foregoing, Confidential Information means information marked or otherwise identified in writing by Company as confidential or proprietary, regardless of form, Confidential Information also means any information that ought in good faith to be treated as confidential or proprietary, whether or not marked and, if verbal or visual, whether or not reduced to writing and marked. Confidential Information includes without limitation: (i) any scientific or technical information, design, process, procedure, formula or improvement that is commercially valuable and secret in the sense that its confidentiality affords Company a competitive advantage over its competitors; (ii) any confidential or proprietary ideas, concepts or know-how, whether or not patentable or copyrightable and (iii) any information that is related to Company or its business operations, financials, performance results, product planning, marketing strategies, pricing, customers, prospects, suppliers, products, computers, software, and any related information (including the existence and terms of this Purchase Order). Confidential Information shall not include any information that (i) is already known to or in the possession of Seller prior to disclosure by Company, (ii) is independently developed by Seller without use of any Confidential Information or (iii) is or becomes available to Seller on a non-confidential basis from a source (other than Seller) which is not prohibited from disclosing such information to Seller by a legal, contractual or fiduciary obligation to Company.

ARTICLE 10 INTELLECTUAL PROPERTY

- 10.1 Subject to any rights, title or interests expressly granted by this Purchase Order, neither Party shall acquire any right, title, or interest in or to intellectual property of the other Party in existence prior to the execution of this Purchase Order. Seller grants to Company a fully sub-licensable worldwide, irrevocable, royalty-free, perpetual, non-exclusive right and license to: (a) use all patents, industrial designs, copyrights and technology related to the Goods; and (b) maintain, repair, replace and use the Goods supplied under this Purchase Order.
- 10.2 Except to the extent that the Goods are made entirely to Company's design, specifications or instructions, Seller shall be liable for and indemnify Company Group from Claims arising from any actual infringement of intellectual property rights in respect of Goods supplied by Seller.

ARTICLE 11 LIENS

- 11.1 Seller shall promptly discharge or release or cause to be discharged or released any and all builders' liens or other liens, encumbrances or charges which are in any way related to the Goods and which may be asserted against the Goods, Company, the Project, the Project Site or any property of Company, and Seller shall indemnify and save Company Group harmless from and against all such liens, encumbrances or charges.

ARTICLE 12 SUSPENSION OR TERMINATION FOR CONVENIENCE

- 12.1 Company may suspend or terminate this Purchase Order for any reason on 30 days written notice. If Company requests Seller to resume the supply of the Goods, Seller shall resume the supply of the Goods as requested, subject to Company's payment of all outstanding costs incurred by Seller in respect of Goods for which Delivery and Acceptance has occurred and in respect of third party equipment orders and cancellation charges. In the event any suspension lasts 60 or more days, Seller may, upon notice to Company, terminate the Purchase Order. In the event of any such termination, Seller shall deliver all finished and unfinished Goods to Company and Company shall pay to Seller all reasonable costs related to Goods provided to date of termination.
- 12.2 Company may request that agreements between Seller and any of its Suppliers be assigned to Company, and Seller hereby authorizes and consents to any such assignment.

ARTICLE 13 TERMINATION FOR DEFAULT

- 13.1 If Seller commits or threatens to do any act of bankruptcy or insolvency, commits or seeks to liquidate or is involved in any similar action, Company may, without prejudice to any other right or remedy it has, terminate this Purchase Order by giving Seller or its trustee, monitor or receiver, as applicable, notice of immediate termination of this Purchase Order.
- 13.2 If Seller fails to complete any aspect, or otherwise comply with the requirements, of this Purchase Order, Company may give notice to Seller that it is in default. If Seller has not remedied the default within 5 days of its receipt of such notice, Company may: (a) immediately cure such default and deduct the cost thereof from any payment thereafter due to Seller; or (b) immediately terminate all or part of this Purchase Order.
- 13.3 If Company terminates all or any part of this Purchase Order: (a) Company shall be entitled to take possession of all Goods; (b) Seller shall be liable to Company for the amount by which the total cost of completion, together with a reasonable amount to cover the cost of warranty and the costs and expenses (both external and internal and including legal fees on a solicitor-and-own-client basis) incurred by Company in respect of such termination, exceeds the original price of the Goods; (c) Company shall not be liable for any penalties, damages or Consequential Losses as a result of the termination of this Purchase Order or the supply of the Goods, or any portion thereof, by Company; and (d) Seller shall discontinue manufacture and fabrication of Goods and assign to and fully vest in Company the rights and benefits of Seller under existing agreements with Suppliers, which are related to the Goods.

ARTICLE 14 WARRANTY

- 14.1 If a defect or deficiency in all or any portion of the Goods is discovered during the Warranty Period and Company provides Seller notice of the same within the Warranty Period, Seller shall, at its own risk and expense, including all costs to access the Goods, remedy, repair or replace without delay, and in a manner satisfactory to Company, such defect or deficiency, or the damaged Goods or other equipment, materials or property of Company or others, damaged as a result of such defect or deficiency or remedy thereof.
- 14.2 For Goods procured or provided, but not manufactured by Seller, Seller shall obtain the best available warranties or guarantees as are available from Seller's Suppliers and shall, upon receiving notice from Company, assign such warranties or guarantees to Company. If the warranties or guarantee are assigned to Company then, upon request by Company, Seller shall assist Company in the enforcement of Claims under such warranties or guaranties.

