

# PILLAR RESOURCE SERVICES INC.

## STANDARD TERMS AND CONDITIONS FOR THE PURCHASE AND/OR RENTAL OF GOODS AND/OR SERVICES

### 1. ACCEPTANCE AND ENTIRETY

(a) These Terms and Conditions shall form part of any agreement or Pillar purchase order which incorporates these Terms and Conditions by reference or to which these Terms and Conditions are attached. These Terms and Conditions, the Pillar purchase order, the agreement or Contract to which they are incorporated by reference or attached, and the specifications, drawings and documents attached (including, without limitation, a Purchase Requirement by Products Form or Supplementary Instructions, as applicable) shall be referred to hereafter collectively as the "Contract". Either or any of the Supplier's written or electronic acceptance of this Contract, the shipment of any Goods or the performance of any Work or the provision of any rental equipment by Supplier, shall constitute acceptance by Supplier of this Contract in its entirety.

(b) This Contract constitutes the entire agreement between PRSI and Supplier with respect to the subject matter of this Contract and supersedes all prior oral or written communications, representations, understandings and agreements. For greater certainty any invoice, acknowledgement or other communication issued by Supplier in connection with this Contract shall not be construed as varying this Contract.

### 2. DEFINITIONS AND INTERPRETATION

Capitalized words or expressions which are defined in this Section 2 shall have the meanings hereby assigned to them below:

(a) "Claim" means any claim, action, proceeding or demand and the resulting losses, liabilities, costs (including legal costs on a solicitor and his own client basis), expenses and damages, whether incurred through settlement or otherwise.

(b) "Contract" has the meaning set out in section 1(a) of these terms and Conditions.

(c) "Customer" means PRSI's customer for whom PRSI is providing goods or services under the Primary Agreement.

(d) "Goods" means the goods, materials, supplies, equipment, methods, processes, designs, information, and any other items or things (whether tangible or intangible) to be supplied and delivered by Supplier to PRSI pursuant to the terms and conditions of this Contract.

(e) "Primary Agreement" means the agreement between PRSI and Customer.

(f) "PRSI" means Pillar Resource Services Inc., together with its successors and permitted assigns.

(g) "PRSI Related Party" means PRSI, its affiliates and divisions, and each of their directors, officers, employees, agents and representatives.

(h) "Subcontractor" means any entity to whom execution of any part of the Supplier's obligations hereunder, including the supply of any Goods or performance of any Work, is subcontracted directly or indirectly by Supplier or any of its subcontractors, and includes such entity's successors and permitted assigns.

(i) "Supplier" means the party supplying Equipment and/or Goods and/or performing Work under this Contract.

(j) "Work" means all the work and services the Supplier is required to carry out for PRSI pursuant to this Contract, and includes, where applicable, the supply of Goods

### 3. SUPPLIER COVENANTS

(a) Supplier understands and acknowledges that the Goods and/or Work it is supplying under this Contract is in furtherance of PRSI's obligations to Customer under the Primary Agreement.

(b) *Performance.* Supplier agrees to supply the Goods and/or perform the Work as specified in this Contract. Supplier shall diligently and carefully perform all Work and supply all Goods in a good, timely and workmanlike manner, satisfactory to both PRSI and to Customer, (including without limitation, Customer standards, specifications and drawings) and in compliance with all applicable laws, rules and regulations, and shall furnish all labour, supervision, machinery, materials, equipment and supplies necessary therefor.

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(c) *Schedule and Delay.* Supplier shall: (i) deliver the Goods to the delivery location specified in this Contract, and by the delivery date specified therein, and/or (ii) perform and complete the Work within the time or times for completion specified in this Contract. Time is of the essence for this Contract and PRSI shall have the right to cancel this Contract, in whole or in part, if it is not filled or performed at the time or times specified. Supplier shall promptly notify PRSI of any actual or anticipated delay in the delivery of Goods or the performance of the Work and shall take all reasonable steps to avoid or end delays, without additional cost to PRSI.

(d) Supplier shall not sublet or subcontract any portion of the supply of Goods or performance of Work without the prior written approval of PRSI. Such approval, if given, shall not relieve Supplier from responsibility for the conduct and work of all Subcontractors.

