



Hofmann Engineering North America Ltd.

Standard Conditions of Contract

1 PRECEDENCE:

- 1.1 These Standard Conditions of Contract take precedence over any other terms or conditions implied or presented on the Purchaser's documentation, unless agreed in writing and authorised by Hofmann Engineering North America Ltd. ("Hofmann"). Any purchase order or contract document of any kind provided by the Purchaser is solely for the convenience of the Purchaser and in no way alters or supersedes the provisions of the Standard Conditions of Contract as stated herein which shall have priority and which shall govern any transaction between Hofmann and the Purchaser.
- 1.2 These Standard Conditions of Contract apply to all goods and/or services ("Scope of Work") sold and/or performed by Hofmann and are incorporated into each and every Quotation issued by Hofmann. The Quotation constitutes Hofmann's offer to the Purchaser identified in the Quotation to sell the Scope of Work identified in the Quotation and otherwise to enter into the agreement the Quotation describes and the Quotation shall be the complete and exclusive statement of such offer and acceptance.
- 1.3 A Contract is formed when Purchaser accepts the Quotation by written acknowledgement or by the issuance to Hofmann of a purchase order or other acceptance for the Scope of Work. Acceptance is expressly limited to these Standard Conditions of Contract and the terms and conditions expressly referred to in the Quotation. Notwithstanding any contrary provision in the Purchaser's purchase order or other acceptance document, delivery of the Products or commencement of production by Hofmann shall not constitute acceptance of Purchaser's terms and conditions to the extent any such terms or conditions are inconsistent with or in addition to the Standard Conditions of Contract contained in the Quotation.

2 DEFINITIONS AND INTERPRETATION

2.1 DEFINITIONS

In this Contract unless the context otherwise requires:

"Claim" means:

- a) any claim, demand, proceeding, appeal, right or action of every nature whatsoever (whether actual, commenced, anticipated, threatened or potential) whether in contract, tort, equity or under any other principle of law or statute of Ontario, Canada or any other jurisdiction that a party may have now or in the future against the other party arising out of or in connection with this Contract; and
- b) any fees, costs, losses (whether direct, indirect or economic and regardless of causation or remoteness) of any nature whatsoever and howsoever arising, suffered or incurred by a party arising out of or in connection with this Contract;

"Deduction" means exemption, reduction, allowance, credit, rebate, adjustment or other privilege;

"Force Majeure" means an irresistible compulsion including but not limited to war, strike, government restrictions and acts of God such as flood, fire etc.

"Hofmann" means Hofmann Engineering North America Ltd of 330 Pinebush Road, Cambridge, Ontario N1T 1Z6, Canada

"Intellectual Property Right" includes any trademark or name, registered design, copyright, patent, moral right or other protected right;

"Liquidated Damages" means the sole and exclusive remedy available to the Purchaser for late delivery of Hofmann's Scope of Work payable only in case of actual and demonstrated loss is incurred by the Purchaser;

"Price" means the fees, costs and expenses set out in the Quotation;

"Purchaser" means the purchasing entity named in the Quotation engaging Hofmann to supply the Scope of Work;

"Quotation" means our written quotation attached or referring to these Standard Conditions of Contract;

"Scope of Work" means the goods or the services or both described in the Quotation;

"Taxes" means all taxes, fees, levies, duties and charges imposed or assessed in respect of the Services by all local, state or national governmental authorities including income tax (including withholding for prescribed payments or group tax), payroll tax, statutory superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise tax and stamp duty; and

"Written Communication" means a letter, facsimile or electronic mail.

2.2 INTERPRETATION

In this Contract, unless the context otherwise requires:

- a) words importing the singular include the plural and vice versa;
- b) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate any governmental agency;
- c) a reference to a document (including this Contract) includes all amendments or supplements to, or replacements or notations of, that document;
- d) a reference to a party includes:
- e) if that party is a person, that party's personal representatives, executors, administrators, successors and permitted assigns; and
 - i. if that party is a corporation, that party's successors and permitted assigns.
 - ii. a reference to any person if that person ceases to exist is reconstituted, renamed or replaced or its powers or functions are transferred to any other person, refers respectively to the person established or constituted in its place or succeeding to its powers or functions;
- f) any reference to a statute or statutory provision shall be deemed to include any statutory provision which supplements, amends, extends, consolidates or replaces the same or which has been supplemented, amended, extended consolidated or replaced by the same and any orders, regulations, instruments or other subordinate legislation made there under;
- g) an obligation, representation or warranty on the part of two or more persons binds them jointly and severally;
- h) an obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- i) 'document', 'goods', 'information' and 'services' shall each be read in the widest possible context; and
- j) 'including' means 'including, but not limited to'.

