



Terms and Conditions

Goods Purchase Order (FHELP)

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1. Definitions

1.1 **Definitions.** Unless the context requires otherwise, the following capitalized terms mean:

- (a) **"Affiliate"** shall have the same meaning given to that term in the *Canada Business Corporations Act*, or any similar, replacement or supplemental Law in effect from time to time, which meaning shall, mutatis mutandis, apply to partnerships, limited liability partnerships and limited partnerships.
- (b) **"Claim"** or **"Claims"** means, as the case may be, any one or more of: loss, damage, cost, expense, disbursement, penalty, fine, claim, demand, action, proceeding, lien (whether builders', mechanic's, construction or other type of lien), legal hypothec, suit, liability, judgment, award, decree, determination, adjudication, unpaid tax of any kind (including withholding tax), cost of investigation and any type of fee (including legal fees, on a solicitor-and-own-client basis), together with any interest in relation thereto at the applicable rate.
- (c) **"Documents"** includes, without limitation, diagrams, illustrations, specifications or drawings supplied directly or indirectly by the Partnership to the Seller, or produced by the Seller or its subcontractors in connection with the supply of the Goods.
- (d) **"Goods"** means all supplies, goods, materials, equipment, components and Services required to be supplied by the Seller in accordance with the Purchase Order.
- (e) **"Indemnitees"** means the Partnership, the partners forming the Partnership, their Affiliates, the Operator, and each of their respective Personnel.
- (f) **"Intellectual Property Rights"** means all intellectual property rights as recognized under the Law, including rights in and to patents, copyrights, industrial designs and other intellectual property, but excluding trademarks. Intellectual Property shall include all:
 - (i) applications or registrations;
 - (ii) rights and privileges arising under applicable Laws; and
 - (iii) rights of the same or similar effect or nature in any jurisdiction,
 relating to the foregoing throughout the world.
- (g) **"Invoicing Requirements"** means the Partnership's invoicing and accounts payable standards, procedures, policies and guidelines on the Operator's website at www.suncor.com and as specified in the Purchase Order and as may be provided by the Partnership from time to time.
- (h) **"Law"** or **"Laws"** means collectively all valid applicable common law, federal, provincial, state and municipal and other local laws, orders, rules, regulations and decisions of regulatory bodies, including, occupational health and safety, fire, employment insurance, workers' compensation, Hazardous Substance, transportation of dangerous goods and handling, environmental protection legislation, building codes, anti-bribery law or international convention, as may apply now or in the future, including but not limited to the *Corruption of*

Foreign Public Officials Act (Canada), the *Foreign Corrupt Practices Act* (U.S.), the *Bribery Act* (U.K.) and the OECD Convention on Combating Bribery of Foreign Public Officials, and any other governmental requirements, work practices and procedures prescribed by law and related to the Seller, the Site, the Goods or the Services.

- (i) **"Operator"** means Suncor Energy Operating Inc. appointed by the Partnership as contract operator of the Site.
- (j) **"Partnership"** or **"the Partnership"** means Fort Hills Energy L.P.
- (k) **"Personnel"** means a party's directors, officers, employees, contract personnel, representatives, advisors and agents.
- (l) **"Project Technology"** means any Technology, and any Intellectual Property Rights therein, created, developed or acquired by the Seller, the Seller's Personnel or the Partnership as a result of or in connection with the Goods.
- (m) **"Purchase Order"** means the purchase order issued by the Partnership and all other attachments identified in the purchase order.
- (n) **"Records"** means the records of the Seller relating to the Purchase Order or the Goods, and which include paper and electronic documents and/or copies in their native form, as the case may be, of:
 - (i) original invoices and records of account for all Goods supplied, and any other items of cost for which the Partnership is obliged to reimburse the Seller, and information relating to Seller's compliance with the Invoicing Requirements;
 - (ii) records relating to any termination or suspension costs; and
 - (iii) information relating to Seller's compliance with the Law and the Supplier Code of Conduct, and the Seller's use of Confidential Information.
- (o) **"Seller"** means the party named in the Purchase Order as the supplier of the Goods to the Partnership.
- (p) **"Services"** means all labour, supervision and such other work and materials to be supplied or performed in connection with the Goods by the Seller at the Site in accordance with the Purchase Order. The Supplemental Site Service Terms and Conditions Addendum available on the Operator's website at www.suncor.com, as updated from time to time, shall apply to such Services and the Seller shall be deemed to have accepted same by proceeding with the Services.
- (q) **"Site"** means the site(s) identified in the Purchase Order.
- (r) **"Supplier Code of Conduct"** means the document entitled "The Way We Do Business – Working with Suncor" reflecting the Operator's Standards of Business Conduct as applicable to the Partnership's suppliers, available on the Operator's website at www.suncor.com.
- (s) **"Technology"** means all: Documents, trade secrets and other proprietary or confidential information; any information of a scientific, technical, or business

