



ALLTRADE INDUSTRIAL CONTRACTORS INC.
TERMS AND CONDITIONS

for MS Order
November 1, 2013

1. DEFINITIONS: For purposes of these Terms and Conditions:

- 1.1. "Change Order" means a written document signed by Contractor and Supplier to change the scope, price, time for performance or other terms of the MS Order.
- 1.2. "CLA" means the *Construction Lien Act* (Ontario).
- 1.3. "Claim" means any demand or request by Supplier for extra payment, extension of time, damages, or other relief in connection with the MS Order.
- 1.4. "Contractor" means the entity issuing this MS Order, which is Alltrade Industrial Contractors Inc., unless a different entity is identified as Contractor in the MS Order. The term "Contractor" shall be used regardless of whether the actual role of the entity issuing this MS Order is a General Contractor, Construction Manager, Design Builder, or otherwise.
- 1.5. "Contract Documents" means the Prime Contract and the Contract Documents as defined therein, together with this MS Order, including the Specifications Schedule and other attachments hereto.
- 1.6. "Default" has the meaning stated in section 21.
- 1.7. "Dispute" has the meaning stated in section 27
- 1.8. "Drawings" means the graphic and pictorial portions of the Prime Contract and/or MS Order showing the Work.
- 1.9. "Hazardous Material" means those materials defined in section 1(1) of the Ontario *Occupational Health and Safety Act*, RSO 1990, c O.1 or a substance subject to regulation as a hazardous material, hazardous substance, toxic substance, or otherwise, under applicable federal, provincial or municipal law, including the *Hazardous Products Act* and the *Environmental Protection Act*; and any other chemical, material, or substance that may have adverse effects on human health or the environment.
- 1.10. The words "include," "including", and their variants shall be interpreted to mean including without limitation.
- 1.11. "Lien" means a lien, claim, or demand against the Project, the Work, Owner's funds, including any lien pursuant to the CLA, or any payment bond furnished by Contractor to Owner.
- 1.12. Material Service Purchase Order ("MS Order") means and includes: (a) the MS Purchase Order form to which these Terms and Conditions are attached and which identifies, among other things, Supplier and the Order Number; (b) these Terms and Conditions; (c) any project manual or bid package pursuant to which Supplier has bid or proposed its Work, including any general conditions, supplementary conditions, and/or special conditions therein; (d) the Drawings and Specifications (and all addenda) defining the Work; (e) the Prime Contract; and (f) any other documents expressly incorporated by the documents listed in this subsection 1.12. The MS Order does not include the Supplier's bid or proposal, which is specifically excluded, nor does it include any terms or conditions on any communication furnished by Supplier unless Contractor specifically agrees in writing to incorporate them.
- 1.13. "Notice to Proceed" means a written document signed by Contractor directing Supplier to undertake specifically described work prior to execution of a Change Order.
- 1.14. "Owner" means the party with whom Contractor has entered into the Prime Contract with respect to the Project, even if such party does not own the Project.
- 1.15. "Price" means the amount to be paid to Supplier under the MS Order, from funds received from or on behalf of Owner, for proper performance of the Work.
- 1.16. "Prime Contract" means the contract between Contractor and Owner with respect to the Project, including all changes or modifications thereto through the date of this MS Order and all Contract Documents, which are defined by the Prime Contract to be a part thereof. Subject to section 2, all requirements, terms and conditions of the Prime Contract so far as they are relevant to this MS Order, are incorporated by reference herein and shall be binding upon the Contractor and the Supplier as if the term "Owner" or "Client", as the case may be, appearing therein had read "Contractor" and the term "Contractor", "Construction Manager" or "Design Builder", (as the case may be), had read "Supplier". The Prime Contract is available from Contractor upon written request except that, if Contractor removes pricing or other portions from the copy provided, Supplier shall not be bound by the removed portions. Failure of Supplier to request the Prime Contract shall not excuse Supplier from compliance with obligations set forth in the Prime Contract.



