

### 1. DEFINITIONS.

In this Purchase Order Terms and Conditions, the following definitions apply:

- (a) **“Agreement”** means the agreement between Supplier and University for the purchase and sale of Goods and / or Services.
- (b) **“Confidential Information”** means all information disclosed by University to Supplier, including without limitation any personal information, as that term is defined in the *Freedom of Information and Protection of Privacy Act* of Alberta, as amended.
- (c) **“Deliverable”** means any deliverable or other work product that arises from the Services, and any related materials, data and documentation.
- (d) **“Delivery Date”** means the date the Goods are to be delivered or the Services are to be performed as specified in the Purchase Order.
- (e) **“Delivery Point”** means the location identified in the Purchase Order to which Supplier is to deliver Goods or, if none is identified, such other delivery point that the University identifies to Supplier in writing.
- (f) **“Goods”** means the goods that are required to be delivered by Supplier pursuant to a Purchase Order, and include all materials, component parts, packaging and labelling of such goods.
- (g) **“Intellectual Property Rights”** means copyrights, patents, rights to apply for patents, domain names and all applications and registration of such worldwide.
- (h) **“Purchase Order”** means the purchase order between University and Supplier for the purchase and sale of Goods and / or Services, to which these Standard Purchase Terms are attached or are incorporated by reference.
- (i) **“Services”** means any services to be provided by Supplier to University pursuant to a Purchase Order.
- (j) **“Specifications”** means the requirements, attributes and specifications for the Goods or Services that are set out in the applicable Purchase Order. Specifications also include:
  - (i) documentations published by Supplier relating to the Goods or Services;
  - (ii) operational and technical features and functionality of the Goods or Services;
  - (iii) standards or levels of service performance for Services; and
  - (iv) University business requirements that are expressly set out to the Supplier in writing.
- (k) **“Supplier”** means the party indicated on the face page of the Purchase Order that is contracting with University.
- (l) **“Supplier Proposal”** means any acknowledgment, estimate, quote, offer to sell, invoice or proposal of Supplier relating to the supply of Goods and / or Services to University, including any delivered in connection with a request for quotations, request for proposal or similar process initiated by University.
- (m) **“University”** means the Board of Governors of Mount Royal University.
- (n) **“Warranty Period”** means in respect of any Goods or Services, the longer of
  - (i) the express warranty period provided by Supplier for the Goods or Services or
  - (ii) the period commencing on the date of Acceptance of such Goods or Services and ending on the date that is one (1) year from that date.

### 2. AGREEMENT.

Unless the parties have previously executed a written agreement prior to the issuance of the Purchase Order, the Agreement consists only of:

- (a) these Standard Purchase Terms;
- (b) the applicable Purchase Order; and
- (c) any Specifications or other documents expressly referenced in the Purchase Order.

Any reference in the Purchase Order to any Supplier Proposal is solely for the purpose of incorporating the descriptions and specifications of the Goods and / or Services contained in the Supplier Proposal and does not incorporate any terms and conditions which may be attached to the Supplier Proposal. If there is any inconsistency between the documents constituting the agreement, then unless otherwise expressly provided, the inconsistency will be resolved by applying the document first noted in this Section 2.

### 3. CANCELLATION.

At any time prior to the Delivery Date, University may, upon written notice to Supplier, cancel a Purchase Order, or any portion thereof, for any reason. In the event of the cancellation of all or a portion of the Purchase Order, the University will reimburse the Supplier for any actual and reasonable expenses that were incurred prior to the date of cancellation and the Supplier will provide the University with any work in progress. A Purchase Order may be modified upon mutual agreement of the parties. The University will have no liability to the Supplier as a result of the cancellation of all or a portion of the Purchase Order, except as set out in this Section 3.

