GENERAL TERMS AND CONDITIONS

SUPPLY OF GOODS AND/OR SERVICES

PART I - GENERAL

1. **Acceptance of Terms.** Upon the signing of an acknowledgement of the purchase order from the Irving corporation ("**Irving**") issuing the purchase order or the commencement of the supply of goods and/or services thereunder by supplier named in the purchase order (the "**Supplier**"), whichever is earlier, a contract (the "**Contract**") will be constituted for the provision of the goods and/or services described in the purchase order (the goods, equipment, or other materials are collectively referred to as the "**Goods**", the services as the "**Services**", and together as the "**Work**") between Supplier and Irving. The signing or commencement of supply will constitute Supplier's unqualified acceptance of the Contract, which will consist solely of these general terms and conditions for supply of goods and/or services (the "**General Terms**"), the purchase order, and the documents referred to on the purchase order. The Contract specifically excludes any terms of Supplier which may be communicated to Irving at any time before, concurrently with or after the date of the Contract, and regardless of whether the Supplier terms form part of any other prior or current contract with Irving unless specifically accepted by Irving in writing. The Contract of which these General Terms form a part supersedes any prior offers, negotiations, and agreements and constitutes the entire agreement between the parties concerning the subject matter. If the Work involves the provision of construction or engineering services by Supplier, the additional terms contained in Part II and Part III will apply, as applicable. Should there be any conflict of terms between the written documents of the Contract, the following will be the order of priority: the purchase order; the scope of work (if any); these General Terms; and the drawings (if any) provided by Irving to Supplier with those of the most recent date having the highest priority.

2. **Supplier Responsibility.** Supplier will have complete responsibility for furnishing the Work. Supplier shall provide efficient administration and supervision with respect to the Work and all of its employees and subcontractors at all times. Supplier shall furnish and pay for all labour, material, supplies, services, tools, equipment, transportation, travel and subsistence expenses, and facilities, other than those which Irving has in writing specifically agreed to provide, and shall do and perform all things necessary for the successful completion of the Work as more specifically described or referred to in the Contract. Any loss or damage to Supplier's, its employee's, agent's or subcontractor's tools or equipment will be Supplier's responsibility and will not be covered by any insurance placed by Irving. Supplier will supply to Irving all documentation as required under the Contract, including all applicable installation, operating and/or service manuals, drawings, and/or documentation required under applicable laws or regulations, including material safety data sheets. Supplier shall pay, satisfy and discharge all mechanics, materials and other liens, and all claims, obligations or liabilities which may be asserted against Irving or its property by reason of, or as a result of any acts or omissions of Supplier, its employees, representatives, licensees or suppliers, or its subcontractors, in connection with, or relating to the performance of the Work. Supplier shall bring to the attention of Irving any obvious or perceived errors or omissions in any specifications or drawings provided by Irving in relation to the Work. Supplier shall be responsible to perform the Work in compliance with all applicable laws, including environmental laws and regulations. Except as specifically set out in Part II (if applicable), Supplier shall procure all licenses and permits, and pay all fees and other required charges necessary to conduct its business, at Supplier's expense. Supplier shall ensure, at no expense to Irving, that it and each of its employees or other individuals engaged by Supplier to provide Work (and each employee or other individual engaged by any subcontractor to provide

Work) has all permits, authorizations and insurance required under applicable law in relation to the Work, including work permits and any other documentation required to demonstrate eligibility to work in Canada. Supplier shall provide Irving with copies of all permits, authorizations, evidence of insurance and documentation upon request and prior to the provision of Work by any individual on behalf of Supplier.

3. **Employees and Subcontractors.** Supplier shall ensure that all employees and its subcontractors, if any, abide by all applicable rules of occupational health and safety including Irving's written contractor's rules and regulations (including Irving's alcohol and drug policy) which are available to Supplier upon request. Irving may require all employees and subcontractors to participate in on-site safety instructions prior to furnishing of Work. When required by Irving, a list of all employees of Supplier and of each subcontractor will be provided to Irving for approval. Irving has the right to approve or reject proposed subcontractors without penalty. Proposed subcontractors will be identified for approval in a timely manner with background information being provided as may reasonably be required by Irving. If any portion of the Work is to be subcontracted by Supplier, it will be the obligation of Supplier to ensure that each subcontractor complies with all the provisions of the Contract, including the insurance provisions.