- 1.17. "Project" means the project identified in the MS Order for which the Supplier is supplying materials and/or equipment along with other miscellaneous services as described in the MS Order.
 - 1.18. "Schedule" means the schedule information provided to Supplier with or prior to the MS Order, together with any updates, adjustments, or refinements to the Schedule of which Supplier receives written notice thereafter. Any change in Schedule must be issued or approved in writing by the Contractor.
 - 1.19. "Specifications" means the portions of the Prime Contract and/or MS Order consisting of the written scope and other requirements for the Work and performance of related services.
 - 1.20. "Subordinate Parties" means all of Supplier's employees, workers, labourers, agents, consultants, suppliers, or subcontractors, at any tier, who perform, assist with, or otherwise are involved in any of the Work.
 - 1.21. "Supplier" means the entity designated as such in the MS Order.
 - 1.22. "Terms and Conditions" means this Document.
 - 1.23. "Work" includes all work and responsibilities performed or to be performed by Supplier or Subordinate Parties, including all goods and services, under the MS Order.
 - 1.24. "WSIB" means the Workplace Safety and Insurance Board of Ontario.
2. **MS ORDER:** The various provisions of the MS Order, as defined in subsection 1.12 above, are intended to complement each other and shall, where reasonably possible, be so interpreted. If there is an irreconcilable conflict between provisions of the MS Order, and any other provisions in the Contract Documents, the provision granting greater rights or remedies to Contractor, or imposing the greater duty, standard, responsibility or obligation on Supplier shall govern. Headings in the MS Order are for convenience only. Singular terms shall include the plural and vice versa.
3. **GENERAL DUTIES OF SUPPLIER:** Supplier shall commence the Work when directed by Contractor and shall diligently perform and complete the Work in strict accordance with the MS Order. With respect to Supplier's Work, Supplier assumes toward Contractor all the obligations, including administrative and procedural, which Contractor assumes towards Owner or other persons under the Prime Contract. Contractor shall have all the rights and remedies against Supplier, which Owner or other persons have against Contractor under the Prime Contract, which is incorporated herein by reference, to the extent it is not amended or superseded by the provisions hereof. Except as specifically set forth in the MS Order, Supplier shall not have any rights against Contractor that Contractor does not have against Owner under the Prime Contract. Supplier shall be responsible for the correctness of its Work. Supplier shall be solely responsible to Contractor for the means, methods, techniques, sequences and procedures for, and for coordinating with all other others all portions of, the Work. Supplier shall participate in meetings regarding the Work as requested by Contractor.
4. **INSPECTION:** Contractor shall have the right to inspect all of Supplier's or its Subordinate Parties' materials or equipment during any stage of manufacture or production, to expedite fabrication, audit quality assurance programs, and to otherwise assure quality control in the production and manufacture of the materials or equipment hereunder by Supplier or its Subordinate Parties. Supplier shall provide reasonable access, facilities, and assistance for the safe and convenient inspection and/or audit at Supplier's plant or its Subordinate Parties' plant. All materials and equipment are subject to final inspection and acceptance by Contractor and/or Owner after receipt by Contractor at the Project site. Such interim and final inspections by Contractor and/or Owner shall not relieve the Supplier of any warranties or its other obligations under the MS Order. Contractor may reject and refuse acceptance of materials or equipment that are not in accordance with the Specifications or Drawings or other data or applicable warranties. Supplier shall indemnify and hold harmless Contractor from and against any increased costs and expenses, including any penalty, liquidated damages or liability of Contractor to Owner or others, arising or resulting from delays caused by Supplier, including resulting from rejected materials or equipment, including Contractor's costs of inspecting such rejected materials or equipment.
5. **DELIVERY, ACCEPTANCE AND RISK OF LOSS:** All equipment and materials shall be suitably coated, wrapped, or covered and boxed or crated for shipment and to prevent damage during handling and storage. All electrical equipment including panels shall be completely covered with high quality waterproof material vacuum packing and use of moisture absorbent materials as appropriate. Where necessary, heavy parts shall be mounted on skids so that cable slings for handling can be readily attached. Where it is unsafe to apply external slings to a package, attached slings shall be provided so that attachment can readily be made. Each package shall be marked according to Contractor's instructions. All costs of packaging, crating and shipping materials or equipment shall be included in the Price. If required by the Drawings, Specifications or other sections of the MS Order, Supplier shall perform installation services, supervision, acceptance testing, and other specified services as necessary to obtain final acceptance of Work. Supplier assumes risk of loss to the equipment and materials supplied until written acceptance of



such equipment and materials by Contractor and Owner at the Project site. Notwithstanding the foregoing, if Contractor rejects the equipment and materials as defective or non-conforming, the risk of loss on such materials and equipment shall remain with Supplier until Supplier corrects the non-conformity or defect. If required by the Drawings, Specifications or other sections of the MS Order, Supplier shall provide training for Owner's employees in the use and operation of equipment.

