

# Goods Purchase Order Terms and Conditions

## 1. Definitions

1.1 **Definitions.** Unless the context requires otherwise, the following capitalized terms, wherever used in the Purchase Order, have the meanings indicated:

- (a) **"Claim"** means any loss, damage, cost, expense, penalty, fine, claim, demand, action, proceeding, Lien, statutory obligation, liability, suit, judgment, award, decree, determination, adjudication, unpaid Tax (including withholding), cost of investigation and fee (including legal fees), together with related interest.
- (b) **"Delivery"** means the delivery of Goods in accordance with Incoterms (Incoterms 2020 latest edition).
- (c) **"Documents"** means the Purchase Order, all documents prepared by or on behalf of Suncor pursuant to the Purchase Order, and all documents prepared by the Supplier pursuant to the Purchase Order that are reviewed and approved in writing by Suncor.
- (d) **"Goods"** means any supplies, goods, materials or other tangible items to be supplied by the Supplier in accordance with the Purchase Order.
- (e) **"Indemnitees"** means Suncor, its affiliates and agents, and their respective directors, officers, partners, members, employees, agents, invitees and contractors, excluding the Supplier.
- (f) **"Invoicing Requirements"** means Suncor's invoicing and accounts payable standards, procedures, policies and guidelines on Suncor's website at [www.suncor.com](http://www.suncor.com) and as specified in the Purchase Order and as may be provided by Suncor from time to time.
- (g) **"Lien"** means any mortgage, pledge, assessment, security interest, lien (including statutory liens), adverse Claim or encumbrance.
- (h) **"Party"** means the Supplier or Suncor, as applicable.
- (i) **"Person"** means an individual, corporation (whether or not for profit), partnership, limited liability partnership, limited partnership (including a limited liability limited partnership), limited liability company, joint venture, trust, business trust, cooperative, association or governmental agency or authority.
- (j) **"Purchase Order"** means the Purchase Order issued by Suncor with respect to the Goods, these Terms and Conditions, and any other attachments identified in the Purchase Order, as modified or amended in accordance with these Terms and Conditions.
- (k) **"Records"** means the records of the Supplier 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 Suncor is obliged to reimburse the Supplier, and information relating to Supplier's compliance with the Invoicing Requirements;
  - (ii) records relating to any termination or suspension costs; and
  - (iii) information relating to Supplier's compliance with the Law, the Site Policies and the Supplier Code of Conduct, and the Supplier's use of confidential information.

- (l) **"Services"** means any services, including any labor, supervision, administration and other services, and all related supplies, tools, equipment and other services and materials that are necessary to be performed or supplied by the Supplier in accordance with the Purchase Order.
- (m) **"Site"** means the site(s) identified in the Purchase Order or where the Goods are to be Delivered.
- (n) **"Site Policies"** means the current version of all of Suncor's standards, procedures, policies and guidelines, issued from time to time, that relate to Suncor's contractors generally or to the Site or the performance of the Services, including: (i) Suncor's U.S. Alcohol and Drug Policy and U.S. Safety and Security Policies; and (ii) if applicable, the Commerce City Refinery Contractor Safety Handbook, in each case, as updated from time to time, or as may be provided by Suncor from time to time, all of which are incorporated herein by this reference.
- (o) **"Suncor"** means the United States Suncor entity identified in the Purchase Order.
- (p) **"Supplier"** means the Party named in the Purchase Order as the supplier of the Goods to Suncor.
- (q) **"Supplier Code of Conduct"** means the document entitled "The Way We Do Business – Working with Suncor" reflecting Suncor's Standards of Business Conduct as applicable to suppliers, available on Suncor's website at [www.suncor.com](http://www.suncor.com).
- (r) **"Tax"** means any present or future taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings, dues and other charges of any nature imposed by any governmental agency or authority.
- (s) **"Vendor"** means any of the Supplier's suppliers, manufacturers, vendors or agents from which any Goods, or any goods, materials or equipment forming any part of the Goods, are directly or indirectly procured by the Supplier. With respect to any Services, the term "Vendor" also includes the Supplier's contractors and subcontractors.
- (t) **"Warranty Period"** means, with respect to any Goods, the period of time beginning on the date of Delivery of the Goods and ending on the date that is 24 months thereafter.