4. **Performance and Warranty.** Supplier guarantees and warrants that: (i) it has full power and authority to enter into the Contract and perform its obligations, (ii) the Contract is a binding obligation of Supplier, enforceable against Supplier in accordance with its terms, (iii) the Work will be rendered in a good and workmanlike manner using qualified personnel and will meet the standards of care, skill and diligence normally met by qualified service providers providing similar services in Canada at the time the Work is performed, (iv) the Work will conform to the specifications, description, drawings, standards, quality and performance levels outlined in the Contract, (v) the Work is fit for the intended purpose of Irving, (vi) title to all the Goods (including deliverables to be provided under the Services) supplied under the Contract will be free and clear from all liens, claims, encumbrances and any other charges whatsoever, (vii) all machinery, equipment and materials incorporated into any Goods will be new and unused, free from defects in materials, workmanship and design, will be to a high industrial standard, and will meet all applicable industry and governmental standards, regulations, codes and guidelines applicable in the location of Supplier and the delivery location, and (viii) Supplier is, alone or with subcontractors, sufficiently experienced and properly qualified, licensed, equipped, organised and financed to perform the Work. Supplier shall repair or remove and replace at its own expense and at Irving's convenience, all workmanship or materials which are non-compliant with any of the above warranties or otherwise defective at any time within two years from the date of final acceptance of the Work by Irving, unless otherwise specified on the purchase order.

5. **Insurance.** Without limiting Supplier's liability under the Contract, Supplier shall provide, maintain and pay for the following insurance coverage: (i) **COMPREHENSIVE GENERAL LIABILITY INSURANCE** covering Supplier's liability for bodily injury (including death) and property damage with limits of not less than $3,000,000 per occurrence, and (ii) **AUTOMOBILE LIABILITY INSURANCE** with limits of not less than $3,000,000 per occurrence for bodily injury and property damage, covering all licensed vehicles owned, leased, hired, or operated by Supplier, and (iii) if Supplier is providing construction or engineering services as part of the Work the additional insurance set out in Part II and Part III (as applicable) is required. The comprehensive general liability policy will include Irving as additional insured with respect to liabilities arising out of or in any way connected with Supplier's operations and will include contingent employer's liability, broad form property damage, and a cross liability clause. All liability cover will be maintained for Products Liability, Completed Operations Hazard and Contractual Liability. The insurance will state that it

is primary insurance and that any other insurance carried by Irving will be specific excess and not contributing therewith. The insurance will contain a waiver of subrogation by the insurer against Irving, its employees, officers, directors, parent, subsidiary, affiliated, related and associated companies. All insurance obtained by Supplier will include the requirement that the insurer will endeavour to provide Irving with 30 days advance notice of any cancellation of coverage. Supplier shall provide Irving with a certificate of insurance evidencing the insurance prior to providing Work, and at other times as requested by Irving. Unless otherwise stipulated, the insurance will be in force for the duration of the Contract. Supplier shall immediately advise Irving in writing in the event that any such insurance coverage is cancelled, terminated, or materially reduced. Supplier shall procure and maintain in full force throughout the Contract term **WORKERS' COMPENSATION INSURANCE** covering all employees of Supplier engaged in any services to be performed on site in accordance with the statutory requirements of the province or state having jurisdiction over its employees, or equivalent government or private coverage.