6. **SUBORDINATE PARTIES:** Supplier shall be fully responsible to Contractor for all actions, omissions, or other conduct of Subordinate Parties arising from or in connection with the Work or the Project. Obligations imposed upon Supplier shall be binding on Subordinate Parties. Supplier shall pay its Subordinate Parties promptly.
7. **LAWS, PERMITS, TAXES:** Supplier shall comply strictly with all applicable federal, provincial and municipal laws, ordinances, codes, rules and regulations, and orders of all authorities having jurisdiction. Supplier shall obtain all necessary licenses and permits and pay all fees, taxes and other charges relating to the Work. Supplier shall furnish, upon Contractor's request, evidence of compliance with any law and the payment of any fee, tax or charge.
8. **HUMAN RIGHTS:** Supplier shall not discriminate against any individual with respect to hire, discharge, compensation, terms, conditions or privileges of employment, or segregation of facilities because of such person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status, disability, or other status protected by applicable law.
9. **SAFETY:**
 - 9.1. Supplier is fully responsible for, and shall ensure, the safety of persons and property in connection with the Work. If installation, or other on-site services are a part of this MS Order, Supplier shall cooperate with Contractor on any overall safety program for the Project. Supplier shall provide a safe workplace and shall otherwise take all precautions for the safety of Subordinate Parties and persons and property in or near the premises where Work is being performed. Supplier shall comply with all current safety requirements of all applicable federal, provincial and municipal laws and regulations, as well as any current Contractor or Owner safety requirements that are communicated to Supplier.
 - 9.2. Supplier shall comply with all requirements of the Ontario *Occupational Health and Safety Act*, RSO 1990, c O.1 and associated regulations, including but not limited to Workplace Hazardous Materials Information System (WHMIS), R.R.O. 1990, Reg 860, including: (1) providing copies of all Material Safety Data Sheets (MSDS) for each Hazardous Material furnished under or otherwise associated with the Work under the MS Order, and having a copy of same available for its employees; (2) providing required training of its employees pursuant to such laws; (3) submitting a copy of its written hazard communication program to Contractor; and (4) Properly labeling all containers of Hazardous Materials that are brought or shipped to the Project site or used in the performance of this MS Order.
 - 9.3. Supplier is fully responsible for any Hazardous Materials it ships or otherwise delivers to the Project.
10. **INDEPENDENT CONTRACTOR:** The Supplier is an independent contractor, and not an employee, agent, or partner of the Contractor.
11. **SCHEDULE:**
 - 11.1. Time is of the essence and is a material consideration of this MS Order. Supplier shall perform and complete the Work in accordance with the Schedule, when and in such sequence as directed by Contractor, so as not to conflict or interfere with the activities or Work of others, including Contractor and the Owner. Supplier shall indemnify and hold harmless Contractor from and against any increased costs and expenses, including any penalty, liquidated damages or liability of Contractor to Owner or others, arising or resulting from Supplier's failure to comply with the Schedule. Changes to the Schedule resulting from Supplier's failure to perform to an earlier version of the Schedule shall not excuse this indemnification obligation.
 - 11.2. If Supplier's performance is delayed or interfered with by Owner, Contractor or other subcontractors, or acts of God or other causes beyond its control, Supplier may present a Claim for an extension of time in accordance with this MS Order, but Supplier shall not be entitled to any resulting increase in the Price or additional compensation or damages except to the extent that the Prime Contract entitles Contractor to compensation from Owner for such delays, and then only to that amount which Contractor shall actually recover from Owner on behalf of Supplier. Supplier expressly waives and releases any other right to damages or additional compensation related to delays.



- 11.3. In no event shall Supplier be entitled to time or monetary relief related to delay, including acceleration costs, productivity losses, lost profits, unabsorbed overhead, or other damages or costs resulting directly or indirectly from delay, unless: (a) Supplier gives Contractor notice of the delay in writing in accordance with the MS Order, including the time limits in section 25; (b) the cause of such delay was extraordinary and unforeseeable and without the fault of Supplier or Subordinate Parties; and (c) Supplier and Subordinate Parties have used all reasonable diligence to prevent, avoid, remove, and mitigate the delay and its impacts.

12. CHANGES:

- 12.1. No changes to the Work, the Price, the Schedule, or other terms of the MS Order are authorized unless approved in a Change Order or Notice to Proceed signed by an authorized representative of Contractor. No course of dealing or course of performance between the parties shall be the basis for an increase in the Price or extension of the Schedule.
- 12.2. Any Change Order issued by Contractor and signed by Supplier, unless otherwise expressly stated therein, is a complete settlement regarding the amount of materials, equipment, labour, overhead, and profit, and any extension of time, that may relate directly or indirectly to that Change Order. Supplier shall have no claim in connection with changes to the Work for additional time or monetary recovery (for delay, interference, acceleration, inefficiency, cumulative effect, extension of overhead cost or any other theory) unless included in the signed Change Order.
- 12.3. Supplier shall quote the price and time impact of proposed changes within 14 days of receipt, unless otherwise directed or agreed in writing by Contractor.

