

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.

- Equivalentents 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 Destination 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. INCO Shipping Terms: CIP Carriage and Insurance Paid to Destination.

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.