(e) Supplier shall comply with all applicable laws and regulations including without limitation, those related to health, safety and environment

(f) *Hazardous Materials.* Supplier shall notify PRSI in writing if any Goods furnished or Work performed are subject to laws or regulations relating to hazardous or toxic substances.

(g) *Shipping and Packing.* All Goods shall be shipped and packed to protect the Goods from damage during transit, and in accordance with the terms and conditions contained within this Contract. Unless otherwise specified in writing, Supplier shall have affixed to each case, skid, crate or container used to supply Goods to PRSI one copy of the packing slip firmly affixed to the exterior and a second copy included on the inside, with a copy of the complete set for packing lists for the entire shipment included and affixed to the first case, skid, crate or container in the shipment, which shall be properly marked and identified as containing same. On shipments not accompanied by an itemized packing list, PRSI's count of the Goods received shall be final and conclusive. Every signed original bill of lading or express receipt shall be retained by Supplier and supplied to PRSI upon request.

(h) *Damage or Non-conformities.* Upon delivery of Goods, if PRSI notifies Supplier of any damage, shortages or nonconformities, Supplier, at its sole cost, shall immediately take all necessary measures to rectify same.

#### **4. INVOICING AND PAYMENT**

Proper invoices ordinarily paid with thirty (30) days subsequent to receipt, or as otherwise specified in PRSI purchase order.

#### **5. TAXES AND DUTIES**

The purchase price for the Goods supplied and any Work performed pursuant to this Contract shall be inclusive of all customs duties, sales taxes (other than GST), assessments and other like charges required to be paid by Contractor, any Subcontractor or the employees of Contractor or any Subcontractors on or in connection with such Goods or Work, but shall be exclusive of any GST which is payable in respect of the purchase price (or any part thereof).

#### **6. CHANGES**

PRSI may, from time to time, make changes, issue additional instructions, require the rescheduling or acceleration or deceleration to all or any part of the Work or the Goods, require additional Work or Goods or direct the omission of Work or Goods previously ordered and the provisions herein shall apply to all such changes. No change shall be binding unless in writing, signed by a duly authorized representative of PRSI and expressly made part of this Contract. If Supplier believes that such change affects the price or delivery date for such Work or Goods, Supplier may request an adjustment to the price or time for performance of its obligations hereunder (including any committed delivery date(s)) from PRSI in writing (with adequate supporting documentation) within ten (10) business days after receipt of notification of such change. Supplier's request for any adjustment to the price or delivery date shall be deemed waived unless submitted in writing within such ten (10) business day period. Any request by Supplier for a change to any part of the Work or the Goods (and/or adjustment to the price or to the delivery date) shall be made in writing (setting out in reasonable detail the requested change and the reasons therefore) and submitted to PRSI immediately. No adjustment to the Work or the Goods, or to the price or the delivery date, shall be effective or binding unless PRSI has provided its prior written approval.

#### **7. PROPRIETARY INFORMATION**

All drawings, blueprints, specifications, dies, patterns, and tools, whether supplied by PRSI or prepared or constructed by Supplier as required for the completion of this Contract and paid for by PRSI, shall be the property of PRSI and information therefrom shall be considered confidential and shall not be disclosed to any third party or made use of by Supplier in connection with furnishing any goods, materials, supplies or equipment or performing any work outside the scope of this Contract.

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## 8. WARRANTIES

(a) The Supplier represents and warrants to PRSI that: (i) Supplier has the experience and competence necessary for the proper supply of the Goods and the proper carrying out of the Work; and (ii) all Goods supplied and Work performed: (A) shall be of the kind and quality specified in this Contract; (B) shall comply strictly with the provisions of this Contract, and all specifications, standards, drawings or other descriptions set forth herein (or later furnished by PRSI and accepted by Supplier); (C) shall be free from fault in design, workmanship and material; (D) shall be new, of good design and workmanship, and of first rate quality; (E) shall be of the most suitable grade and fit for their intended purposes, as described by this Purchase Order, and (F) shall perform as specified and satisfactorily fulfill any operating conditions specified. All warranties set forth in this Section 8 shall remain in effect notwithstanding termination of this Contract.