13. PAYMENTS:

- 13.1. Contractor agrees to pay Supplier, from funds received from Owner, for the satisfactory performance of the Work, the Price in accordance with the following:
- 13.1.1. Prior to the first application for payment, the Supplier shall submit to the Contractor for the Contractor's approval, a schedule of values of the various parts of the Subcontract Work, aggregating the total amount of the Price and allocated so as to facilitate evaluation of each application for payment.
- 13.1.2. The Contractor shall make monthly progress payments to the Supplier on account of the Price as described in subsection 13.1.3.; the amounts of such payment shall be as approved by the Contractor and certified by the individual empowered by the Prime Contract to certify the amounts payable by the Owner to the Contractor (the "Certifier") and shall be subject to all holdbacks provided for under the CLA and under this MS Order. Subject to the discretion of the Owner and the Contractor, the Contractor may apply for early release of Supplier and supplier holdback pursuant to the CLA. Such application shall be made in accordance with the provisions of this section 13 (Payments), clearly stipulating the particulars of the Subcontract Work involved, the name of the Supplier and such other requirements as are stipulated by the CLA.
- 13.1.3. Applications for payment must run concurrently showing the amount of work done to date and all authorized extras, credits and backcharge. The Supplier shall make applications for payment, accompanied by supporting statutory declarations and/or other documents required by this MS Order in triplicate, on or before the 25th day of each month (the "Submission Date") to the Contractor for approval and processing. The amount claimed shall be for the value of the products delivered at the jobsite, (if so permitted by the Prime Contract) and the Subcontract Work performed by the Supplier proportionate to the Price up to the 30th day of the month, whereupon payment to the Supplier by the Contractor in the amount of ninety percent (90%) of the certified sum less all amounts previously paid shall become due and payable forty-five (45) days after the Submission Date. Subject to applicable construction lien legislation, the balance of ten percent (10%) shall be paid forty-seven (47) days after the final acceptance and certification by the Certifier of the Subcontract Work. The release of any payment under this MS Order is subject to the payment conditions set forth in subsection 13.1.4.
- 13.1.4. The payments provided for under this section 13 shall only be payable by the Contractor once the following conditions precedent have been met:
- (a) no claims for lien have been asserted relating to the Subcontract Work which have not been released;
- (b) the Supplier has provided to the Contractor a statutory declaration that all accounts for labour, worker's compensation insurance, subcontracts, products, tools, construction machinery and equipment and any other indebtedness which may have been incurred by the Supplier in the performance of the Subcontract Work and for which the Contractor might in



any way be held responsible have been paid in full, except monies properly retained or monies payable out of the holdback to be released;

- (c) the Contractor has been paid all amounts payable by the Owner as certified by the Certifier under the Prime Contract for that portion of the Subcontract Work covered by the Supplier's application for payment (and the Supplier bears the risk of non-payment by the Owner);
- (d) all required bonds and insurance certificates have been received by the Contractor, including WSIB clearance specified in subsection 13.1.5.; and
- (e) respecting final application for payment, the documentation required under section 17 (Contract Closeout Documentation).

13.1.5. As soon as reasonably practicable, and in no event less than seven (7) days before the Supplier's final application for payment, the Supplier shall provide to the Contractor not less than four (4) (or such greater number as may be required by the Contract Documents) copies of guarantees, as-built drawings, manufacturer's manuals, written guarantees, final inspection clearances (i.e. plumbing, hydro, structural, roofing, etc.) where called for in the Contract Documents. A notarized statutory declaration indicating appropriate payment of labour and materials, and written clearance from the WSIB must accompany the final application.

