

TERMS AND CONDITIONS SAFWAY SERVICES CANADA, ULC

The Purchase Orders are subject to the following Terms and Conditions

1. **DEFINITIONS:** As used in these Terms and Conditions "Materials" means both goods and services unless the context clearly requires otherwise, and, as to goods, includes all materials, machinery, equipment, articles, items, parts, portions, attachments, repairs, replacements and substitutions thereof or therefore provided for in this order; "Vendor" means the person, firm or corporation to whom this Purchase Order is issued; "Purchaser" means Safway Services Canada, ULC.
2. **ACCEPTANCE:** Acceptance of this offer represented by this Purchase Order shall occur upon the Vendor's acknowledgment of the Purchase Order, which would include submission of a sales order, confirmation or acknowledgment of the Purchase Order or, in any event, delivery, in whole or in part, of the Materials to be furnished hereunder. By acceptance of this Purchase Order and/or performance hereunder, Vendor agrees to comply fully with the terms and conditions of sale set forth in this Purchase Order, and any supplements hereto which are incorporated by a reference herein.
3. **MODIFICATIONS:** Vendor agrees that this Purchase Order contains the entire agreement of the parties and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Purchase Order. This Purchase Order expressly limits acceptance to the terms of the Purchase Order and Purchaser will not be bound by any terms which are not contained in this Purchase Order, and will not be bound by the Vendor's terms and conditions which acknowledge or accept this Purchase Order, nor shall Purchaser's acceptance of the Materials covered by this Purchase Order constitute acceptance of Vendor's terms and conditions. Moreover, commencement of performance by Vendor, in the absence of written acceptance of Vendor's terms and conditions by Purchaser, shall be deemed to be performance in accordance with the terms and conditions of this Purchase Order and an acceptance hereof, notwithstanding prior dealings or usage of trade. This Purchase Order may be modified only by written agreement, signed by an authorized representative of Purchaser's Purchasing Department.
4. **VENDOR QUALIFICATIONS:** Vendor represents that the information contained in the Vendor Qualification Application, which is attached as Exhibit A, which is attached to and made a part of this Agreement, or has been submitted previously by the Vendor and is made a part of this Agreement, is correct as of the date of this Agreement. Vendor shall advise Purchaser of any material corrections or modifications to Exhibit A during the term of this Agreement.
5. **PURCHASER STANDARDS:** Vendor will conform to all quality control and other standards and inspection systems as established or directed by Purchaser. In addition, Vendor shall comply with the highest and best industry practices with respect to the Materials and/or Services.
6. **DURATION OF OFFER:** Any offer made by Purchaser pursuant to this Purchase Order may be revoked by Purchaser orally or in writing at any time prior to acceptance as defined in paragraph 2.
7. **INSPECTION:** All Material purchased pursuant to this Purchase Order shall be subject to inspection and testing by Purchaser, or at Purchaser's option, the customer of the Purchaser, at all reasonable times and places, including, but not limited to, inspection and testing at Vendor's plant before, during and after manufacture. Purchaser's inspection or failure to inspect shall in no way relieve Vendor of any responsibility or liability with respect to such Materials including any warranty or guarantee contained in this Purchase Order nor shall the Purchaser's inspection or failure to inspect be interpreted in any way to imply acceptance by the Purchaser.
8. **REJECTION:** Notwithstanding prior inspection, payment of all or any part of the purchase price, or use of the Materials, Purchaser shall have the right, exercisable upon reasonable notice, to reject any Materials which do not conform to the requirements of this Purchase Order, even if the nonconformity does not become apparent until the manufacturing, processing or assembly stage. Materials found to be not in accordance with the specifications outlined in this Purchase Order shall be returned to the Vendor, transportation collect, for credit or refund, and Vendor will reimburse Purchaser for all reasonable expenses resulting from rejection. Neither payment nor acceptance by Purchaser shall constitute an acknowledgment of the absence of breach of warranty or limit any of Purchaser's rights hereunder.
9. **WARRANTY:** In addition to any other express or implied warranties provided by law or otherwise, Vendor represents and warrants that:
 - a. The sale or use of the Materials will not infringe or contribute to the infringement of any patents, trademarks, trade names or other intellectual property rights, or embody any unauthorized use of trade secrets either in Canada or in foreign countries. Vendor further agrees to defend, at its own expense, Purchaser and its customers and users of the Materials, and to hold Purchaser harmless against any and all claims, demands, actions, causes of action, suits, judgments, costs, expenses, fees, penalties, damages (consequential, incidental, punitive or otherwise), the cost of defense and reasonable attorneys' fees, and all other liabilities and obligations whatsoever arising from or attributable to such infringement or unauthorized use of trade secrets. If the sale or use of the Materials is enjoined in any respect, Vendor at its own expense and at Purchaser's option shall: (i) procure for the Purchaser and its customers the right to continue using and selling the Materials; (ii) modify the Materials so as to be non-infringing; (iii) replace the Materials with non-infringing Materials; or (iv) refund the purchase price to the Purchaser.
 - b. All Materials covered under this Purchase Order are unencumbered, will be of the highest quality and workmanship and will conform to the specifications, drawings, plans, instructions, samples or other description furnished or adopted by Purchaser and will be free from defect in materials or workmanship, merchantable and fit for the purpose intended, including any special requirements of Purchaser which have been disclosed to Vendor. Vendor shall immediately replace or repair free of charge f.o.b. Purchaser's plant any Materials supplied hereunder which prove defective in workmanship or material within one year from date of shipment. All warranties of the Vendor, express and implied, and remedies of Purchaser, in this paragraph or elsewhere in this Purchase Order, shall survive indefinitely any delivery, inspection, tests, acceptance and payment.
 - c. All Materials covered by this Purchase Order will conform with all applicable local, provincial and federal statutes laws, rules, regulations, Executive Orders, and ordinances. Further, Vendor warrants that all Materials covered by this Purchase Order will conform in every respect to the requirements of OHSA, and any environmental regulations. This warranty shall survive any inspection, delivery or acceptance of the Materials by Purchaser, and the Vendor will defend and hold Purchaser harmless from loss, cost or damage by reason of any actual or alleged violation of any such law, ordinance or regulation.

