

Ontario Aboriginal Housing Services Standard Terms and Conditions for Purchase Orders

Listed below are the Standard Terms and Conditions which apply to the purchase of all Products and/or Work by Ontario Renovates Home Repair Program (Ontario Aboriginal Housing Support Services Corporation) from a Vendor and is incorporated into all Ontario Renovates Home Repair Purchase Orders, as such terms are defined herein.

PART A – INTERPRETATION

1. **Definitions.** In this Agreement, the following terms shall have the following meanings:

Act: Act means the Construction Act (Ontario), R.S.O. 1990 and all rules and regulations thereto, as amended from time to time

Agreement: means the Purchase Order, together with these Standard Terms and Conditions, as same may be updated from time to time and available online at www.ontarioaboriginalhousing.ca/vendor-portal, and all documents specifically referenced therein.

Agreement Price: means the Price for the Work as set out on the Purchase Order.

Applicable Laws: means all current constitutions, treaties, laws, statutes, codes, ordinances, orders, decrees, rules, regulations, and by-laws, whether domestic, foreign or international of any governmental authority, and the common law, binding on or affecting any person, property or matter referred to in the context in which such words are used.

Homeowner: means the individual(s) whose property will be improved by the Work being undertaken.

Product: means goods, equipment, materials, products, and/or services (whether or not ancillary to the sale of a Product) described in a Purchase Order.

Proper Invoice: means an invoice that meets all requirements set out in Section 6(a).

Project: means the total construction contemplated at the site, of which the Work may be the whole or a part.

Purchase Order: shall mean a document, electronic or hard copy, offered by the Purchaser to the Vendor, in the form of a purchase order or similar document, which order refers to these Standard Terms and Conditions, and which document orders the Product and/or Work.

Purchaser: shall mean Ontario Aboriginal Housing Support Services Corporation operating as Ontario Aboriginal Housing Services (“OAHS”) and any successors or assigns.

Revised Purchase Order: shall mean the reissued Purchase Order, agreed to by the parties, which incorporates any agreed upon revisions to the Work, adjustment to the Agreement Price, if any, and/or Work Schedule, if any.

Site: shall mean the location specified in the Purchase Order where the Product and/or Work is to be supplied.

Subcontractor: means any person or entity having a direct contract with the Vendor to provide Products or perform part of the Work at the Site.

Vendor: shall mean the individual, partnership, corporation or other entity contracting to provide the Product and/or Work described in the Purchase Order and to whom the Purchase Order is issued to by the Purchaser and it shall also include any affiliate, Subcontractor or permitted assign of the Vendor.

Work: shall mean the total provision of Products and related services, including labour, as required by the Purchase

Order.

PART B – AGREEMENT AND SCOPE OF WORK

2. **Acceptance.**

- (a) The Agreement is formed when Vendor accepts the Purchase Order, inclusive of the Standard Terms and Conditions. The issuance of a Purchase Order does not constitute an acceptance by Purchaser of any offer or proposal by Vendor, whether in the form of a quotation, acknowledgement, invoice or otherwise. In the event the Vendor's quotation or proposal is held to be an offer, that offer is expressly rejected and is replaced in its entirety by the offer/counteroffer made by the herein Purchase Order and Standard Terms and Conditions.
- (b) Where the Vendor does not accept the Purchase Order or the Standard Terms and Conditions, the Vendor shall deliver a written notice to the Purchaser rejecting the Purchase Order and/or the Standard Terms of Conditions within one (1) business day of receipt of the Purchase Order, failing which the Vendor shall be deemed to have accepted the Purchase Order and Standard Terms and Conditions. Acceptance of the Purchase Order is expressly limited to the terms and conditions contained in the Agreement.
- (c) Notwithstanding Purchaser's acceptance of or payment for the shipment of Products or any similar act by the Purchaser, no purported acceptance of a Purchase Order by the Vendor on terms and conditions which modify, supersede, supplement or otherwise alter the terms and conditions of this Agreement shall be binding upon Purchaser and such terms and conditions shall be deemed rejected and replaced by the terms and conditions of this Agreement, unless Vendor's proffered terms or conditions are accepted in advance and in writing by the Purchaser.

3. **Agreement Documents.** The Vendor shall review the Purchase Order and any other documents which are part of the Agreement and promptly report to the Purchaser any error, inconsistency or omission that the Vendor may discover. If the Vendor does discover an error, inconsistency or omission in the Agreement Documents, it shall not proceed with the affected Work, or the ordering of any Product, until it has received corrected or missing information from the Purchaser.

