



Purchase Order Terms & Conditions

As used herein, "Vendor" includes Vendor, its subsidiaries and affiliates; "KCM" includes Kastone Construction Management and its subsidiaries and affiliates. Vendor and KCM hereby agree as follows:

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1. SERVICES & DELIVERABLES.

Vendor agrees to perform the services ("Services") and/or provide the goods or Services deliverables (collectively referred to as "Goods") as described in any valid purchase order or scope of work issued by KCM subject to these Terms and Conditions ("Agreement"). Upon the earlier of (a) acceptance of a KCM purchase order or this Agreement, (b) shipment of Goods against a KCM purchase order, and (c) commencement of Services in accordance with a KCM purchase order, Vendor shall be bound by the provisions of this Agreement, including all provisions set forth on the face of any applicable KCM purchase order, regardless of whether Vendor acknowledges or otherwise signs this Agreement or the applicable purchase order, unless Vendor timely objects to such terms in a written notice pursuant to Section 21 below, prior the earlier of (a), (b) or (c) above. Notwithstanding the foregoing or anything else herein, this Agreement will not supersede or take the place of any written agreement which is signed by both parties (one being an authorized KCM representative) and covers the same subject matter as this Agreement or a related purchase order(s). This Agreement may not be added to, modified, superseded or otherwise altered, except by writing signed by an authorized KCM representative. Vendor acknowledges and agrees that only KCM's General Counsel has the authority to modify, amend, or otherwise alter this Agreement or enter a new agreement. Any terms or conditions contained in any acknowledgment, invoice or other communication of Vendor, which are inconsistent with the terms and conditions herein, are hereby rejected. To the extent that this Agreement might be treated as an acceptance of Vendor's prior offer, such acceptance is expressly made on condition of assent by Vendor to the terms hereof and shipment of the Goods or beginning performance of any Services by Vendor shall constitute such assent. KCM hereby reserves the right to reschedule any delivery or cancel any purchase order issued at any time prior to shipment of the Goods or prior to commencement of any Services. KCM shall not be subject to any charges or other fees as a result of such cancellation.

2. DELIVERY.

Time is of the essence. Delivery of Goods shall be made pursuant to the schedule, via the carrier and to the place specified on the face of the applicable purchase order. KCM reserves the right to return, shipping charges collect, all Goods received in advance of the delivery schedule. If no delivery schedule is specified, the order shall be filled promptly and delivery will be made by the most expeditious form of land transportation. If no method of shipment is specified in the purchase order, Vendor shall use the least expensive carrier. In the event Vendor fails to deliver the Goods within the time specified, KCM may, at its option, decline to accept the Goods and terminate the Agreement or may demand its allocable fair share of Vendor's available Goods and terminate the balance of the Agreement. Vendor shall package all items in suitable containers to permit safe transportation and handling. Each delivered container must be labeled and marked to identify contents without opening and all boxes and packages must contain packing sheets listing contents. KCM's purchase order number must appear on all shipping containers, packing sheets, delivery tickets and bills of lading.



3. IDENTIFICATION, RISK OF LOSS & DESTRUCTION OF GOODS.

Vendor assumes all risk of loss until receipt by KCM. Unless otherwise specified on a valid KCM Purchase Order, title to the Goods shall pass to KCM upon receipt by it of the Goods at the designated KCM destination. If the Goods ordered are lost, damaged or destroyed prior to title passing to KCM, KCM may at its option cancel the Agreement or require delivery of substitute Goods of equal quantity and quality. Such delivery will be made as soon as commercially practicable. If loss of Goods is partial, KCM shall have the right to require delivery of the Goods not destroyed. In the event any of the Goods are damaged, destroyed or lost, any amount owed by KCM shall be cancelled for those Goods and Vendor shall promptly refund any amount already paid by KCM for those Goods.