6. **Indemnity.** Supplier shall defend, indemnify and hold harmless Irving and its affiliates and their respective agents, officers, directors and employees from and against any and all suits, legal proceedings, claims, demands, damages, liabilities, losses, fines, penalties, costs and expenses including reasonable legal fees arising out of or attributable to: (i) the performance or non-performance of the Contract, or any negligent act or omission of Supplier, its agents, employees and subcontractors, in furnishing the Work, (ii) any breach by Supplier of any representation, warranty, obligation or covenant under the Contract, (iii) bodily injury, sickness or death of any of Supplier's or any subcontractor's employees, or loss or damage to Supplier's or any subcontractor's property, (iv) any defect in Irving's or Supplier's title to the Work, or any lien, charge, encumbrance or claim affecting the Work, and (v) any infringement or claimed infringement of any patents or other intellectual property rights by the manufacture, sale or use of any Goods, software, materials, apparatus, or methods furnished by Supplier under the Contract. In the event of any suit or proceeding which is based upon a claim that the Work or any part infringes any patent or other intellectual property right, and where the use of the Work is enjoined pending the outcome of the suit or proceeding, Supplier shall either secure for Irving the right to use the Work pending the final outcome or pay Irving the losses sustained by Irving due to any injunction or prohibition. In the event any Work is held to be infringing and the use is permanently enjoined, Supplier shall promptly and at its expense either: (i) obtain for Irving the right to use the Work, (ii) replace the Work with non-infringing Work equal to or better than that removed, or (iii) modify the Work so as to render it non-infringing. Irving may be represented in any suits or legal proceedings by lawyers of its own selection at Supplier's expense.

7. **Taxes and other amounts.** Unless stated otherwise in the purchase order, all applicable taxes, duties, packaging, shipping and freight charges are included in the purchase price and are for the account of Supplier, save and except the goods and services tax, harmonized sales tax, or any other value added taxes as may be applicable during the term of the Contract. Supplier shall pay all contributions, taxes, premiums and insurance required under federal, provincial/state or local laws in relation to its employees engaged in the furnishing of the Work, and all sales, use, excise, transportation, occupation and other taxes and duties applicable to Work furnished hereunder which Supplier is required by law to pay. Supplier will co-operate with Irving in the recovery of any sales taxes paid by Supplier on Goods supplied which were used in an exempt application.

8. **Packaging, Shipping and Invoicing.** Supplier warrants that all Goods to be shipped hereunder will be properly classified, described, packaged, marked and labelled, and will be in the proper condition for transportation in accordance with all applicable laws or regulations (including national hazard

communication standards). A detailed packing slip showing Irving's purchase order number, Supplier's firm name and the shipper's name will be included in or attached to each package. Irving's purchase order number will be shown on the outside of each package on carload shipments. A copy of the loading sheet will be mailed directly to Irving at the address shown on the face of the purchase order, on the date of the shipment. Failure to comply with this clause will, at Irving's option, constitute grounds to reject the shipment. If routing instructions are not followed, Supplier may be held liable for any additional transportation costs incurred. When shipments of Goods are made from other than a Canadian location, the shipments will be made in accordance with Irving's customs instructions (which are available to Supplier upon request) and Canadian Customs regulations. Invoices must be sent directly to the Irving company purchasing the Goods and/or Services (and not the Irving purchasing agent) and will show the purchase order number, shipper, origin and destination. Failure to comply with this clause may result, at Irving's option, in the rejection of Supplier's invoice and/or the shipment. Payment terms will not commence until receipt by Irving of a proper invoice.

9. **Title and Risk of Loss.** Title to the Goods (including documents, designs, drawings, specifications, plans, reports, information and other deliverables to be provided under the Services) and risk of loss will pass to Irving upon delivery at Irving's facility, unless otherwise specified on the purchase order.

10. **Independent Contractor.** Supplier will be an independent contractor and not an agent or representative of Irving. Supplier, its agents, employees and subcontractors, shall not bind Irving to any obligation with a third party, nor hold themselves out as having authority to bind or obligate Irving. None of the persons engaged by Supplier or any of its subcontractors in the performance of the Work will be considered employees of Irving.

11. **Force Majeure.** Any delay caused to either Supplier or Irving by reason of acts of God, force majeure, or other causes beyond a party's reasonable control and occurring without a party's fault or negligence, including strikes, lockouts and labour unrest, will not be regarded as a default in performance by Supplier or by Irving. Notice of any anticipated delay will be given by the delayed party to the other as soon as possible under the circumstances. Performance under the Contract will resume as soon as practicable, and the party affected by the delay will at its own cost take all commercially reasonable measures to minimize the impact of the event on the other party, including through the devising and implementation of work-around plans, re-sequencing and resuming performance under the Contract as soon as possible. In these circumstances, Irving will have the right to adjust the contracted quantity of the Goods and/or the scope of the Services, or adjust delivery schedules and/or completion date(s), as the case may be. No extension will be made for delay unless written notice of claim is given to Irving within 10 days of the commencement of the delay. Any extension for delay will be for the period of time as agreed upon in writing between the parties. In the event that a force majeure event lasts for more than 30 days, Irving will have the right to terminate the Contract for the applicable Goods and/or Services without penalty.