10. CHANGES:

- a. Purchaser may at any time by a written order, signed by an authorized representative of Purchaser's Purchasing Department, make changes within the general scope of this Purchase Order, in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipment or packing; (iii) place of delivery; and quantity purchased. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this Purchase Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly. No change in price or time shall be valid or effective without a prior written change order from Purchaser. Any claim by Vendor for adjustment under this clause must be asserted in writing within thirty (30) days from the date of receipt by Vendor of the notification of change.
- b. In connection with any claim for adjustment under this clause, Vendor shall submit cost data in such form and detail as may reasonably be required by Purchaser.
- c. Where the cost of property made obsolete or excess as a result of a change is included in Vendor's claim for adjustment pursuant to this clause, Purchaser shall have the right to prescribe the manner of disposition of such property.

11. SHIPPING AND DELIVERY:

- a. Vendor shall properly pack, mark and ship Materials and provide related documentation according to the requirements of Purchaser, carriers and any and all applicable statutes, regulations and ordinances, including, but not limited to, those of the country of destination. Vendor will promptly provide Purchaser, in the form requested by Purchaser, the identity and amount of all physical and/or chemical properties and any changes to the physical and/or chemical properties of the Materials.
- b. Before and at the time Materials are shipped, Vendor will give Purchaser sufficient warning in writing, including, but not limited to, appropriate labels on all Materials, containers and packing; disposal and recycling instructions; and material safety data sheets and certificates of analysis of any hazardous or restricted material that is part of the Materials. Vendor shall also provide any special handling instructions that are needed to advise carriers, Purchaser and their employees as to appropriate measures while handling, transporting, processing, using or disposing of the Materials, containers, and packing. Vendor agrees to comply with any and all applicable federal, state and local statutes, regulations and ordinances relating to such Materials.
- c. Vendor agrees to comply with any customs obligations, including, but not limited to, those required by the North American Free Trade Agreement ("NAFTA") regarding origin marking, labeling requirements, or local content origin requirements. Vendor shall be fully responsible for any export licenses or authorizations and shall furnish any documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. If Materials originate in a country other than the country in which Materials are delivered, Vendor will mark the Materials to reflect the Materials' country of origin and shall provide to Purchaser and any appropriate governmental agency any and all documentation necessary to determine the admissibility and the effect of entry of Materials into the country in which Materials are delivered. Vendor warrants that any information that is supplied to Purchaser about the import or export of Materials is true and that all sales covered by the Order will be made at not less than fair value under the anti-dumping laws of the countries to which the Materials are exported.
- d. Title to and risk of loss of all Materials subject to any Order shall remain with Vendor until delivery and acceptance of the Materials by Purchaser.
- e. If Vendor for any reason, does not comply with Purchaser's delivery schedule, performance dates or deadline, or any other requirement of an Order, Purchaser may:
 - i. approve a revised delivery or performance schedule;
 - ii. require shipment of any of the Materials by a more expeditious method of transportation;
 - iii. cancel the Order; or
 - iv. accept the Order and charge Vendor for any and all damages incurred by Purchaser arising out of or in any way related to Vendor's failure to comply with Purchaser's delivery schedule, performance dates or deadlines, or any other requirement of the Order.
 - v. Purchaser will not be charged for loading, packing, boxing, crating or cartage, unless stated in the Order. Damage to any Materials not packed to insure proper protection will be charged to Vendor.

12. PRICE: The purchase price of the Materials and/or Services will generally be set forth on the face of the Order. Unless otherwise stated in the Order, the purchase price is:

- a. A firm fixed price for the duration of the Order and not subject to increase for any reason, including increased raw material costs, increased labor or other manufacturing costs, increased development cost, or changes in volumes from the volumes estimated or expected;
- b. Inclusive of all federal, state, provincial and local taxes and any duties applicable to provision of the Materials and/or Services.

13. PAYMENT: Payment by Purchaser shall be net forty-five (45) days from the date of invoice. Unless otherwise provided for in the Order, invoices may not be sent to Purchaser until Purchaser's receipt of the Materials by the Purchaser or the complete performance of the Services. Invoices will be submitted by Vendor to the Purchaser's location indicated on the Order and shall reference the number of the Order.

14. INDEMNITY: Vendor hereby agrees to indemnify, defend and hold harmless Purchaser from all claims, demands, actions, causes of action, suits, judgments, costs, expenses, fees, (including the cost of defense and reasonable attorneys' fees, penalties, damages (including any consequential, incidental, punitive or other damages), and for damage to property and injuries, including death, arising out of or in any way related to: (i) any manufacturing, design or other defect, or improper operating or installation instructions, with respect to the Materials covered under this Purchase Order; (ii) the acts or omissions (including negligence) of Vendor, its agents, employees or representatives in the furnishing, installation, erection, repair, adjustment, use or operation of the Materials covered under or related to the products or services

provided pursuant to this Purchase Order; (iii) any modification to Purchaser's design, drawings or plans made by Vendor, including modification proposed by Vendor and approved by Purchaser; (iv) a breach of Vendor's warranties and guarantees, either expressed or implied; or (v) any other breach of the terms of this Purchase Order (collectively, "Indemnified Liabilities"). Vendor's obligation to defend and indemnify under this paragraph will apply regardless of whether a claim arises in tort, negligence, contract, warranty, strict liability or otherwise. At its option, Purchaser may participate in the defense of any third party claim with its own counsel, at Vendor's expense.