4. PAYMENT.

As full consideration for the performance of the Services, delivery of the Goods and the assignment of rights to KCM as provided herein, KCM shall pay Vendor (i) the amount agreed upon and specified in the applicable KCM purchase order, or (ii) Vendor's quoted price on date of shipment (for Goods), or the date Services were started (for Services), whichever is lower. Applicable taxes and other charges such as shipping costs, duties, customs, tariffs, imposts and government imposed surcharges shall be stated separately on Vendor's invoice. Payment is made when KCM's check is mailed. Payment shall not constitute acceptance. All personal property taxes assessable upon the Goods prior to receipt by KCM of Goods conforming to the purchase order shall be borne by Vendor. Vendor shall invoice KCM for all Goods delivered and all Services actually performed. Each invoice submitted by Vendor must be provided to KCM within ninety (90) days of completion of the Services or delivery of Goods and must reference the applicable purchase order, and KCM reserves the right to return all incorrect invoices. KCM will receive a 2% discount of the invoiced amount for all invoices that are submitted more than ninety (90) days after completion of the Services or delivery of the Goods. Unless otherwise specified on the face of a purchase order, KCM shall pay the invoiced amount within sixty (60) days after receipt of a correct invoice. Vendor will receive no royalty or other remuneration on the production or distribution of any products developed by KCM or Vendor in connection with or based on the Goods or Services provided.

5. WARRANTIES.

5.1 Services: In addition to any other Vendor representations and warranties, Vendor represents and warrants that all Services shall be completed in a professional, workmanlike manner, consistent with the highest industry standards and with the degree of skill and care that is required by current, good and sound professional procedures. Further, Vendor represents and warrants that the Services shall be completed in accordance with applicable specifications and shall be correct and appropriate for the purposes contemplated in this Agreement. Vendor represents and warrants that the performance of Services under this Agreement will not conflict with, or be prohibited in any way by, any other agreement or statutory restriction to which Vendor is bound.



5.2 Goods: In addition to any other Vendor representations and warranties, Vendor represents and warrants that all Goods provided will be new and will not be used or refurbished. Vendor warrants that all Goods delivered shall be free from defects in materials and workmanship and shall conform to all applicable specifications and representations for at least a period of fifteen (15) months from the date of delivery to KCM or for the period provided in Vendor's standard warranty covering the Goods, whichever is longer. Vendor hereby agrees that it will make spare parts available to KCM for a period of five (5) years from the date of shipment at Vendors then current price, less applicable discounts.

All warranties shall be construed as conditions as well as warranties and shall not be exclusive. Vendor shall furnish to KCM Vendor's standard warranty and service guaranty applicable to the Goods. All warranties and Service guaranties shall run both to KCM and to its customers. If KCM identifies a warranty problem with the Goods during the warranty period, KCM will promptly notify Vendor of such problems and will return the Goods to Vendor, at Vendor's expense. Within five (5) business days of receipt of the returned Goods, Vendor shall, at KCM's option, either repair or replace such Goods, or credit KCM's account for the same. Replacement and repaired Goods shall be warranted for the remainder of the warranty period or six (6) months, whichever is longer.

6. INSPECTION.

KCM shall have a reasonable time after receipt of Goods or Service deliverables and before payment to inspect them for conformity hereto, and Goods received prior to inspection shall not be deemed accepted until KCM has run an adequate test to determine whether the Goods conform to the specifications hereof. Use of a portion of the Goods for the purpose of testing shall not constitute an acceptance of the Goods. If Goods tendered do not wholly conform with the provisions hereof, KCM shall have the right to reject such Goods. Nonconforming Goods will be returned to Vendor freight collect and risk of loss will pass to Vendor upon KCM's delivery to the common carrier.

7. INDEPENDENT CONTRACTOR.

KCM is interested only in the results obtained under this Agreement; the manner and means of achieving the results are subject to Vendor's sole control. Vendor is an independent contractor for all purposes, without express or implied authority to bind KCM by contract or otherwise. Neither Vendor nor its employees, agents or subcontractors ("Vendor's Assistants") are agents or employees of KCM, and therefore are not entitled to any employee benefits of KCM, including but not limited to, any type of insurance. Vendor shall be responsible for all costs and expenses incident to performing its obligations under this Agreement and shall provide Vendor's own supplies and equipment.

8. VENDOR RESPONSIBLE FOR TAXES AND RECORDS.

Vendor shall be solely responsible for filing the appropriate tax forms, and paying all such taxes or fees, including estimated taxes and employment taxes, due with respect to Vendor's receipt of payment under this Agreement. Vendor further agrees to provide KCM with reasonable assistance in the event of a government audit. KCM shall have no responsibility to pay or withhold from any payment to Vendor under this Agreement any taxes or fees. KCM will regularly report amounts paid to Vendor by filing tax to CRA.



