

BETWEEN:      VENDOR.      (the "Supply Contractor")

AND:              Regional District of Nanaimo              (the "Corporation")

THIS AGREEMENT WITNESSES that the Supply Contractor and the Corporation agree as follows:

1.      The Supply Contractor shall provide all labour, Supply Contractor's Plant and Equipment and materials required to supply the Goods within the required time, as required by the Contract Documents further defined in the Standard Form Supply Contract General Conditions.
2.      The Corporation shall pay the Supply Contractor the Contract Price, as required by the Contract Documents.
3.      The Contract Price shall be the sum in Canadian Dollars of the following:
  - (a)      \$ \_\_\_\_\_ (Excl. Taxes), and
  - (b)      any payments made on account of changes, as may be required by the Contract Documents.

The Contract Price shall be the entire compensation owing to the Supply Contractor by the Corporation for the Goods and shall cover and include necessary costs including but not limited to all supervision, labour, materials, Supply Contractor's Plant and Equipment, overhead, profit, financing costs, duty, shipping charges, fabrication and finishing, conveyance and delivery, packing, crating, freight, cartage, drafting charges, tariffs, warranty and all other costs and expenses whatsoever incurred in supplying the Goods (Incoterms DDP applies).

Except for the amounts which the RDN in good faith is disputing and except for any set off which the RDN may claim and except for invoices (or portions of invoices) in respect of which the RDN has requested and not received supporting evidence, the RDN shall pay invoices submitted to it for the Goods, within 30 days' receipt thereof.

4.      Payment terms for the Goods shall be as follows:
  - (a)      10% of the Contract Price upon approval of the engineered drawing package;
  - (b)      40% of the Contract Price upon receipt of all materials required for fabrication/assembly;
  - (c)      50% of the Contract Price upon delivery and acceptance to the Delivery Point.

5. The Supply Contractor shall supply all Goods to the Delivery Point on the date requested and confirmed by the Corporation, with one week notice. For scheduling purposes, this date will be \_\_\_\_ weeks (*TBC depending on quoted delivery time*) from the date of the Supply Contract, plus or minus two weeks.
6. The Contract Documents shall form a part of this Agreement as though recited in full.
7. The Contract supersedes all prior negotiations, representations, or agreements, whether written or oral and is the entire agreement between the Corporation and the Supply Contractor with respect to the subject matter of this Agreement.
8. The Supply Contractor shall not assign the Contract, or any portion of the Contract, or any payments due or to become due under the Contract, without the express written consent of the Corporation which will not be unreasonably withheld.
9. No action or failure to act by the Corporation or an authorized representative of the Corporation shall constitute a waiver of any right or duty afforded any of them under the Contract or constitute an approval or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
10. This Agreement shall ensure to the benefit of and be binding upon the Corporation and the Supply Contractor and their respective heirs, executors, legal representatives, successors and permitted assigns. In the event of more than one person being the Supply Contractor, the grants, covenants, provisos and claims, rights, powers, privileges, and liabilities shall be construed and held to be several as well as joint.
11. Time shall be of the essence of this Agreement.
12. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Delivery by electronic transmission in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as follows:

REGIONAL DISTRICT OF NANAIMO

by its authorized signatory on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the date of Agreement):

SIGNED on behalf of the Corporation by:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

VENDOR

by its authorized signatory on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_:

SIGNED on behalf of the Supply Contractor by:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**GENERAL****1.1 DEFINITIONS**

The following words and terms, unless the context otherwise requires, in all Contract Documents, shall have the meanings set out below. Words importing the male gender include the female gender and either includes the neuter and vice versa and words importing the singular number includes the plural number and vice versa.