(b) Supplier shall, at its sole expense (including all costs of removal, packing, transportation and reinstallation), promptly repair or, at PRSI's option, acting reasonably, replace Goods furnished, or re-perform Work performed, as the case may be, which fails to conform to the requirements of this Contract. PRSI may charge Supplier for all costs incurred by PRSI with respect to repairs made by PRSI or Work re-performed by PRSI to correct Supplier's failure to competently perform the Work or to remedy defective Work when Supplier has been given notice of such defaults and thereafter has failed to take prompt and effective action to correct the failure in accordance with the foregoing.

(c) Goods delivered in error, rejected or delivered in overages in excess of trade practice shall be held at Supplier's risk and shall be removed by Supplier or returned by PRSI, at Supplier's expense and risk. PRSI shall receive a full refund and/or credit on the original purchase price as well as storage and other reasonable costs shall be allowed on account of such returned or removed items.

## 9. LIENS

Supplier agrees to defend, indemnify and hold harmless PRSI from any and all claims, liens and encumbrances arising from the Work or Goods placed or furnished by or to the order of Supplier under this Purchase Order. If at any time there shall be evidence of any such lien, claim or encumbrance for which, if established, PRSI might become liable, PRSI shall then have the right to retain or charge back out of any payment then due paid or thereafter to become due to Supplier, an amount sufficient to indemnify PRSI against such lien, claim or encumbrance and to satisfy any statutory requirements to establish a lien fund.

## 10. LIABILITY AND INDEMNIFICATION

(a) *Liability.* Supplier shall be liable to PRSI for, and shall indemnify PRSI and hold it harmless from and against: (1) any and all losses, costs (including all reasonable legal and related expenses), damages and expenses whatsoever which PRSI or any PRSI Related Party may suffer, sustain, pay or incur; and (2) all Claims brought against, suffered, sustained, paid or incurred by PRSI or any PRSI Related Party; including without limitation respecting any damage to property, any injury or death of persons or any loss or damage of any other kind, which directly or indirectly, in whole or in part, are caused by, arise out of or are in any way attributable or incidental to any breach of this Contract by Supplier or to any acts or omissions by Supplier, any Subcontractor, or any Party in relation to this Contract which constitute negligence, gross negligence or wilful or wanton misconduct.

(b) Indirect, Incidental, Consequential and Punitive Damages

- (i) Notwithstanding any other provision of this Contract, neither PRSI nor any PRSI Related Party shall be liable to Supplier, for any indirect, economic, consequential, incidental, special, punitive or exemplary damages which may be suffered or incurred by Supplier, and which arise out of or in connection this Contract,
- (ii) Supplier shall require each of the Subcontractors to provide a waiver of indirect, economic, consequential, incidental, special, punitive and exemplary damages in favour of PRSI and all PRSI Related Parties.

## 11. INSURANCE

(a) Without limiting its obligations or liabilities hereunder, Supplier shall, during the performance of this Contract and the duration of any warranty period, obtain and maintain, at its sole cost and expense, as a minimum, with insurance companies satisfactory to PRSI, all insurance required by applicable law or that PRSI (acting reasonably) deems necessary, as well as the following insurance: (i) Workers Compensation Insurance covering all personnel engaged in the performance of the obligations hereunder in accordance with all applicable statutory requirements; (ii) Commercial General Liability Insurance, on a per occurrence basis, with a limit of loss of not less

than \$2,000,000. inclusive for bodily injury including death and/or property damage (including loss of or loss of use of property) per occurrence and otherwise on terms consistent with industry practice have regard to the nature of the obligations hereunder; (iii) Automobile Liability Insurance covering all motor vehicles owned, leased or licensed by Supplier and engaged in the supply of Goods or performance of Work under this Contract, with limits of not less than \$2,000,000 for injury or death of one or more persons, or damage to or destruction of property as a result of any one accident;

(b) The Supplier shall, upon request by PRSI and prior to the supply of any Goods or performance of any Work, provide PRSI with a certificate of insurance as evidence that the insurance required under this Section has been obtained. The Supplier shall require each of its Subcontractors and common carriers to provide like insurance to that set forth herein. Supplier, its Subcontractors, and its common carriers shall provide PRSI with an insurance certificate evidencing the insurance required and shall require its insurers to provide notice to PRSI of any material change in the insurance provided.