nature; standards and specifications; conceptions, ideas, innovations, principles, knowledge and discoveries; research, developmental, demonstration or engineering work; systems, designs, analytical tools, practices, methods of assessment and techniques; data and data files; metrics and statistics; scoping studies; and all other information, methods, processes, formulations, formulae, technical or procedural information. Furthermore, Technology may be embodied in or on any media including hardware, software, photographs, drawings, plans, documents, deliverables, reports, studies, manuals, summaries and other work product.

- (t) **"Terms and Conditions of Purchase"** means this document entitled "Terms and Conditions Goods Purchase Order", including where applicable, the Supplemental Site Service Terms and Conditions Addendum, and forming part of the Purchase Order.

2. Precedence

- 2.1 **Precedence.** The Terms and Conditions of Purchase shall govern if inconsistent with the terms and conditions on the face of the Purchase Order.

3. Scope of Supply

- 3.1 **Goods.** The Seller shall supply the Goods in accordance with the Purchase Order.
- 3.2 **Time.** The Seller acknowledges that timely supply of the Goods is a matter of paramount importance to the Partnership.

4. Changes

- 4.1 **Partnership Change.** The Partnership may, at any time, make changes to the Goods including, without limitation, additions, deletions, rescheduling and acceleration or deceleration to all or any part of the Goods.

5. Independent Contractor

- 5.1 **Independent Contractor.** The Seller is an independent contractor and not the agent of the Partnership.

6. Representations

- 6.1 **Seller's Performance Representations and Warranties.** The Seller represents and warrants that the Goods:
- (a) shall be free from all latent and other defects or deficiencies;
 - (b) shall be of merchantable quality;
 - (c) shall be fit for the purpose for which the Goods have been manufactured, fabricated or supplied; and
 - (d) are now, and shall continue to be, free and clear of all liens, encumbrances, any adverse Claims, demands or other interests.

7. Warranty

- 7.1 **Remediation of Defective or Deficient Goods.** The Seller shall, at its own risk and expense, including all costs to access the Goods, but subject to the limit specified in Paragraph 11.1 Limitation of Liability for the Seller, remedy without delay any defect or deficiency in the Goods discovered within 24 months after delivery of the Goods or 12 months after the Goods are put into service under normal operating conditions, whichever occurs first.

- 7.2 **Indemnification by Seller to the Partnership for Remediation.** Should the Seller fail to promptly remedy the defects or deficiencies in accordance with Paragraph 7.1 Remediation of Defective or Deficient Goods, the Partnership may proceed with any activities necessary to remedy the defects or deficiencies and the Seller shall indemnify and hold harmless the Partnership from any Claim suffered, sustained, paid or incurred by the Partnership.

8. Return of Goods

- 8.1 **Return of Goods.** In the event any Goods are delivered in error, rejected as not being in accordance with the Purchase Order, or overages in excess of trade practice, then the Partnership shall have the right to return such Goods at the Seller's expense and risk.