9. INSURANCE.

Vendor shall be solely responsible for maintaining and requiring Vendor's Assistants to maintain such adequate health, auto, workers' compensation, unemployment compensation, disability, liability, and other insurance, as is required by law or as is the common practice in Vendor's and Vendor's Assistants' trades or businesses, whichever affords greater coverage. Upon request, Vendor shall provide KCM with certificates of insurance or evidence of coverage before commencing performance under this Agreement. Vendor shall provide adequate coverage for any KCM property under the care, custody or control of Vendor or Vendor's Assistants.

10. INDEMNITY.

Vendor shall indemnify, hold harmless, and at KCM's request, defend KCM, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses and expenses, including attorneys' fees and cost of suit arising out of or in any way connected with the Goods or Services provided under this Agreement, including, without limitation, (i) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean-up costs, (ii) Vendor failing to satisfy the Internal Revenue Service's guidelines for an independent contractor, (iii) any claim based on the negligence, omissions or willful misconduct of Vendor or any Vendor's Assistants, (iv) any breach of this Agreement, and (v) any claim by a third party against KCM alleging that the Goods or Services, the results of such Services, or any other products or processes provided under this Agreement, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other products, software or processes. Vendor shall not settle any such suit or claim without KCM's prior written approval. Vendor agrees to pay or reimburse all costs that may be incurred by KCM in enforcing this indemnity, including attorneys' fees. Should the Goods or Services Vendor provides to KCM be threatened by injunction or be the subject of any legal proceeding, Vendor shall, at its sole cost and expense, either (a) substitute fully equivalent non infringing Goods or Services; (b) modify the Goods or Services so that they no longer infringe but remain fully equivalent in functionality; (c) obtain for KCM, its distributors, subcontractors or customers the right to continue using the Goods or Services; or (d) if none of the foregoing is possible, refund all amounts paid for the infringing Goods or Services.

11. CONFIDENTIALITY.

Vendor may acquire knowledge of KCM Confidential Information (as defined below) in connection with its performance hereunder and agrees to keep such KCM Confidential Information in confidence during and following termination or expiration of this Agreement. "KCM Confidential Information" includes but is not limited to all information, whether written or oral, in any form, including without limitation, information relating to the research, development, products, methods of manufacture, trade secrets, business plans, customers, vendors, finances, personnel data, Work Product (as defined herein) and other material or information considered proprietary by KCM relating to the current or anticipated business or affairs of KCM which is disclosed directly or indirectly to Vendor. In addition, KCM Confidential Information means any third party's proprietary or confidential information disclosed to Vendor in the course of providing Services or Goods to KCM. KCM Confidential Information does not include any information (i) which Vendor lawfully knew without restriction on disclosure before KCM



disclosed it to Vendor, (ii) which is now or becomes publicly known through no wrongful act or failure to act of Vendor, (iii) which Vendor developed independently without use of the KCM Confidential Information, as evidenced by appropriate documentation, or (iv) which is hereafter lawfully furnished to Vendor by a third party as a matter of right and without restriction on disclosure. In addition, Vendor may disclose Confidential Information which is required to be disclosed pursuant to a requirement of a government agency or law so long as Vendor provides prompt notice to KCM of such requirement prior to disclosure. Vendor agrees not to copy, alter or directly or indirectly disclose any KCM Confidential Information. Additionally, Vendor agrees to limit its internal distribution of KCM Confidential Information to Vendor's Assistants who have a need to know, and to take steps to ensure that the dissemination is so limited, including the execution by Vendor's Assistants of nondisclosure agreements with provisions substantially similar to those set forth herein. In no event will Vendor use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use of KCM Confidential Information. Vendor further agrees not to use the KCM Confidential Information except in the course of performing hereunder and will not use such KCM Confidential Information for its own benefit or for the benefit of any third party. The mingling of the KCM Confidential Information with information of Vendor shall not affect the confidential nature or ownership of the same as stated hereunder. Vendor agrees not to design or manufacture any products which incorporate KCM Confidential Information. All KCM Confidential Information is and shall remain the property of KCM. Upon KCM's written request or the termination of this Agreement, Vendor shall return, transfer or assign to KCM all KCM Confidential Information, including all Work Product, as defined herein, and all copies thereof.