- 13.2. Unless Owner's failure to pay is caused solely by the wrongdoing of Contractor, the obligation of Contractor or Contractor's surety to pay Supplier is expressly preconditioned (a condition precedent) upon receipt of each payment from Owner and the amount allowed and paid to Contractor on account of Supplier's Work. This condition applies to payments of every type, including progress payments, retention payments, Change Order payments, final payment, or otherwise. Supplier relies solely and exclusively on the credit of Owner, not of Contractor.
- 13.3. No payment shall be taken as an admission by Contractor of the amount of Work done, its classification, quality, sufficiency or the sum due Supplier or as an acceptance or release of Supplier from responsibility under the MS Order.
- 13.4. Supplier shall receive and hold the payments by Contractor as a trust fund to be applied first to the payment of Subordinate Parties in accordance with the provisions of the CLA.
- 13.5. Contractor may issue backcharges against the Price for increases in Contractor's costs that result from Supplier's failure to comply with the MS Order, or other costs, which are chargeable to Supplier under the MS Order. Contractor shall provide written notice of any such backcharge.
- 13.6. Contractor shall have the right to withhold payment, until final payment, for defective Work not remedied; claims of Contractor, Owner or any other person against Supplier arising out of or in any way connected with the Work; failure to pay Subordinate Parties; Liens; failure to supply required documentation; anticipated inability of Supplier to complete the Work for the balance of the Price; or any other breach of this MS Order. If any such deficiencies are not promptly corrected or remedied after written notice, Contractor may rectify the same at Supplier's expense and deduct all costs and expenses reasonably incurred from such withheld payments.
- 13.7. Supplier shall not recover interest or late fees on late or delayed payments except (a) to the extent interest is recovered by Contractor from Owner under the Prime Contract, or (b) as otherwise required by applicable law.
- 13.8. Supplier's right to final payment is expressly conditioned (a condition precedent) on Contractor's or Contractor's surety's receipt of final payment for Supplier's Work from Owner and Supplier's final completion of the Work, including submission in form satisfactory to Contractor, of all documents required by the Supplier or reasonably requested by Contractor, including invoices, certificates, waivers, releases, warranties, instruction manuals, test reports, and consent of surety.
- 13.9. Receipt of final payment waives and releases all claims by Supplier against Contractor and Owner relating to the MS Order except those expressly preserved by written agreement concurrent with final payment.
- 13.10. If money is owed from Supplier to Contractor under the MS Order for any reason, including overpayments or legitimate backcharges, Supplier shall pay such money to Contractor within 14 days after written demand.

14. **LIENS:** Owner's funds, the Work, the Project, and any payment bond furnished by Contractor or Owner shall be kept by Supplier free of all Liens by itself or Subordinate Parties. Within ten days after written demand, Supplier shall discharge or bond off any such Liens. If it fails to do so, Contractor, at its sole discretion, may use any means necessary to remove the Liens, and Supplier shall indemnify Contractor for any related costs and legal fees. The obligations of this section 14 shall not apply to the extent a Lien is caused by Contractor's wrongful failure to pay Supplier in breach of this MS Order, without fault of Supplier.



15. **INTELLECTUAL PROPERTY:** Royalties and fees for patents, copyrights, and any other intellectual property rights covering materials, articles, apparatus, devices, equipment, or processes used in the Work shall be included in the Price.
16. **WARRANTY AND CORRECTION OF WORK:** In addition to all other warranties set forth in the MS Order, and in the Prime Contract, Supplier warrants to Owner and Contractor that the Work shall be free from defects and performed in strict conformity with the requirements of the MS Order. This warranty survives the termination of the MS Order and shall not be limited by any other provisions contained in the MS Order. Supplier shall promptly correct Work that is defective or fails to conform to the MS Order at any time within the time period that Contractor is obligated to correct Work under the Prime Contract. Nothing in this paragraph establishes a period of limitation or otherwise restricts obligations which Supplier may have under other provisions of the MS Order or applicable law.
17. **INDEMNIFICATION:**
 - 17.1. To the fullest extent permitted by law, Supplier shall defend, indemnify and hold harmless Contractor and its agents, employees, owners, officers, members, partners, affiliates, and successors from and against any and all liabilities, claims, causes of action, lawsuits, or expenses arising from (a) Supplier's breach or failure to comply with this MS Order, including any Default or breach of any warranty, or (b) personal injury or death to any person (including employees of Supplier or Subordinate Parties) or property damage (including claims for loss of use), which arise out of or result from the Work or the operations or acts of commission or omission of Supplier, including those of its Subordinate Parties; or (c) infringement of any patent rights or copyrights arising out of the use or sale of the materials or equipment purchased under the MS Order; unless the injuries or damages are caused by the sole negligence of the party seeking to be indemnified. Supplier's indemnity obligations shall include, but are not limited to: indemnity for all damages and judgment interest, all costs and fees, including all defense costs, expenses and legal fees, and all settlement payments relating to or arising out of, resulting from or in any way connected with any claim, cause of action or lawsuit, or proceeding requiring indemnity by Supplier; all expenses, including costs, expenses and legal fees, incurred in securing indemnity from Supplier if Supplier fails or refuses promptly to fulfill any of the indemnity obligations under this MS Order; the obligation to indemnify Contractor for any liability imposed upon Contractor to indemnify and/or defend any and all persons, including but not limited to Owner, from liabilities, claims, causes of action, lawsuits, or expenses arising from or in connection with the MS Order; the obligation to indemnify Owner to the same extent and in the same manner as Supplier is obligated to indemnify Contractor.
 - 17.2. The indemnification provisions contained in this MS Order shall survive the completion or termination of this MS Order.
 - 17.3. The indemnification obligations in this MS Order shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Supplier under Workers' or Workmen's Compensation Acts, Disability Acts or other Employee Benefit Acts.
18. **INSURANCE:** Before any Work is started, certificates of insurance and additional insured endorsements for Supplier's liability policies showing the contractually required insurance coverages must be supplied to Contractor, which shall be subject to Contractor's approval for adequacy of protection. Receipt of a non-conforming insurance certificate by Contractor without objection, or failure to collect an insurance certificate, does not constitute a waiver of the insurance obligations of this MS Order. The insurance requirements identified below are minimum requirements. If the Prime Contract imposes additional or higher standards, Supplier shall meet those as well.
 - 18.1. WSIB coverage covering Supplier's statutory obligations in Ontario, which shall be subject to Contractor's approval and proof of good standing with the WSIB. If the Contractor is held liable by the Owner or any other party to make premium payments on the labour portion of this MS Order that have not been made by the Supplier and/or the Supplier does not maintain an account in good standing, for which Contractor may be liable, Contractor may make all such payments and the amount thereof shall be deducted from any amounts payable to the Supplier hereunder, and the Supplier shall indemnify Contractor in respect of any claims, damages, losses or expenses it may suffer in connection therewith.
 - 18.2. Automobile Liability insurance with the limit of \$1,000,000 per accident covering Supplier's owned, non-owned and hired automobiles.