## 2. Supply of Goods

- 2.1 **Goods.** The Supplier shall supply the Goods in accordance with the Purchase Order.
- 2.2 **Time.** Time is of the essence in the supply of the Goods.
- 2.3 **Delivery.** The Supplier shall provide Delivery of the Goods in accordance with the Purchase Order, or if Delivery terms are not specified in the Purchase Order, f.o.b. the Site at the specific location designated by Suncor.
- 2.4 **Suncor's Count.** Suncor's count of any Goods received shall be final and conclusive on shipments not accompanied by the Supplier's itemized packing list.
- 2.5 **Acceptance, Rejection and Revocation of Acceptance.** Goods shall not be deemed accepted until finally inspected by Suncor after Delivery to Suncor. Notwithstanding any contrary provision, the making or failure to make any inspection, examination or test of, payment for or acceptance of any Goods shall not impair Suncor's right to reject or revoke acceptance of non-conforming, defective or deficient Goods or

to exercise any other remedies available to Suncor, all of which shall be cumulative, or relieve the Supplier from any of its obligations.

- 2.6 **Title Transfer.** All right, title and interest in and to the Goods shall be vested in Suncor upon the first to occur of the following: (a) the Goods are first identifiable to the Purchase Order; (b) Suncor pays for the Goods; or (c) the Delivery of the Goods. Any transfer of title shall be without prejudice to Suncor's right to refuse Goods.
- 2.7 **Risk of Loss.** Notwithstanding Paragraph 2.6, care, custody, control and risk of loss of any Goods shall remain with the Supplier until Suncor takes physical possession of and accepts such Goods.
- 2.8 **Right to Return Goods.** Suncor shall have the right to return any Goods at the Supplier's cost, expense and risk that are delivered in error, rejected as defective, deficient or not conforming to the Purchase Order or an overage in excess of trade practice.
- 2.9 **Suncor Change.** Suncor may, at any time, make changes to the Goods to be supplied, including additions, deletions, rescheduling and acceleration or deceleration, and the Supplier agrees to perform its obligations under the Purchase Order as changed.
- 2.10 **Compliance with Law.** The Supplier shall, and shall cause its employees and agents to, comply with all Laws, the Supplier Code of Conduct, and the Site Policies applicable to the Purchase Order or the Goods.

### 3. Payment

- 3.1 **Payment.** Subject to the terms and conditions herein, payment for the Goods shall be made in accordance with the Purchase Order.
- 3.2 **Withholding.** Notwithstanding any contrary provision, an amount otherwise due to the Supplier may be withheld, without payment of interest, if Suncor determines that such withholding is necessary to protect Suncor from any Claims arising out of or resulting from: (a) the Supplier being in breach or default of the Purchase Order; (b) the Supplier not promptly remedying any defective or deficient Goods; (c) the failure of the Supplier to pay any Claims for labor or materials; (d) the failure of the Supplier to comply with the accounts payable, invoicing and payment request procedures set forth in the Invoicing Requirements and the Documents; or (e) any other amounts that Suncor disputes in good faith as not being due and owing. If and when the cause of the withholding of any amount is removed and satisfactory evidence of such removal is furnished to Suncor, Suncor shall promptly pay to the Supplier the amount withheld pertaining to such cause.
- 3.3 **Set-Off.** Suncor may, without prejudice to any other right or remedy, deduct and set-off any amounts owed by the Supplier to Suncor under the Purchase Order from any amount due or owing by Suncor or its affiliates under any other contract or agreement Suncor or its affiliates has or may have with the Supplier.