12. OWNERSHIP OF WORK PRODUCT.

For purposes of this Agreement, "Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, Service deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Vendor alone or with others which result from or relate to the Services performed hereunder. Standard Goods manufactured by Vendor prior to the engagement by KCM and sold to KCM without having been designed, customized or modified for KCM do not constitute Work Product but KCM shall have a license to use such Goods as KCM uses them. All Work Product shall at all times be and remain the sole and exclusive property of KCM. Vendor hereby agrees to irrevocably assign and transfer to KCM and does hereby assign and transfer to KCM all of its worldwide right, title and interest in and to the Work Product including all associated intellectual property rights. KCM will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name or to follow any other procedure that KCM deems appropriate. Vendor agrees: (a) to disclose promptly in writing to KCM all Work Product in its possession; (b) to assist KCM in every reasonable way, at KCM's expense, to secure, perfect, register, apply for, maintain, and defend for KCM's benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in KCM's name as it deems appropriate; and (c) to otherwise treat all Work Product as KCM Confidential Information as described above. These obligations to disclose, assist, execute and keep confidential survive the expiration or termination of this



Agreement. All tools and equipment supplied by KCM to Vendor shall remain the sole property of KCM. Vendor will ensure that Vendor's Assistants appropriately waive any and all claims and assign to KCM any and all rights or any interests in any Work Product or original works created in connection with this Agreement. Vendor irrevocably agrees not to assert against KCM or its direct or indirect customers, assignees or licensees any claim of any intellectual property rights of Vendor affecting the Work Product. KCM will not have rights to any works conceived or reduced to practice by Vendor which were developed entirely on Vendor's own time without using equipment, supplies, facilities or trade secret or KCM Confidential Information, unless (i) such works relate to KCM's business, or KCM's actual or demonstrably anticipated research or development, or (ii) such works result from any Services performed by Vendor for KCM.

13. NONINTERFERENCE WITH BUSINESS.

During and for a period of two (2) years immediately after the termination or expiration of this Agreement, Vendor agrees not to unlawfully interfere with the business of KCM in any manner, and further agrees not to solicit or induce any employee or independent contractor to terminate or breach an employment, contractual or other relationship with KCM.

14. TERMINATION.

KCM may terminate this Agreement effective immediately upon written notice to Vendor if Vendor fails to perform or otherwise breaches this Agreement, files a petition in bankruptcy, becomes insolvent, or dissolves. In the event of such termination, KCM shall pay Vendor for the portion of the Services satisfactorily performed and those conforming Goods delivered to KCM through the date of termination, less appropriate offsets, including any additional costs to be incurred by KCM in completing the Services.

KCM may terminate this Agreement, or any Service(s), for any other reason upon thirty (30) days' written notice to Vendor. Vendor shall cease to perform Services and/or provide Goods under this Agreement on the date of termination specified in such notice. In the event of such termination, KCM shall be liable to Vendor only for those Services satisfactorily performed and those conforming Goods delivered to KCM through the date of termination, less appropriate offsets. Vendor may terminate this Agreement upon written notice to KCM if KCM fails to pay Vendor amounts past due within sixty (60) days after Vendor notifies KCM in writing pursuant to Section 21 below that payment is past due.

Upon the expiration or termination of this Agreement for any reason: (a) each party will be released from all obligations to the other arising after the date of expiration or termination, except for those which by their terms survive such termination or expiration; and (b) Vendor will promptly notify KCM of all KCM Confidential Information or any Work Product in Vendor's possession and, at the expense of Vendor and in accordance with KCM's instructions, will promptly deliver to KCM all such KCM Confidential Information and/or Work Product.

15. REMEDIES.

If Vendor breaches this Agreement, KCM shall have all remedies available by law and at equity. For the purchase of Goods, Vendor's sole remedy in the event of breach of this Agreement by KCM shall be the right to recover damages in the amount equal to the difference between market price at the time of



breach and the purchase price specified in the Agreement. No alternate method of measuring damages shall apply to this transaction. Vendor shall have no right to resell Goods for KCM's account in the event of wrongful rejection, revocation of acceptance, failure to make payment or repudiation by KCM and any resale so made shall be for the account of Vendor.