4. **Work.** The Vendor shall perform all Work described or referenced in the Purchase Order or elsewhere in the Agreement. Unless stated in the Agreement, the Vendor shall provide and pay for all Products, labour and materials required to perform all the Work, including all permits (including building permits), licenses, inspections and certificates that are required to complete the Work in accordance with Applicable Laws. At the request of the Purchaser, the Vendor shall promptly provide the Purchaser with a copy of any such permit, license, regulatory approval or certificates.

5. **Revised Purchase Order Required For Any Changes to the Work.** The Purchaser, without invalidating this Agreement, may make changes by altering, adding to, or deducting from the Work. The schedule or timing specified for the performance of the Work ("**Work Schedule**") may be adjusted accordingly. The Vendor shall not perform extra work nor make any changes to the Product or Work specified in the Purchase Order without first obtaining a Revised Purchase Order signed by the Purchaser. When the Purchaser and the Vendor agree to the scope of the change in the Work and the method of valuing the change (e.g. lump sum, net actual costs and savings), the Purchaser shall issue a Revised Purchase Order. A Revised Purchase Order signed by the Purchaser shall be a condition precedent to any claims by the Vendor for an adjustment in the Agreement Price or Work Schedule on account of a change in the Work.

PART C – PAYMENT TERMS

6. **Proper Invoice and Payment.**

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- (a) In this Agreement, a Proper Invoice shall mean an application for payment by the Vendor that:
- (i) is given to the Purchaser in Adobe Acrobat .pdf format and by email to Purchaser's representative listed on the Purchas Order, unless the Purchaser has agreed to another method for delivery; and
 - (ii) contain all of the following information
 - (A) the Vendor's name and address and HST registration number;
 - (B) the date of the invoice and the period during which the Work was supplied;
 - (C) the name of the Homeowner and address of the property where the Work was performed;
 - (D) an itemized description, including quantities where appropriate, of the Work that was supplied;
 - (E) the amount payable for the Work that was supplied;
 - (F) the name, title, telephone number and mailing address of the person to whom payment is to be sent; and
 - (G) a current WSIB clearance certificate.
- (b) **Holdbacks:** All contracts with Contract Prices exceeding \$10,000 shall be subject to a combined statutory holdback and deficiency holdback collectively equal to 10% of the Contract Price ("Combined Holdback"). The Combined Holdback shall be released in accordance with the payment terms set out in Section 6(c).
- (c) Payment Terms
- (i). **For Projects with a Contract Price under \$10,000:** the Vendor shall issue a Proper Invoice for payment of 100% of the Contract Price upon the Vendor's completion of all Work in a manner that is satisfactory to the Homeowner and OAHS. The Proper Invoice shall be paid within 30 days of receipt, provided that the Purchaser's obligation to make payment shall not arise unless and until the Vendor's Proper Invoice complies with all of the requirements of a Proper Invoice set out in Section 6(a).
 - (ii). **For General Repairs with a Contract Price over \$10,000:** the Vendor shall issue a Proper Invoice for payment equal to 90% of the Contract Price (ie the Contract Price less the Combined Holdback) upon Final Inspection for all General Repairs, and such Proper Invoice shall be paid within 30 days provided that the Vendor's Proper Invoice complies with all of the requirements of a Proper Invoice set out in Section 6(a). Payment of the Combined Holdback shall be made 60 days after all deficiencies identified in the Final Inspection have been repaired to Homeowner's and OAHS' satisfaction. All Work must be completed and satisfactory to the Homeowner and OAHS prior to the release of the Combined Holdback.
 - (iii). **For Heating, Plumbing, Electrical, or Septic Replacement Projects with a Contract Price over \$10,000:** the Vendor shall issue a Proper Invoice for payment equal to 90% of the Contract Price (ie the Contract Price less the Combined Holdback) upon full completion for Heating, Plumbing, Electrical & Septic Replacements, , and such Proper Invoice shall be paid within 30 days provided that the Vendor's Proper Invoice complies with all of the requirements of a Proper Invoice set out in Section 6(a). All Work must be completed and satisfactory to the Homeowner and OAHS. Payment of the Combined Holdback shall be made 60 days after all deficiencies identified in the Final Inspection have been repaired to Homeowner's and OAHS' satisfaction.
 - (iv). **For Supply-Only Purchase Orders:** Subject to the Purchaser's right to give notice of non-payment in accordance with the Act, and subject to the holdback provisions of the Act, the Purchaser will make payment to the Vendor the sum approved by the Purchaser for the Work no later than 28 days after the date the Vendor delivers a Proper Invoice in accordance with Section 6(a); provided that the Purchaser's obligation to make payment shall not arise unless and until the Vendor's Proper Invoice complies with all of the requirements of a Proper Invoice set out in Section 6(a).