"Addenda" means any addition, deletion, clarification, or corrections issued with respect to the Original Solicitation Documents prior to execution of the Agreement;

"Agreement" means the Standard Form Supply Contract Form of Agreement executed by the Corporation and the Supply Contractor;

"Contract" means the contractual relationship formed between the Corporation and the Supply Contractor by each party's execution of the Agreement;

"Contract Documents" means the following documents:

- (1) the executed Agreement;
- (2) these General Conditions;
- (3) any Addenda;
- (4) the Original Solicitation Documents;
- (5) the Proposal; and
- (6) other relevant documents such as but not limited to letters of clarification and any reports, standards or the like included by reference in the Original Solicitation Documents or Addenda;

"Contract Price" has the meaning set out in the Agreement;

"Corporation" means the Regional District of Nanaimo;

"Day" means calendar day;

"Delivery Date" means the date set out in the Agreement as the latest date by which the Supply Contractor is required to supply Goods to the Delivery Point;

"Delivery Point" means the **<Enter location and street address>** as per Incoterms 2020 Delivery Duty Paid (DDP) with title transferring at the named place;

“Goods” means moveable property that the Supply Contractor is required to deliver to the Corporation pursuant to the Contract Documents and includes materials, products, equipment, and other physical objects of every kind and description whether in solid, liquid, gaseous, or electronic form;

“Inspector” means a person appointed by the Corporation having the authority set out in Clause 2.1.2.1 of these General Conditions.

“Original Solicitation Documents” means the request for proposals, invitation to tender or comparable form of solicitation posted by the Corporation which resulted in the Agreement being executed;

“Proposal” means the Supply Contractor’s written submission to the Corporation in response to the Original Solicitation Documents;

“Specifications” means that part of the Contract Documents consisting of general requirements and written descriptions of the technical features of materials, equipment, construction systems, standards, and workmanship;

“Supply Contractor” means the person identified as such in the Agreement.; and

“Warranty Period” has the meaning set forth in Clause 3.4.1 of these General Conditions.

## **CONTRACT REQUIREMENTS**

### **1.1.1 Successors' Obligations**

The Contract shall enure to the benefit of and is binding upon not only the parties hereto but also their respective successors and permitted assigns.

### **1.1.2 Assignment of Contract**

The Supply Contractor shall not assign the Contract in whole or in part, nor any payments due or to become due under the Contract without the prior written consent of the Corporation. No assignment of the Contract shall relieve the Supply Contractor from any obligation under the Contract or impose any liability on the Corporation. Involuntary assignment of the Contract because of bankruptcy, assignment of the Contract for the benefit of creditors or appointment of a receiver, or insolvency shall be deemed default under the Contract entitling the Corporation to terminate the Contract as hereinafter provided.

### 1.1.3 Waiver of Rights

Except as herein provided, no act or failure to act by the Supply Contractor or the Corporation at any time with respect to the exercise of any right or remedies conferred upon them under this Contract shall be deemed to be a waiver on the part of the Supply Contractor or the Corporation of any of their rights or remedies. No waiver shall be effective except in writing. No waiver of one right or remedy shall act as a waiver of any other right or remedy or as a subsequent waiver of the same right or remedy.

### 1.1.4 Amendment of Contract Documents

The Contract Documents shall not be amended except as specifically agreed in writing signed by both the Corporation and the Supply Contractor.

## 1.2 LAWS, REGULATIONS AND PERMITS

1.2.1 The Contract shall be construed under and according to the laws of the Province of British Columbia and subject to an agreement to refer a dispute to mediation as per Clause 2.3 of these General Conditions. The parties agree to irrevocably attorn to the jurisdiction of the Courts of the Province of British Columbia.

1.2.2 The Supply Contractor shall give all notices required by law and shall comply with all laws, acts, ordinances, rules, and regulations relating to or affecting the Goods. If any permits, authorizations, approvals or licences from any government or governmental agencies are necessary or desirable for the prosecution of the work they shall be obtained by the Supply Contractor at its expense, provided that the Supply Contractor shall not make application for any such permit, authorization, approval, or licence without first obtaining the written consent of the Corporation.

### 1.2.3 Patents, Royalties and Copyright

The Supply Contractor shall pay all fees, royalties or claims for any patented invention, article, process, or method that may be used upon or in a manner connected with the Goods or with the use of the Goods by the Corporation. Before final payment is made on the account of this Contract, the Supply Contractor shall, if requested by the Corporation, furnish acceptable proof of a proper release from all such fees or claims.

- 1.2.4 All references to money in the Contract Documents shall be interpreted as meaning lawful currency of Canada.

## **PART 2 CORPORATION-SUPPLY CONTRACTOR RELATIONS**

### **2.1 AUTHORITY OF CORPORATION**

#### **2.1.1 Acceptability of Goods**

The Corporation shall make the final determination of the acceptability of the Goods.