16. FORCE MAJEURE.

KCM shall not be liable for any failure to perform including failure to (i) accept performance of Services or, (ii) take delivery of the Goods as provided caused by circumstances beyond its control which make such performance commercially impractical including, but not limited to, acts of God, fire, flood, acts of war, government action, accident, labor difficulties or shortage, inability to obtain materials, equipment or transportation. In the event KCM is so excused, either party may terminate the Agreement and KCM shall at its expense and risk, return any Goods received to the place of shipment.

17. SEVERABILITY.

If any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

18. LIMITATION OF LIABILITY.

IN NO EVENT SHALL KCM BE LIABLE TO VENDOR OR VENDOR'S AGENTS, OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, WHETHER OR NOT KCM WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

19. ASSIGNMENT; WAIVER.

Vendor may not assign this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of KCM. Any assignment or transfer without such written consent shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of KCM without restriction. A decision not to act upon any default of any term or condition of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition.

20. NONEXCLUSIVE AGREEMENT.

This is not an exclusive agreement. KCM is free to engage others to perform Services or provide Goods the same as or similar to Vendor's. Vendor is free to, and is encouraged to, advertise, offer and provide Vendor's Services and/or Goods to others; provided however, that Vendor does not breach this Agreement.

21. NOTICES.



Except for Purchase Orders which may be sent by local mail, facsimile transmission, or electronically transmitted, to be an effective notice by Vendor to KCM, all notices, and other communications hereunder shall be in writing, and shall be addressed to the General Counsel of KCM, with a copy to the KCM Chief Financial Officer, and shall be considered given when (a) delivered personally to both such individuals, or (b) properly sent by confirmed facsimile to KCM's U.S. headquarters and properly sent by commercial overnight courier with written verification receipt to KCM's U.S. headquarters. Notices from KCM to Vendor shall be deemed provided when (a) delivered personally to a representative of Vendor, or (b) sent by commercial overnight courier to Vendor.

22. SURVIVAL OF OBLIGATIONS.

Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

23. ENTIRE AGREEMENT; MODIFICATION.

This Agreement is the complete, final and exclusive statement of the terms of the agreement between the parties and supersedes and replaces in full any and all other prior and contemporaneous negotiations and agreements, whether oral or written, between them relating to the subject matter hereof. This Agreement may not be varied, modified, altered, or amended by Vendor except pursuant to a writing, including a purchase order or a change order issued by KCM, signed by the General Counsel of KCM. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledgment or other document submitted by Vendor. Notwithstanding the foregoing or anything else herein, this Agreement will not supersede or take the place of any written agreement which is signed by both parties (one being an authorized KCM representative) and covers the same subject matter as this Agreement or a related purchase order(s). Notwithstanding anything to the contrary, KCM may vary, modify, alter and amend this Agreement, in its sole and absolute discretion and without approval by Vendor, by posting a revised agreement on its website.

24. COMPLIANCE WITH LAWS.

24.1 General: Vendor shall comply fully with all applicable municipal, provincial and local laws in the performance of this Agreement including, but not limited all applicable employment, tax, import, export control and environmental laws. Vendor is responsible to obtain any and all required import and export certifications or licenses.

24.2 Hazardous Materials: If Goods include hazardous materials, Vendor represents and warrants that Vendor understands the nature of any hazards associated with the manufacture, handling and transportation of such hazardous materials

24.3 Customs: Upon KCM's request, Vendor will promptly provide KCM with a statement of origin for all Goods and Canadian Customs documentation for Goods wholly or partially manufactured outside of Canada.

25. INJUNCTIVE RELIEF.



Vendor acknowledges and agrees that the obligations and promises of Vendor under this Agreement are of a unique, intellectual nature giving them particular value. Vendor's breach of any of the promises contained in this Agreement will result in irreparable and continuing damage to KCM for which there will be no adequate remedy at law and, in the event of such breach, KCM will be entitled to seek injunctive relief, or a decree of specific performance.