### 4. Warranties

- 4.1 **Warranty.** The Supplier warrants to Suncor that all Goods will: (a) conform to the Purchase Order; (b) be new and of good and merchantable quality, free from all latent and other defects; (c) not infringe the intellectual property rights of any other Person; and (d) be transferred to Suncor free and clear of all Liens.
- 4.2 **Breach of Warranty.** If any defect or breach of warranty is discovered during the Warranty Period, and Suncor notifies the Supplier in writing of the defect or breach within 30 days after the expiration of the Warranty Period, then the Supplier

shall correct, repair, replace, re-perform or otherwise remedy the defect or breach and any loss, damage or destruction to any existing real or personal property of Suncor or other Persons arising out of, resulting from or in connection with the defect or breach (or the remedy of the defect or breach), failing which Suncor may proceed with any activities necessary to remedy the defect or breach (and the Supplier shall indemnify, defend and hold harmless the Indemnitees from any costs or other Claims arising out of, relating to or in connection therewith). All warranty work shall be at the sole risk, cost and expense of the Supplier (including all costs for any necessary disassembly, transportation, reassembly and reinspection) and performed without delay and in a manner satisfactory to Suncor.

### 5. Insurance

- 5.1 **Insurance Coverage.** Without limiting any of the obligations or liabilities under the Purchase Order, the Supplier shall obtain at its own expense and cost, a policy of Commercial General Liability Insurance suitable to Suncor 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 Suncor's existing facilities.

### 6. Liability and Indemnification

- 6.1 **Liability of Supplier.** The Supplier shall be liable to the Indemnitees for, and shall indemnify, defend and hold harmless the Indemnitees from and against, any and all Claims asserted against, or suffered, sustained, paid or incurred by the Indemnitees arising out of, relating to or in connection with: (i) the negligent acts or omissions or the intentional misconduct of the Supplier; (ii) the performance, purported performance or non-performance of the Supplier under the Purchase Order; and (iii) any Taxes that are the responsibility of the Supplier under the Purchase Order.
- 6.2 **Limitation of Liability for the Supplier.** Without limitation of the Supplier's other liabilities and obligations under the Purchase Order, including Article 4 (which shall not be limited in any way), the Supplier's aggregate liability under Paragraph 6.1 shall be limited to the greater of the Purchase Order price and the aggregate amount of available insurance coverage maintained by the Supplier, except that such liability shall not be limited with respect to Claims arising out of, relating to or in connection with the gross negligence or willful misconduct of the Supplier or its Vendors, or their respective employees or agents.
- 6.3 **Consequential and Punitive Damages.** Except for coverage that may be available under insurance policies required to be maintained under the Purchase Order by the Supplier, and except with respect to Claims brought or alleged by third parties that are subject to indemnification hereunder, neither Party shall be liable to the other for punitive, exemplary or consequential damages (including lost profit but specifically excluding fines or penalties imposed by governmental agencies or authorities).
- ### 7. Suspension or Termination
- 7.1 **Termination for Cause.** Suncor may at any time immediately upon written notice terminate the Purchase Order for cause: (i) after the occurrence and during the continuance of any breach or default by the Supplier under the Purchase Order; or (ii) after the bankruptcy or insolvency of the Supplier or any parent company of the Supplier.
- 7.2 **Suspension or Termination for Convenience.** Suncor may, at any time, with or without cause, suspend or terminate the Purchase Order, or any portion thereof, for convenience or any other reason upon 30 days written notice.

