



## GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS AND SERVICES

### 1. Applicability

(a) These terms and conditions of purchase (these “**Terms**”) are the only terms which govern the purchase of the goods (“**Goods**”) and services (“**Services**”) by **NCH'KAY DEVELOPMENT LIMITED PARTNERSHIP** (“**Buyer**”) from the seller (“**Seller**”) named on purchase order (the “**Purchase Order**”) to which these Terms are attached to.

(b) The Purchase Order and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Seller’s general terms and conditions of sale regardless of whether or when Seller has submitted its sales confirmation or such terms including any Seller’s general terms and conditions attached to any of its invoices. This Agreement expressly limits Seller’s acceptance to the terms of this Agreement. Fulfilment of this Purchase Order constitutes acceptance of these Terms.

### 2. Delivery of Goods and Performance of Services.

(a) Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the “**Delivery Date**”). If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate this Agreement immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller’s failure to deliver the Goods on the Delivery Date.

(b) Seller shall deliver all Goods to the address specified in the Purchase Order (the “**Delivery Point**”) during Buyer’s normal business hours or as otherwise instructed by Buyer. Seller shall pack all goods for shipment according to Buyer’s instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition.



(c) Seller shall provide the Services to Buyer as described and in accordance with the Purchase Order and in accordance with the terms and conditions set forth in these Terms.

(d) Seller acknowledges that time is of the essence with respect to Seller's obligations hereunder and the timely delivery of the Goods and Services, including all performance dates, timetables, project milestones and other requirements in this Agreement.

3. **Quantity.** If Seller delivers more or less than the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's sole risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price (hereinafter defined) for the Goods shall be adjusted on a pro-rata basis.

4. **Shipping Terms.** Delivery of the Goods shall be made in accordance with the terms on the face of this Agreement. The Purchase Order number must appear on all shipping documents, shipping labels, invoices, correspondence, and any other documents pertaining to the Purchase Order.

5. **Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Point.

6. **Inspection and Rejection of Non-Conforming Goods.** Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are non-conforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind this Agreement in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the non-conforming or defective Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Agreement for cause pursuant to Section 18. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.



7. **Price.** The price of the Goods and Services is the price stated in the Purchase Order (the "**Price**"). If no price is included in the Purchase Order, the Price shall be the price set out in Seller's published price list in force as of the date of the Purchase Order. Unless otherwise specified in the Purchase Order, the Price includes all packaging, transportation costs to the Delivery Point, insurance, customs duties and fees and applicable taxes. No increase in the Price is effective, whether due to increased material, labour, or transportation costs or otherwise, without the prior written consent of Buyer.
8. **Payment Terms.** Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with these Terms. Buyer shall pay all properly invoiced amounts due to Seller within thirty (30) days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set-off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.
9. **Seller's Obligations Regarding Services.** Seller shall:
- (a) before the date on which the Services are to start, obtain, and at all times during the term of this Agreement, maintain, all necessary licences and consents and comply with all relevant laws applicable to the provision of the Services;
  - (b) comply with all rules, regulations, and policies of Buyer;
  - (c) maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Seller in providing the Services in such form as Buyer shall approve. During the term of this Agreement and for a period of two (2) years thereafter, upon Buyer's written request, Seller shall allow Buyer to inspect and make copies of such records and interview Seller personnel in connection with the provision of the Services;
  - (d) obtain Buyer's written consent, which may be given or withheld in Buyer's sole discretion, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Seller, other than Seller's employees, to provide any Services to Buyer (each such approved subcontractor or other third party, a "**Permitted Subcontractor**"). Buyer's approval shall not relieve Seller of its obligations under the Agreement, and Seller shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of



this Agreement as if they were Seller's own employees. Nothing contained in this Agreement shall create any contractual relationship between Buyer and any Seller subcontractor or supplier;

- (e) require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of this Agreement;
- (f) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Seller, are properly licensed, certified, or accredited as required by applicable law and are suitably skilled, experienced, and qualified to perform the Services;
- (g) ensure that all of its equipment used in the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by the Buyer; and
- (h) keep and maintain any Buyer equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with the Buyer's written instructions or authorization.