12. **Notice.** Any notice required or permitted to be given under the Contract must be forwarded by facsimile with a confirming copy mailed by prepaid mail, or by courier, to the address of the parties shown on the purchase order. The notice will be deemed to be received one day following the sending of the facsimile message and the mailing of the confirming copy. In the case of Irving, copies of the notice will be delivered to the following addresses: P.O Box 5888, 300 Union Street, Saint John, New Brunswick, E2L

4L4, Attention: Secretary, and P. O. Box 5777, 300 Union Street, Saint John, New Brunswick, E2L 4M3, Attention: President.

13. **Limitation of Liability.** Under no circumstances will Irving, its directors, officers and employees be liable to Supplier or any other person or entity for special, incidental, consequential, punitive, exemplary or indirect damages, loss of goodwill or business revenues or profits, work stoppage, downtime costs, loss of use of equipment or facilities, cost of capital, data loss, or any and all other commercial damages or loss whether based in contract, warranty, tort, negligence, gross negligence or statute, and in no event will Irving's liability exceed the value of the Contract.

14. **Confidentiality.** Supplier acknowledges that in order to provide the Work, certain proprietary and/or confidential information may be disclosed to Supplier or may be observed and/or acquired by Supplier in the performance of the Contract. Supplier shall hold all information in the strictest confidence and shall ensure it is not disclosed, published or disseminated to any third party. Supplier shall ensure that its employees, agents, subcontractors and representatives assume the same obligation of confidentiality before communicating the information or know-how to that person. The confidential information will not be used by Supplier, except to provide the Work.

15. **No publicity.** Unless the Supplier has received prior written consent from Irving's communications department (which consent may be withheld in Irving's absolute discretion); Supplier shall not publicize, announce or otherwise distribute any information in any format or media, whether such formats or media are now known or later devised, including any so-called "social media", in respect of (i) the Contract, (ii) Supplier's relationship with Irving, or (iii) or any information about Irving, including Irving's activities, operations, brands, trademarks, products, services, personnel, other relationships, practices, policies, intellectual property, know how, or financial matters.

16. **Records Retention.** Supplier shall retain, for at least five years following the end of any applicable warranty period or the final settlement date of any outstanding claims or disputes, whichever is later, the following: (i) proper accounts and records of the cost to Supplier of the Work and of all expenditures or commitments made by Supplier in connection with the Work, and all invoices and receipts relating to the Work; (ii) all of Supplier's subcontracts and all correspondence in connection with the subcontracts; (iii) all pertinent commercial documentation in respect of the Contract and all subcontracts, including copies of invoices, freight bills, dock receipts, freight forwarded receipts, bills of lading, certificates of origin, and any other pertinent documents; and (iv) all documents recording or evidencing Supplier's compliance with the Contract, including drawings, calculations, and inspection records. All of the foregoing will at all times be open to audit, inspection and examination by the authorized representatives of Irving, who may make copies and take extracts, but only for the limited purpose of (a) verification of Supplier's compliance with the terms of the Contract, (b) enforcement of Irving's rights under the Contract, or (c) ascertaining amounts owed by Irving, where relevant.

17. **Governing Law.** The Contract is to be governed, both with respect to its construction and performance, by the laws of the Province of New Brunswick, Canada and the parties agree to submit to the exclusive jurisdiction of the courts of that Province. The parties expressly exclude the application of the *United Nations Convention on Contracts for the International Sale of Goods* and further exclude the application of the *International Sale of Goods Contracts Convention Act* (Canada) and the *International Sale of Goods Act* (New Brunswick).

18. **Set-off.** In addition to any right of set-off or recoupment provided by law, Irving may at any time and without notice set-off claims by Supplier for amounts due or to become due from Irving under the Contract against any claims that Irving or any of Irving's affiliates has or may have arising out of the Contract or any other transaction between Irving or Irving's affiliates and Supplier or any of Supplier's affiliates.