## 8. Confidentiality and Intellectual Property

- 8.1 **Confidentiality.** Except (a) with the prior written consent of the providing Party, which consent may be unreasonably withheld, (b) to affiliates of a Party, and to their respective officers, directors, employees and agents, and (c) with respect to Suncor, to its advisors and contractors, all confidential information, knowledge and know-how of a Party shall be received in the strictest confidence and shall not be disclosed by the other Party, or used by the other Party in any manner whatsoever directly or indirectly for any purpose other than for the purposes of the performance by the receiving Party of its obligations under the Purchase Order. Each Party shall be responsible for a breach of this Article by any Person to whom such confidential information, knowledge or know-how is disclosed. The Supplier shall indemnify the Indemnitees for a breach of this Article by the Supplier. In addition to claiming damages or an indemnity, Suncor shall be entitled as a matter of right to seek an injunction and enforce the terms and provisions of this Article, without the necessity of posting a bond or other form of security.
- 8.2 **Publicity.** Suncor shall not provide any endorsement of the Supplier or the Goods. The Supplier shall not erect any sign or advertising, use any Suncor trademark, logo or device in any sign or advertisement.
- 8.3 **Ownership.** Suncor shall own all right, title and interest in and to all Documents, and all other intellectual property with respect to any Goods of which the reasonable value has been paid or is payable to the Supplier, and the Supplier hereby assigns to Suncor all right, title and interest of the Supplier in and to all Documents and all such intellectual property, and all intellectual property rights therein.
- 8.4 **License.** The Supplier grants to Suncor a fully sub-licensable worldwide, irrevocable, royalty-free, perpetual, non-exclusive right and license, to use, copy, modify, reproduce and create derivative works with respect to any and all intellectual property related to the Goods that are not the property of Suncor under this Article, for the purposes of repairing, maintaining, replacing and using the Goods and any other materials, compositions, designs, methods, processes and systems that are supplied by the Supplier under the Purchase Order or otherwise owned or operated by Suncor.

## 9. Taxes and Liens

- 9.1 **Tax Responsibility of the Supplier.** Except as set forth in Paragraph 8.2 below, the Supplier shall be solely responsible for all Taxes, and the withholding, collection and remittance of all Taxes, arising out of or relating to the provision of the Goods or the Purchase Order, including all sales, use or excise Taxes.
- 9.2 **Direct Pay Permits.**
- (a) Suncor Energy (U.S.A.) Inc. and Suncor Energy (U.S.A.) Pipeline Company each have a direct payment permit issued by the City of Commerce City, Colorado ("Commerce City").
  - (b) Suncor Energy (U.S.A.) Inc. has a direct pay permit issued by the Colorado Department of Revenue that covers certain Taxes assessed by the State of Colorado, Adams County, Colorado and RTD/CD (together with Commerce City, each a "Taxing Jurisdiction").
  - (c) Copies of each of the direct pay permits shall be provided to the Supplier upon request. Pursuant to the direct pay permits, the Suncor entity holding the direct pay permit will pay directly (i) any sales, use and excise Taxes imposed by the applicable Taxing Jurisdiction on any Goods or any such goods, equipment or materials that are incorporated into any Goods or manufactured,

supplied or procured by the Supplier for such Suncor entity, and (ii) any sales, use and excise Taxes imposed by the applicable Taxing Jurisdiction on any leases, services, and labor made or provided by the Supplier to such Suncor entity.

- (d) For so long as a Suncor entity has a direct pay permit from a Taxing Jurisdiction, the Supplier may not charge such Suncor entity, or pass on to such Suncor entity in any manner, any Tax imposed by such Taxing Jurisdiction. Any Tax imposed by a Taxing Jurisdiction that is charged or passed on to a Suncor entity holding a direct pay permit from such Taxing Jurisdiction will be either, at Suncor's option, invoiced back to the Supplier or offset against future amounts owing from Suncor to the Supplier.
- 9.3 **Sales and Use Taxes.** At the request of Suncor, the Supplier shall provide to Suncor, detailed records of all sales, use and excise Taxes collected from the Supplier or any Vendor. In no event shall Suncor be liable or responsible for the payment of any amount to the Supplier or any sales, use and excise Taxes that are imposed more than once by the same Tax authority on the same Goods. In the event any such additional Taxes are imposed, such Taxes shall be the sole liability and responsibility of the Supplier.
- 9.4 **Tax Withholdings & Representations.** Suncor shall have the right to deduct or withhold from any amount paid or payable to the Supplier under the Contract, any deductions or withholdings that Suncor is required to make under Law.
- 9.5 **Liens.** The Supplier shall not, or permit any Vendor to, file, deliver or record any Lien, including any financing statement or continuation statement, against the Goods, the Site or any other property of Suncor. The Supplier shall take any such actions as may be necessary or as Suncor may request to cause any such recorded Liens to be released. Until any such Liens are fully released under Law to the satisfaction of Suncor, Suncor may withhold from all payments to the Supplier amounts deemed sufficient by Suncor to ensure the payment of all related Claims and the full release of all such Liens.
- ## 10. General Matters
- 10.1 **Notices.** Notices shall be given in writing and delivered in person or internationally recognized courier or transmitted by facsimile to the applicable address in the Purchase Order
- 10.2 **Governing Law.** The Purchase Order shall be governed by and construed in accordance with the laws (and specifically as a contract primarily for the sale of goods, Article 2 of the Uniform Commercial Code) of the State of Colorado, without reference to choice of law rules or principles that would apply the laws of another jurisdiction. The Parties expressly exclude the United Nations Convention on Contracts for the International Sale of Goods.
- 10.3 **Forum Selection; Waiver of Right to Jury Trial.** Each Party irrevocably consents to the exclusive jurisdiction of the State and United States Federal Courts located in Denver, Colorado (and their appellate courts) for any actions, suits or proceedings arising out of or relating to the Purchase Order, the transactions under the Purchase Order, the Goods or the relationship of the Parties, and waives any claim that any such proceeding has been brought in an inconvenient forum, or that the other Party does not have personal jurisdiction over such Party in such courts. EACH PARTY EXPRESSLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY SUCH ACTION, SUIT OR PROCEEDING.
- 10.4 **Survival.** Obligations in the Purchase Order extending past the termination or expiration of the Purchase Order shall