15. **INSURANCE:** Vendor agrees that it, any of its subcontractors (which must first be approved by Purchaser pursuant to paragraph 16 below), or any other persons or entities performing any such work in connection with the Materials, products or services provided under this Purchase Order will maintain public liability, including product liability, completed operations, contractor's liability, property damage insurance and protective liability and automobile liability and Workers' Compensation, and employer's liability insurance as will adequately protect Purchaser against the Indemnified Liabilities as set forth in paragraph 9 above. Vendor agrees to submit certificates of insurance, evidencing its insurance coverage when requested by Purchaser with minimum coverage limits acceptable to Purchaser:
- a. Worker's Compensation and Employer's Liability Insurance
 - i. Worker's Compensation and Occupational Disease coverage in accordance with the laws of the jurisdiction in which the work is to be, or is being, performed.
 - ii. Employer's Liability coverage with a limit of One Million Dollars (\$ 1,000,000) per occurrence.
 - b. Commercial General Liability Insurance
 - i. Commercial General Liability insurance with additional insured coverage for any claims arising from Vendor's work or this contract.
 - ii. Said Commercial General liability coverage shall have the following minimum limits on an occurrence basis, except when indicated otherwise:
 - 1. Five Million Dollars (\$ 5,000,000) aggregate per project;
 - 2. Five Million Dollars (\$ 5,000,000) products coverage;
 - 3. Five Million Dollars (\$ 5,000,000) completed operations coverage;
 - 4. Five Million Dollars (\$ 5,000,000) personal and advertising injury coverage;
 - c. Automobile Liability Coverage
 - i. Automobile liability coverage for owned, hired and non-owned vehicles with a minimum coverage limit of One Million Dollars (\$ 1,000,000) per accident.
 - d. Umbrella/Excess Liability Coverage
 - i. Umbrella/Excess Liability coverage with a minimum limit of Five Million dollars (\$ 5,000,000) per occurrence.
 - e. Miscellaneous
 - i. All coverages set forth in these requirements shall be primary and non-contributory with respect to any other insurance or self insurance that may be maintained by Safway, Safway's customer, or the Owner and Vendor waives any right of subrogation against Safway, Safway's customer, or the Owner.
 - ii. Said coverages shall not be subject to cancellation without at least thirty (30) days prior written notice to Safway. Should such insurance coverage be cancelled, Safway may, at its sole discretion, procure similar or identical coverage to that previously provided by the Vendor and deduct any and all costs associated with procuring such coverage from any amounts owed by Safway to Vendor or, at Safway's sole discretion, bill Vendor for such costs.
 - iii. Vendor shall provide to Safway, in a form acceptable to Safway, any and all necessary insurance certificates detailing the coverages listed in these requirements. Safway shall have no duty to review said certificates and any failure of Safway to notify Vendor of its non-compliance with this Section 5.3 or any other provision contained in these requirements shall not act as a waiver of any right by Safway.
 - iv. Vendor shall require that any and all of its subcontractors maintain insurance coverage in a manner consistent with these requirements and that proof of said coverage be provided to Safway upon request.
16. **ASSIGNMENT AND SETOFF:** Vendor may not assign its rights or delegate its duties hereunder without the prior consent of Purchaser, and any attempted assignment or delegation without such consent shall be void. Claims for money due or to become due under this Purchase Order maybe assigned by Vendor, but Purchaser shall be under no obligation to pay the Assignee unless Purchaser is furnished with written notice of the assignment and a copy of the instrument of assignment. Payment, whether to Vendor or to an assignee of Vendor, shall be subject to setoff or recoupment for any present or future claim or claims which Purchaser or any of Purchaser's affiliated companies may have against Vendor.
17. **PURCHASER'S PROPERTY:** All Materials, special drawings, dies, patterns, or other special items furnished to Vendor by Purchaser, or paid for by Purchaser shall remain the property of Purchaser. Such property shall be plainly identified by Vendor as Purchaser's property and shall be safely stored and not used except in filling Purchaser's Purchase Order. Such property while in Vendor's custody shall be maintained in good condition at Vendor's expense in an amount equal to the replacement cost, with loss payable to Purchaser. Purchaser's property may be removed by Purchaser at any time, and in any case, shall be returned to Purchaser upon Vendor's supplying the Materials or completion of services set forth in this Purchase Order.

