

## E.S. FOX LIMITED TERMS AND CONDITIONS OF PURCHASE, MARCH 2021 REVISION

1. The Canadian Construction Documents Committee CCDC-2 2008 Stipulated Price Subcontract, as authorized by the Canadian Construction Association, is incorporated by reference and forms part of this agreement. For greater clarity, "Purchaser" shall be substituted for "Contractor" and "Supplier" shall be substituted for "Subcontractor". At the Purchaser's sole discretion, the following terms are supplementary to the CCDC-2 2008 Subcontract.
2. Invoices will not be accepted unless our Purchase Order number is shown. Unless otherwise instructed in the body of the Purchase Order, the Supplier agrees to submit progress billings with appropriate detail, in an approved format to the Purchaser by the 25<sup>th</sup> day of each month for which progress is claimed, for approval by the Purchaser. Progress payments on approved invoices are due by the Purchaser to the Supplier on or before the 30<sup>th</sup> day of the month following the month for which progress is claimed, or 5 days after the Purchaser receives payment from the Purchaser's customer, whichever is greater, less holdbacks required by law or by Purchaser's Prime Contract.
3. Discount terms of payment must be shown on invoice. Discounts will be calculated from actual date that correct invoices are received.
4. If requested by Purchaser, one unaltered copy of this Purchase Order must be signed by the Supplier in the place indicated for acceptance and returned to Purchaser within ten (10) days from its date, failing which this Purchase Order can be revoked at Purchaser's option.
5. Each party represents and warrants that the person signing for it has authority to bind that party to this purchase contract and all conditions of it.
6. The Supplier acknowledges that it has reviewed all contract documents relating to this project which are relevant to the materials and/or services to be provided by the Supplier, including but not so as to limit the generality of the foregoing, the prime contract with the general contractor and/or owner, drawings, specifications, instructions, general conditions and sub-contract conditions. The materials and/or services shall be supplied and performed by the Supplier in accordance with and subject to these contract documents. If no contract documents are specified the Supplier must comply with the best practice industry standards applicable to the materials and/or services concerned.
7. The materials and/or services must be fit for the purpose for which the materials and/or services of the same kind are commonly supplied or bought and for any other purpose the Purchaser specifies. The materials must be of merchantable quality and, unless otherwise specified in the Purchase Order, must be new.
8. All materials supplied shall be subject to our inspection and approval before acceptance. Materials with patent or latent defects or not in compliance with specifications may be returned to the Supplier at the Supplier's expense.
9. Time shall be of the essence. Supplier agrees to provide any materials and/or services in accordance with the date specified herein or instructions from Purchaser as provided from time to time. The Purchaser reserves the right to change the place of delivery at any time prior to actual shipment provided that the Supplier shall be entitled to be reimbursed for any actual increased cost, or shall reduce the prices to the extent of any reduction in cost, arising out of such change.
10. If this order calls for work to be performed by Supplier all work performed and materials used in connection therewith shall be at the risk of and expense of and shall be replaced by Supplier in the event of any damage or destruction thereof prior to delivery to and acceptance by Purchaser and Purchaser's customer. If this order calls for work to be performed by Supplier upon any premises owned or controlled by Purchaser or Purchaser's customer, Supplier will keep the premises and the work free and clear of all liens and upon completion, at the Purchaser's request, shall furnish Purchaser with a certificate of completion and waiver of lien for himself and for each of his Suppliers and sub-contractors. Whenever any property belonging to Purchaser or its customers is in the possession of Supplier or Supplier's Sub-suppliers, Supplier shall be deemed an insurer for its safe return to Purchaser. Supplier will indemnify, hold harmless and defend Purchaser and Purchaser's customer from any and all claims, demands or suits made or brought under the worker's compensation law of the Province in which any work is performed hereunder and will, if requested, furnish to Purchaser a certificate showing that Supplier is complying with worker's compensation law of such Province. Supplier will also indemnify, hold harmless and defend Purchaser and Purchaser's customer(s) from all loss and expense for any damage to or injury to or death of persons in any manner arising out of or incident to the performance of this Purchase Order.
11. Neither this order nor any monies due or to become due thereunder may be assigned by the Supplier without the written consent of the Purchaser.
12. The terms and conditions set forth or referred to in this order constitute the entire agreement between the parties hereto and no modifications shall be binding, unless mutually agreed to in writing. The receipt by Purchaser of any quotation form, sales confirmation, or other proposal, etc., verbal or otherwise, shall not in the absence of a written acknowledgement by Purchaser expressly agreeing to same, have the effect of changing in any manner of adding to the terms and conditions contained herein.
13. No charges will be allowed for containers, crating, cartage, or packages unless stated herein.
14. Execution and return by Supplier of the acknowledgement hereof, or shipment by Supplier of all or any portion of the goods, or beginning of work or issuance of shop drawings or etc., shall constitute acceptance of this order strictly upon the terms and conditions contained which alone are applicable to this order.
15. Prices stated on this Purchase Order, unless stated otherwise, are quoted F.O.B. job/our works and are based on shipment via truck or landed freight at Supplier's risk.
16. Purchase always subject to terms and conditions contained in Purchaser's agreement with owner or general contractor.
17. Payment of any and all amounts owing under this Purchase Order are conditional upon Purchaser's receipt of corresponding payments under its prime contract with its customer.
18. Without limiting any right of set-off or deduction given or implied by law or elsewhere in this agreement, the Purchaser may set-off any amount payable to the Purchaser by the Supplier under this agreement or any current agreement against any amount payable to the Supplier under this agreement.
19. Supplier is responsible for issuance of shop drawings and delivery of materials in accordance with job progress. Approval of shop drawings does not relieve Supplier of conforming to specifications of project requirements or Purchase Order in any way.
20. Supplier must supply as necessary and is responsible for accuracy of information and data required for design of items and accessories related to this order and supplied and installed by others.
21. Value of additions/deletion to this order shall be determined by actual cost plus a reasonable markup as agreed to by both parties.
22. Supplier is responsible for testing, instructions, site cleanup, noise levels, weights, start up, samples, mock-ups, correction of faults and omissions, job measurements, painting of equipment and installation, temporary site services and attendance at job meetings, as applicable to the Supplier's work.
23. Should the Supplier be delayed in the performance of the work by the act, neglect, delay or default of the Purchaser or those the Purchaser is contractually responsible for, the time fixed for the completion of the work that was delayed shall be extended by the period of the time lost, only when critical path has been proven to be extended. However no such time extension request shall be made or granted unless a claim for same is delivered in writing to the Purchaser within 36 hours of the commencement of the event or occurrence giving rise to the delay.
24. All goods and services provided under this order will be guaranteed free from all defects of material, workmanship and installation for a period of twelve (12) months from date of official acceptance by owner and/or buyer, or as per contract between Purchaser and Purchaser's customer, whichever is longer. Guarantee shall include freight, packing, material, labour, installation, services etc. unless stated otherwise at time of order. The signing of a packing slip, start up verification etc. does not indicate acceptance.
25. The Supplier warrants to the Purchaser the right to use and sell any patented devices or parts used in the goods purchased and agrees to indemnify the Purchaser against any claims for royalties, license fees or other claims or demands by reason of the use or sale thereof, whether or not any such devices or parts are specified by the Purchaser or used by the Supplier in the goods purchased without such specification.

