

Procurement Standard Terms And Conditions
(Effective November 15, 2011)

GENERAL TERMS AND CONDITIONS

1. **The Contract.** The “*Contract*” consists of these terms and conditions and the purchase order(s), including all exhibits, schedules and specifications, proposals or other documents attached thereto or referenced therein (the “*Purchase Order*”) issued by Redpath Sugar Ltd. (the “*Buyer*”) in connection with the procurement of Services or Goods. Additionally, if Vendor is providing Services, the provisions contained in “Part A - Services Terms and Conditions” (below) shall also be applicable to, and form a part of, the Contract. If Vendor is providing Goods, the provisions contained in “Part B - Goods Terms and Conditions” (below) shall also be applicable to, and form a part of, the Contract.

2. **Price and Payment.** Buyer will pay Vendor the price for the Services or Goods as set forth in the Purchase Order (the “*Price*”). The Price includes all taxes except sales tax. Vendor will not collect sales tax if an exemption is available. Vendor shall invoice Buyer promptly after delivery of the Goods and after Services are rendered, unless otherwise agreed to in writing by the parties. Invoices shall be sent to the billing address indicated in the Purchase Order. Buyer’s Purchase Order number must be stated on Vendor’s invoice in order for it to be timely processed. Invoices which do not bear a Purchase Order number will be returned to Vendor for re-invoicing. Invoices properly bearing a Purchase Order number shall be paid within thirty (30) days of Buyer’s receipt of the invoice. Payment of invoices does not constitute a release of any of Vender’s obligations under the Contract.

3. **Insurance.**

3.1. Vendor will, at its expense and for the duration of the Contract and a period of three years thereafter, maintain insurance policies with the following coverages (collectively, the “*Insurances*”):

(a) Worker’s Compensation and Employer’s Liability Insurance in compliance with applicable Laws and having limits of not less than \$1,000,000 for employer’s liability. Vendor shall also be responsible for verifying that Vendor’s subcontractors and suppliers have and maintain worker’s compensation insurance and contractual liability insurance for all written contracts entered into by them.

(b) Commercial General Liability Insurance having liability limits of not less than \$2,000,000 general aggregate per location, \$2,000,000 aggregate for products and completed operations, \$1,000,000 for personal and advertiser’s injury for each incident and \$1,000,000 combined single limit for each occurrence.

(c) Automobile Liability Insurance for all owned, non-owned and hired vehicles used by Vendor in performance of the Contract, and will have liability limits of not less than \$1,000,000 combined single limit for bodily injury and property damage for each accident.

(d) Umbrella Liability Insurance is required if Vendor (i) produces a product or ingredient which is included in any edible or food chain product sold or distributed by Buyer or (ii) is performing Services which involves major alterations, additions, demolition, welding or cutting operations. Such insurance will have liability limits of not less than \$5,000,000 for each occurrence and \$5,000,000 aggregate and will be in excess of all other Insurances required to be maintained by Vendor.

(e) Professional Liability Insurance is required if applicable to the Services being rendered. Such insurance shall have coverage

of the type and in amounts usually insured by companies of like size and operating similar business as conducted by Vendor.

3.2. The Insurances will (a) be with an insurer having an AM Best rating of not less than A-10 or better or as is otherwise acceptable to Buyer; (b) include “*Redpath Sugar Ltd. and its Affiliates*” as additional insureds; (c) provide thirty (30) days prior written notice of cancellation or material change, except for Workers’ Compensation; (d) be primary and non contributory by any insurance, self insurance or limits maintained by Buyer; and (e) will not reduce or limit Vendor’s obligation to indemnify and defend Buyer for claims made or suits brought which result from, or are in connection with, Vendor’s performance of the Contract. Prior to providing any Services or Goods, Vendor will furnish Buyer a certificate showing evidence of the Insurances.

4. **Indemnification.** Vendor shall indemnify, defend and hold harmless Buyer, including its respective officers, directors, employees, Affiliates and agents, from any and all claims, suits, losses, damages, costs and expenses, including legal fees and costs, to the extent resulting from or arising out of (a) Vendor’s or Vendor’s Workforce’s negligent acts or omissions; (b) breach of Vendor’s obligations, covenants or warranties hereunder; (c) a defect in the design, material or workmanship of the Goods or (d) the performance of the Services.