**4. DELIVERY OF GOODS AND SERVICES.**

Upon the Supplier's acceptance of the Purchase Order, Supplier agrees to supply and deliver the Goods to University and to perform the Services, as applicable, on the terms set out in this Agreement. Supplier shall, at its own expense, pack, load and deliver Goods to the Delivery Point in accordance with the invoicing, delivery terms, shipping, packing and other instructions printed on the face of the Purchase Order or otherwise provided to Supplier by University in writing. No charges will be allowed for freight, transportation, insurance, shipping, storage, handling, demurrage, cartage, packaging or similar charges unless provided for in the applicable Purchase Order or otherwise agreed to in writing by University. Time is of the essence with respect to delivery of the Goods and performance of Services. Goods shall be delivered and Services performed by the applicable Delivery Date. Supplier must immediately notify University if Supplier is likely to be unable to meet a Delivery Date. Title and Risk of loss or damage shall pass to University upon receipt of Goods at the Delivery Point, unless otherwise agreed to by the University in writing. University has no obligation to obtain insurance while Goods are in transit from Supplier to the Delivery Point. Supplier shall follow all instructions of University and cooperate with University's customs broker as directed by University (including by providing requested shipping documentation) with respect to all Goods that originate from sources or suppliers based outside Canada. Supplier shall comply with all laws with respect to the importation of Goods from outside of Canada.

**5. INSPECTION, ACCEPTANCE AND REJECTION.**

All shipments of Goods and performance of Services shall be subject to University's right of inspection. University shall have ninety (90) days (the "Inspection Period") following the delivery of the Goods at the Delivery Point or performance of the Services to undertake such inspection, and upon such inspection University shall either accept the Goods or Services ("Acceptance") or reject them. University shall have the right to reject any Goods or Services that are not in conformance with the Specifications or any term of this Agreement. Transfer of title to University of Goods shall not constitute University's Acceptance of those Goods. University shall provide Supplier within the Inspection Period notice of any Goods or Services that are rejected, together with the reasons for such rejection. If University does not provide Supplier with any notice of rejection within the Inspection Period, then University will be deemed to have provided Acceptance of such Goods or Services. University's inspection, testing, or Acceptance or use of the Goods or Services hereunder shall not limit or otherwise affect Supplier's warranty obligations hereunder with respect to the Goods or Services, and such warranties shall survive inspection, test, Acceptance and use of the Goods or Services. University shall be entitled to return rejected Goods

to Supplier at Supplier's expense and risk of loss for, at University's option, either:

- (a) full credit or refund of all amounts paid by University to Supplier for the rejected Goods; or
- (b) replacement Goods to be received within the time period specified by University. Title to rejected Goods that are returned to Supplier shall transfer to Supplier upon such delivery.

**6. PAYMENT TERMS.**

Prices for the Goods and/or Services will be set out in the applicable Purchase Order. Price increases or charges not expressly set out in the Purchase Order shall not be effective unless agreed to in advance in writing by University. Supplier will issue all invoices on a timely basis. All invoices delivered by Supplier must meet University's requirements, and at a minimum shall reference the applicable Purchase Order. University will pay the undisputed portion of properly rendered invoices thirty (30) days from the date the invoice is received. University shall have the right to withhold payment of any invoiced amounts that are disputed in good faith until the parties reach an agreement with respect to such disputed amounts and such withholding of disputed amounts shall not be deemed a breach of this Agreement nor shall any interest be charged on such amounts. Notwithstanding the foregoing, University agrees to pay the balance of the undisputed amounts on any invoice that is the subject of any dispute within the time periods specified herein. University may holdback payment to the Supplier in accordance with the *Builders' Lien Act* of Alberta, as amended.

**7. TAXES.**

Unless otherwise stated in a Purchase Order, all prices or other payments stated in the Purchase Order are exclusive of any taxes. Supplier shall, on each invoice, separately itemize all applicable taxes and indicate its applicable tax registration number(s). University will pay all applicable taxes to Supplier when the applicable invoice is due. Supplier will remit all applicable taxes to the applicable government authority as required by applicable laws. Notwithstanding any other provision of this Agreement, University may withhold from all amounts payable to Supplier all applicable withholding taxes and to remit those taxes to the applicable governmental authorities as required by applicable laws.