18.3. Commercial General Liability insurance with limits of liability as follows:

General Aggregate	\$ 2,000,000
Products-Completed Operations Aggregate	\$ 2,000,000
Personal/Advertising Injury	\$ 2,000,000
Each Occurrence	\$ 2,000,000

This coverage shall include coverage for premises-operations, independent contractors' protective, products and completed operations, personal injury and broad form property damage, and Contractual Liability protection with respect to Supplier's indemnification obligations under the MS Order. Products-completed operations coverage must be maintained for at least two years after final completion of the Project.

18.4. General Provisions.

18.4.1. Every policy must be written by an insurance company licensed in Ontario and is reasonably acceptable to Contractor.

18.4.2. Limits may be attained by a combination of an underlying policy with an umbrella or excess liability policy, provided, however, that in the event an umbrella or excess liability policy is used, it must also be endorsed to provide primary and non-contributory coverage to any other valid, applicable, and collectible insurance or self-insurance in force for Contractor, Owner, or other additional insureds, regardless of whether such other insurance is written on a primary, excess or contributory basis.

18.4.3. "Alltrade Industrial Contractors Inc.," Contractor (if other than Alltrade Industrial Contractors Inc.) and Contractor's members and partners (if applicable), Owner, and all other entities as required in the Prime Contract shall be endorsed as additional insureds on Supplier's commercial general liability policy with respect to liability arising out of activities, "operations" or "work" performed by or on behalf of Supplier. Forms that do not provide additional insured status for completed operations shall not be accepted. In no case shall any additional insured endorsement exclude coverage for Alltrade Industrial Contractors Inc.'s or Contractor's own negligence nor limit coverage for Alltrade Industrial Contractors Inc. or Contractor only to potential liability incurred solely as a result of Supplier's acts or omissions. Furthermore, nothing in the additional insured endorsement shall limit Alltrade Industrial Contractors Inc.'s or Contractor's products-completed operations coverage to only those liabilities arising from Supplier's "ongoing operations".

18.5. Evidence of the required insurance is to be provided to Contractor on a form acceptable to Contractor together with copies of any additional insured endorsements and must indicate:

18.5.1. Any coverage exclusions or deviations from the 1988 ISO commercial general liability form or subsequent versions;

18.5.2. A Best's rating for each insurance carrier at A- VII or better;

18.5.3. That additional insured endorsements have been provided as required under the MS Order; and

18.5.4. Any deductibles over \$10,000 applicable to any coverage.

18.6. All coverage must be primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for Contractor, Owner, or other additional insureds, regardless of whether such coverage is written on a primary, excess or contributory basis. Each policy shall be endorsed so that the issuing insurance company shall provide thirty (30) days written notice of cancellation to the Contractor and any additional insureds. Supplier also agrees to provide Contractor with written notice, pursuant to section 28, of any cancellation, non-renewal or material modification to any of the policies required under this MS Order.

18.7. Supplier shall waive, and shall require (by endorsement or otherwise) its insurers providing the coverage required by these insurance requirements to waive, subrogation rights against Contractor, Owner, and all other additional insureds for losses and damages incurred and/or paid under the insurance policies required by these insurance requirements or other insurance applicable to Supplier or its Subordinate Parties, and shall include this same requirement in contracts with its Subordinate Parties. If the policies of insurance referred to in this paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies shall cause them to be so endorsed.