10. **Change Orders.** Buyer may at any time, by written instructions and/or drawings issued to Seller (each a "**Change Order**"), order changes to the Services. Seller shall within five (5) days of receipt of a Change Order submit to Buyer a firm cost proposal for the Change Order. If Buyer accepts such cost proposal, Seller shall proceed with the changed services subject to the cost proposal and the terms and conditions of this Agreement. Seller acknowledges that a Change Order may or may not entitle Seller to an adjustment in the Seller's compensation or the performance deadlines under this Agreement.

11. **Conditions and Warranties.**

- (a) Seller covenants and warrants to Buyer that all Goods will:
  - (i) be free from any defects in workmanship, material, and design;
  - (ii) conform to applicable specifications, drawings, designs, samples, and other requirements specified by Buyer;
  - (iii) be fit for their intended purpose and operate as intended;



- (iv) be merchantable;
- (v) be free and clear of all liens, security interests, or other encumbrances; and
- (vi) not infringe or misappropriate any third party's patent or other intellectual property rights.

These warranties survive any delivery, inspection, acceptance, or payment of or for the Goods by Buyer;

(b) Seller warrants to Buyer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement; and

(c) the warranties set forth in this Section 11 are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods or Services with the foregoing conditions and warranties. If Buyer gives Seller notice of noncompliance pursuant to this Section, Seller shall, at its own cost and expense, promptly (i) replace or repair the defective or non-conforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or non-conforming goods to Seller and the delivery of repaired or replacement Goods to Buyer, and, if applicable, (ii) repair or re-perform the applicable Services.

12. **General Indemnification.** Seller shall defend, indemnify, and hold harmless Buyer and Buyer's parent company, their respective subsidiaries, affiliates, successors, or assigns and their respective directors, officers, partners, shareholders and employees (collectively, "**Indemnitees**" and each an "**Indemnitee**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, or expense, including reasonable legal fees and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with the Goods and Services purchased from Seller or Seller's negligence, wilful misconduct, or breach of the Terms. Seller shall not enter into any settlement without Buyer's prior written consent.



13. **Intellectual Property Indemnification.** Seller shall, at its expense, defend, indemnify, and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or any Indemnitee's use or possession of the Goods or use of the Services infringes or misappropriates the patent, copyright, trademark, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or the applicable Indemnitees' prior written consent.

14. **Limitation of Liability.** Nothing in this Agreement shall exclude or limit (a) Seller's liability under Sections 12 and 13 hereof, or (b) Seller's liability for fraud, personal injury, or death caused by its negligence or wilful misconduct.

15. **Insurance.**

(a) During the term of this Agreement, Seller will have and maintain in good standing a worker's compensation and insurance account with the provincial workers' compensation board, and provide Buyer with evidence of its registration, including the Seller's workers' compensation number and clearance certificate.

(b) Where the contract value of the Purchase Order exceeds \$100,000 or as may otherwise be required by Buyer, Seller will, in addition to the insurance requirement under Section 15(a), have and maintain in force the following insurance during the term of this Agreement:

(i) commercial general liability insurance with policy limits sufficient to protect and indemnify the Buyer from any losses arising from the Seller or the Seller's personnel's conduct, acts, or omissions, and in any event with limits no less than \$5,000,000 per occurrence, which policy will include contractual liability coverage insuring the activities of the Seller under this Agreement;

(ii) professional liability insurance in respect of the Seller's personnel, in an amount satisfactory to the Buyer, and in any event with limits no less than \$5,000,000 per occurrence; and

(iii) such other insurance as may be required by the Buyer from time to time.



(c) Each such insurance policy shall name the Buyer, Nch'kaý Development Corporation, the Squamish Nation and/or such other affiliated entity of any of the foregoing requested by the Buyer as additional insured under the policy. Except where prohibited by law, the Seller shall require its insurers to waive all rights of subrogation against the Buyer's insurer, the Buyer and the Indemnitees.

(d) The Seller will forward to the Buyer a certificate verifying such insurance upon the Buyer's written request. The Seller will not do anything to invalidate such insurance and will notify the Buyer immediately in writing of notice of termination or material change of such insurance.

(e) If the Seller fails to provide or maintain insurance as required by this Agreement, then the Buyer will have the right to provide and maintain such insurance and give evidence to the Buyer. The Seller will pay the cost thereof to the Buyer on demand or the Buyer may deduct the cost from the amount which is due or may become due to the Seller.