5. **Force Majeure.** The inability of either party (the “*Obligor*”) to fulfill its obligations under this Contract resulting from delays caused by strikes, insurrection, acts of God, war, terrorism, emergencies, shortages or unavailability of materials, weather, change in law or other similar causes beyond the party’s reasonable control, and not caused by any acts or omissions on the part of the Obligor (collectively, a “*Force Majeure*”), which will have been timely communicated to the other party (the “*Obligee*”), will extend the period for the performance of the obligations by a period equal to the period(s) of any such delays(s); provided that such party will continue to perform to the extent feasible in view of such Force Majeure. In the event a Force Majeure causes unreasonable extensions for the Obligor’s performance of its obligations under this Contract to the detriment of the Obligee, the Obligee may terminate the Contract effective upon Obligor’s receipt of written notice of termination by the Obligee and Buyer shall pay Vendor for all Services properly completed and Goods delivered in accordance with the terms of the Contract up to the date of termination.

6. **Confidentiality.** Vendor acknowledges that (a) as a result of Vendor’s engagement under this Contract, Vendor may have access to or be provided with business, financial, technical, proprietary or other information from or regarding Buyer and its Affiliates (collectively, the “*Information*”), (b) such Information, even though it may be contributed, developed or acquired by Vendor, constitutes valuable, special and unique assets of Buyer developed at significant expense and which are the exclusive property of Buyer, (c) the restrictions on disclosure and use of the Information set forth below are reasonable and necessary to protect Buyer and its Affiliates and is not unreasonably restrictive of any personal rights, and (d) Buyer would not enter into this Contract without the assurance that all the Information will be used for the exclusive benefit of Buyer. Accordingly, Vendor shall never disclose the Information to others and shall protect and maintain strict confidentiality of the Information. Vendor shall not use the Information for any purpose other than with respect to its business relationship with the Buyer. In addition, Vendor shall not disclose to any person either the fact that the Information has been

provided under this Contract or the existence of a relationship between Buyer and Vendor without the prior consent of Buyer. Vendor shall limit disclosure of the Information within its organization only to those officers, employees or subcontractors (“*Representatives*”) who are required to use such Information in connection with the provision of Services or Goods hereunder and who agree to be bound by and comply with the foregoing obligations of confidentiality. Vendor shall be responsible for any breach of the obligations of confidentiality by its Representatives. The foregoing obligations of confidentiality and restrictions on use and disclosure shall not apply to any Information that (a), at the time of disclosure, is published or generally known to the public; (b), after disclosure by Buyer to Vendor, is published or becomes generally known to the public except as a result of the breach of this Contract; (c) was in Vendor’s possession at the time of disclosure by Buyer (as evidenced by written records) and was not acquired, directly or indirectly, from Buyer; or (d) is obtained from any third party lawfully in possession of the Information and not in violation of any contractual or legal obligation with respect to the Information.

7. **Buyer’s Properties.** Vendor acknowledges, and will advise Vendor’s Workforce, that the premises upon or around which Services will be performed or Goods delivered or serviced, including, but not limited to, refinery, packaging, storage, and distribution facilities, labs, offices and hospitality centers, owned or controlled by Buyer or its Affiliates (collectively, the “*Properties*”) contain inherent risks and hazards, including, but not limited to, risks involving asbestos, vehicles, moving machinery, equipment, uneven or slippery surfaces, explosion, fire, smoke, gases, steam, chemicals, emissions, and other hazardous conditions. In the event Vendor accesses the Properties, Vendor does so voluntarily and voluntarily assumes all risks of loss, damage, costs or injury that may be sustained by Vendor or Vendor’s Workforce in or on the Properties and waives any claims whatsoever based upon the condition of Properties and existing improvements thereon. Additionally, Vendor and Vendor’s Workforce shall abide by the “Company Rules and Regulations” (the “*Rules*”) governing contractors while on Buyer’s Properties. The Rules are located on Buyer’s internet site www.redpathsugar.com.