## **12. SUSPENSION OF PERFORMANCE**

PRSI may at any time, and from time to time, by written notice to Supplier, suspend further performance of all or any portion of this Contract by Supplier. Such suspension may be at PRSI's own instigation, or be the result of suspension, delay or other action of Customer under the Primary Agreement. Upon receiving any such notice of suspension, Supplier shall promptly suspend further performance of this Contract to the extent specified, and during the period of such suspension shall properly care for and protect all Goods, work in progress, materials, supplies and equipment Supplier has on hand for performance of this Purchase Order. Supplier shall use its best efforts to utilize its material, labour and equipment in such a manner as to mitigate costs associated with suspension. PRSI may at any time withdraw the suspension as to all or part of the suspended performance by written notice to Supplier specifying the effective date and scope of withdrawal and Supplier shall, on the specified date of withdrawal, resume diligent supply of the Goods and performance of the Work for which the suspension is withdrawn. PRSI shall reimburse Supplier for reasonable and verifiable out-of-pocket costs incurred by Supplier as a direct result of suspension of all or any portion of this Contract by PRSI pursuant to Section 12, and Supplier shall be entitled to reasonable extensions to the delivery dates or time or times for completion specified in this Contract which are reasonably required as a direct result of suspension of all or any portion of this Contract by PRSI pursuant to Section 12.

## **13. TERMINATION WITHOUT CAUSE**

PRSI shall have the right to terminate this Contract in whole or in part at any time for its convenience and without cause by giving ten (10) business days prior written notice to Supplier. On the date of such termination stated in the notice, Supplier shall discontinue the performance of all Work, shall place no additional orders, and shall, pending PRSI's instructions, preserve and protect all Goods which it has on hand (which were purchased for or committed to this Purchase Order), work in progress, and completed work product (whether located in Supplier's or its supplier's plant or facility), and shall make the same available to PRSI. PRSI shall pay Supplier the verifiable and substantiated costs of all Goods and Work which have been provided pursuant to this Purchase Order, incurred up to the date of termination. Upon receipt of notice of termination, Supplier shall take all reasonable steps to mitigate any resulting costs. Supplier shall not be entitled to any damages (including loss of profits or anticipated profits) because of such termination. Upon any such termination, PRSI may remove from Supplier's possession all Goods, materials, supplies and equipment for which PRSI has paid (whether fabricated or not) without hindrance by Supplier or anyone claiming through Supplier.

## **14. TERMINATION FOR DEFAULT**

(a) In the event that:

- (i) a petition for bankruptcy shall be filed by or against Supplier;
- (ii) Supplier shall be adjudged a bankrupt;
- (iii) Supplier shall make a general assignment for the benefit of creditors;
- (iv) a receiver shall be appointed on account of the insolvency of Supplier;
- (v) Supplier shall, except as the result of Force Majeure, neglect to supply enough properly skilled workers or proper, goods, materials, supplies or equipment for the proper supply of the Goods or execution of the Work; or
- (vi) Supplier shall fail to meet any delivery schedule hereunder, fail to supply the Goods or perform the Work in accordance with any schedule hereunder, or fail in any material respect to comply with or perform any of the terms of this Contract, and any such failure continues for a period of five (5) business days after the date of receipt of written notice from PRSI to remedy or cure such failure; PRSI may immediately terminate this Contract by written notice to Supplier.