(f) All required insurance policies will be with insurers licensed to underwrite insurance in British Columbia.

16. **Compliance with Law.** Seller is in compliance with and shall comply with all applicable laws, regulations, and ordinances. Seller shall maintain in effect all the licences, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

17. **Key Personnel.**

(a) Seller shall appoint the following persons as its authorized representatives with respect to all matters pertaining to this Agreement (collectively, the "**Key Personnel**"):

Name	Title/Role



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(b) Seller shall ensure that all Key Personnel are available as reasonably required for the provision of the Goods and Services throughout the term of this Agreement. Seller shall promptly notify Buyer if any Key Personnel becomes unavailable to provide the applicable Goods and Services (or any portion thereof) for any reason. After notifying the Buyer of the unavailability of any Key Personnel, Seller shall have sixty (60) days to find suitable proposed individual to replace such unavailable Key Personnel (such replacement, the “**Replacement Personnel**”) and to submit a summary of their qualifications, experience and ability to Buyer. If Buyer, acting reasonably, does not find the proposed individual(s) to be suitable as Replacement Personnel, Seller shall have an additional thirty (30) days to find suitable alternative Replacement Personnel and submit a summary of their qualifications, experience and ability to Buyer. If Buyer, acting reasonably, again does not find the proposed alternative individual(s) to be suitable as Replacement Personnel in accordance with this provision, then that portion of the contract value of the Purchase Order reasonably attributable to the provision of Goods and Services by such applicable unavailable Key Personnel (as determined by the Buyer acting reasonably) shall be reduced proportionately by 20%.

(c) Seller covenants and agrees that it shall make no changes in the Key Personnel except either:

- (i) upon the death, illness, incapacity, resignation or termination for cause of the applicable Key Personnel; or
- (ii) with the prior written consent of Buyer,

provided that in each case, any replacement or substitution of a Key Personnel shall be at no cost to the Buyer and shall be with individuals who possess comparable, equivalent or superior qualifications, experience and ability as the applicable Key Personnel to be replaced or substituted and otherwise appointed in accordance with Section 17(b) of this Agreement.

18. **Termination.** In addition to any remedies that may be provided under these Terms, Buyer may terminate this Agreement with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods or Seller’s delivery of the





Services, if Seller has not performed or complied with any of these Terms, in whole or in part. If Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, liquidation, reorganization, or assignment for the benefit of creditors, then the Buyer may terminate this Agreement effective immediately upon written notice to Seller. If Buyer terminates the Agreement for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted and Services accepted by Buyer prior to the termination.

19. **Waiver.** No waiver by Buyer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Buyer. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

20. **Confidential Information.** All non-public, confidential, or proprietary information of Buyer, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the purpose of performing this Agreement and may not be disclosed or copied unless authorized in advance by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section.

21. **Assignment.** Seller shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Seller of any of its obligations hereunder. Buyer may at any time assign or transfer any or all of its rights or obligations under this Agreement without Seller's prior written consent.

22. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Agreement.



23. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
24. **Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein.
25. **Choice of Forum.** Any legal suit, action, litigation or proceeding of any kind whatsoever in any way arising out of, from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, shall be instituted in the courts of the Province of British Columbia, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, litigation or proceeding.
26. **Notices.** Each Party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a “**Notice**”) in writing and addressed to the parties at the addresses set forth on the Purchase Order (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). The delivery of a Notice will be by hand, by courier, by prepaid first class mail, or by other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender. A Notice delivered by one party in accordance with this Section will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it will be deemed to have been received three business days after the date on which it was mailed. A Notice sent by any form of electronic communication will be deemed to have been received on the date of its transmission provided that if such day is not a business day or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it will be deemed to have been received at the opening of business at the place of receipt on the first business day next following the transmission thereof.
27. **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.



28. **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Section 12 (General Indemnification), Section 13 (Intellectual Property Indemnification), Section 16 (Compliance with Laws), Section 20 (Confidential Information), Section 24 (Governing Law), Section 25 (Choice of Forum), and this Section 28 (Survival).

29. **Amendments and Modifications.** These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.