19. **International Trade Reporting and Documentation.** Supplier shall provide all information necessary for Irving to comply with all applicable laws, including legal reporting obligations, in the country(ies) of origin and destination. Supplier shall provide all documentation, including certificates of origin, and/or electronic transaction records to allow Irving to meet customs-related obligations, and local content or origin requirements, and to obtain all tariff and trade program duty avoidance(s) and/or refund benefits, where applicable. Supplier further agrees, upon request by Irving, to participate in trusted trader, trade security or other similar government programs with a view to eliminating or minimizing security related delays at the border. Supplier shall assume any and all financial responsibility arising from Supplier's failure to comply with these requirements and/or to supply Irving with information required to meet legal reporting obligations, including any fines, penalties, forfeitures, unnecessary duties or counsel fees incurred or imposed as a result of actions taken by the importing or exporting country's government.

20. **Termination.** Irving may terminate the Contract immediately and/or suspend the Contract without prejudice to any other right Irving may have if: (i) Supplier makes assignment or is petitioned into bankruptcy, or if a receiver is appointed to administer the affairs of Supplier, (ii) Supplier breaches any of the terms or conditions of the Contract and refuses or is unable to rectify any breach to Irving's satisfaction within five days following receipt of notice of the breach, or (iii) Irving reasonably believes that Supplier will be unable to satisfactorily perform its obligations under the Contract. Irving may without penalty terminate the Contract or suspend the Contract for a reasonable period of time without cause subject to the payment to Supplier of reasonable direct costs (excluding overhead expenses and lost profits) incurred by Supplier as a result of the termination or suspension.

21. **Irving Companies.** Supplier shall, whenever feasible, use the services and/or goods of Irving related companies, provided the company is cost competitive (see www.jdirving.com for a description of Irving related companies).

22. **Additional.** Supplier will not assign the Contract or any portion of the Contract without the prior written consent of Irving, which consent may be withheld by Irving in its absolute discretion. Irving will have the right to assign the Contract or any portion of the Contract, without Supplier's consent, to any of Irving's affiliates or to any purchaser or successor to Irving's relevant business. The Contract will be binding on and enure to the benefit of the parties and their respective heirs, executors, administrators, successors and permitted assigns. Any failure by Irving at any time, or from time to time, to enforce or require the strict keeping and performance by Supplier of any of the terms or conditions of the Contract, will not constitute a waiver by Irving or a breach of any terms or conditions, and will not affect or impair the terms or conditions in any way, or the right of Irving at any time to avail itself of the remedies as it may have for any breach or breaches of the terms or conditions. Supplier acknowledges that it understands that time is of the essence in the performance of its obligations under the Contract. No modification of, nor additions to the terms of the Contract will be effective until expressly accepted in writing by Irving. Each paragraph and provision of the Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of the Contract will remain in full force and effect. The headings

used herein are for convenience of reference only and will not be considered part or affect the interpretation of the Contract. Words expressed in the singular include the plural and vice-versa and words of one gender include all genders. “Including” will mean including without limitation and “include” and “includes” will have a corresponding meaning.

PART II – CONSTRUCTION SERVICES

23. **Schedule and Permits.** Supplier shall provide and maintain an up-to-date critical path schedule for the Work, which will include the time required for mobilization. This schedule will be made available to Irving for approval. Supplier represents and warrants to Irving that the critical path schedule, as submitted to and approved by Irving, is realistic and can be met by Supplier. Without penalty to Irving, Supplier shall schedule as many workers per shift and as many shifts per day as may be required to ensure completion of the Work to the satisfaction of Irving as outlined in the description or scope of work referred to in the purchase order. Should the Work fall behind schedule, Irving will have the right to require Supplier to increase manpower, days of work, hours of work, use additional equipment or take other steps as may be necessary or required to ensure completion of the Work in compliance with the applicable specifications, all at Supplier’s expense. Supplier shall secure and pay for all licenses and permits which it may require to comply fully with all laws, including ordinances and regulations of the proper public authorities in connection with the performance of the Work, save and except the required building permit which will be obtained by Irving.