3 PRICES

The prices stated in the Quotation exclude any Taxes, including without limitation HST, VAT or sales tax, import duty and other levies and charges. All Taxes and duties applicable shall be for the Purchaser's account unless otherwise stated in the Quotation.

4 DELIVERY

- 4.1 Delivery shall be Ex Works (EXW in accordance with INCOTERMS 2010)
- 4.2 Delivery dates as stated in the quotation approximate only and are:
- a) based on shop-loading at the time of quotation, and
 - b) contingent upon all of the Purchaser's information required for design and manufacture being received by Hofmann in a timely manner.
- 4.3 Liquidated Damages will be accepted only if confirmed, in writing by us.

5 PAYMENT

- 5.1 Unless otherwise specified in the Quotation, Hofmann will issue an Invoice to the Purchaser at the end of each month for that part of the Scope of Work that Hofmann have provided for that month.
- 5.2 Within thirty (30) days from the date of each Invoice the Purchaser must either:
- a) Pay the full amount contained in the invoice, or
 - b) Dispute all or part of the Invoice as set out in clause 5.5
- 5.3 If the Purchaser fails to fulfil the obligations under clause 5.2 then:
- a) apart from other rights, Hofmann have the right to either or both:
 - iii. suspend any or all of the Services until payment in full is received; and
 - iv. terminate this Contract under clause 13.3 (which Hofmann can do at any time before or during any suspension); and
 - b) The Purchaser is obliged to pay to Hofmann all costs (including legal fees on a solicitor and own client basis), expenses, loss or damages incurred or suffered by Hofmann in collecting the unpaid amount from the Purchaser.
- 5.4 Unless both parties otherwise agree in writing, the Purchaser cannot set off (whether in law or otherwise) any amount that is or may be owing from Hofmann to the Purchaser against any money that the Purchaser must pay Hofmann under clause 5.2.
- 5.5 If the Purchaser disputes all or any part of the amount claimed in an Invoice then, within 30 days from the date of the Invoice, the Purchaser must:
- a) pay Hofmann that portion of the amount stated in the Invoice which the Purchaser does not dispute; and
 - b) for that portion of the Invoice in dispute, comply with clause 16.

- 5.6 If any of the Prices are a reimbursement to Hofmann for an acquisition from a third party on which Hofmann are entitled to claim an input tax credit, the amount the Purchaser is required to pay is to be reduced by the amount of the input tax credit Hofmann are entitled to.

6 TITLE and RISK

- 6.1 Ownership, property and title to any part of the Scope of Work shall remain with Hofmann and shall not pass to the Purchaser, irrespective of the Purchaser taking possession of any part of the Scope of Work, until the Purchaser has paid and Hofmann has received the Contract Price in full.
- 6.2 In the event that any parts of the Scope of Work are delivered prior to receipt of full payment of the Contract Price, the Purchaser has the obligation to keep the parts separate and properly stored and maintained as a fiduciary of Hofmann until Hofmann has received full payment for the Scope of Work.
- 6.3 Risk for any parts of the Scope of Work passes to the Purchaser at the earlier of:
- a) delivery as defined under INCOTERMS 2010, or
 - b) upon title of the Scope of Work passing to the Purchaser.

7 QUALITY and INSPECTION

- 7.1 The quoted Scope of Work is based upon Hofmann's accredited quality system.
- 7.2 The Purchaser shall have the right at its own cost to inspect the progress of the Scope of Work. Such inspection including scope, notice of inspection, date and time require Hofmann's agreement in writing.

8 DOCUMENTATION and DATA

In the event that the Purchaser furnishes Hofmann with information including but not limited to instruction, drawings or any other data required for the performance of the Scope of Work, Hofmann:

- a) assumes no responsibility for the adequacy of such information; and
- b) is entitled to rely on the accuracy of such information; and
- c) is not required to review or confirm the accuracy of such information; and
- d) to the extent permitted by law, is not liable to you for any and all Claims in connection with any inaccuracy of such information.