#### **2.1.2 Appointment and Authority of Inspector**

2.1.2.1 The Corporation may appoint an Inspector at any time before or after award of the Contract. If the Corporation appoints an Inspector, the Inspector shall represent the Corporation at the Delivery Point. The Inspector shall have the authority set out in the Contract Documents and such other authority as may be delegated in writing by the Corporation including but not limited to the following:

- (a) to make determinations regarding the Goods; and
- (b) to make determinations regarding the Supply Contractor's performance of its obligations under the Contract.

### **2.2 RESPONSIBILITIES OF THE SUPPLY CONTRACTOR**

#### **2.2.1 Attention to the Goods**

The Supply Contractor shall diligently attend to the supply of the Goods so that they are delivered faithfully, expeditiously and in accordance with the Contract Documents.

#### **2.2.2 Authorized Representative**

The Supply Contractor shall advise the Corporation in writing of the name of the Supply Contractor's authorized representative.

#### **2.2.3 Off-loading of Goods**

The Supply Contractor shall provide all necessary instructions to ensure satisfactory off-loading of the Goods.

#### 2.2.4 Shipment

The Supply Contractor shall properly package all Goods for safe shipment to the Delivery Point and a notice of shipment shall be sent by the Supply Contractor to the Corporation in advance of final delivery. The notice of shipment shall state the Delivery Date, the applicable purchase order number, description of the Goods, the Supply Contractor's name and the carrier by which the shipment is being made. Clear title to the Goods, free of all charges, liens and encumbrances shall pass to the Corporation when the Goods are received, inspected, deficiencies rectified, and accepted by the Corporation at the Delivery Point. Until such time as title of the Goods is accepted by the Corporation, all risk related to the Goods shall remain with the Supply Contractor. Except for the transfer of risk, the passing of title to the Corporation shall not affect any of the Supply Contractor's obligations.

#### 2.2.5 Errors and Omissions

If the Supply Contractor discovers that there are any errors or omissions in the Contract Documents, it shall immediately notify the Corporation in writing. The Corporation will review the matter and if it concludes that there is an error or omission, it shall determine the corrective actions to be taken and will advise the Supply Contractor accordingly. If the corrective work associated with an error or omission increases or decreases the amount of work called for in the Contract, the Corporation shall issue an appropriate change order. After discovery by the Supply Contractor of an error or omission in the Contract Documents any work thereafter performed by the Supply Contractor shall be done at its risk unless otherwise agreed by the Corporation.

### 2.3 DISPUTE RESOLUTION

#### 2.3.1 Disputes

A dispute occurs between the Corporation and the Supply Contractor where there is a difference between the parties as to the interpretation, application or administration of the Contract.

#### 2.3.2 Dispute/Claim Resolution

- (1) Any matters in dispute under this Contract which is not first resolved between the parties acting reasonably may, with the concurrence of both the Corporation and the Supply Contractor be submitted to mediation to a single mediator appointed jointly by them.



- (2) No one shall be nominated to act as a mediator who is in any way financially interested in the business affairs of either the Corporation or the Supply Contractor.
- (3) If the parties cannot agree on the choice of a mediator, each party shall select a nominee and the nominees shall jointly appoint a mediator.
- (4) The mediation shall take place in Nanaimo, British Columbia, unless agreed otherwise. Parties will be responsible for their own costs.

### **PART 3 MATERIAL, EQUIPMENT AND WORKMANSHIP**

#### **3.1 GENERAL**

The Goods shall be of the quality specified in the Contract Documents or better. All work related to the Contract Documents shall be done with equipment and workmanship of the best quality and description and by employment of properly skilled workers and in strict conformity with and as required by the Contract Documents. Materials and equipment shall be the product of suppliers or manufacturers of established good reputation, regularly engaged in the supply or manufacture of such materials or equipment.

### 3.2 DEMONSTRATION OF COMPLIANCE WITH CONTRACT REQUIREMENTS

#### 3.2.1 Inspection

Inspections and testing shall not in any way relieve the Supply Contractor from any of its obligations or responsibilities under the Contract Documents, and shall not in any way prejudice or constitute a waiver of any rights or remedies of the Corporation or any guarantees, warranties or covenants in favour of the Corporation, and the Corporation shall be entitled to rely on the expertise and obligations of the Supply Contractor and its subcontractors and their consultants and engineers to the same extent as if such inspections and testing by the Corporation or any Inspector or agent had not taken place.