18.8. Supplier's duty to provide the insurance coverage set forth in this section 18 is a severable obligation from Supplier's indemnification obligations as set forth in section 17. Nothing in this section 18 shall be deemed to limit Supplier's liability under this MS Order.



19. **BONDING:** Contractor shall have the right to require Supplier to furnish surety bonds to secure the faithful performance of the MS Order and the payment of all MS Order obligations. If bonds are required of Supplier, the surety must be authorized to transact the business of suretyship licensed in the province of Ontario. If the face of the MS Order indicates that bonding is required, Supplier's reasonable bond premium shall be included in the Price. Bonds shall be submitted in accordance with the latest edition of Canadian Construction Documents Committee approved bond forms.
20. **ASSIGNMENT:** The Supplier shall not assign the MS Order or any part thereof, without the prior written consent of Contractor.
21. **SUPPLIER DEFAULT:** Supplier shall be in Default if it fails or refuses to: (a) supply sufficient materials or equipment of proper quality; (b) prosecute the Work diligently or maintain progress in accordance with the Schedule; (c) make payment to all Subordinate Parties promptly; (d) provide waivers of Liens or other documentation required under the MS Order; (e) provide adequate assurances in writing, within 72 hours after written request by Contractor, that Supplier is ready, willing, and able to perform the requirements of the MS Order, including proof of the financial and other resources necessary to comply with the Schedule; (f) correct, replace and/or re-execute faulty, damaged, or defective Work; (g) supply or maintain required bonds or insurance; (h) comply promptly with a written directive issued by Contractor pursuant to the MS Order; (i) maintain satisfactory financial standing. It shall be judged unsatisfactory, without further proof, if Supplier files an arrangement proceeding, or is insolvent or commits any act of insolvency, or makes an assignment for benefit of creditors, or turns over its assets per a trust chattel mortgage, or files or has filed against it a petition for bankruptcy, liquidation, reorganization, or receivership, or has appointed against it a receiver over a substantial part of its assets, or has a creditors committee appointed, or consents to the formation of a creditors committee, or has a creditor foreclose upon a substantial part of its assets, or has a creditor issue an execution or garnishment, or has a levy issued against it by any taxing authority; or (j) perform fully, in other respects, any or all of the requirements of the MS Order.
22. **REMEDIES FOR SUPPLIER DEFAULT:**
- 22.1. In the event of any Default described in section 21, Contractor shall be entitled to employ any or all of the following remedies: (a) require Supplier to increase manpower or equipment, work overtime, or work extra shifts, at Supplier's expense; (b) supplement or replace Supplier's forces with other manpower, materials, or equipment, at Supplier's expense; (c) suspend Supplier's right to proceed with the Work, in whole or in part, for such time as Contractor deems advisable; (d) take possession of and use any materials, equipment, tools, or appliances necessary to carry out the Work; (e) terminate all or any portion of the MS Order for Default; and/or (f) pursue any other relief available under the MS Order or applicable law.
- 22.2. Prior to relying on the remedies identified in this section 22, Contractor shall provide Supplier 72 hours written notice and opportunity to cure, unless emergency circumstances make such notice impracticable.
- 22.3. If a bankruptcy petition is filed by or against Supplier, and Supplier is otherwise in default, Contractor shall have the right to prompt relief from the automatic stay and a prompt decision assuming or rejecting the MS Order.
23. **TERMINATION FOR CONVENIENCE:** Contractor reserves the right to terminate all or any part of the MS Order at any time for its convenience, upon 72 hours written notice. If it is determined that Contractor's attempted termination of the contract for Default was invalid for any reason, such attempt shall be automatically converted to a termination for convenience, without further notice, and Supplier shall be limited to the remedy provided in this section 23. In the event of a termination of the MS Order for convenience, Contractor shall pay Supplier for the Work properly performed to the effective date of termination, together with supplier termination charges or other demobilization expenses necessarily incurred by Supplier as a direct result of the termination. If Owner has terminated the Prime Contract for convenience, Contractor's liability to Supplier shall be fully extinguished by Contractor awarding and paying to Supplier any recovery obtained from Owner on Supplier's behalf. In no event shall Supplier be entitled to recover anticipated profit or overhead on Work not performed, or any other indirect or consequential expenses or damages.
24. **TERMINATION FOR DEFAULT:** Contractor has the right to terminate the Supplier for Default under the conditions provided in section 21. In such event, Supplier shall not be entitled to receive any further payments under the MS Order until the Work under the MS Order is completely finished. At that time, if the unpaid balance of the amount to be paid under the MS Order exceeds the expenses incurred by Contractor finishing Supplier's



Work, such excess shall be paid by Contractor to Supplier, but, if such expense shall exceed such unpaid balance, then Supplier shall pay to Contractor the amount by which such expense exceeds such unpaid balance.