8. Miscellaneous.

8.1. The Contract is non-exclusive and constitutes the entire agreement between the parties regarding the subject matter. Any prior understanding or representation of any kind preceding the date of the Contract will not be binding on either party except to the extent incorporated therein. Notwithstanding the foregoing, in the event any document, including, but not limited to, any proposal, acknowledgement, acceptance, confirmation or receipt by Vendor of a Purchase Order, or any other document comprising a part of the Contract, contains terms or conditions which limit Buyer’s rights or remedies, or are inconsistent with this Contract, such terms and conditions will not be considered a part of this Contract. Any modification of this Contract or additional obligation assumed by either party will be binding only if in writing and signed by an authorized representative of each party.

8.2. Any failure on the part of any of the parties to enforce any provision of this Contract shall not constitute a waiver of that provision, nor prejudice the right of the parties to enforce the provisions at any time subsequent to any such failure to enforce. The rights and remedies set forth in this Contract to a nondefaulting party shall be deemed cumulative, and the exercise of one of such rights or remedies shall not operate to bar the exercise of any other rights and remedies provided to a nondefaulting party under this Contract or at law or in equity.

8.3. This Contract may not be assigned or transferred to any other person or entity without the express, prior, and written consent of Buyer.

8.4. This Contract shall be governed by, construed and enforced in accordance with the laws of the Province of Ontario and of Canada as applicable therein. The prevailing party in any action brought to interpret or enforce this Contract shall be entitled to recover from the nonprevailing party the reasonable attorneys’ fees, costs and expenses incurred by the prevailing party in such action.

8.5. Vendor agrees that it shall (a) comply with all applicable federal, state, provincial, local and other laws ordinances, rules, codes and regulations in its country or countries in which it does business as are applicable to the Goods being sold or Services rendered (collectively, the “*Laws*”), including those concerning the environment, employee rights to freedom of association, wages, benefits and work hours; (b) provide employees with a safe and sanitary workplace that includes appropriate controls and protective equipment; (c) follow non-discrimination practices in regard to gender, race, age, national origin, disability, citizenship, veteran status, marital status, sexual orientation, or religious beliefs and provide a workplace free from harassment; (d) refrain from paying or accepting bribes or kickbacks; (e) minimize operational impact to air, water, soil, and surrounding areas; and (f) require its vendors to adhere to the same requirements as set forth above.

8.6. Vendor agrees to comply, and certifies that it does comply, with all laws regarding forced labor, child labor, slavery and human trafficking. Vendor agrees to require, and certifies that it does require, its Vendors to adhere to the same requirements.

8.7. All notices to the parties under this Contract (not including invoices) will be in writing and sent to the mailing address set forth in the Purchase Order.

8.8. This Contract will not be construed as creating a partnership or joint venture between the parties. The parties intend that the relationship of Vendor to Buyer be that of an independent contractor. Vendor shall have no right or authorization, express or implied, to assume or create any obligation on behalf of Buyer.

8.9. Those provisions of the Contract which by their nature are intended to survive the making of the final payment or any termination of this Contract shall so survive, including, but not limited to, Sections 4 and 6 above, Sections A-6, A-7 and A-8 of Part A below, and Sections B-8 and B-9 of Part B below.

8.10. “*Affiliate*” means any Person that controls, is controlled by or is under common control with Buyer. The term “*control*” means the ownership, directly or indirectly, of fifty percent or more of the voting stock or equity interest of the subject Person. “*Person*” means any natural person, corporation, unincorporated organization, partnership, association, joint stock company, joint venture, trust or government, or any agency or political subdivision of any government, or any other entity. Affiliates are intended third party beneficiaries of the Contract.

PART A - SERVICES TERMS AND CONDITIONS

If Vendor is providing Services, the following provisions shall also be applicable to, and form a part of, the Contract:

PART A-1.Scope of Services.