**8. HAZARDOUS MATERIALS.**

Supplier agrees to provide, upon and as requested by University, to satisfy any applicable laws governing the use of any hazardous substances either of the following:

- (a) all reasonably necessary documentation to verify the material composition, on a substance by substance

basis, including quantity used of each substance, of any Goods, and/or of any process used to make, assemble, use, maintain or repair any Goods; or

- (b) all reasonably necessary documentation to verify that any Goods and/or any process used to make, assemble, use, maintain or repair any Goods, do not contain, and the Services do not require the use of, any particular hazardous substances specified by University.

**9. LEGAL COMPLIANCE AND WORKPLACE SAFETY.**

In carrying out its obligations under the Agreement, including the performance of Services, Supplier shall at all times comply with all applicable federal, provincial, and municipal laws, regulations, standards, and codes. Supplier shall establish an account with the Alberta Workers' Compensation Board and will maintain such account in good standing. Supplier shall obtain all applicable permits, licenses, exemptions, consents and approvals required for the Supplier to manufacture and deliver the Goods and perform the Services. The Supplier's employees or agents who are performing work in Canada must be eligible to perform work in Canada.

**10. WARRANTIES.**

Supplier warrants to University that during the Warranty Period all Goods provided hereunder shall be:

- (a) of merchantable quality;
- (b) fit for the purposes intended;
- (c) unless otherwise agreed to by University, new; (iv) free from defects in design, material and workmanship;
- (d) in strict compliance with the Specifications;
- (e) free from any liens or encumbrances on title whatsoever;
- (f) in conformance with any samples provided to University; and
- (g) compliant with all applicable federal, provincial, and municipal laws, regulations, standards, and codes.

Supplier shall perform all Services:

- (a) exercising that degree of professionalism, skill, diligence, care, prudence, judgment, and integrity which would reasonably be expected from a skilled and experienced service provider providing services under the same or similar circumstances as the Services under this Agreement;
- (b) in accordance with all Specifications and all University policies, guidelines, by-laws and codes of conduct applicable to Supplier; and
- (c) using only personnel with the skills, training, expertise, and qualifications necessary to carry out the Services. University may object to any of the Supplier's personnel engaged in the performance of Services who, in the reasonable opinion of University, are lacking in

appropriate skills or qualifications, engage in misconduct, constitute a safety risk or hazard or are incompetent or negligent, and the Supplier shall promptly remove such personnel from the performance of any Services upon receipt of such notice, and shall not re-employ the removed person in connection with the Services without the prior written consent of University. Supplier further warrants to University that at all times all Goods and or Services will not be in violation of or infringe any Intellectual Property Rights of any person. Supplier shall assign to University all manufacturer's warranties for Goods not manufactured by or for Supplier, and shall take all necessary steps as required by such third party manufacturers to effect assignment of such warranties to University.

**11. WARRANTY REMEDIES.**

In the event of breach of any of the warranties in Section 9, and without prejudice to any other right or remedy available to University (including University's indemnification rights hereunder), Supplier will, at University's option and Supplier's expense, refund the purchase price for, or correct or replace the affected Goods, or re-perform the affected Services, within 10 day(s) after notice by University to Supplier of warranty breach. All associated costs, including costs of re-performance, costs to inspect the Goods and/or Services, transport the Goods from University to Supplier, and return shipment to University, and costs resulting from supply chain interruptions, will be borne by Supplier. If Goods are corrected or replaced or Services are re-performed, the warranties in Section 9 will continue as to the corrected or replaced Goods for a further Goods Warranty Period commencing on the date of Acceptance of the corrected or replaced Goods by University. If Supplier fails to repair or replace the Goods within the time periods required above, University may repair or replace the Goods at Supplier's expense. In the event that any Goods provided by Supplier to University are subject to a claim or allegation of infringement of Intellectual Property Rights of a third party, Supplier shall, at its own option and expense, without prejudice to any other right or remedy of University (including University's indemnification rights hereunder), promptly provide University with a commercially reasonable alternative, including the procurement for University of the right to continue using the Goods in question, the replacement of such Goods with a non-infringing alternative satisfactory to University, or the modification of such Goods (without affecting functionality) to render them non-infringing.