18. **EXCUSABLE DELAYS:** Vendor shall not be liable for delays in manufacture or delivery of the Materials to the extent such delays are due to causes beyond Vendor's reasonable control, provided Vendor notifies Purchaser of the delay within seven (7) days after the occurrence which causes the delay. Purchaser shall have the right, at its option and without any liability to Vendor, to cancel by notice in writing to Vendor the portion or portions of this Purchase Order affected by such occurrence. Further, Purchaser may cancel this Purchase Order at any time prior to delivery of the Materials if its business is interrupted by causes beyond Purchaser's reasonable control, provided that Purchaser shall give prompt notice of such cancellation to Vendor. Causes deemed beyond a party's reasonable control include acts of God (including, without limitation, storms, floods, earthquakes and other naturally occurring events), acts of civil or military authorities, fires, labor disturbances, epidemics, war, national emergency or riot, and including acts of the other party.
19. **CANCELLATION; PURCHASER'S LIABILITY:** If Vendor is adjudged bankrupt, or is insolvent, or makes an assignment for the benefit of creditors, or if its business or affairs pass to the hands of a receiver, Purchaser shall have the option of canceling all or any portion of this Purchase Order. If Vendor breaches any provision of, or covenant or obligation contained in this Purchase Order or any obligation imposed by law, Purchaser shall have, in addition to any rights or remedies set forth herein, all remedies provided by law including, without limitation, the right to cancel, cover, and to recover incidental, special and consequential damages, plus interest, reasonable attorneys' fees and costs of suit, and the exercise of any right or remedy shall not preclude or waive Purchaser's exercise of any other rights or remedies.
- In addition to the Purchaser's right to cancel this Purchase Order for cause, Purchaser shall have the right to terminate this Purchase Order without cause, in whole or in part, at any time by written or telephonic notice. If the parties cannot agree within a reasonable time upon the amount of fair compensation to the Vendor for the Purchaser's cancellation, without cause, the Purchaser will: (i) pay the contract price for all articles completed in accordance with this Purchase Order and not previously paid for; (ii) pay a fair and proper portion of the contract price for Materials in progress; and (iii) pay Vendor's actual costs for all materials acquired or contracted for by Vendor for the purpose of completing this Purchase Order, which Vendor is unable to cancel or return. Vendor shall deliver any articles or materials referred to in the previous sentence to Purchaser, pursuant to the Purchaser's directions. All cancellation charges shall be subject to the Purchaser's review.
- In no event shall Purchaser be liable for anticipated profits, interest or penalties, or for incidental, consequential, punitive, exemplary or other damages or liabilities in connection with this Purchase Order, whether for breach of contract, late payment, property damage, personal injury, illness, death or otherwise.
20. **PRICE WARRANTY:** Vendor represents that the prices charged for the Material covered by this Purchase Order (whether or not specified hereon) are the lowest prices charged by Vendor to Purchasers of a class similar to Purchaser under conditions similar to those specified in this Purchase Order, and comply with applicable Government regulations in effect. Vendor agrees that any price reduction made in the Materials covered by this Purchase Order subsequent to the placement of this Purchase Order will be applicable to this Purchase Order.