PART A-1.1.Vendor will perform the work described in the Purchase Order in accordance with, and in satisfaction of, the Contract (collectively, the “*Services*”). Vendor shall provide all employees and subcontractors it deems necessary to perform the Services (collectively, “*Vendor’s Workforce*”) and shall be

solely responsible for paying Vendor's Workforce, including, but not limited to, paying any and all taxes, insurances and benefits associated with their employment or retention by Vendor. Vendor shall ensure that Vendor's Workforce has the skill, knowledge, experience and qualifications that are necessary and appropriate for the proper performance of the Services.

PART A-1.2. Subject to any exclusions specifically set forth in the Purchase Order, Vendor shall furnish, and be exclusively responsible for, all tools, vehicles, and equipment necessary for the performance of the Services (collectively, "*Vendor's Equipment*"). Vendor's Equipment must be suitable for the hazardous classification of the building, area, or process in which it will be utilized. Buyer shall not be responsible to provide job site security against, nor otherwise be liable for, vandalism, theft, breakage or damage to any Vendor's or Vendor's Workforce's materials, Vendor's Equipment, or materials incorporated into the Services, unless caused by the gross negligence of Buyer or its invitees.

PART A-1.3. Vendor shall not operate Buyer's vehicles or powered equipment (collectively, "*Buyer's Equipment*") without Buyer's prior consent. If consent is given, Vendor acknowledges that Buyer's Equipment (a) is provided "as-is", without representation or warranty, express or implied, (b) will be used by Vendor at its own risk, and (c) must only be operated by personnel qualified to safely operate the specific equipment in question.

PART A-1.4. If the Services involve the receiving, storing, processing, packaging, warehousing or shipping of any goods, materials, equipment, or products owned by Buyer (collectively, "*Buyer's Products*"), all Buyer's Products shall remain the property of Buyer while in the possession or control of Vendor. Vendor unconditionally waives any and all claims of ownership or liens on, or security interest in, Buyer's Products (excluding warehouseman's liens up to but not exceeding the value of unpaid fees for Services rendered) and Vendor shall not permit any of its creditors to obtain a lien on, or security interest in, Buyer's Products. Vendor agrees that Buyer may execute and file, or upon request, that Vendor shall execute, deliver and file such documents, including UCC-1 Financing Statements, as are reasonably necessary to evidence Buyer's ownership of Buyer's Products provided to Vendor. If requested to do so by Buyer, Vendor shall store, maintain or warehouse Buyer's Products in areas that are separated from the goods of Vendor and any third party. Vendor shall bear the risk of loss for Buyer's Products while in Vendor's possession or control. Upon reasonable prior notice to Vendor, Buyer or its agents or any authorized creditor of Buyer shall have the right at any time to enter upon Vendor's premises to inspect inventory or remove Buyer's Products in the possession or control of Vendor.

PART A-1.5. Vendor, at its expense, shall possess and maintain all necessary licenses, certificates, or other governmental authorizations and permits required by the Laws or necessary for Vendor and Vendor's Workforce to perform the Services, excluding jobsite permits for which Buyer shall reimburse Vendor.

PART A-1.6. Vendor acknowledges that Buyer will be operating its business on or abutting the site whereupon Services may be performed. Vendor shall take all reasonable steps to minimize the disruption of Buyer's operations and use of the site when Services are being rendered.

PART A-2. Deliverables. If the Services include the tender of Deliverables, all Deliverables shall be the sole and exclusive property of Buyer and Buyer shall have all right, title and interest in and to the Deliverables. Vendor will do everything reasonably necessary during and after its engagement and without charge to Buyer to enable Buyer to secure and protect

its ownership rights in the Deliverables. "*Deliverables*" refers to all writings, drawings, plans, specifications and programs, and all other original works of authorship, prepared by Vendor at Buyer's expense, or which, as determined by Buyer, arise out of or otherwise relate to the Services and which Vendor prepares, whether in whole or in part and whether alone or with others, during its engagement by Buyer.

PART A-3. Commencement and Completion.

PART A-3.1. Unless otherwise set forth in the Contract or directed by Buyer, Vendor shall commence performance of the Services immediately upon receipt of the Purchase Order and complete the Services within the applicable timeframe set forth in the Contract.

PART A-3.2. As to Services to be completed by a specific date, Vendor shall achieve Substantial Completion of the Services by the specific date set forth in the Contract. "*Substantial Completion*" shall mean that Vendor has timely completed the performance of Services in accordance with the requirements of the Contract, but for the items identified in Section A-3.3 below.