survive the termination or expiration of the Purchase Order and the supply of the Goods.

- 10.5 **Assignment.** Neither Party may assign the Purchase Order without the prior written consent of the other Party, which consent may be unreasonably withheld, except that Suncor may assign the Purchase Order to an affiliate or in connection with a transfer of the Site, including by merger.
- 10.6 **Entire Agreement.** The Purchase Order constitutes the entire agreement between the Parties as to the subject matter of the Purchase Order and supersedes and replaces any and all prior written or oral agreements, undertakings and understandings.
- 10.7 **Amendments.** Except as expressly provided in the Purchase Order, no amendment or modification to the Purchase Order shall be binding on Suncor or the Supplier unless made in writing and signed by an authorized representative of both Parties.
- 10.8 **No Waiver.** No Party shall be deemed to have waived any of its rights, powers or remedies unless the waiver is in writing and signed by such Party. No course of dealing, custom, or practice between the Parties shall operate as a waiver or estoppel of any rights, powers or remedies.
- 10.9 **Audit.** At any time during normal business hours until 2 years after Delivery of the Goods, Suncor or its nominees shall have the right to inspect and audit the Supplier's Records.
- 10.10 **Binding Agreement.** The Purchase Order shall become a binding agreement upon the Supplier signing and returning an executed copy of the Purchase Order or upon the Supplier otherwise acknowledging acceptance of the Purchase Order or commencing performance of the Purchase Order, whichever occurs first.
- 10.11 **Exclusions.** Any terms or provisions in the Supplier's quotation, bid, proposal, invoice or other documents that are inconsistent with these Terms and Conditions are agreed to be void and of no force or effect.
- 10.12 **Services.** To the extent of any Services provided by the Supplier under the Purchase Order, the Purchase Order and the provision of such Services shall be governed by Suncor's Supplemental Site Services Terms and Conditions, a copy of which the Supplier acknowledges has been reviewed and approved by the Supplier and is incorporated herein by this reference.
- 10.13 **Precedence.** In the event of a conflict or inconsistency among or between the Documents: (a) the latest revisions revised by Suncor or approved in writing by Suncor shall govern; and (b) the conflict or inconsistency shall be resolved in the following order: (i) these Terms and Conditions; (ii) the Purchase Order; (iii) attachments to the Purchase Order; (iv) technical specifications; and (v) drawings.
- 10.14 **Severability; Construction.** If any term, covenant or condition of the Purchase Order, to any extent, is invalid or unenforceable, the remainder shall not be affected. Any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not be applicable in the interpretation of the Purchase Order.
- 10.15 **Agency.** If Suncor Energy Services Inc. issues the Purchase Order on behalf of Suncor, then it represents and warrants to the Supplier that it has the authority to do so.

**[End of Terms and Conditions]**