(b) Upon any such termination, PRSI shall be relieved of all further obligations with respect to this Contract except the obligation to pay such proportion of the total Contract price, as determined by PRSI, as the proportion of the Goods supplied and Work which is completed and accepted bears to the entire Goods to be supplied and Work covered by this Contract, less any amount previously paid to Supplier on account of same and any claims that PRSI may have against the Supplier, and Supplier shall be liable to PRSI for all costs in excess of the Contract price herein specified incurred by PRSI in completing or procuring the completion of performance specified in this Contract. Upon any such termination, PRSI may remove from Supplier's possession all Goods, materials, supplies and equipment for which PRSI has paid (whether fabricated or not)

## **15. TITLE TO GOODS**

Title to all Goods furnished by Supplier pursuant to this Contract shall pass to PRSI upon such Goods first being identified in respect of this Contract. PRSI's title to all such Goods shall be free and clear of all liens, claims, charges, security interests and encumbrances whatsoever upon the earlier of payment by PRSI of any Supplier's invoice, submitted in accordance with this Contract, covering such Goods or part thereof or upon delivery of such Goods hereunder. Supplier shall, regardless of whether title to such Goods has transferred to PRSI, be responsible for the care, custody, control and security of such Goods, maintain and service such Goods, make good on any loss or damage that may occur to such Goods, and exercise due care with respect thereto, all until satisfactory delivery of such Goods as set forth in this Purchase Order. The cost of making good any such pre-delivery loss or damage shall be borne solely by Supplier. The transfer of title to Goods shall in no way affect Supplier's obligations or PRSI's rights as set forth in this Contract.

## **16. FORCE MAJEURE**

(a) Neither party to this Contract shall be in default by reason of any delay or failure in the supply of the Goods or prosecution of the Work to the extent that such delay or failure is due to acts, delays or failures which are caused by reason of matters not within the party's reasonable control ("Force Majeure"), provided that the following non-exhaustive list shall not constitute events of Force Majeure: (i) strikes, lockouts or other industrial concerted action by workers of the Supplier or any Subcontractor for which may adversely impact the performance of Supplier's obligations hereunder; (ii) failure of equipment that could have been prevented by normal maintenance; (iii) shortage of materials, equipment, transportation or utilities (unless caused by circumstances which are themselves an event of Force Majeure); (iv) lack of finances or inability to perform because of a party's financial condition; or (v) climactic weather and subsurface conditions reasonably expected to occur within the geographic area where any worksite is located.

(b) Should Supplier be delayed in the supply of the Goods or the prosecution and completion of the Work because of any event of Force Majeure, the time herein fixed for completion shall be extended for a period equivalent to the time so lost, which extended period shall be determined and fixed by PRSI, but no such extension shall be made unless a claim for such an extension is presented in writing to PRSI within forty-eight (48) hours after commencement of the delay. Supplier shall not, due to an event of Force Majeure, be excused from performance hereunder where alternate sources of supply of goods, materials, supplies, equipment or service are available to Supplier, or be entitled to claim any additional amounts from PRSI.

## **17. THIRD PARTY DISPUTES**

In the event that PRSI is required to mediate, litigate or arbitrate a dispute with a third party, which dispute arises out of this Contract or is in any way connected with this Contract or with Supplier, Supplier agrees to join in such litigation or arbitration proceeding as PRSI reasonably request.

## **18. INSPECTION**

Either or both of PRSI or Customer, or their authorized representatives, shall have the right to inspect the Goods provided or the Work performed at any time during the performance of this Contract to ensure compliance with this Contract, and Supplier shall accommodate such inspection. Any such inspection shall not relieve Supplier of any of its obligations under this Contract.

## **19. ASSIGNMENT AND AMENDMENT**

Supplier shall not assign this Contract or any interest herein (including any payment due or to become due) to any party without the prior express written consent of PRSI, which consent may be withheld in PRSI's sole and absolute discretion. Any assignment of this Contract or any interest herein in violation of the foregoing shall be null and void. No amendment or other modification of this Contract shall be effective unless it is in writing and signed by a duly authorized officer of each of the parties hereto.

## **20. CONFIDENTIALITY**

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Supplier shall maintain in confidence all information which is acquired from (or prepared for) PRSI that was not previously known to Supplier, in the public domain, or lawfully obtained from a third party not under an obligation of confidence and shall not disclose it to any third party or use such information for any purpose other than the performance of its obligations under this Contract.

## 21. RETENTION AND AUDIT

During the term of this Contract, and for a period of five (5) years after its conclusion, Supplier shall maintain, in accordance with industry practice and generally accepted accounting standards, complete and accurate documents, books and records related to Supplier's performance of this Contract. PRSI shall have the right, during the currency of this Contract, and for five (5) years thereafter, upon reasonable notice to Supplier, to examine and audit such books and records.

