

1. GENERAL

- Time is of the essence.
- An incomplete, conditional, unbalanced, obscure, altered or irregular tender may be rejected. Tender may be rejected for failure to provide specifications or catalogue information, or both, for a product offered as an equivalent.
- Tenders shall be irrevocable for the tender validity period, and the lowest or any Tender or part thereof will not necessarily be accepted.
- Written Addenda will be used to amend or clarify tendering Specifications.
- Agreement includes Purchase Order, these Terms and Conditions, Specifications, Drawings and **VENDOR's** Tender, with document precedence in the order named.
- **PURCHASER** means the issuer of the Purchase Order and includes its agents. It may also be referred to as **NALCOR ENERGY, HYDRO** or **CF(L)Co**, whichever is applicable.
- **VENDOR** means the Vendor named on the Purchase Order and includes its subcontractors and agents.
- **GOODS** means supply of specified manufactured articles.
- **WORK** means supply of specified labour, equipment, materials, **GOODS** and services.
- **WORK SITE** means all places where **WORK** is to be performed.
- Communications and documentation shall be in English.
- Measurement units shall comply with Specifications.
- **WORK** shall be governed by the laws of Newfoundland and Labrador and any action or proceeding arising from the Work shall be determined exclusively by a court in Newfoundland and Labrador
- Agreement binds and benefits both parties, successors and permitted assigns.

2. TENDER CLOSING AND LATE RECEIPT OF TENDERS

Tender closing time is clearly stated on the Request for Quotation form or in a tender document. Tender responses must be received prior to the closing time. Unless otherwise specified, tenders are accepted by fax. In the event that due to extenuating circumstances, such as a postal or transportation labour dispute or inclement weather, a tender is received late, the decision as to whether the tender will be accepted will be at the sole discretion of Hydro

3. TENDER EVALUATION

- Evaluation will be based on total analysis including, but not limited to, price, quality, delivery, **TENDERER's** past performance and its ability to meet Specifications, and legal, technical and financial considerations relevant to cost-effective delivery.
- If no tender meets Specifications, tenders may be evaluated on the basis of that which most closely meets Specifications and is most cost-effective.

4. PRICING AND PAYMENT TERMS

- Prices should be in Canadian currency, payable at par in St. John's, Newfoundland. Unless otherwise provided in Specifications, payment shall be net thirty (30) days from invoice date, subject to receipt of **GOODS** in apparent proper working condition and free from defects.
- **VENDOR's** acceptance of final payment, releases **PURCHASER** from claims of and liability to **VENDOR** for **PURCHASER's** acts, omissions or neglect.
- Invoices shall separately identify the amounts of federal GST/HST.

5. PURCHASE ORDER CHANGES

Changes shall be made by duly authorized written Change Order.

6. GOODS AND EQUIVALENTS

- **GOODS** shall meet Specifications, be of standard proven contemporary design (not prototype) and be new, unless otherwise approved by **PURCHASER** in writing.

- Equivalents approved by **PURCHASER** in writing are acceptable.

7. DELIVERY

VENDOR shall arrange design, manufacturing and shipping so that **GOODS** or components thereof shall arrive at F.O.B. Point in accordance with the date stipulated. Delivery occurs when **PURCHASER** signs for receipt.

8. SHIPPING AND INSURANCE

VENDOR shall adequately protect **GOODS** against damage until delivery, and bear costs of loss or damage. Itemized packing slip shall accompany each shipment.

VENDOR shall provide insurances as per Specifications.

9. ENVIRONMENTAL PROTECTION

PURCHASER uses an Environmental Management System (EMS) registered to the ISO 14001 Standard. **PURCHASER** has an environmental policy that commits to compliance with legal and other requirements, prevention of pollution and continual improvement. **VENDOR** must be aware of actual or potential impacts associated with **GOODS** or **WORK** provided. **VENDOR** shall protect the environment of the areas where the **WORK** is located. **WORK** shall be subject to inspection by **PURCHASER** and relevant provincial and federal governments. Specific matters relating to environmental protection shall be dealt with between **VENDOR** and **PURCHASER**.