9. Insurance

- 9.1 **Insurance Coverage.** Without limiting any of the obligations or liabilities under the Purchase Order, the Seller shall obtain at its own expense and cost, a policy of Commercial General Liability Insurance suitable to the Partnership in an amount of not less than \$5 million per occurrence covering Products and Completed Operations Liability. This policy will respond to property damage to the Partnership's existing facilities.

10. Liability and Indemnification

- 10.1 **Liability of Seller.** The Seller agrees that it shall be liable to and indemnify and hold harmless the Indemnitees for all Claims whatsoever which the Indemnitees may suffer, sustain, pay or incur as a result of and to the extent of: (i) the negligence; and (ii) breach of contract; of the Seller, arising out of or incidental to the performance or non-performance of the Seller's obligations or the provision of the Goods under the Purchase Order.

11. Limitation of Liability

- 11.1 **Limitation of Liability for the Seller.** Subject to Paragraph 11.2 Gross Negligence and Willful Misconduct and the Seller's obligations to indemnify pursuant to Article 12 Third Party Claims, Article 18 Confidentiality, Article 19 Intellectual Property and Article 21 Taxes, which shall not be limited in any way, the Seller's liability under this Purchase Order shall be limited to the greater of:

- (a) all amounts of applicable coverage under policies of insurance required to be maintained under the Purchase Order, or
- (b) the Purchase Order price.

- 11.2 **Gross Negligence and Willful Misconduct.** The limitation of the Seller's liability, specified in Paragraph 11.1 Limitation of Liability for the Seller shall not apply in respect of liability of the Seller arising from, or connected to, its gross negligence or willful misconduct. Where the Purchase Order is governed by the Laws of Quebec, "gross negligence and willful misconduct" shall have the same meaning as "intentional or gross fault".

12. Third Party Claims

- 12.1 **Third Party Claims.** The Seller agrees that it shall be liable to and indemnify and hold harmless the Indemnitees from all Claims whatsoever by third party which may be brought or made against the Indemnitees or which the Indemnitees may sustain, pay or incur as a result of and to the extent of the acts, faults, errors, omissions or

negligence of the Seller arising out of or incidental to the performance or non-performance of the Seller's obligations or the provision of the Goods under the Purchase Order or the conduct of the Seller.

13. Consequential and Punitive Damages

13.1 **Consequential and Punitive Damages Exclusion.** Neither party shall be liable to the other for consequential damages, punitive damages or damages for losses of profits, revenue, business, reputation or financing and lost opportunity.

13.2 **Direct Lost Profits.** Notwithstanding Paragraph 13.1 Consequential and Punitive Damages Exclusion, the Seller shall be liable to the Indemnitees for damages for losses of profits, revenue, business, reputation or financing and lost opportunity if and to the extent that such losses are a direct result of: (i) the negligence; or (ii) breach of contract; of the Seller; arising out of or incidental to the performance or non-performance of the Purchase Order or the supply of the Goods by the Seller.

13.3 **Exception to Consequential and Punitive Damages Exclusion.** Paragraph 13.1 Consequential and Punitive Damages Exclusion shall not apply to the Seller's obligation to indemnify the Indemnitees pursuant to Paragraph 12.1 Third Party Claims, Paragraph 18.2 Confidentiality Indemnification and Paragraph 19.1 Intellectual Property Indemnification.

14. Title Transfer

14.1 **Title Transfer.** Title to the Goods or part thereof shall be vested in the Partnership when the first of the following events occurs:

- (a) the Goods, or a portion thereof, are first identifiable as being appropriated to the Purchase Order;
- (b) the Partnership pays for the Goods, or part thereof; or
- (c) the Goods or part thereof are dispatched from the Seller's place of manufacture to the Site.

14.2 **Refusal of the Goods.** Any transfer of title to the Goods shall be without prejudice to the Partnership's right to refuse the Goods in case of non-conformity with the requirements of the Purchase Order.

14.3 **Risk of Loss.** Notwithstanding Paragraph 14.1 Title Transfer, care, custody, control and risk of loss of the Goods, and liability arising from the storage and transportation of the Goods, remains with the Seller until the Partnership takes physical possession and accepts delivery of the Goods.