7. **Substantial Performance.** When the Vendor considers the Work to have met the requirements for Substantial Performance of the Work as defined in the Act and the Final Inspection (if any) has been performed by the Purchaser's representative, the Vendor shall submit an application to the Purchaser for the certification of Substantial Performance of the Work in accordance with the form prescribed by the Act. The Purchaser shall review the application and advise the Vendor whether the application has been accepted or give reasons as to why it has not been accepted. The application will not be considered valid until Products installed are tested and conform to the requirements of the Agreement and the Purchaser's representative deems the Work reviewed during the Final Inspection (if any) to have been satisfactory. If a certificate of Substantial Performance of the Work is issued, the Vendor shall publish the certificate in accordance with the requirements of the Act and shall provide a copy to the Purchaser immediately thereafter.
8. **Final Completion of the Agreement.** When the Vendor considers that the Work is complete, and all deficiencies have been remedied to the Purchaser's satisfaction, the Vendor shall submit an application for release of of the Combined Holdback to the Purchaser. The Purchaser shall review the same and advise the Vendor whether the application has been accepted, or give reasons as to why it has not been accepted. The application will not be considered valid until Products installed are tested and conform to the requirements specified in the Agreement, all deficiencies have been corrected, and all closing documents required by the Agreement, including without limitation, as-built drawings and warranty documents, have been received and accepted by the Purchaser.
9. **No Deemed Acceptance.** No payment by the Purchaser, nor partial or entire use or occupancy of the Work by the Purchaser, shall constitute an acceptance of any portion of the Work or Products which are not in accordance with the requirements of the Agreement.

PART D – DELIVERY OF GOODS OR PRODUCT

10. **Delivery and Title.** The Vendor shall deliver the Products specified in the Purchase Order and elsewhere in the Agreement. Title to the Products shall pass to the Purchaser upon delivery of the Products to the Site. Risk of loss for the Products shall pass to the Owner on Final Completion of the Agreement. Purchaser shall have the right to specify the carrier and/or the method of transportation to be used in transporting the Products. No packing, packaging or transportation charges shall be payable by Purchaser unless specifically permitted in the Purchase Order.
11. **Late Deliveries.** If the Vendor fails to deliver the Products within the time specified in the Purchase Order, Purchaser shall have the right to require any special method of transportation, including express or where practical air shipment, to expedite delivery of the Products and Vendor shall be solely responsible for any additional costs of the same, save and except, where such delays are the result of an event of Force Majeure as defined in Section 50. Where the Vendor's delay in delivering any Product exceeds, or is expected to exceed, five (5) weeks from the date specified in the Purchase Order, the Purchaser may, in its sole and absolute discretion and without any liability to the Vendor whatsoever, cancel the Purchase Order or any part thereof.
12. **Non-Conforming Product.** The Purchaser will notify the Vendor of any Product that is rejected as deficient, defective, or otherwise failing to conform to the Purchase Order's or Agreement's specifications ("**Non Conforming Product**"). The acceptance of all or any part of the Product shall not be deemed to be a waiver of the Purchaser's right to cancel or return all or any part of a shipment of Product on account of Non Conforming Product. Such right shall be in addition to any other rights or remedies that the Purchaser may have in contract, at law or in equity. Acceptance of any part of the Product shall not bind Purchaser to accept any or all future shipments of Product. The Vendor shall be responsible for all costs related to the correction, repair, or replacement of any Non Conforming Product, including any and all damage resulting from such repair or replacement and any and all charges incurred in relation to returning and replacing Non Conforming Product.

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13. **Delivery Documentation.** Product requiring a Material Safety Data Sheet (“**MSDS**”) as set out in the Workplace Hazardous Materials Information System shall have the MSDS sheet attached to the shipments, clearly visible, as applicable, for all deliveries.

