



# PURCHASE ORDER

## TERMS & CONDITIONS

These Standard Terms and Conditions are incorporated into and form part of the Purchase Order. The Purchase Order is comprised of these Standard Terms and Conditions together with any other documents or components referenced as being part of the Purchase Order, and any change orders, addenda, revisions, amendments and supplementary agreements issued by BMMI from time to time pertaining thereto (as approved by the <sup>TM</sup>Supplier ).

### 1. DEFINITIONS

- 1.1 **GOODS** shall mean the materials, products or services to be purchased or to be supplied as specified in the **PURCHASE ORDER** and/or any part thereof.
- 1.2 **PURCHASER** shall mean BMMI and/or any of its parents, subsidiaries or affiliates so named in the Purchase Order
- 1.3 **PURCHASE ORDER** shall mean the PURCHASE ORDER form, this document and any other document listed herein and shall constitute the entire agreement between the parties.
- 1.4 **SUPPLIER** shall mean any person or company having a contract for the supply of GOODS to PURCHASER.

### 2. ACCEPTANCE

The performance of the Purchase Order by Supplier shall constitute acceptance of the Purchase Order.

### 3. DELIVERY

Delivery Dates of the Goods and/or performance of the Delivery Services shall be specified in the Purchase Order. The responsibility and costs of Delivery shall be agreed upon in writing. The Supplier shall closely observe and comply with the Purchaser's conditions of handling and storage of Goods. The Order number must appear on all documents pertaining to the Order, invoices, packing lists, correspondence, and all shipping documents. Supplier shall not substitute material or ship more than the quantity ordered.

### 4. INSPECTION

Purchaser reserves the right to inspect the Goods on or after the Delivery Date. Purchaser, at its sole option, may reject all or any portion of the Goods if it determines the Goods are defective or nonconforming. If Purchaser requires replacement of the Goods, pursuant to Section 5, Supplier shall promptly replace the nonconforming Goods. Any inspection or other action by Purchaser under this Section shall not affect Supplier's obligations under the Order, and Purchaser shall have the right to further inspection after Supplier takes remedial action.

### 5. CUMULATIVE REMEDIES

The rights and remedies under this Order are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise. If Supplier is in breach of the warranties set out in Section 9, Supplier will, at its sole cost, replace or repair the Goods or re-perform Services to Purchaser's satisfaction.

### 6. PRICE AND PAYMENT

The price of the Goods or Services shall be agreed upon in writing (the <sup>TM</sup>Price ). Supplier shall invoice Purchaser for the Order within thirty (30) days of delivery. Unless otherwise stated in the Order, Purchaser shall pay all properly invoiced amounts due to Supplier within ninety (90) days after receipt of such invoice, except for any amounts disputed by Purchaser. The parties shall seek to resolve all such disputes expeditiously and in good faith. Supplier shall continue performing its obligations under the Order notwithstanding any such dispute. Without prejudice to any other right or remedy, Purchaser reserves the right to set off any amount owing to it by Supplier against any amount payable by Purchaser to Supplier. Payment of an invoice is not evidence or admission that the Goods or Services meet the requirements of the Order.

## **7. CHANGE ORDER**

Purchaser may, from time to time, initiate changes by issuing to Supplier written notices (each, a "Change Order") that alter, add to, or deduct from the Goods or Services, but that are otherwise subject to the Terms of this Order. Supplier will provide a written consent for any Change Order and shall promptly comply with the terms of any Change Order.

No change to or modification of the items, specifications, terms, conditions and prices appearing in the Purchase Order shall be binding upon Purchaser unless expressly agreed in writing by Purchaser. Supplier shall promptly notify Purchaser in the event that any Goods subject of the Purchase Order are affected by changes in drawings, specifications or design, but Supplier shall not without prior written consent of Purchaser incorporate any such changes in the order.

## **8. TERMINATION**

Purchaser may terminate this Order, in whole or in part, for any reason upon seven (7) days' prior written notice to Supplier. In addition to any remedies provided herein, Purchaser may terminate this Order with immediate effect, either before or after acceptance of Goods or Services, if Supplier has breached any of the Terms herein. If the Supplier becomes insolvent, commences or has commenced by it or against it bankruptcy proceedings, receivership, reorganization or assignment for the benefit of creditors, then the Purchaser may terminate this Order. If Purchaser terminates the Order for any reason, Supplier's sole and exclusive remedy is payment for the Goods or Services received and accepted by Purchaser prior to the termination.

## **9. WARRANTIES**

Supplier warrants to Purchaser that all Goods, Services or Goods furnished in connection with Services will: (a) be new and free from any defects in workmanship, material and design; (b) conform to applicable specifications; (c) be fit for their intended purpose and operate as intended; (d) be free and clear of all liens, security interests or other encumbrances; and (e) not infringe or misappropriate any third party's intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Purchaser's discovery of the noncompliance. If Purchaser gives Supplier notice of noncompliance, Supplier shall, at its own cost and expense, promptly replace or repair the nonconforming Goods or Services.

## **10. INDEMNIFICATION**

Supplier shall defend, indemnify, and hold harmless Purchaser and Purchaser's parent company, its subsidiaries, affiliates, successors or assigns and its respective directors, officers, shareholders, and employees (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, action, judgment, interest, penalty, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder (collectively, "Losses") arising out of or occurring in connection with Supplier's performance of its obligations or Supplier's negligence, willful misconduct or breach of the Terms of this Order or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. Supplier shall not enter into any settlement without Purchaser's or Indemnitee's prior written consent.