15. Payment

15.1 **Payment.** Subject to the terms and conditions herein, payment shall be made in accordance with the Purchase Order.

15.2 **Withholding.** Notwithstanding any other provision, an amount otherwise due to the Seller may be withheld, without payment of interest, if, in the opinion of the Partnership, it is necessary to protect the Partnership from loss on account of the Seller:

- (a) failing to provide the Goods in accordance with the terms of this Purchase Order;
- (b) being in default of any condition of the Purchase Order, including without limitation, quality assurance;

(c) not promptly remedying defective or deficient Goods; or

(d) failing to promptly and satisfactorily pay any Claim for labour performed or materials or equipment furnished;

and if and when the cause of the withholding of any amount is removed and satisfactory evidence of such removal is furnished to the Partnership, the Partnership shall promptly pay the amount withheld to the Seller pertaining to such cause.

16. Set-Off

16.1 **Set-Off.** The Partnership may deduct and set-off any amounts owed by the Seller to the Partnership under the Purchase Order, howsoever arising, from any amount due or owing by the Partnership under any contract the Partnership has or may have with the Seller.

17. Suspension or Termination

17.1 **Suspension or Termination by the Partnership.** The Partnership may, at any time, without cause, suspend or terminate the Purchase Order for any reason on 15 days' written notice, provided, however, that the Partnership may, upon giving 24 hours' notice, immediately terminate the Purchase Order for cause.

18. Confidentiality

18.1 **Confidential Information.** Any and all confidential information of the Partnership or the Seller received by the other party to the Purchase Order shall be received in the strictest confidence and not disclosed except by the Partnership as may be necessary to use or maintain the Goods.

18.2 **Confidentiality Indemnification.** Without limitation and in addition to any other rights or remedies the Partnership may have, the Seller acknowledges that it shall be liable to and shall indemnify and hold harmless the Indemnitees from all inter-party and third party Claims brought against or suffered, sustained, paid or incurred by the Indemnitees arising out of or resulting from a breach of Article 18 Confidentiality by the Seller.

18.3 **Further Relief.** It is understood that a breach of any of the promises or provisions contained in this Article may cause the other party to suffer a loss for which it could not be adequately compensated by monetary damages. In addition to claiming damages or an indemnity, the affected party shall be entitled as a matter of right to seek an injunction and enforce the terms and provisions of this Article. The parties agree that the affected party will suffer irreparable harm as a result of a breach of any of the promises or provisions contained in this Article, and the other party consents to any preliminary or ex parte applications for such relief to any court of competent jurisdiction, including, without limitation, equitable relief including injunctive relief and specific performance. The foregoing rights shall be cumulative and shall be in addition to any other remedies which may be available to the affected party.

18.4 **Term.** The obligations under this Article 18 Confidentiality shall continue for a period of 5 years following the date the Purchase Order becomes a binding agreement in accordance with Paragraph 25.6 Binding Agreement.

19. Intellectual Property

- 19.1 **Rights of Parties.** Subject to any rights, title or interests expressly granted by the Purchase Order, neither party shall acquire any right, title, or interest in or to any Technology of the other party in existence prior to the execution of the Purchase Order and any Intellectual Property Rights therein.
- 19.2 **Intellectual Property Indemnification.** The Seller shall be liable to and, in addition, shall indemnify and hold harmless the Indemnitees from and against any and all Claims arising out of or resulting from the actual or alleged infringement or misappropriation of Intellectual Property Rights or any litigation based thereon in respect of Project Technology or Goods supplied by the Seller or the license provided pursuant to Paragraph 19.3 License. The Seller, if requested to do so by the Partnership, shall, at its sole expense, promptly defend against the Claim. The Partnership shall notify the Seller upon becoming aware of the Claims. The Seller shall have the right at its own expense to modify the Goods so they become non-infringing, or to obtain the necessary licenses to use the infringing Goods only if such substituted and modified Goods shall meet all the requirements and be subject to all the provisions of the Purchase Order.
- 19.3 **License.** Notwithstanding Paragraph 19.1 Rights of Parties, if any Technology that the Seller owned, created, developed or acquired prior to the Partnership receiving the Goods or independently of such order for the Goods ("**Background IP**") is incorporated or embedded into any Goods or is otherwise necessary to use or maintain the Goods, then the Seller hereby grants to the Partnership and its Affiliates a non-exclusive, irrevocable, worldwide, transferable, royalty-free, fully paid-up, sub-licensable and perpetual right and license to use or maintain such Background IP in any way related to its use of the Goods with no obligation to account to the Seller.
- 19.4 **Project Technology.** The Partnership shall own all Project Technology, which shall be the Partnership's Confidential Information. The Seller hereby assigns, and agrees to assign to the Partnership, an ownership interest in any Project Technology that it or its Personnel create, develop or acquire and provide such Project Technology to the Partnership.