PART D – VENDOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

14. **Vendor’s Obligations.** The Vendor shall supply the Work in accordance with the terms and conditions of the Agreement, including all Product as specified in the Purchase Order. Product and Work are to be supplied to the Site by the delivery dates set forth in the Purchase Order. The Vendor shall use qualified personnel, equipment and facilities that meet industry standards and Applicable Laws in the provision of the Product and Work. The Vendor shall comply with all Applicable Laws, comply with all permits, by-laws, or ordinances governing the Work, and adhere to the good industry standards and practices of the profession, industry or trade involved in the Work. The Vendor shall maintain accurate and complete books and records with respect to the performance of the Work, including with out limitation, records of the delivery and inspection of Product and site logs recording the personnel and daily site activities.
15. **Standard of Care.** In performing this Agreement, the Vendor shall protect the image and reputation of the Purchaser and shall exercise the standard of care, skill and diligence that would normally be exercised by an experienced, skilled and prudent contractor supplying similar services for similar projects. The Vendor acknowledges and agrees that throughout the Agreement, the Vendor’s obligations, duties and responsibilities shall be interpreted in accordance with this standard. The Vendor shall exercise the same standard of care, skill and diligence in respect of any Products, Subcontractors, personnel, or procedures which it may recommend to the Purchaser or which it may use in connection with the Work.
16. **Supervision.** The Vendor shall provide all necessary supervision and appoint a competent, representative who shall be in attendance at the Site while Work is being performed. The appointed representative shall not be changed except for valid reason and only with the Purchaser’s prior consent, which shall not be unreasonably withheld. The Vendor will be as fully responsible to the Purchaser for acts and omissions of any of its Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Vendor.
17. **Subcontractors.** In the event the Vendor provides Product and/or Work to the Purchaser either directly or through a Subcontractor, the Vendor agrees for itself, or agrees to require any Subcontractor who provides such Product and/or Work to the Purchaser pursuant to the Agreement, to agree to all terms of the Agreement set forth as a condition of their providing the Work. The Vendor shall not sub-contract any portion of the Work without the prior written approval of an authorized representative of the Purchaser.
18. **Health and Safety.** The Vendor acknowledges that it has and/or will assume overall responsibility for compliance with all aspects of the health and safety legislation on the site, including all the responsibilities of the “constructor” under the *Occupational Health and Safety Act* (Ontario). The Vendor shall be responsible for construction safety with respect to the Site, the Work and for compliance with the rules, regulations and practices required by the applicable construction safety legislation. The Vendor shall indemnify and save harmless the Purchaser and its agents, officers, directors, employees, consultants, successors and assigns from and against the costs of any and all safety infractions arising from the acts and/or omissions of the Vendor and/or its Subcontractors under the applicable construction health and safety legislation, including the payment of legal fees and disbursements on a full indemnity basis.
19. **Training.** The Vendor shall ensure its employees, Subcontractors, and agents have successfully completed all required training under Applicable Laws prior to commencing the Work. The Vendor shall ensure its employees and agents refrain from smoking while on a Site unless in a designated smoking area. The Vendor shall leave the Site clean and ensure all employees, Subcontractors, and agents respect and comply with the rules, regulations, ordinances and practices required by Applicable Laws affecting the Site and the Work. The Vendor shall provide the Purchaser with

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records of training required for the Work on request. The Vendor is responsible for supplying all safety equipment and apparel required to complete the Work.

20. **Workers Compensation.** The Vendor shall have and maintain workers compensation insurance with coverage limits in compliance with Applicable Laws. Prior to commencing the Work, the Vendor shall furnish to the Purchaser an up-to-date clearance certificate from the provincial Workplace Safety and Insurance Board showing that Vendor is in good standing. At any time during the term of the Contract, when requested by the Purchaser, the Vendor shall provide evidence of compliance by the Vendor and any Subcontractors with workers' compensation legislation, including payments due thereunder.
21. **Site Conditions.** Prior to proceeding with any Work, the Vendor shall perform field measurements to confirm the elevations, locations, arrangements, and sizes of fixtures, equipment, outlets, utilities and underground services and become familiar with conditions and spaces affecting these matters. Where site conditions require reasonable minor changes in indicated locations and arrangements, the Vendor shall make such changes at no additional cost to the Purchaser. Similarly, where known conditions or existing conditions interfere with new installation and require minor relocations, the Vendor shall include such relocation in the Work at no additional cost.
22. **Prior Work.** To the extent the Vendor knows or ought to have known that work that precedes the Vendor's Work has been done by other third parties in an improper manner, the Vendor shall be responsible to report such to the Purchaser prior in writing to commencing the Work. In the event the Vendor fails to provide such report, the Vendor shall be liable for any costs, damages and expenses whatsoever accruing to the Vendor or the Purchaser and shall indemnify the Purchaser for any costs accruing to the Purchaser.
23. **Protection of Work.** The Vendor shall protect the Work and shall take all reasonable precautions to protect the Project, the Work, and property of others during the performance of the Work. If the Vendor, its employees or anyone for whom it is responsible at law, damages the Project or the property or any adjacent property or work of the Purchaser or other contractors, the Vendor shall immediately inform the Purchaser and shall be solely responsible for the costs of repairing said damage in accordance with the Purchaser's directions.
24. **Cleanup.** The Vendor shall remove from the worksite all waste products and debris caused by the Work on a daily basis. Should the Vendor fail to do so, the Purchaser shall have the right, after twenty-four (24) hours' written notice, to have the clean-up and removal performed by whatever means as may be most expedient and the Vendor shall pay all costs of such clean-up and removal of waste products and debris.
25. **Correction of Deficient Work.** The Vendor shall promptly correct defective Work that has been rejected by the Purchaser as failing to conform to the Agreement Documents whether or not the defective work has been incorporated into the Work and whether or not the defect is the result of poor workmanship, use of defective Products, or damage through carelessness or other acts or omissions of the Vendor. The Vendor shall promptly make good other work or property destroyed or damaged by such corrections at the Vendor's own cost. The Vendor shall prioritize the correction of any defective Work identified as a priority by the Purchaser.
26. **Delays.** If the Vendor is delayed in the performance of the Work by any act or omission of the Vendor, Subcontractors, Suppliers, or anyone whom it is responsible for at law, the Vendor shall promptly provide the Purchaser with Notice in Writing of such delay, prepare a recovery schedule acceptable to the Purchaser, and take such actions as may be deemed necessary by the Purchaser. All overtime, acceleration costs, or other amounts necessary to achieve the recovery of the Work schedule shall be borne solely by the Vendor. If the Vendor is delayed in the performance of the Work by any act or omission of the Vendor, Subcontractors, Suppliers, or anyone whom it is responsible for at law or fails to achieve the Substantial Performance Date or the Final Completion Date, the Vendor shall reimburse the Purchaser for any additional costs, damages, or expenses incurred by the Purchaser, including any fees paid by the Purchaser to other Vendors or consultants.