## **11. CONFIDENTIAL INFORMATION**

All non-public, confidential or proprietary information of the Purchaser, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts or rebates, disclosed by Purchaser to Supplier, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Purchaser in writing. Upon Purchaser's request, Supplier shall promptly return all documents and other materials received from Purchaser. Purchaser shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) rightfully and legally known to the Supplier at the time of disclosure; or (c) rightfully and legally obtained by the Supplier on a non-confidential basis from a third party.

## **12. INSURANCE**

Supplier shall, at its cost, effect and maintain until the risk in the Goods passes to Purchaser adequate material loss or damage insurance at least to the full replacement value of the Goods including adequate transit insurance and also covering unloading if Supplier is required to unload the Goods. Such insurance shall cover the parties' respective rights and if required by Purchaser shall be in the joint names of the parties. Supplier shall carry: (a) Workers Compensation/Employer's Liability required by law with where legally permitted an indemnity for Purchaser (including its client as applicable) and ensure that its sub-suppliers have similarly insured its employees; (b) adequate public & product liability insurance and (c) any other insurance required by law.

### **13. COMPLIANCE WITH LAW**

Supplier warrants and represents to Purchaser that it is in compliance with, and shall remain in compliance during performance of this Order, all applicable laws, regulations and ordinances. Supplier has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits required by law to carry out its obligations under the Order. Supplier shall comply with all export and import laws of all countries involved in the sale of Goods under this Order. Supplier assumes all responsibility for shipments of Goods requiring any government import clearance. If Supplier fails to comply with the laws, orders, rules, ordinances and regulations and as a result Purchaser is fined, Supplier agrees to pay the fine and costs incident thereto or reimburse Purchaser for payment.

### **14. TAXES**

Unless specified otherwise on the face of the Order, the prices are inclusive of, and Supplier shall be solely responsible for and pay, all federal, state, and local taxes, including, but not limited to, value added tax, goods and services tax, sales, use or consumption tax. No sales or use tax shall be added when a valid tax exemption is indicated on the face of this Order by the Purchaser.

### **15. TITLE AND RISK OF LOSS**

Unless otherwise specified in the Order, risk of loss of the Goods remains with Supplier and title will not pass to Purchaser until the Goods are delivered to and accepted by Purchaser at the Delivery Location.

### **16. FORCE MAJEURE**

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party ("Force Majeure Event"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, terrorist acts, riots, strike, or embargoes. Supplier's economic hardship or changes in market conditions are not considered Force Majeure Events. Supplier shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order. If a Force Majeure Event prevents Supplier from performance for a continuous period of more than fifteen (15) business days, Purchaser may terminate this Order immediately by giving written notice to Supplier.

### **17. WAIVER AND RELEASE OF LIENS**

Upon Supplier receipt of amounts properly invoiced, Supplier waives and releases all rights to, for itself and its subcontractors, and at its sole cost shall obtain prompt removal of any lien fixed against Purchaser, for Goods or Services performed under this Order.

### **18. RELATIONSHIP OF THE PARTIES**

The Supplier is an independent contractor of Purchaser. Nothing contained herein shall be construed as creating any agency, partnership, employment or fiduciary relationship. Neither party shall have authority to bind the other party in any manner whatsoever.

### **19. GOVERNING LAW AND VENUE**

All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the state, province or territory identified in the address for the Purchaser on the Order, excluding its choice or conflict of law rules. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the federal and/or state, provincial or territorial courts in the state, province or territory identified in the address for the Purchaser on the Order and the courts of appeal from them.

### **20. NOTICES**

All notices, consents, claims, demands, waivers and communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (return receipt requested, postage prepaid). A Notice is effective only upon receipt of the receiving party, and if the party giving the Notice has complied with the requirements of this Section 21.

## **21. INCONSISTENT TERMS**

Any terms found on the attached to the Purchase Order shall govern over the terms and conditions herein. Any separate written overriding agreement signed by both parties shall govern over the terms of the Order.

## **22. SERVICES**

- 22.1. Any Supplier that may perform Services represents itself as qualified and able to perform in a proficient, diligent and timely manner.
- 22.2. Supplier shall perform Services pursuant to the industry standard of care. Purchaser will furnish materials, equipment and machinery only if and to the extent set forth in the Order.
- 22.3. Supplier will report immediately to Purchaser any event or circumstance which Supplier knows or reasonably suspects is, or results from, a violation of Purchaser's policies or law set forth herein.
- 22.4. Supplier will, at its sole cost and expense, repair or replace any real or personal property belonging to Purchaser that Supplier, its employees or agents may damage, destroy or remove while performing or result from performing this Order.
- 22.5. Supplier shall ensure that all persons it employs or retains to perform the Work are competent to perform it and are properly trained, instructed and supervised.
- 22.6. Supplier shall not change any persons it employs or retains to perform the Work without prior written approval from the Purchaser.
- 22.7. Supplier shall supply and pay for all labour, materials, supplies, equipment, facilities, approvals and licenses necessary or advisable to perform its obligations under the Purchase Order.
- 22.8. Supplier shall comply with, and shall ensure that any subcontractors comply with, the Purchaser's Health and Safety requirements and other workers' safety requirements and regulations.

## **23. SURVIVAL**

Provisions of this Order which by their nature should apply beyond any termination of the Purchase Order will remain in effect for the period expressed within the Section but not longer than a period of two (2) years.

## **24. SEVERABILITY**

If any term or provision of the Terms and Conditions is found invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term of Terms and Conditions or invalidate or render unenforceable such term in any other jurisdiction.

## **25. MISCELLANEOUS**

Supplier shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without Purchaser's prior written consent. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment shall relieve the Supplier of any of its obligations hereunder. No modification, alteration or amendment of the Order shall be binding unless agreed to in writing and signed by Purchaser. No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order by Purchaser shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or privilege hereunder preclude any other exercise of any additional right, remedy, or privilege.