PART A-3.3. Vendor will achieve Final Completion of the Services within two weeks of the date of achieving Substantial Completion. "*Final Completion*" shall mean (a) Substantial Completion has been achieved; (b) all punchlist items have been fully completed to the satisfaction of Buyer; (c) Vendor has completed its final site cleanup and restoration; and (d) Vendor has delivered to Buyer, as applicable, the following documents (i) all certificates and other necessary approvals evidencing completion of the Services issued by governing authorities and architect; (ii) Vendor's final affidavit and release of lien complying with applicable statutes; (iii) satisfactions of lien for any claims of lien filed on account of the Services (unless transferred to bond by Vendor); (iv) final or "as built" drawings and specifications for the Services, including all equipment and systems designed and installed as part of the Services; (v) all warranties; (vi) five copies of all operation, maintenance, overhaul and parts manuals and all software and such other technical data for all equipment, appliances and other components tendered as part of the rendition of the Services; (vii) certificates of insurance for the Insurances required under this Contract; (viii) all confidential information; and (ix) any other documents, items, materials, equipment or work required to be provided or returned by Vendor pursuant to the Contract.

PART A-3.4. In the event Vendor is unable to timely perform Services by the dates set forth in the Contract for reasons not arising from or attributable to Vendor's acts or omissions, then (a) the dates for the performance or completion of the Services shall be equitably extended or (b) upon prior approval by Buyer, Vendor may incur overtime and Buyer will pay Vendor for the overtime charges incurred in connection therewith. Time is of the essence in performance of this Contract.

PART A-4. Conditions of Payment. As a condition to each payment for Services performed or materials delivered in connection therewith, Vendor will provide Buyer with a release from Vendor and all subcontractors and materialmen of all claims, mechanic's liens or rights to any claim accruing prior thereto. Additionally, final payment for Services performed is also conditioned upon Vendor achieving Final Completion.

PART A-5. Change Orders.

PART A-5.1. For Services performed for a fixed amount, there shall be no additional charges in excess of the fixed amount stated in the Purchase Order, including, but not limited to, any charges for project-administration fees, overtime, mobilization costs, leasing expenses, travel expenses, and taxes (excluding sales

taxes), unless specifically provided in the Contract. If there is a change that is not within the scope of the Services or consistent with the Contract for Services performed at a fixed amount (a "Major Change"), then the parties will discuss the proposed Major Change and Vendor will indicate in writing the labor and materials necessary to implement the Major Change. Once the parties agree as to the scope and price for the Major Change, the Major Change will be implemented by Buyer's issuance of an amended or a new Purchase Order ("Change Order"). Unless documented by a Change Order, any claim for payment for additional services (including materials) performed by Vendor shall be deemed to have been waived by Vendor.

PART A-5.2. Notwithstanding the foregoing, prior to performing Services, Vendor shall examine the project site to its full satisfaction, including any existing work or improvements in place, but excluding latent problems not reasonably discoverable by a contractor specializing in site improvements, and shall determine that the same are fit and proper to receive the Services. Failure of Vendor to object to the condition of the project site prior to performing the Services shall constitute a waiver of any claims by Vendor that the project site and existing improvements are not in accordance with the Contract. Buyer expressly disclaims any warranties, expressed or implied, as to the suitability of the project site for the performance of the Services or the suitability of the drawings and specifications (or other documents, data or surveys provided to Vendor) for their intended purpose.

PART A-6. Vendor's Warranties and Covenants.