If the Contract Documents, laws, ordinances, or any public regulatory authority requires parts of the Goods to be specially inspected, tested or approved, the Supply Contractor agrees that the Goods shall comply.

The Goods are subject to inspection and acceptance by the Corporation within a reasonable time after receipt. The Corporation will notify the Supply Contractor in writing of the rejection of any of the Goods which are not in accordance with the Contract Documents, and the Goods will be held subject to disposition by the Supply Contractor at the Supply Contractor's risk and subject to all charges accruing because of such rejection.

Notwithstanding any prior payment therefor, all Goods are subject to inspection and testing by the Corporation at the Delivery Point.

#### 3.2.2 Certification

The equipment must be certified by the Supply Contractor in accordance with the local authorities with jurisdiction. Where compliance of Goods with the Contract Documents is not readily determinable through inspection and tests, the Corporation may require that the Supply Contractor provide, at the Supply Contractor's expense, properly authenticated documents, certificates, or other satisfactory proof of compliance. These documents, certificates or other proof shall include performance characteristics, materials of construction and the physical or chemical characteristics of materials.

### 3.2.3 Electrical

Electrical products that plug into an electrical outlet must meet Canadian national safety standards and be certified by an accredited certification body such as CSA, cUL or cETL.

## 3.3 DEFECTIVE OR IMPROPER GOODS

### 3.3.1 Correction of Defective Goods

If upon inspection, testing or otherwise the Goods or any portion thereof are found to be non-conforming, unsatisfactory, defective, or inferior quality or workmanship, or fail to meet any guarantee of operating or other Specifications contained herein, or any other requirements of the Contract Documents, then without prejudice to any other rights or remedies, the Corporation may give notice of its dissatisfaction to the Supply Contractor in writing and the Supply Contractor shall immediately upon receipt of such notice do all things that are required to satisfy the Corporation. If the Supply Contractor refuses or neglects to do all things that are required to satisfy the Corporation within one week from the receipt of notice, the Corporation may employ some other person to do so and all expenses and costs consequent thereon or incidental thereto shall be charged to the Supply Contractor. The employment of such other person or the doing of the said work by the Corporation itself shall not affect the Supply Contractor's duties and liabilities hereunder or relieve the Supply Contractor from the performance and fulfilment of any or all of the Supply Contractor's warranties, covenants, undertakings, obligations and duties under the Contract.

3.3.2 If upon inspection, testing or otherwise the Goods or any portion thereof are found to be non-conforming, unsatisfactory, defective, or inferior quality or workmanship, or fail to meet any guarantee of operating or other Specifications contained herein, or any other requirements of the Contract Documents, then without prejudice to any other rights or remedies, the Corporation may return the Goods or any part thereof to the Supply Contractor at the Supply Contractor's sole cost and all amounts theretofore paid by the Corporation to the Supply Contractor on account of the Contract Price of such returned Goods, shall be repaid to the Corporation by the Supply Contractor. The Supply Contractor shall advise the Corporation in writing, where to return the Goods, and failing such advice from the Supply Contractor, the Supply Contractor agrees to accept the returned Goods at the Supply Contractor's registered office. Neither the inspection nor failure to make inspection, nor acceptance of Goods shall release the Supply Contractor from any warranties or other provisions of this Contract nor impair the

Corporation's right to reject non-conforming Goods. The Corporation reserves the right even after it has paid for and accepted Goods to make a claim against the Supply Contractor on account of any Goods which do not prove to be satisfactory or are defective irrespective of the Corporation's failure to notify the Supply Contractor of a rejection of non-conforming Goods or revocation of acceptance thereof, or to specify with particularity any defect in non-conforming Goods after rejection or acceptance thereof.