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27. **Environmental Concerns.** If the Vendor encounters hazardous substances on Site, or has reasonable grounds to believe that hazardous substances are present at the Site which were not disclosed prior to commencement of the Work, or which were disclosed but have not been dealt with in accordance with Applicable Laws, the Vendor shall take all reasonable steps to ensure that no person's exposure to any hazardous substance exceeds the levels prescribed by any Applicable Laws at the Site, and shall immediately report the circumstances to Purchaser in writing.
28. **Insurance.** The Vendor shall have and maintain general liability and property damage insurance, each with coverage of not less than two million dollars (\$2 million) per occurrence. The Vendor shall also have and maintain auto liability insurance in the amount of two million (\$2 million) for each of bodily injury and property damage, if vehicles are being used, regardless of whether owned or rented. All policies shall provide the Purchaser with not less than thirty (30) days prior written notice of any material change or cancellation of the insurance coverage. The Vendor's failure to maintain the coverage required by this section shall be grounds for the immediate termination of this Agreement, by the Purchaser, for cause. In the event of an incident or accident at a Site, the Vendor shall report the incident or accident immediately to the Purchaser and shall provide a written incident or accident report within twenty-four (24) hours. All such coverage shall be in place from the date of the commencement of the Work until two years (2) after Final Completion of the Agreement.
29. **Bonds.** If required by the Purchaser, the Vendor shall furnish evidence of being bondable and, upon direction by the Purchaser, will obtain and furnish to the Purchaser performance and labour and materials payment bonds in the amounts specified in the Agreement. The Vendor shall be responsible for bonding any Subcontractors of the Vendor. Under no circumstances shall the Purchaser be liable or responsible for debts of the Vendor or payments to any Subcontractors.
30. **Vendor Representations and Warranties.** The Vendor represents and warrants that: (i) it is duly incorporated, validly existing and in good standing and has full capacity to enter into the Agreement and perform its obligations hereunder; (ii) no hardware or software or other material used in the supply of the Product and/or Work infringes any intellectual property rights or liens of any third party; (iii) the Vendor holds or will hold all right, title and interest in the Product; (iv) it operates in compliance with all Applicable Laws; and (v) this Agreement does not violate any other agreement binding on the Vendor. The Vendor also represents and warrants that the Product and the Work: (i) will be performed in accordance with the service levels and/or specifications of the Agreement; (ii) are free from latent or patent defects in materials, workmanship and design; and (iii) will be performed by well-qualified personnel in accordance with best established industry standards and practices. These warranties are continuous and extend to new or additional Product that may be supplied by the Purchaser to the Vendor. In addition, the Vendor acknowledges that Vendor knows of the Purchaser's intended use and expressly warrants that all Product and/or Work covered by the Agreement will be fit and sufficient for the particular purpose intended by Purchaser.
31. **Construction Warranty**
- (a) Except for extended warranties set out Paragraph (e), the warranty period under the Agreement is one (1) year from the date of Final Completion of the Work.
 - (b) The Vendor shall be responsible for the proper performance of the Work for the duration of the applicable warranty period.
 - (c) The Purchaser shall give the Vendor written notice of observed defects and deficiencies which occur during the applicable warranty period.
 - (d) The Vendor shall promptly correct or replace, at the Vendor's sole expense, defects or deficiencies in the Work which appear prior to and during the applicable warranty period and such corrections shall be warranted for a further period of one (1) year from the date of correction. The Vendor shall also correct or pay for damage resulting from the performance of its warranty obligations
 - (e) Any extended warranties shall be as specified in the Agreement. Extended warranties shall be issued by the warrantor to the benefit of the Purchaser or as the Purchaser may direct.