9 INTELLECTUAL PROPERTY

- 9.1 Ownership of Intellectual Property Rights associated with Hofmann's Scope of Work including design, documents and manufacturing techniques (including software) owned or developed by Hofmann is at all times vested in Hofmann.
- 9.2 Upon receipt of full payment for the Scope of Work, Hofmann grants the Purchaser a royalty free, non-exclusive, non-transferrable licence to use such Intellectual Property Rights under clause 9.1 only for the use of the goods and services supplied under the Scope of Work at the location for which the Scope of Work was intended under the Contract.

Each party warrants to the other that any designs, materials, documents, methods of working or other information they provided to the other party shall not infringe any Intellectual Property Right.

9.3 Subject to clause 12, each party shall immediately indemnify the other against any costs (including legal costs on a solicitor and own client basis), expenses, loss or damages incurred or suffered by the other in connection with any actual or alleged infringement of any Intellectual Property Right.

10 CONFIDENTIALITY

10.1 Subject to clauses 10.2 and 10.3, each party agrees to keep the terms and conditions of this Contract and any information supplied by one party to the other under this Contract confidential. A party may only disclose confidential information of the other party to another person provided that:

- a) the disclosing party obtains the other party's consent; and
- b) the person receiving the confidential agreement also agrees in writing to be bound by this clause 10.

10.2 Confidential information does not include information which:

- a) was at or after the time of disclosure part of the public domain through no act or omission of either party;
- b) become available to Hofmann or the Purchaser from a third party who did not acquire such confidential information under an obligation of confidentiality either directly or indirectly from either Hofmann or the Purchaser; or
- c) was known to either at the time of disclosure by the other.

10.3 Each party may disclose:

- a) information as is required by law to be disclosed; and
confidential information in confidence to that party's financiers, insurers or professional advisers.

11 DEFECTS LIABILITY

11.1 Mechanical Warranty

Hofmann warrants that the Scope of Work under the Contract shall be free from defects arising from faulty materials, workmanship and design during the warranty period ("Warranty Period") specified herein provided that Hofmann will not be held responsible for any loss arising from incorrect installation or improper maintenance or operation of the goods by the Purchaser.

In no circumstance does the warranty extend to or apply in respect of defects arising from normal wear, corrosion, excessive heat, chemical degradation, abrasive erosion, improper storage or extended storage. Parts or components furnished, but not manufactured, by Hofmann, are warranted only to the extent of the original manufacturer's warranty to Hofmann.

It is a recommendation for the validity of the warranty that, prior to the goods being placed into operation mechanical pre-commissioning is carried out using Hofmann's assistance and advisory services.

The Warranty Period is twelve 12 months from commissioning or eighteen 18 months from Delivery, whichever period ends first.

The Warranty Period for replaced or repaired parts is twelve 18 months from the date of replacement or repair.

However, no warranty for any replaced or repaired parts shall apply after twelve 18(12) months from Delivery. No warranty shall apply to repairs or replacements made without Hofmann's prior approval.

The warranties set forth in these Standard Conditions of Contract shall be exclusive, in lieu of, and exclude any and all other warranties, implied or express, to the fullest extent permitted by law. There are no implied warranties of merchantability, fitness for purpose, performance or otherwise.

11.2 Remedies under Mechanical Warranty

Where the Scope of Work proves, under the other conditions set forth above, to be non-conforming or to contain defective material or workmanship, provided that Purchaser has informed Hofmann by way of Written Communication (with sufficient description of the defect) within seven (7) days of becoming aware of the defect and during the Warranty Period, Hofmann shall at its cost rectify the defect within a reasonable time. The manner in which Hofmann rectify the defect, whether by replacement or by repair of any defect or by obtaining equivalent goods or otherwise shall be at Hofmann's sole and absolute discretion. If such a defect arises by virtue of a design fault, Hofmann may redesign, alter or amend the Scope of Work. If Hofmann is to replace goods, or any part of goods, then Hofmann shall only be obliged to pick up the goods from the original delivery point and to deliver the replacement goods to the original delivery point. Hofmann shall not be liable for removal or reinstallation costs or other costs of similar nature. Hofmann shall at all times have a right at its sole discretion to repair any defects in situ at the site where the goods are located.

To the fullest extent permitted by law, Hofmann's liability for defects under the Contract shall include and be limited to the above remedies. A Claim by the Purchaser of any alleged defect shall give no right to the Purchaser, implied or otherwise, to withhold or make any Deduction from payments due to Hofmann.