### 3.3.3 Retention of Defective Goods

If in the opinion of the Corporation any portion of the Goods supplied under the Contract is defective or not in accordance with the Contract Documents and if the defect or imperfection in the same is not of sufficient magnitude or importance to make the Goods dangerous or undesirable, or if the removal of such Goods is impracticable, or will create conditions which are dangerous or undesirable, the Corporation shall have the right and authority to retain such Goods instead of requiring the defective or imperfect Goods to be removed and reconstructed, but the Corporation shall be entitled to make such deductions from the payments due or to become due to the Supply Contractor as are just and reasonable.

### 3.3.4 No Implied Approval

The fact that the Corporation has not disapproved of or rejected any part of the Goods shall not be deemed or be construed to be an acceptance of any such part of the Goods or any such materials.

## 3.4 WARRANTY AND GUARANTEE

3.4.1 The Supply Contractor agrees that the warranty provisions outlined in the Proposal are to the benefit of the Corporation and that the Goods are free from all defects arising from faulty construction, manufacturing, materials, equipment or workmanship for the period which is twelve (12) months ("Warranty Period") commencing on the earliest of the following dates: (i) the date Corporation accepts clear title to the Goods, or (ii) the date that is six (6) months from the delivery date of the Goods at the Delivery Point.

3.4.2 During the Warranty Period, the Supply Contractor, upon the receipt of notice in writing from the Corporation, shall promptly make all repairs arising out of defects in the Goods. The Corporation shall be entitled to make such repairs, if 10 Days after the giving of such notice to the Supply Contractor, the Supply Contractor has failed to make or undertake with due diligence the repairs. In case of an emergency, where, in the opinion of the Corporation, delay could cause serious loss or damage, or inconvenience to the public, repairs may be

made without notice being sent to the Supply Contractor, only after all reasonable attempts have been made to contact the Supply Contractor. The costs of any repair made by the Corporation in connection with this clause shall be charged to the Supply Contractor and the Supply Contractor shall reimburse the Corporation for such costs. All covenants and agreements shall continue to be binding on the Supply Contractor until they have been fulfilled.

- 3.4.3 The Corporation is relying on Supply Contractor's skill and judgment in selecting and providing the proper Goods and any applicable services for the Corporation's particular use. The Supply Contractor warrants to the Corporation and its successors in interest that the Goods and any services covered hereby will correspond with the description of the same in the Contract Documents, will conform to all applicable Specifications, will be of the best quality and, unless otherwise specified, will be fit for the purpose for which they are to be used and will conform in all aspects, both in the manufacture and use thereof, with all applicable safety orders or regulations of the Province of British Columbia. The Supply Contractor also warrants that the Goods are free and clear of all liens and encumbrances whatsoever and that the Supply Contractor has a good and marketable title to the same.
- 3.4.4 The Supply Contractor warrants and guarantees that the Goods are free from all defects arising at any time from faulty design in any part of the Goods.
- 3.4.5 The Supply Contractor represents that it has read the Contract Documents and, particularly, the Specifications and has satisfied itself that the Goods can be supplied in accordance with the Contract Documents, free of defects and fit for the purpose for which they are to be used.
- 3.4.6 The warranty should be made out to the Regional District of Nanaimo, 6300 Hammond Bay Road, Nanaimo, B.C. V9T 6N2