PART A-6.1. In addition to any other warranties contained in the Contract or provided by the Laws, Vendor warrants and covenants that:

- (a) The Services will be performed in a timely, professional, safe and workmanlike manner in accordance with, and in satisfaction of, the requirements of the Contract, the Rules and all applicable Laws;
- (b) All material, equipment and supplies furnished (i) shall satisfy, and perform in accordance with, the requirements and specifications of the Contract; (ii) are free from defects in design, workmanship and materials; (iii) are manufactured and supplied in compliance with all applicable Laws; (iv) are new; (v) are free from liens or other title encumbrances or defects; (vi) can be used by Buyer without infringing or violating the rights of any third parties; and (vii) are free from any contamination by hazardous or toxic wastes, chemicals or materials of any kind;
- (c) Vendor is not a party to, or bound by, any contract or commitment, or subject to any restriction, including, but not limited to, contracts related to existing or previous employment containing confidentiality or noncompete covenants, which now or in the future could interfere with the performance by Vendor of Services under this Contract; and
- (d) Deliverables will not infringe upon any patent, design, copyright, trademark or other intellectual property rights of any third parties.

PART A-6.2. Vendor will obtain similar warranties and covenants from each of its subcontractors and suppliers, which warranties and covenants will run in favor of Buyer, except that as to roofs, air conditioning units and other major components, Vendor will obtain warranties for such longer periods of time as is customary for those trades and materials or as may otherwise be required by the Contract.

PART A-6.3. Approval of Vendor's designs or specifications, or acceptance of the Services shall not prejudice Buyer's warranty rights under the Contract. All warranties shall survive inspection, acceptance and payment by Buyer. The

establishment of a warranty period relates only to the specific obligation of Vendor to correct breaches of the warranties and does not establish a period of limitation with respect to any other obligation under the Contract.

PART A-7. Correction of Work. Throughout the duration of the Contract and for a period the longer of one (1) year or the period set forth in the Purchase Order, Vendor shall promptly correct faults or defects in the Services or Deliverables ("Warranty Services") at its expense. If Vendor fails to perform Warranty Services satisfactorily, Buyer may correct such faults or defects and Vendor shall reimburse Buyer for the cost of correction. Buyer, at its discretion, may offset against any payments owing Vendor the costs Buyer incurred in correcting any such faults or defects.

PART A-8. Liens. In the event a claim of lien is filed against the Buyer's properties, Vendor will, within ten (10) days from Vendor's receipt of notice of the claim of lien, cause the claim of lien to be satisfied, or in the alternative, to be transferred to a bond. In the event any liens are not cleared of record within said ten (10) days, Buyer will have the right to settle, satisfy or bond off such lien at Vendor's cost and expense and offset the cost against any amounts due Vendor under the Contract, and Buyer will be entitled to all other remedies available at law or in equity.

PART A-9. Performance. If Vendor at any time fails to supply sufficient properly skilled and qualified workmen or sufficient materials of proper quality and quantity, or fails to perform the Services required hereunder with reasonable diligence and dispatch, or otherwise fails in the performance of any part of the Contract, and such default by the Vendor is not cured within seven days after written notice thereof by Buyer to Vendor, then Buyer may terminate this Contract effective upon Buyer's receipt of notice of termination. In such case, Vendor shall not be entitled to receive any further payment under this Contract until all Services are completely finished, at which time, and if expense is incurred by Buyer for completing the Services in accordance with the Contract which exceeds the Price, Buyer, may offset against any remaining payments owed Vendor the costs Buyer incurred in completing the Services or, if such sums are insufficient, Vendor shall promptly pay Buyer upon demand the amount of such excess.

PART A-10. Termination. Buyer may terminate this Contract or any Purchase Order at any time, without cause, for convenience by giving Vendor at least ten (10) days' prior written notice. In the event of such a termination, (a) Buyer shall pay Vendor for all Services properly completed up to the date of termination (which is not cancelable or recoverable); (b) all prior payments made under the Contract shall be applied to the amounts due hereunder; (c) in no event shall the total payments due to Vendor under the Contract exceed the Price; (d) any excess amounts paid by Buyer to Vendor shall be immediately returned to Buyer (e) Vendor shall deliver to Buyer all equipment, materials and supplies for which Buyer has made payment; and (f) Vendor shall fully cooperate with Buyer in (i) protecting and preserving all work in place, (ii) transferring all building permits or other approvals to the name of Buyer or the successor general contractor, and (iii) otherwise generally cooperating with Buyer to ensure timely and lien-free completion of all Services.