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32. **Construction Liens.** The Vendor shall save and keep the Purchaser and the Site free from all construction liens and all other liens whatsoever arising out of the Work. If any lien is claimed, filed or registered or any written notice of a lien is delivered by reason of services or materials or any Work supplied or claimed to have been supplied by or through a Subcontractor or supplier, the Vendor shall, at its own expense, within ten (10) Working Days of being notified of the lien or written notice of a lien, secure the discharge, release, vacating or withdrawal of such lien or written notice of a lien by payment or by giving security or in such other manner as is or may be required or permitted by law, failing which the Purchaser may, but shall not be required, take such steps as it, in its absolute discretion, may deem necessary to release, vacate or discharge the lien or written notice of a lien and the costs of such activities, including any legal fees on a lawyer and client basis and bonding costs, shall be setoff against any amounts which may otherwise be due and payable to the Vendor. Where no amounts are due and payable to the Vendor, the Vendor shall reimburse the Purchaser for such amounts immediately upon demand.

PART E – PURCHASER’S RIGHTS AND OBLIGATIONS

33. **Purchaser’s Obligations.** Subject to the Purchaser’s rights of setoff, the Purchaser shall pay Vendor for the Work in accordance with the terms of the Agreement.
34. **Right to Inspect Product.** Purchaser reserves the right to inspect the Product and/or Work and reject or require the replacement of any Products and/or Work, in whole or in part, if such Product and/or Work does not meet the requirements the Agreement. The cost of such replacement, including transportation costs, shall be at the Vendor’s sole cost and expense. If in the opinion of the Purchaser, it is not expedient to correct or replace the defective Products or Work, the Purchaser may deduct from the amount otherwise due and owing to the Vendor the difference in value between the Products delivered and/or the Work performed and that called for by the Agreement.
35. **Right of Removal.** The Purchaser, acting reasonably, shall have the right to order that the Vendor to remove from the Project, without cost to the Purchaser, employee of the Vendor or Subcontractor, who, in the reasonable opinion of the Purchaser jeopardizes the safety or security of the Project, any person, the Purchaser’s operations, is a detriment to the Project, or whose behavior may be considered as harassment in the workplace. Immediately upon receipt of such order the Vendor shall make arrangements for the appointment of a replacement employee acceptable to the Purchaser.

PART F – LIABILITY, INDEMNIFICATION AND TERMINATION

36. **Liability and Indemnification.** The Vendor agrees to indemnify and hold harmless the Purchaser and the Purchaser’s affiliates, directors, officers, employees and agents (the “**Representatives**”) against all liabilities, damages, losses, costs, claims, expenses, suits, proceedings and demands (“**Claims**”) with respect to any part of the Product and/or Work covered by the Agreement, including but not limited to legal fees on a substantial indemnity basis and disbursements, suffered or incurred by the Representatives, including without limitation, for any third party Claims, bodily injury, death, or damage to or destruction of property resulting from the Product and/or Work, regardless of whether Vendor has insurance or a valid letter or waiver of insurance requirements under Applicable Laws, which arises out of, and which Claims are occasioned by or in connection with: (i) the Vendor’s, or those for whom its responsible, performance or non-performance or breach of this Agreement; (ii) the failure of any representation or warranty made by the Vendor under this Agreement to be true and correct; (iii) negligent acts or omissions or willful misconduct of Vendor and those for whom the Vendor is responsible for at law; and (iv) actual or claimed intellectual property infringements or any litigation based thereon. Such obligations shall survive acceptance of the Product and/or Work and payment therefore by Purchaser. No third party claim may be settled without the consent of Purchaser, which consent shall not be unreasonably withheld.
37. **Limitation of Liability.**

Notwithstanding any provision herein to the contrary:

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- (a) Neither Party shall be liable for any lost or prospective profits or any other indirect, consequential, special, incidental, punitive, or other exemplary losses or damages, whether based in contract or other tort or otherwise, regardless of the foreseeability or the cause thereof.
 - (b) In no event will the liability of the of the Purchaser be liable to the Vendor for an amount exceeding the remaining unpaid balance of the Contract Price, as calculated on the date of the claim.
 - (c) The Purchaser shall not be liable for any Claim based upon or resulting from any erroneous or incomplete information provide by a Homeowner or any third party.
38. **Waiver upon Final Payment.** As of the date that the Vendor receives payment of its final invoice, the Vendor expressly waives and releases the Purchaser from any and all claims which it has or reasonably ought to have knowledge of that could be advanced against the Purchaser including, without limitation, those that might arise from the willful misconduct, negligence or breach of contract by the Purchaser, except those for those claims for which Notice in Writing was given to the Purchaser before the date on which the final payment was made to the Vendor and which remain unsettled.
39. **Termination for Cause.** If the Vendor becomes insolvent, bankrupt, or making any arrangement with or for the benefit of its creditors, fails to commence the Work, abandons the Work, refuses to perform any portion of the Work, neglects to execute the Work properly and diligently, or fails to perform any provisions of this Agreement, the Purchaser may notify the Vendor in writing that the Vendor is in default of the Vendor's contractual obligations and instruct the Vendor to correct the default within five (5) Working Days of receiving the notice, failing which the Purchaser may (i) correct such default and deduct the cost thereof, plus an administration fee of 15%, from any payment then or thereafter due to the Vendor; or (ii) terminate the Vendor's right to continue with the Work in whole or in part or terminate the Agreement, effective immediately. If the Purchaser terminates the Agreement under this Section 39, the Purchaser shall be entitled:
- (a) to finish the Work by whatever methods the Purchaser may deem expedient but without undue delay or expense; and
 - (b) withhold any further payments to the Vendor until the Work is finished; and
 - (c) charge the Vendor the amount by which the full cost of finishing the Work, including a contract administration fee of 15%, together with the estimated cost of any corrections required by the warranties for which the Vendor is liable, exceeds the unpaid balance of the Agreement Price; or if such cost of finishing the work is less than the unpaid balance of the Agreement Price, pay the Vendor the difference; and
 - (d) on expiry of such warranty period as might exist, charge the Vendor the amount by which the cost of corrections under warranty exceeds the allowance provided for such corrections, or if the cost of such correction is less than the allowance, pay the Vendor the difference.
40. **Termination for convenience.** The Purchaser may suspend or terminate this Agreement for convenience at any time for any or no reason. In such event, the Purchaser shall pay for the Work performed up to the effective date of suspension or termination, including demobilization costs, and for such additional reasonable direct costs directly flowing from and which are a reasonable consequence of the suspension or termination, but excluding the costs of the Vendor's head office personnel and overhead costs, any consequential, indirect or special damages, and any loss of profit or loss of opportunity costs and damages arising from or caused by the suspension or termination, and regardless of whether any such excluded costs, damages or claims are made or incurred by any Subcontractor or Supplier.
41. **Payment of Claims.** The Vendor shall promptly and satisfactorily settle and pay all accounts, claims or liens with respect to the Work or the Product with two (2) days of receipt of notice of such claims. If Vendor fails or refuses to settle or pay same or provide the Purchaser with written notice that it has reasonable grounds for disputing same within the time specified, the Purchaser shall have the right to settle or pay such accounts, claims and/or liens for the account of the Vendor. In the event the Vendor provides the Purchaser with written notice that it is disputing an

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account, claim or lien, the Purchaser shall have the right to pay or settle such accounts, claims or liens in such manner that in the Purchaser's opinion will not prejudice the Vendor's right to dispute same.

42. **Set-off.** Notwithstanding any provision in this Agreement to the contrary, the Purchaser may withhold payment of any amount invoiced to the extent required to offset any previous over-payment made to the Vendor, damages or costs incurred by the Purchaser, or to the extent as may be necessary to protect the Purchaser from loss or damage as a result of the Vendor's failure to perform any of its material obligations under this Agreement.
43. **Confidentiality.** The Vendor agrees to keep confidential all of the information and materials it obtains from Purchaser or its agents in connection with the Agreement, and the Vendor agrees not to use or disclose such information to any person, other than for performance of the Work hereunder on a need-to-know basis.