#### **PART 4 INDEMNIFICATION AND INSURANCE**

##### **4.1 INDEMNIFICATION AND RELEASE**

- 4.1.1 The Supply Contractor shall save harmless and indemnify the Corporation and its directors, officers, servants, employees and agents (the "Indemnified Parties") from and against all actions, claims, demands, proceedings, suits, losses, damages, costs and expenses of whatsoever kind or nature (including but not limiting the generality of the foregoing, in respect of death, injury, loss or damage to any person or property) arising in any way out of or connected with negligent acts, omission, willful misconduct or breach of this Contract by the Supply Contractor, except to the proportionate extent that such actions, claims, demands, proceedings, suits, losses, damages, costs and expenses were caused by the Indemnified Parties or any of them.
- 4.1.2 Unless otherwise specified in the Contract, the Supply Contractor shall save harmless and indemnify the Indemnified Parties from and against all actions, claims, demands, proceedings, suits, losses, damages, costs and expenses of whatsoever kind or nature arising in any way from liability of any nature or kind for or on account of any copyrighted or uncopyrighted composition, secret or other process, patented or unpatented invention, articles or appliances manufactured, supplied or used in the Goods, and/or used or to be used by the Corporation before or after supply of the Goods as a result of work performed by the Supply Contractor, and if the Supply Contractor shall fail to save harmless and indemnify in manner aforesaid, any money collected from the Indemnified Parties shall be charged to the Supply Contractor.
- 4.1.3 The Supply Contractor shall release and discharge the Corporation and its directors, officers, servants, employees and agents (the "Released Parties") from and against all actions, claims, demands, proceedings, suits, losses, damages, costs and expenses of whatsoever kind or nature (including but not limiting the generality of the foregoing, in respect of death, injury, loss or damage to any person or property) which the Supply Contractor or its servants or employees might have in any manner arising in any way out of or connected negligent acts, omission, willful misconduct or breach of this Contract by the Supply Contractor except to the proportionate extent that such actions, claims, demands, proceedings, suits, losses, damages, costs and expenses were caused by the Released Parties or any of them.
- 4.1.4 The indemnity provided in this clause by the Supply Contractor to the Indemnified Parties shall not in any way be limited or restricted by any insurance or by limitations on the amount or type of damages, compensation or benefits payable under the Workers' Compensation Act or any other similar statute.

## 4.2 INSURANCE

#### 4.2.1 General

The Supply Contractor and subcontractors shall provide at their own cost any insurance which they are required by law to provide or which they consider necessary to protect their own interests.

#### 4.3 PATENT, TRADEMARK OR COPYRIGHT

4.3.1 The Supply Contractor represents that it has fully investigated all Specifications, including any furnished by the Corporation, in connection with the Goods and based on such investigation and its experience and superior knowledge with respect to such Goods has determined that the production and supply thereof will not infringe any patent, trademark or copyright.

### **PART 5 SHIPMENT OF GOODS/DAMAGE TO GOODS**

#### 5.1 SHIPMENT OF GOODS

##### 5.1.1 Delivery of Goods

The Supply Contractor must deliver the Goods to the Delivery Point DDP (Incoterms 2020). Delivery of the Goods to a carrier for transmission to the Delivery Point does not constitute delivery of the Goods to the Corporation. Any such carrier is deemed to be the Supply Contractor's agent and not the Corporation's agent.

##### 5.1.2 Delivery Costs

The Supply Contractor is responsible for all costs and expenses whatsoever in relation to the supply and delivery of the Goods to the Delivery Point, including without limitations, all shipping, carrier, transportation, freight, insurance, storage, handling, and off-loading costs, as well as any customs or excise charges or duties.

##### 5.1.3 Supply Contractor to Bear Risk

The Supply Contractor shall bear all risks and shall assume all responsibility for the Goods, including, without limitation, any loss or damage to the Goods from any cause whatsoever, up to acceptance of the Goods by the Corporation.

##### 5.1.4 Loss or Damage

If loss or damage to the Goods occurs for which the Supply Contractor is responsible, the Supply Contractor shall immediately effect repairs or replace any property as necessary to make good any such loss or damage. If the Supply Contractor refuses or neglects to do so, the Corporation may make good any such loss or damage, either by itself or by employing some other person, and the expense of doing so shall be charged to the Supply Contractor. If any repair or replacement of property is performed on the Goods because of loss or damage to the Goods for which the Supply Contractor is responsible the Supply Contractor represents and warrants that the warranty provided shall not be affected or changed to any manner or respect whatsoever.

#### 5.1.5 Acceptance of Delivery of Goods by Corporation

Notwithstanding any other provision in the Contract Documents, the Corporation is not deemed to have accepted the Goods until the Goods have been delivered to and off-loaded at the Delivery Point and the Corporation has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the Contract. The Corporation's acceptance or deemed acceptance of the Goods shall not prejudice any rights or remedies the Corporation may have hereunder relating to Goods that are found to be non-conforming, unsatisfactory, defective, of inferior quality or workmanship, or which fail to meet any Specifications or requirements of the Contract Documents.

## PART 6 PROGRESS AND COMPLETION

### 6.1 CONTRACT TIME

#### 6.1.1 Prosecution of the Goods

Time shall be strictly of the essence. The Supply Contractor shall supply the Goods in accordance with the Contract Documents. The Supply Contractor acknowledges that the schedule for supply of the Goods as set out in the Contract Documents is reasonable.