PART B - GOODS TERMS AND CONDITIONS

If Vendor is providing Goods, the following provisions shall also be applicable to, and form a part of, the Contract:

PART B-1. Scope. Vendor shall sell to Buyer the goods, materials, supplies, products or equipment identified in the Purchase

Order (collectively, the “*Goods*”) strictly in accordance with, and subject to, the Contract.

PART B-2.Packaging and Shipping. No charge will be allowed for packing or shipping of Goods, unless agreed to in writing by Buyer. Shipments will be packed to secure the lowest transportation costs, while protecting the Goods from damage or deterioration. Packing lists must be included with all shipments and must reference the applicable Purchase Order number. Shipments not accompanied by packing lists will be conclusively deemed to be in the amount of Buyer’s count or weight determined by Buyer. Buyer is not obligated to accept any Goods which are of excess quantities, materially untimely or under-shipments in whole or in part, and such shipments may be returned at Vendor’s expense and risk. All shipments of any Goods consisting of hazardous materials (as defined under Ontario’s Occupational Health and Safety Act (“*OHSA*”) must be accompanied by five (5) copies of the applicable Material Safety Data Sheets (“*MSDS*”) in compliance with the OHSA and the regulations, guidelines and policies related thereunder. Shipments of any such hazardous materials without the required MSDS shall be subject to the provisions of Section B-10.1 below.

PART B-3.Delivery, Risk of Loss, Title. Unless otherwise specified in the Purchase Order, Goods shall be delivered F.O.B. Buyer’s facility no later than the delivery date specified in the Purchase Order. Time is of the essence in performance of this Contract. Title to Goods shall transfer to Buyer at the F.O.B. point, subject to inspection and acceptance as described herein. Risk of loss shall transfer to Buyer upon Buyer’s acceptance.

PART B-4.Inspection and Acceptance. Prior to delivery, Vendor shall perform all inspections and tests necessary to substantiate that the Goods conform to the requirements of the Contract. Acceptance of Goods is subject to Buyer’s inspection at reasonable times and places. Payment alone does not constitute acceptance of Goods. No inspection, test or delay, the failure to inspect, test or discover any defect, or the payment of invoices shall relieve Vendor of any of its obligations, or impair any of Buyer’s rights or remedies, under the Contract.

PART B-5.Technical Data. Upon delivery of the Goods, and at no additional cost to Buyer, Vendor will furnish Buyer, as applicable to the Goods: (a) Certificates of Analysis containing the analytical information reasonably required by Buyer; (b) five copies of the MSDS; (c) five copies of all manuals related to installation, operation, maintenance, overhaul, and parts; and (d) all software and programs, including any modifications made thereto and associated software manuals.

PART B-6.Spare Parts. Upon acceptance of the Goods, and where applicable, Vendor will provide a complete list of spare parts for the Goods. The spare parts lists will be in an electronic spreadsheet format and will identify in separate columns (a) Vendor’s identification number; (b) manufacturer’s identification number; (c) UNSPSC identification number; (d) complete description of part; (e) location on the Goods; and (f) quantity on the Goods. All descriptions must be supplied using the following standards: The first word is a noun, followed by sufficient attributes, separated with commas, to fully describe the part. Punctuation and symbols should not be used beyond fractions. Units should be standard abbreviations, ft, in, mm, etc. Dimensions should not be separated by an X; incorrect: 6in x 4in, correct: 6IN OD, 4IN ID. Complete description example: cylinder, pneumatic, 1/2in bore, 2in stroke, 200psi. Vendor will promptly provide spare parts price and delivery quotations to Buyer on request and the reply will be in the same media through which the request was transmitted. Vendor will accept purchase orders from Buyer for spare parts pertaining to the Goods and will promptly act on the purchase orders.

PART B-7.Related Services. Upon request of Buyer, Vendor shall provide applicable engineering, installation, training and other technical assistance services in regard to the installation, operation and maintenance of the Goods immediately following delivery of the Goods (“*Technical Assistance*”). There will be no charge for Technical Assistance, unless specifically provided for in the Contract. Technical Assistance shall be considered “Services” and shall be performed in accordance with, and subject to, the provisions of this Contract, including the provisions contained in Part A above.

PART B-8.Vendor’s Warranties and Covenants.