PART G - GENERAL

44. **Currency.** Except as specifically provided in the Agreement, all amounts in the Agreement are stated and shall be paid in Canadian currency.
45. **Modifications to this Agreement.** This Agreement may not be modified orally, and no modifications or any claimed waiver of any of the provisions hereof shall be binding unless in writing and signed by all parties. No acknowledgement of Purchase Order from the Vendor containing terms and conditions shall have the effect of modifying these Standard Terms and Conditions.
46. **Independent Vendor.** The Vendor is an independent Vendor engaged by the Purchaser to perform the Work. Neither the Vendor nor any of its personnel is engaged as an employee, servant, or agent of the Purchaser. The Vendor is responsible for all deductions and remittances required by law in relation to the Vendor's employees.
47. **No Exclusivity.** Nothing herein shall be interpreted to create an exclusivity in favour of Vendor unless otherwise set out in the Purchase Order.
48. **Time of the Essence.** Time shall be of the essence. The Vendor agrees to complete the Work in accordance with the date specified herein or instructions from Purchaser as provided from time to time. No oral extensions of time for performance of this Agreement shall be accepted, without the prior written agreement of the Purchaser.
49. **Advertising and Public Statements.** Vendor shall not use Purchaser's name, logo, or trademarks for the purposes of advertising, social media posts, press releases, promotion, solicitation, or general publicity matters without the prior written consent of Purchaser.
50. **Force Majeure.** Notwithstanding anything to the contrary in this Agreement, neither party shall be liable for delay or non-performance caused by any of the following circumstances when beyond its control: fire, acts of God, explosions, riots, strikes, storms, floods, earthquakes, extreme natural disasters, wars, sabotage, terrorism, pandemics, or epidemics ("**Force Majeure**"). For clarity, Force Majeure shall not include financial hardship of either party. Should an event of Force Majeure make it impossible for a party to perform its obligations hereunder, the affected party shall use all reasonable efforts to mitigate the adverse impact of the Force Majeure event. The affected party shall notify the other party that it considers an event of Force Majeure has occurred. If the adverse impact cannot be eliminated completely, such non-performance shall be excused for the duration of the event of Force Majeure. If, however, the event of Force Majeure lasts more than fifteen (15) days from the original notification, this Agreement may be terminated in whole or in part by the Purchaser.
51. **Rights and Remedies; No Waiver by Conduct.** Except as expressly provided in the Agreement, the duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law or in equity. No waiver by or on behalf of a party of any breach of a provision of this Agreement shall be binding upon the party,

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except as may be specifically agreed in writing, and such a waiver shall not operate as a waiver of any subsequent breach, whether of a like or different character. No waiver shall be inferred from or implied by the conduct of the Purchaser. Failure to enforce any right or remedy available to the Purchaser under this Contract will not be construed to be an approval of or acquiescence of any breach or as a waiver of the Purchaser's right or remedy.

52. **Waiver of Consequential Damages.** In no event, whether in contract or tort, shall the Purchaser be liable to the Vendor for any indirect, consequential, incidental, exemplary, punitive, or special damages, including without limitation, claims for lost profit or loss of opportunity, even if such party has been advised of the possibility of such damages in advanced
53. **Governing Law and Dispute Resolution.** This Agreement will be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. Each party irrevocably attorns to the exclusive jurisdiction of the courts of Sault Ste. Marie, in the Province of Ontario, with respect to any matter arising under or relating to this Agreement if such matter cannot be resolved between the parties.
54. **Notices.** All notices, demands, or other communications authorized or required hereunder shall be in writing and shall be deemed to have been duly given: (i) if delivered by courier, when received by the addressee or (ii) if sent by confirmed fax, one business day following transmission to the addressee: (i) in the case of notice to the Purchaser at: Ontario Aboriginal Housing Services, 500 Bay Street, Sault Ste. Marie, Ontario, P6A 1X5 or Fax: (705) 256-2671; and (ii) in the case of notice to the Vendor, at the address and/or fax number on file held by Purchaser for which the Vendor is responsible to provide address and contact information changes to Purchaser immediately upon such changes. For clarity, no notices or demands are permitted to be delivered by email.
55. **Entire Agreement.** Except as may be expressly agreed in writing by authorized representatives of the parties, the Agreement constitutes the entire agreement between the Parties related to the Product and/or Work and replaces any earlier agreements, whether oral or written. The Agreement is paramount to any invoice related thereto. The parties agree that there are no other agreements, representations or warranties other than those expressed herein, unless a master agreement exists between Purchaser and Vendor to govern the supply of Products, which master agreement must be identified in the Purchase Order and which terms and conditions will supersede this Agreement.
56. **Assignment and Succession.** The Vendor shall not assign this Purchase Order, or any portion thereof, without the prior written consent of the Purchaser, which may be withheld. This Agreement will enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.
57. **Survival and Severability.** If any provision of the Agreement is determined to be invalid, illegal or unenforceable by any court of competent jurisdiction, that provision will be severed from the Agreement, and the remaining provisions will remain in full force and effect. Any clause which by its nature should survive termination will do so, including without limitation Sections 18 (Health and Safety), 25 (Correction of Deficient Work), 28 (Insurance), 30 (Vendor's Representations and Warranties), 31 (Construction Warranty), 32 (Construction Liens), 33 (Purchaser's Obligations), 36 (Liability and Indemnification), 37 (Limitation of Liability), 38 (Waiver upon final payment) and 43 (Confidentiality).
58. **No Contra Proferentum.** Notwithstanding any rule or maxim of law or construction to the contrary, any ambiguity or uncertainty will not be construed against a party by reason of the authorship of any of the provisions of this Contract.
59. **Language of Contract.** Les parties se sont expressément entendues pour que ces termes et conditions soient rédigés en langue anglaise. The parties have expressly agreed that the Agreement should be drafted in English.