## 22. NOTICES

All notices, reports, and other communications to be given by Supplier or PRSI under this Contract shall be in writing, and shall be given by hand delivery, courier, facsimile or e-mail to PRSI or Supplier, as the case may be, at the applicable address, facsimile number or e-mail address shown on the face page of this Contract. Any notice delivered pursuant to this Section shall be deemed to have been delivered on the date of its receipt, unless such notice is received after 5:00 p.m. (Calgary time) or on a non-business day, in which event the notice shall be deemed received on the next business day.

## 23. RENTALS

(a) In this section "Equipment" means the equipment, tools and/or other items owned by Supplier and rented to PRSI pursuant to this Contract, as more specifically set out in the purchase order.

(b) *Primary Agreement* – Supplier understands and acknowledges that the Equipment being provided is in furtherance of PRSI's obligation to the Customer under the Primary Agreement;

(c) *Rental Period* - The rental period shall commence on the date that the Equipment is delivered to the designated PRSI premises, or the date that PRSI or its agent removes the Equipment from the Suppliers premises. The rental period shall terminate on the date that the Equipment is returned to the Suppliers premises.

(d) *Inspection* - PRSI acknowledges that it has conducted a visual inspection of the Equipment and confirms that such inspection has not revealed any damage or defect.

(e) *Good Repair* - Supplier warrants and represents that the Equipment is in good repair and working order consistent with accepted industry standards, and further warrants that the Equipment is free from any latent or hidden damage or defects. PRSI shall not be liable for any latent or hidden damage or defect existing at the commencement of the rental period, nor shall PRSI be liable for normal wear on the Equipment in the course of regular operation of the Equipment during the rental period.

(f) *Proper Operation* - PRSI shall use the Equipment in a proper and reasonable manner consistent with industry standards. PRSI shall not make any significant or substantial alterations to the Equipment without the prior written consent of Supplier.

(g) *Ownership of Equipment* - Title to and ownership of the Equipment shall remain vested at all times in the Supplier. It is understood and agreed that this Contract does not give PRSI any proprietary or ownership interest in the Equipment.

(h) *Damage During Rental* - PRSI shall be liable for damage to Equipment during the rental period, however it is agreed and understood that normal wear and tear on Equipment during the rental period is not damage for which PRSI is liable.

(i) *Security* - PRSI shall take reasonable measures to ensure the security of the Equipment while on PRSI's premises or in PRSI's custody or control during the rental period.

(j) *Other Sections* – The provisions of Sections 1, 4, 7, 10, 16, 17, 20, 21 and 24 shall apply to this Section 23.

## 24. MISCELLANEOUS TERMS

(a) *Waiver*. No relaxation, forbearance, or delay by PRSI in enforcing any of the terms of this Contract shall prejudice or affect any other of PRSI's rights under this Contract, nor shall any waiver by PRSI of any breach of this Contract operate as a waiver of any subsequent or continuing breach of this Contract. Any waiver of PRSI's rights or remedies must be expressly made in writing.

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(b) *Governing Law.* The governing law of the Contract shall be the laws of the Province of Alberta and the federal laws of Canada, as applicable, and Supplier and PRSI irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Alberta. Any legal action initiated pursuant to the Contract shall be brought in the Judicial Centre of Calgary.

(c) *Independent Contractor.* The Supplier is an independent contractor and is solely responsible for all persons employed or subcontracted in the performance of Supplier's responsibilities pursuant to this Purchase Order, and for the manner in which such responsibilities, including any Work, are performed.

(d) *Severability and Survival* Should any provision of this Contract be deemed in contradiction with applicable laws or otherwise unenforceable, this Purchase shall remain in force in all other respects. The provisions of this Contract which expressly survive, or by their nature are intended to survive, the termination, cancellation, completion or expiration of this Purchase Order, including each other provision necessary for interpretation or enforcement, shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

## **25. Supplier Code of Conduct**

Supplier will review and comply with Pillar [Supplier Code of Conduct](#) found on the Pillar website at:

<https://www.pillar.ca>