10. HAZARDOUS OR CONTROLLED PRODUCTS

VENDOR shall not deliver or use a hazardous or controlled product as defined by the Hazardous Products Act unless such product has a WHMIS label attached and is supplied with a Material Safety Data Sheet (MSDS). **VENDOR** shall inform workers of all information concerning use, storage and handling of, or working in proximity to, hazardous or controlled products.

11. PERMITS

Unless otherwise provided for in Specifications, **VENDOR** shall obtain and pay for all permits and licences and shall give all notices necessary or required for lawful performance of **WORK**.

12. WORKER'S COMPENSATION

If applicable, prior to starting work, **VENDOR** shall provide a Letter of Good Standing from the Workplace Health, Safety and Compensation Commission.

13. WORKMANSHIP

VENDOR shall employ competent and skilful workers and provide best workmanship.

14. SAFETY AND HEALTH

VENDOR shall comply with legislated occupational health and safety requirements, and any **PURCHASER** specified additional requirements.

15. INSPECTION AND ACCEPTANCE

GOODS shall be subject to inspection and test by **PURCHASER** during manufacture, if specified, and upon delivery, if specified. If Specifications are not met, **GOODS** may be rejected and returned at **VENDOR**'s expense.

16. TITLE AND WARRANTY

- **VENDOR** shall provide **PURCHASER** with good and clear title to **GOODS** and shall indemnify and save harmless **PURCHASER** from and against any and all claims, damages, loss, costs and expenses arising from any title dispute.
- Unless otherwise specified in the Specifications, **GOODS** shall be guaranteed as to compliance with Specifications for a period of twelve (12) months following **PURCHASER**'s acceptance. **VENDOR** agrees to promptly remedy defects and deficiencies and to restore **GOODS** to satisfactory operating condition, and including freight charges, all without cost to **PURCHASER**. Restored parts of **GOODS** shall be guaranteed for a further period equal to the original guarantee period and commencing from date of restoration. This guarantee shall be in addition to **PURCHASER**'s other rights.

17. PATENTS

VENDOR shall indemnify and save harmless **PURCHASER** from all claims, costs and damages arising from **PURCHASER**'s use of **GOODS** provided by **VENDOR** resulting from or contributed to by infringement, or alleged infringement, upon any patent, trademark or copyright.

18. PERFORMANCE

VENDOR shall perform **WORK** as an independent Vendor and not as an employee or agent of **PURCHASER**.

19. SUBCONTRACTS AND ASSIGNMENTS

VENDOR shall not assign this order and shall supply **GOODS** and render invoice, unless otherwise authorized by **PURCHASER**. **VENDOR** shall be responsible for payment of all assessments for levies relating to **WORK** performed by employees, agents or subcontractors of **VENDOR**.

20. NO WAIVER

Agreement provisions may only be waived by **PURCHASER**, in writing.

21. DUTIES AND TAXES

- Tendered prices shall include all duties and taxes except federal GST/HST. Unless otherwise provided for in Specifications, **PURCHASER** will be the importer of record.
- If applicable, Non-Resident Withholding Tax will apply, unless **VENDOR** has provided a waiver from CCRA.

22. FORCE MAJEURE

Neither party to the contract shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations is delayed, hindered or prevented by Force Majeure. "Force Majeure" means acts of God, acts of public enemies, acts of a competent governmental authority and includes any other cause which could not have been avoided by the exercise of reasonable human foresight and skill.

23. TERMINATION

- **PURCHASER** shall have the right, in its sole discretion, upon written notice to **VENDOR**, to terminate the contract in whole or in part without being subject to a claim for damages for such termination.
- **VENDOR**'s obligations as to **WORK** performed and bona fide obligations assumed prior to termination shall continue after termination; and as full compensation, **VENDOR** will be paid for **WORK** performed to **PURCHASER**'s satisfaction prior to termination and cancellation expenses judged necessary by **PURCHASER**. Total payments shall not exceed the Contract Price.

24. MECHANICS' LIEN ACT

Prior to release of any Mechanics' Lien holdback, if required, **VENDOR** shall provide a Release from All Liabilities in a form acceptable to **PURCHASER**.