21. **SUBCONTRACTING:** Subcontracting of this work covered by this Purchase Order is not permitted without prior written consent of Purchaser. Vendor shall ensure that any third party to whom Vendor subcontracts any services or work to be performed hereunder is bound by all of the terms and conditions relating to such work to which Vendor is bound under this Purchase Order.
22. **CUMULATIVE REMEDIES:** The Purchaser's rights and remedies set forth in this Purchase Order are cumulative and in addition to any other or further rights and remedies provided in law or equity. Any waiver by Purchaser of any particular breach or default under this Purchase Order by Vendor shall not constitute a continuing waiver or a waiver of any breach or default.
23. **CONFIDENTIAL INFORMATION:** Vendor will not, without Purchaser's prior written consent, advertise or publish in any manner that it has furnished or contracted to furnish to Purchaser the Materials specified in the Purchase Order. Further, all drawings, specifications, technical information, experience or similar confidential information disclosed by Purchaser to Vendor, together with documents containing such material, are the confidential property of the Purchaser. Vendor shall not disclose such confidential property to its employees or to any third party except on a need-to-know basis to enable Vendor to manufacture and supply to Purchaser the Materials covered by this Purchase Order, and the Vendor shall take all reasonable steps to maintain the confidentiality of all such confidential information. Within five (5) business days after the earlier of (i) cancellation of this Purchase Order or (ii) Purchaser's request, Vendor shall return all confidential information (including all copies, notes and/or extracts thereof) furnished to Vendor by Purchaser under this Purchase Order. In addition, any portion of such confidential information that consists of analyses, compilations, studies or other documents prepared by Vendor, or by its directors, officers, employees, agents or subcontractors will be destroyed.
24. **INVENTIONS:** If this Purchase Order involves or results in: (i) any invention or any experimental, developmental or research activities, including engineering related thereto; (ii) any reduction to practice of any subject matter, application or discovery that could be patented or copyrighted; or (iii) any improvement in the design of the Materials or any alternative or improved method of accomplishing the objectives of this Purchase Order (collectively, "Inventions"), such Inventions shall be owned by Purchaser and shall be deemed confidential and proprietary property of Purchaser, whether or not such Inventions or any portions thereof can be patented or copyrighted, and Vendor shall cooperate (and cause its employees, agents and subcontractors to cooperate) in executing any documents and taking any other actions necessary or convenient to patent, copyright or otherwise perfect such Inventions for the benefit of Purchaser.
25. **LICENSE FOR USE OF MATERIALS:** Vendor grants to Purchaser and to any of Purchaser's affiliated companies a nonexclusive license, under reasonable terms and conditions, to make, have made, use, have used and sell under any other patents now or hereafter owned or controlled by Vendor that cover any application of the technology embodied in the information or data Vendor acquires or develops in the course of Vendor's activities in performing under this Purchase Order. At Purchaser's request, Vendor will furnish to Purchaser all other information and data of Vendor that Purchaser deems necessary to understand the operation of and to maintain the Materials delivered under this Purchase Order, and to understand and apply the information and data made available to Purchaser under this paragraph 20, with no restrictions on use other than Vendor's patent rights.
26. **PACKING, CRATING AND CARTAGE:** No charge will be allowed for loading, packing, boxing, crating or cartage, unless stated in this Purchase Order. However, damage to any Materials not packed to insure proper protection will be charged to Vendor.