11.3 No Liability for Process Design

Hofmann shall not be liable for design of any process for which the Scope of Work or any work will be used and Hofmann accepts no responsibility and shall not be liable to the Purchaser in connection with the Contract, in tort (for negligence or otherwise), under statute or on any other basis for any claims, demands, liabilities, losses, costs, expenses or damages in connection with any design of any process for which the Scope of Work or any work will be used (including with any other equipment).

12 LIMITATIONS OF LIABILITY and INDEMNITIES

12.1 Limitation on liability

Despite any other clause of the Contract and unless otherwise limited by the terms hereof, to the fullest extent permitted by law, Hofmann's total aggregate liability to the Purchaser, whether arising out of or in connection with the Contract (including the performance or non-performance of the work under the Contract), under statute, in tort (for negligence or otherwise) or on any other basis shall be the lesser of:

- a) the total aggregate Price of the Contract;
- b) if applicable, the amount recovered by us under any of Hofmann's insurance policies which are in effect at the time the Scope of Work is performed;

12.2 Exclusion of consequential damages

Despite any other clause of the Contract, to the fullest extent permitted by law, Hofmann shall not be liable to the Purchaser for the loss of use of services or existing property, loss of profits, loss of product or business interruption, or for special, indirect, consequential or punitive damages of whatever kind, whether arising out of or in connection with the Contract, under statute, in tort (for negligence or otherwise) or on any other basis.

12.3 Indemnities by Hofmann

Hofmann indemnifies and holds harmless the Purchaser for loss and damage resulting from acts or omissions constituting a material breach of this Contract by Hofmann. Limitations and exclusions of liability in 12.2 and 12.3 above shall apply to such loss and damage. Indemnification and hold harmless liability for acts or omissions with Purchaser's contributory negligence and of third parties are expressly excluded.

12.4 Indemnities by the Purchaser

The Purchaser indemnifies and holds harmless Hofmann for any liability, loss or damage, death or injury and any claims, actions, suits, demands, expenses or proceedings of what ever nature which arise out of the negligence of the Purchaser or acts or omissions constituting a material breach of this contract by the Purchaser.

13 SUSPENSION and TERMINATION

13.1 Suspension

In the event that the Purchaser suspends the Contract, Hofmann shall be entitled to payment for all its costs and works completed or in production.

Costs associated with suspension will be payable on the basis of actual costs plus ten percent (+10%). Such costs include without limitation costs associated with project management, engineering, design work, suspension of subcontractor orders, hedging costs, storage costs, handling, insurance costs and rearrangement of transportation. In the event of suspension, Hofmann will use reasonable efforts to extend the Warranty Period for the Scope of Work for the time period of the suspension up to a maximum of six (6) months, subject to agreement by Hofmann's suppliers. The Purchaser shall waive all rights to claim liquidated damages for delay from Hofmann due to suspension.

13.2 Termination for convenience

In the event that the Purchaser terminates this Contract for convenience, Hofmann shall be entitled to payment for all Hofmann's costs and works completed or in production under the Contract.

Costs associated with cancellation of subcontractor's orders will be payable on the basis of actual costs plus ten percent (+10%). Such costs include without limitation costs associated with project management, engineering, design work, suspension of subcontractor orders, storage costs, handling, insurance costs and rearrangement of transportation. In addition any costs, losses or gains which result from the cancellation of currency hedges associated with the Contract shall be to the Purchaser's account. Such amounts shall be treated as a variation to the original Contract value. Such hedges may be for either contract payments to Hofmann by the Purchaser or from Hofmann to subcontractors and shall be established by Hofmann at its own discretion whenever transactions are not in Australian dollars. The Purchaser expressly agrees that such hedges are put in place specifically for the supply under the Contract, including also subcontractor order, and are not of a general financing nature.

13.3 Termination for breach of Contract

Either party may terminate the Contract in the event of a material breach of its obligations under the Contract by the other party provided that:

- a) The terminating party has provided and the other party has received a Written Communication specifying the breach and requiring the breach to be remedied within the time stated in the Written Communication (which shall not be less than 14 days); and
- b) The breach has not been remedied within the period given in that Written Communication.

If Hofmann terminate the Contract pursuant to clause 13.3, without limiting any of Hofmann's other rights, Hofmann have the right to repossess any part of the Scope of Work provided to the

Purchaser even if those parts including but not limited to goods or materials have become a permanent fixture.