25. **CLAIMS:** Any Claim by Supplier must be submitted to Contractor, in writing, by the earlier of: (a) seven calendar days after Supplier is first aware or should be aware of the event(s) giving rise to the Claim; or (b) within a reasonable time (at least three business days if available) before Contractor is required to give Owner notice of the Claim. Claims shall be submitted in such form and manner as shall enable Contractor to submit them promptly to Owner in conformance with the Prime Contract. The timely and proper submission of the Claim is a condition precedent to any liability by Contractor to Supplier for same.
26. **PRIME CONTRACT FORMS:** The following special provisions shall apply if the form of the Prime Contract is a Standard Construction Document listed below:
- 26.1. If the Prime Contract is Standard Construction Document CCDC 2-1994 or CCDC 2-2008, GC 7.2 thereof shall not be applicable to this MS Order.
 - 26.2. If the Prime Contract is Standard Construction Document CCDC 3-1998, Articles A4 through A7, and GCs 3.1, 3.3 through 3.5, CG 3.13 and GC 4 thereof shall not be applicable to this MS Order.
 - 26.3. If the Prime Contract is Standard Construction Document CCDC 3-1986, Articles A3 and A9 through A11 and GC 25 and 31 thereof shall not be applicable to this MS Order.
 - 26.4. If the Prime Contract is Standard Construction Document CCA 5 – 1988, Articles A1-A15, Appendix A thereof and GC 2, 3, 4, 7, 8, 10 and 15 thereof shall not be applicable to this MS Order.
 - 26.5. If the Prime Contract is Standard Construction Management Contract for Services CCDC 5A-2010, Articles A1 – A9, Schedules A1, A2, B1, B2 and C thereof, and Part 2, 3, 4, GC 6.2, Part 7, and GC 9.2.3 9.2.5 and GC 9.2.10 shall not be applicable to this MS Order.
 - 26.6. If the Prime Contract is Standard Construction Document CCDC 5B-2010, with a cost-plus option selected in Article A8, then Articles A5, A6, then A8 (other than as necessary to determine that the cost-plus option was selected) and A9, Schedules A1 and A2, and GCs 1.5, 3.1, 3.3 – 3.6, GC 4 and GC 7.2 shall not be applicable to this MS Order.
 - 26.7. If the Prime Contract is Standard Construction Document CCDC 5B-2010, with a stipulated price option selected in Article A8, then Article A8 (other than as necessary to determine that the fixed option was selected) and GC 7.2 shall not be applicable to this MS Order.
27. **DISPUTE RESOLUTION:** If Contractor and Supplier disagree in relation to matters of payment, allowance or loss referred to in this MS Order, then the matter shall be referred to a Board of Arbitration to consist of one person selected by Contractor and one person selected by the Supplier, these two to select a third. The rules governing the arbitration, except those with respect to costs, shall be those expressed in Standard Construction Document CCDC 40-1994 (or any successor document), with this MS Order being the “Contract” referred to therein. The decision of any two of this board shall be final and binding on both parties hereto. Each party shall pay one half of the expense of such Board of Arbitration, but otherwise shall be responsible for its own legal costs.
28. **NOTICES:** Notices shall be provided in writing, through mail, courier, fax, e-mail, or hand delivery, to an officer or management employee of the party being notified. Notices to Contractor shall be confirmed with a copy sent, return receipt, to the address listed for Contractor on the MS Order. Either party may change its address by providing written notice of the new address.
29. **GENERAL PROVISIONS:**
- 29.1. This MS Order constitutes the entire understanding of the parties and supersedes any prior proposal or agreement, and shall not be modified, amended or revoked except in writing executed by an authorized representative of Contractor. In entering into this MS Order, Supplier has not relied on any promises or representations unless stated herein. Should any portion of this MS Order be held invalid or unenforceable, in whole or in part, the remainder of the MS Order shall be valid and enforceable to the fullest extent permitted by law. The failure of Contractor to enforce at any time any of the provisions of this MS Order shall in no way be construed to be a waiver, nor in any way to affect the validity of this MS Order or any part thereof or the right of Contractor to enforce each and every provision.
 - 29.2. Except where expressly stated, there are no third-party beneficiaries to this MS Order.
 - 29.3. This MS Order shall be governed by the laws of Ontario and the federal I federal laws of Canada applicable therein.