PART B-8.1.In addition to any other warranties contained in the Contract or provided by the Laws, Vendor warrants and covenants that the Goods (a) shall satisfy, and perform in accordance with, the requirements and specifications of the Contract; (b) are free from defects in design, workmanship and materials; (c) are manufactured and supplied in compliance with all applicable Laws; (d) are new; (e) are free from liens or other title encumbrances; and (f) can be used by Buyer without infringing or violating the rights of any third parties.

PART B-8.2.Vendor’s warranty for Goods such as roofs, air conditioning units and other major components shall be for such periods of time as is customary for those goods and materials or as otherwise required by the Contract. Vendor warrants the Goods (excluding Food Goods) for the longer of one year or the period set forth in Contract (the “*Warranty Period*”). Vendor shall obtain similar warranties and covenants as those set forth in this section from each of its subcontractors and suppliers, which warranties shall run in favor of the Buyer.

PART B-8.3.Approval of Vendor’s designs or specifications, or acceptance of the Goods shall not prejudice Buyer’s warranty rights under the Contract. All warranties, express or implied, shall survive inspection, acceptance and payment by Buyer. The establishment of a Warranty Period relates only to the specific obligation of Vendor to correct the breaches of the warranties and does not establish a period of limitation with respect to any other obligation under the Contract.

PART B-9.Food Warranty. As to Goods which are food grade products (“*Food Goods*”), Vendor further warrants that (a) as of the date of delivery, the Food Goods (i) will not be adulterated, misbranded or unsafe within the meaning of Canada’s Food and Drugs Act and the regulations, guidelines and policies related thereunder (collectively, the “*Act*”); (ii) will be in compliance with all applicable Laws, including the Act; (iii) will conform to the specifications; and (iv) if required by Buyer, will have Kosher certification; (b) Vendor has obtained and shall maintain all necessary permits, registrations and licenses required to manufacture and supply the Food Goods; and (c) Vendor has complied with all applicable Laws relating to the manufacture or transportation of the Food Goods, including all “Good Manufacturing Practices” applicable to the manufacture, labeling and packaging of the Food Goods in effect from time to time.

PART B-10.Rejection and Cancellation.

PART B-10.1.If Vendor delivers nonconforming Goods that vary from any sample, specification, warranty or other requirements of the Contract, Buyer may reject the Goods and elect one of the following remedies at Vendor’s expense: (a) return the Goods for full credit or refund, including freight charges, (b) require Vendor to correct or replace the Goods; (c) correct the Goods; (d) obtain replacement Goods from another source; or (e) retain the Goods and reduce the Price for loss of value.

PART B-10.2.For Goods that are stock items and otherwise conforming to the Contract (“*Stock Goods*”), Buyer has the right at anytime to cancel the Contract or the applicable

Purchase Order and/or return to Vendor any Stock Goods and receive a full refund of any amounts paid by Buyer towards the purchase Price of such Stock Goods; however, any return of Stock Goods shall be at Buyer's expense and must be made within thirty (30) days of Buyer's acceptance of the Goods.

PART B-10.3.As to Custom Made Goods, Buyer has the right to cancel the Contract or the applicable Purchase Order during its manufacture. However, in such event, and provided that the Custom Made Goods were conforming to the Contract, Buyer shall pay Vendor its out-of-pocket materials and labor charges, and a proportionate share of Vendor's profit it would have derived from the sale to Buyer. "Custom Made Goods" refers to those Goods which are unique, non-stock items, manufactured to Buyer's particular specifications and which cannot be readily sold to a third party or otherwise utilized by Vendor.

PART B-10.4.In the event of a cancellation of the Contract or a Purchase Order or the return of Goods (including Stock Goods and Custom Made Goods), (a) all prior payments made under the Contract shall be applied to the amounts that would be due hereunder; (b) in no event shall the total payments due to Vendor under the Contract exceed the Price; (c) any excess amounts paid by Buyer to Vendor shall be immediately returned to Buyer; (d) all Goods paid for by Buyer (which is not cancelable or recoverable) shall be delivered by Vendor to Buyer, except in the case Goods returned to Vendor.