14 VARIATIONS

The Purchaser may request changes to the scope and delivery under the Contract. Such request must be made in writing. As soon as practical after receipt of such request, Hofmann will prepare, for the Purchaser's approval, an offer including, to the extent practically possible, the effect of the implementation of the changes on the Price and delivery time. Hofmann shall have no obligation to proceed with any change until the Parties agree in writing to any change in the Price, delivery schedule and other possible terms and conditions requiring an amendment.

15 FORCE MAEJURE

15.1 A failure to perform any of Hofmann's obligations including delay in delivery or provision of any or the whole of the Scope of Work under the Contract shall not be deemed a breach of any obligation of Hofmann and Hofmann shall not be liable if such failure to perform is caused by Force Majeure.

15.2 In the event of a delay in delivery or provision of any or the whole of the Scope of Work under the Contract due to Force Majeure Hofmann will be entitled to an extension of time for delivery under the Contract without penalty of any kind. Hofmann shall not be liable to pay any Liquidated Damages for any delay resulting from Force Majeure.

16 Applicable Law, Arbitration and Mediation.

16.1 This Agreement will be governed by and construed under the laws of the Province of Ontario, without regard to principles of conflict of laws or choice of forum. To the extent permitted by applicable law, each of us waives any right to a jury trial with respect to any litigation arising under or in connection with this Agreement.

16.2 Either party may refer any claim or controversy arising out of, or relating to, this Agreement, or the making, performance or interpretation of this Agreement to mediation by delivering to the other party a notice of dispute setting out the nature of the dispute and the desired outcome of the dispute (the "Notice of Dispute"). With fifteen (15) days of receipt of a Notice of Dispute, we shall attempt to resolve the dispute through informal discussion. If we fail to resolve the dispute in this manner, either of us may, within thirty (30) days after delivery of the Notice of Dispute (but not before the expiry of the fifteen (15) day period for informally resolving the dispute as referenced above), deliver a notice to mediate to all parties to this Agreement (the "Notice to Mediate"). Any Notice of Dispute or Notice to Mediate shall be delivered in accordance with this Agreement. Upon delivery of a Notice to Mediate, all parties to this Agreement shall attempt to agree upon the mediator and shall be required to follow the rules established by the mediator. Delivery of a Notice of Dispute or Notice to Mediate under this section does not preclude Hofmann from taking any other measure in relation to the subject matter of the dispute at any time.

16.3 Hofmann reserves the right, at our sole discretion, to refer any claim or controversy arising out of, or relating to, this Agreement, or the making, performance or interpretation of this Agreement to arbitration and such event will be finally settled (including any award of costs payable by one of us to the other) by arbitration pursuant to the then prevailing rules of the Canadian Arbitration Association, by one arbitrator appointed in accordance with such rules. All arbitration proceedings will take place in [Cambridge], Ontario. The award of the arbitrator will be the sole and exclusive remedy between the parties regarding any claims, counterclaims, issues or accounting presented or pled to the arbitrator; will be promptly paid free of any tax, deduction or offset; and any costs, fees or taxes incident to enforcing the award will, to the maximum extent permitted by law, be charged against the party resisting such enforcement. Judgment upon the award of the arbitration may be entered in the court

having jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award or an order of enforcement.

16.4 Nothing herein contained shall bar our right to obtain injunctive relief against threatened conduct that will cause us loss or damage, under the usual equity rules, including the applicable rules for obtaining specific performance, restraining orders, and interim or interlocutory injunctions; and you agree to pay all court costs and reasonable legal fees incurred by us in obtaining such relief.

16.5 The matter of arbitration, the pleadings in the arbitration, the submissions made to the arbitrator, evidence filed in the arbitration, and the arbitration award, shall be kept strictly confidential by you, except that either party may take steps to enforce the arbitration award in a court of competent jurisdiction, but such enforcement should not result in publication or disclosure of the award unless required by the Court. The arbitrator may impose sanctions for failure to abide by the terms provided for in this clause.

17 Bill 101

The parties acknowledge having required that the present Standard Conditions of Contract and all invoices, documentation, notices and judicial proceedings entered into, given or instituted pursuant hereto or relating directly or indirectly hereto be drawn up in English. Hofmann Engineering North America Ltd. et l'acheteur reconnaissent avoir exigé que le contrat ainsi que les présents termes et conditions soient rédigés en anglais.