#### 6.1.2 Schedule

The Supply Contractor shall provide a schedule and periodic updates co-ordinating the supply of Goods within the prescribed time. Contract time extensions, if any, shall be incorporated into updated schedules. The failure of the Supply Contractor to comply with this requirement may entitle the



Corporation to terminate the Supply Contractor's right to continue with the supply of Goods or to delay progress payments.

## 6.2 TERMINATION

6.2.1 The Corporation may terminate the Contract if the Supply Contractor at any time becomes bankrupt, makes an assignment of his property for the benefit of his creditors, or if a receiver or liquidator should be appointed. Such termination shall be effective upon the Corporation giving notice thereof.

6.2.2 If at any time the Corporation reasonably forms the opinion that the Supply Contractor is in default under this Contract because the Supply Contractor:

- (1) has breached a fundamental term of the Contract or is in substantial breach of the terms of the Contract;
- (2) has failed to supply the Goods, within the time specified in the Contract Documents or extensions mutually agreed between the parties in writing;
- (3) has failed or is failing to furnish or to maintain a detailed schedule;
- (4) has become in any way unable to supply the Goods or any part thereof; or
- (5) has repeatedly failed to make prompt payments to subcontractors, suppliers or others for labour, materials, or equipment;

then the Corporation may give notice in writing to the Supply Contractor of such opinion and require that such default or defaults be remedied forthwith. If, within five Days of such notice, such default or defaults are not remedied to the satisfaction of the Corporation or the Supply Contractor has not taken reasonable measures to commence remedying the default(s), the Corporation may terminate the Contract. Such termination shall be effective immediately.

6.2.3 The Corporation may terminate the Contract, without any cost or penalty or consequence whatsoever, if it concludes, acting reasonably on the information available to it, that the Supply Contractor is in material non-compliance with, or has been convicted of a material offence or violation of, health, safety, labour, or environmental laws.

## 6.3 NO CLAIM

Except as herein before provided, the Supply Contractor shall have no claim against the Corporation for any reason whatsoever by reason of the termination of the Contract.

**PART 7 PAYMENT****7.1 PAYMENTS TO SUPPLY CONTRACTOR**

7.1.1 Payments to the Supply Contractor will be made as per the Agreement and set forth otherwise in the Contract Documents.

7.1.2 Notwithstanding Clause 7.1.1 the Corporation may withhold from payment:

- (1) Such reasonable amount as the Corporation determines appropriate with respect to any part of the Goods not in compliance with the Contract Documents;
- (2) Statutory holdback if the supply of Goods is of a nature that creates an obligation on the Corporation to retain a holdback under the Builders Lien Act;
- (3) The amount of any bona fide builder's lien claim asserted against the Corporation or which the Corporation acting reasonably anticipates will be made against the Corporation; or
- (4) Any deduction or set-off the Corporation may otherwise be entitled to under the Contract.

7.1.3 Payments may be withheld until the relevant operating manuals and all operating and maintenance materials together with all warranties have been delivered to the Corporation.

7.1.4 In addition to any other remedy the Corporation may have in the Contract or law, the Corporation may refuse to make payment because of subsequently discovered evidence or test results, and shall be compensated for any payment previously made to the Supply Contractor to such extent as may be necessary to protect the Corporation from loss because of:

- (1) Defective or damaged Goods;
- (2) A deductive change order;
- (3) Failure of the Supply Contractor to supply the Goods in accordance with the Contract Documents, including failure to maintain the supply of the Goods in accordance with the schedule; or

- (4) Disregard by the Supply Contractor of the authority of the laws of any public body having jurisdiction.

The Corporation may refuse to make payment of the full amount because of claims made against the Corporation on account of the Supply Contractor's performance or supply of Goods. In such case, the Corporation shall give the Supply Contractor prompt written notice stating the reasons for each action.

- 7.1.5 Prior to payment to the Supply Contractor, if requested by the Corporation, the Supply Contractor shall deliver to the Corporation a statutory declaration in form satisfactory to the Corporation declaring that all subcontractors, labour and accounts for material and equipment have been paid and that no persons, firms or corporations have any lien against the lands comprising the Delivery Point or the work together with such other documentation as the Corporation, acting reasonably, determines is necessary or desirable.