20. Compliance with Laws and Supplier Code of Conduct

- 20.1 **Compliance with Law.** The Seller shall comply with all applicable Law in the performance of its obligations under the Purchase Order.
- 20.2 **Compliance with Supplier Code of Conduct.** The Seller shall and shall ensure that its subcontractors and their respective Personnel comply with the Supplier Code of Conduct at the cost and expense of the Seller. In the case of any difference between the requirements of the Supplier Code of Conduct and the Law, the stricter or higher standard shall apply.

21. Taxes

- 21.1 **Tax Responsibility.** With the exception of goods and services tax/harmonized sales tax (as defined in the *Excise Tax Act* (Canada)) payable on amounts due to the Seller, payment of which shall remain the responsibility of the Partnership, the Seller shall pay all taxes in relation to the Goods supplied under the Purchase Order in compliance with all applicable Law.

- 21.2 **Tax Indemnity.** The Seller shall indemnify and save harmless the Partnership from any and all Claims which may be made or assessed against the Partnership in respect of the Seller's obligations described in Article 21 Taxes.

22. Audit

- 22.1 **Audit.** At any time during normal business hours until 2 years following delivery of the Goods, the Partnership or its nominees shall have the right to inspect and audit the Records.

23. UN Convention on the Sale of Goods

- 23.1 **Exclude the Application.** The parties hereto expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

24. Governing Law

- 24.1 **Governing Law and Jurisdiction.** The Purchase Order shall be governed by and construed in accordance with the Laws of the province where the Site is located. The parties agree to accept and submit to the exclusive jurisdiction of the courts of that province.

25. General Matters

- 25.1 **Assignment.** Neither party may assign the Purchase Order without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- 25.2 **Subcontracting.** Seller shall not subcontract any portion of the Purchase Order without the prior written consent of the Partnership, which consent shall not be unreasonably withheld.
- 25.3 **Entire Agreement.** The Purchase Order constitutes the entire agreement between the parties and shall supersede and replace any and all prior agreements between the parties with respect to the subject matter hereof, and may be amended only by written instrument signed by the parties.
- 25.4 **Amendments.** No amendment to the Purchase Order shall be binding on the Partnership and the Seller, unless made in writing and signed by the authorized representatives of both parties.
- 25.5 **No Waiver.** The Partnership's failure to insist on performance of any term, condition or instruction or failure to exercise any right or privilege, or its waiver of any breach or default shall not thereafter waive any such term, condition, instruction, right or privilege.
- 25.6 **Binding Agreement.** The Purchase Order shall become a binding agreement upon the Seller signing and returning an executed copy of the Purchase Order or upon the Seller otherwise acknowledging acceptance of the Purchase Order or commencing performance of the Purchase Order, whichever occurs first.
- 25.7 **Exclusions.** Any reference to the Seller's documents (quotation, bid, or proposal) does not imply acceptance of any terms, conditions, or instruction contained in such document. Any Seller's terms and conditions stated in any communication shall not apply to the Purchase Order and shall not be applicable in the interpretation of the Purchase Order.

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