ARTICLE 15 LIABILITY AND INDEMNIFICATION

- 15.1 This Article 15 shall govern over all other provisions of this Purchase Order.
- 15.2 Subject only to the limitations set out in this Article 15, Seller shall indemnify Company Group from and against all Claims that arise or result from the negligent acts or omissions of any member of Seller Group, howsoever arising, by reason of anything done or not done, or third party damages for personal injury and or property damage.
- 15.3 Notwithstanding any other provision of this Purchase Order, each Party waives and releases the other Party from consequential losses and damages (including loss of profits or anticipated profits, loss of business opportunity, loss of revenue and loss of reputation) for all Claims arising directly between them, except for the following consequential damages: (a) arising from a third party Claim as against one Party, for which the other Party may be liable; (b) any liquidated damages specified in this Purchase Order, if applicable; (c) that are or would be recoverable under any insurance policy required to be maintained by Seller pursuant to this Purchase Order, regardless of whether the Seller actually obtains or maintains that policy and regardless of whether the insurer actually pays for a Claim; (d) arising from or related to a Claim in relation to a breach of Article 9 or Article 10; or (e) any failure to indemnify pursuant to this Article 15.

ARTICLE 16 FORCE MAJEURE

- 16.1 If an event or circumstance outside the reasonable control of a Party restrains or delays the performance by a Party of its obligations under this Purchase Order and notice of the Event of Force Majeure is provided to the other Party within seventy-two (72) hours of the first occurrence of the Event of Force Majeure, and provides such further evidence of the Event of Force Majeure as may be reasonably requested by the other Party promptly thereafter, then that Party's obligations shall be suspended for the duration and to the extent that such event or circumstance continues to prevent such performance; provided, however, a Party claiming under this Article 16 shall take all reasonably commercial steps to mitigate such event or circumstance and its effects and neither Party shall be entitled to compensation pursuant to this Article 16.
- 16.2 No lack of financial resources of any person; no strike, work stoppages or other interruptions from concerted efforts of workers; any order, act or omission of any governmental authority, including import restrictions; no shortage of labour, Goods, machinery, equipment or supplies; non-receipt of Goods or materials from Suppliers; or weather shall be a basis for Seller to make any Claim against Company.

ARTICLE 17 DISPUTE RESOLUTION

- 17.1 Disputes between the Parties relating to or arising out of this Purchase Order shall be settled as follows: (a) a Party seeking to resolve a dispute shall provide notice thereof to the other Party, which notice shall contain particulars of the grounds of the dispute in reasonable detail so as to fully inform the other Party as to the material issues in dispute; (b) upon issuance and receipt of such notice representatives of the Parties shall meet and attempt to resolve the dispute on an amicable basis; and (c) should no such resolution occur within 14 days thereafter, either Party may by further notice escalate the dispute to the senior management of the Parties, who shall meet and attempt once again to resolve the dispute within a further 14 days, failing which

either Party shall be at liberty to enforce its rights as it sees fit, subject only to the terms and conditions of this Purchase Order. For so long as a dispute remains unresolved, Seller shall continue to supply the Goods in a timely manner unless instructed by Company in writing to suspend the provision thereof.

ARTICLE 18 REPRESENTATIONS OF SELLER

- 18.1 Seller acknowledges Company is relying on Seller's skill, knowledge and expertise in the supply of the Goods in accordance with this Purchase Order. Seller represents and warrants with respect to the Goods supplied by Seller that:
- (g) 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 this Purchase Order;
 - (h) Seller has all required permits, licences and authorizations necessary to carry on its business and to be obtained by it to supply the Goods;
 - (i) 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;
 - (j) the Goods, are now, and shall continue to be, free and clear of all liens, encumbrances, any adverse Claims, demands or other interests; and
 - (k) it is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

ARTICLE 19 GENERAL PROVISIONS

- 19.1 This Purchase Order shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein, subject to Article 17. The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.
- 19.2 Seller may not assign this Purchase Order without the prior written consent of Company, which consent may be arbitrarily withheld.
- 19.3 Amendment of this Purchase Order shall be made in writing and signed by both Parties.
- 19.4 Notices required by this Purchase Order shall be given in writing, addressed to the Party at the address or facsimile set out in this Purchase Order and delivered in person or by commercial courier.
- 19.5 Each limitation period under the Limitations Act (Alberta) which may be applicable to any claim relating to, or arising in connection with, as audit conducted under Article 8.6 is hereby extended to 2 years beyond the end of the audit period set out in Article 8.6, and Seller shall ensure each subcontract made by it contains a provision similarly extending any applicable limitation period