**12. INTELLECTUAL PROPERTY RIGHTS.**

All Intellectual Property Rights in and to each Deliverable shall vest in University. The Supplier irrevocably waives any moral rights that it may hold in the Deliverables. To the extent that any Deliverables or Goods rely upon any intellectual

property of Supplier, Supplier grants to University a worldwide, royalty-free, non-exclusive, perpetual license to use, copy, modify and distribute such intellectual property as part of the Deliverables or Goods.

### 13. CONFIDENTIALITY.

Confidential Information is confidential and the exclusive property of the University. Supplier agrees that it will only access and use the Confidential Information as needed to supply and deliver the Goods and perform the Services. Supplier will not disclose the Confidential Information to a third party without the prior written consent of University. Supplier will protect the Confidential Information in its possession by making reasonable security arrangements against such risks as unauthorized access, use or disclosure. Supplier will notify University in the event of an actual or potential unauthorized access, use or disclosure of the Confidential Information. Upon termination of the Agreement, the Supplier will turn over all Confidential Information to the University and destroy any remaining digital copies of the Confidential Information.

### 14. INSURANCE.

The Supplier will, at its own expense, obtain and keep in full force and effect, for the benefit of the Supplier and MRU, the following insurance:

- (a) **Comprehensive General Liability insurance** having an inclusive limit, including personal injury and property damage, of not less than five million Canadian dollars (\$5,000,000.00) per single occurrence. The policy shall contain a waiver of subrogation clause in favor of University, and shall also contain a clause requiring the insurer not to cancel or change the insurance without first giving University thirty (30) days prior written notice.
- (b) **Auto Liability insurance** providing coverage for all owned or leased vehicles of the Supplier at a level of two million Canadian dollars (\$2,000,000.00) per single occurrence.
- (c) Any other insurance or bonds as specified on the Purchase Order.

### 15. INDEMNITIES.

The Supplier shall be liable and responsible for, and shall indemnify, release and save harmless University, and its officers, directors, employees, students and agents (the "University Indemnitees"), from and against any and all claims, demands, actions, proceedings, causes of action, losses, damages, liabilities, deficiencies, interest, penalties, fines, and amounts paid in settlement, costs and expenses of every nature and kind whatsoever (including, without limitation, all legal fees rendered on a solicitor-and-client basis and other professional fees and disbursements), which

the University Indemnitees may suffer, sustain, pay or incur resulting from, arising out of, attributable to, or connected with, directly or indirectly:

- (a) any act or omission of the Supplier;
- (b) any breach of or default in any covenant, term or condition of the Agreement by the Supplier; and
- (c) all taxes, contributions, charges, interest, penalties or other amounts imposed by any governmental or other public authority having jurisdiction with respect to the Agreement, the performance of the Services, the delivery of the Goods or the Supplier, including but not limited to, all payments pursuant to the *Workers' Compensation Act* of Alberta, the *Income Tax Act* of Canada, or the *Excise Tax Act* of Canada, or any amendments to such legislation or other legislation similar or supplemental thereto.

### 16. GENERAL.

Supplier will perform its obligations under the Agreement as an independent contractor and in no way will Supplier or its employees be considered employees, agents, partners, fiduciaries, or joint venture of University. If any provision of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part thereof and all other provisions shall continue in full force and effect. No waiver of any provision of this Agreement shall be enforceable against that party unless it is in writing and signed by that party. Supplier may not assign or subcontract this Agreement, in whole or in part, without University's prior written consent. Any provision of this Agreement which expressly or by implication from its nature is intended to survive the termination or completion of the Agreement will continue in full force and effect after any termination, expiry or completion of this Agreement. This Agreement shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable therein. The parties irrevocably attorn to the jurisdiction of the courts of Alberta in Calgary, which will have exclusive jurisdiction over any matter arising out of this Agreement.