27. **CONTROLLING JURISDICTION:** Any dispute, claim or lawsuit brought under this Purchase Order shall be governed, controlled and interpreted in accordance with the laws of the State of Wisconsin (without regard to the choice of law rules of such state and without reference to the Convention on the International Sale of Goods). Vendor agrees that any litigation or other legal action, involving or related to products or services provided pursuant to this Purchase Order shall be brought in either the appropriate Wisconsin State Court or in the United States Federal Court for the Eastern District of Wisconsin.
28. **RISK OF LOSS:** Unless otherwise specified, risk of loss shall remain Vendor's until the Materials covered by this Purchase Order have been delivered to Purchaser and have been inspected and accepted, and the Vendor shall have the responsibility of insuring the Materials against transportation loss and any other loss or damage until the Materials have been delivered to Purchaser and have been inspected and accepted.
29. **COMPLIANCE WITH LAWS; EQUAL OPPORTUNITY:** Vendor agrees to comply with all applicable federal, provincial and local laws, statutes, ordinances, codes, rules, regulations and orders in connection with the manufacture, sale, delivery and use of the Materials, including, without limitation, obtaining or making all approvals and filings, complying with country of origin requirements under the North American Free Trade Agreement and any other duty preference programs, and, upon request, Vendor will submit to Purchaser evidence of such compliance.
30. **ASSIGNMENT:** Vendor shall not assign this Agreement or any of its rights or obligations hereunder without the prior consent of the Purchaser.
31. **NOTICES:** Any required or permitted notice will be deemed to have been given when received in writing at the address of the party being given notice. Notices shall be as follows:

To Purchaser:

Safeway Services, LLC

Attn.: Asset Management

N19 W24200 Riverwood Dr.

Waukesha, WI 53188

32. **SEVERABILITY:** If any provision of this Purchase Order, or portion of any provision, is declared or found to be unenforceable, the balance of this Purchase Order or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof. In particular, if any interest rate provided for herein is higher than that permitted by applicable law, it shall automatically be amended to the highest legal rate.
33. **PRODUCT FABRICATION:** Vendor shall not fabricate any of the Materials or procure any materials required in their fabrication, and Purchaser shall have no obligation as to the same, except to the extent expressly authorized in this Purchase Order or in written instructions forwarded to Vendor by Purchaser.