26. The Supplier represents, warrants, certifies and covenants that it shall take, on behalf of itself and its employees, all appropriate actions necessary to protect health, safety and the environment, and has established effective requirements to ensure any sub-suppliers it uses to perform the work called for under this Purchase Order shall be in compliance with this section 26. The Supplier declares that all ESFL policies and all applicable government regulations, rules, orders, codes, standards and directives (federal, provincial and municipal) with respect to health, safety, environmental protection and conservation will be observed. ESFL policies pertaining to the environment, health and safety are available on our website ([www.esfox.com](http://www.esfox.com)). With respect to the work provided by sub-suppliers, sub-vendors and sub-subcontractors, the Supplier shall ensure and be responsible for its compliance with such legislation.
27. The Supplier is responsible (including cost) to ensure that all Supplier personnel involved in transportation of dangerous goods pursuant to the Purchase Order (which includes any packing, loading and unloading) have proper, adequate and appropriate training, instruction, supervision and personal protection equipment required in connection with such tasks in accordance with all applicable regulations (federal, provincial and municipal).
28. This order includes approval of all goods as required by appropriate governing bodies and all items shall bear labels indicating same. Where applicable, and when requested by the Purchaser, Safety Data Sheets (SDS) must be submitted to the Purchaser when such chemicals or hazardous materials are being provided by the Supplier.
29. The Purchaser reserves the right to terminate this purchase contract without liability for payment or damages if material supplied by Supplier is not in accordance with plans, specifications, approved samples or are defective in workmanship or material. No deviation from the plans and specifications of the architect, engineer, or owner shall be allowed unless approved in writing by Purchaser's authorized representative. Material not conforming will be corrected entirely at Supplier's expense. Termination of this purchase contract does not limit Supplier's contractual obligations to the Purchaser as listed herein.
30. Failure of the Purchaser to exercise any of its rights pursuant to these conditions shall in no way constitute a waiver of those rights nor shall such failure excuse the Supplier from any of its contractual obligations under the Purchase Order.
31. Payments by Purchaser to Supplier, in accordance with Supplier's final draw invoice, being the balance due under the contract, shall be in full and final settlement of all claims, causes of action of whatever kind, including negligence, delay claims and breach of contract, which the Supplier may have in connection with this contract. Payment in full does not constitute relief of Supplier's contractual obligations as listed herein.
32. This contract is to be governed by and construed in accordance with the laws of the Province of Ontario.