24. **Work Site.** Supplier and its subcontractors, if any, shall co-operate with Irving and other agents and contractors of Irving at the Work site and shall plan operations and carry on the Work so as to avoid interference or hindrance or delay to (i) Irving’s operations and (ii) the other contractor’s or subcontractor’s activities in relation to the Work or other projects at the Work site. Irving will cooperate in good faith with Supplier and other contractors and subcontractors on the Work site to allow the Work to proceed expeditiously. Supplier shall maintain and leave the Work site clear of all surplus debris, equipment and materials and in a condition suitable for use by Irving unless otherwise agreed in writing between the parties. Supplier at any time during progress of the Work shall, within 24 hours after receiving written notice from Irving or its designated agent so to do, proceed to remove from the Work site all materials condemned by Irving or its designated agent, whether assembled or not, and to dismantle all portions of the Work which are condemned as unsound, or in any way failing to conform with the requirements of the Contract and to replace at its own expense all those portions of the Work and materials.

25. **Industrial Gases.** Supplier shall advise Irving as early as practicable of its needs and that of its subcontractors in relation to industrial gases required to perform the Work. Supplier shall ensure that its employees, agents and subcontractors do not bring to the Work site nor remove from the Work site cylinders, tanks or vessels used to store industrial gas without Irving’s prior approval.

26. **Inspection.** All aspects of the Work will be subject to the inspection and approval by Irving or its designated agent at all times, provided however, that the approval will not relieve Supplier of its responsibility for the proper performance of the Work. Supplier shall provide sufficient, safe and proper facilities at all times for inspection of the Work. Supplier shall provide Irving with full information concerning all materials to be furnished by Supplier before entering into the Work.

27. **Holdback and Final Payment.** Irving may withhold and remit to Canada Revenue Agency any amounts required to be withheld and remitted pursuant to the Income Tax Act (Canada) and the regulations thereto. Irving may retain as a holdback a percentage of the invoiced amount as is appropriate according to applicable tax legislation and construction lien legislation governing the Work site. Supplier may post a bond acceptable to Irving in lieu of Irving retaining a holdback. Supplier may invoice for final payment of all sums due to Supplier hereunder after acceptance in writing by Irving of the completed Work, provided Supplier will have given to Irving evidence satisfactory to Irving that all privileges, liens, claims, obligations and liabilities against the property of Irving or chargeable to Irving have been fully paid, satisfied and released.

28. **Additional Insurance.** Without limiting Supplier's liability under the Contract, if Supplier is providing construction services, Supplier shall provide, maintain and pay for the following additional insurance coverage: (i) "**ALL RISK" CONTRACTOR'S EQUIPMENT INSURANCE** covering construction machinery and equipment used by Supplier for the performance of the Work, in an amount at least equal to the replacement value of the machinery and equipment. The policy will provide a waiver of subrogation by the insurer against Irving, its employees, officers, directors, parent, subsidiary, affiliated, related and associated companies; and (ii) if the Work involves the movement and/or lifting of Irvingowned property; **HOOK LIABILITY INSURANCE** or an endorsement to Supplier's property policy with a limit of not less than $3,000,000 per occurrence. The insurance will cover direct damage to the Irving property in Supplier's care, custody and control, loss of use of the Irving property and any associated systems that are rendered inoperable as a result of the damage. The insurance will state that it is primary insurance and that any other insurance carried by Irving will be specific excess and not contributing therewith. The policy will provide a waiver of subrogation by the insurer against Irving, its employees, officers, directors, parent, subsidiary, affiliated, related and associated companies.

PART III – ENGINEERING SERVICES

29. **Plans and drawings.** All plans, drawings, specifications, technical data, designs, computer programs, reports or other information (hereinafter referred to as "data") produced by Supplier in tangible form in the performance of the Work to be provided under the Contract, will be the property of Irving and Supplier will be provided with copies of the data for its own use as may be required in the ordinary course of its business. Should any drawing or specification prepared by Supplier be incorrect or require amendment, in addition to any other rights or remedies Irving may have under the Contract or in law or equity, Irving may require Supplier to rectify the drawing or specification, all at the expense of Supplier.

30. **Additional Insurance.** Without limiting Supplier's liability under the Contract, if Supplier is providing engineering services, Supplier shall provide, maintain and pay for the following additional insurance coverage: **PROFESSIONAL LIABILITY INSURANCE** of not less than $5,000,000 per claim which will remain in force for a period of at least two years following acceptance of the Work by Irving. [End of document.]