

# PURCHASE ORDER TERMS & CONDITIONS

Revised June 1, 2015

## 1. INTRODUCTION.

A Spencer Building Carrier Hotel Inc. issued purchase order ("Purchase Order"), together with these terms and conditions ("Terms and Conditions"), and any attachments incorporated therein (the foregoing, collectively, the "Purchase Agreement") applies to the purchase of specified goods and/or services ("Products") by Spencer Building Carrier Hotel Inc. ("SBCH"). This Purchase Agreement constitutes the entire agreement between SBCH and the Vendor listed on the Purchase Order ("Vendor") with respect to the Products described therein. If another agreement governing the purchase of such Products exists between SBCH and Vendor, the terms of such agreement shall prevail.

## 2. ACCEPTANCE AND PRECEDENCE OF TERMS.

Vendor's acknowledgement of this Purchase Agreement or commencement of performance will constitute Vendor's acceptance of these Terms and Conditions. Any additional or different terms in Vendor's documents are deemed material alterations and are hereby rejected by SBCH. Except as otherwise set forth in Section 1 of these Terms and Conditions, this Purchase Agreement will be controlling over any additional, inconsistent or conflicting terms of any purchase order, quotation, confirmation, invoice, acknowledgement, release, or other written correspondence, even if accepted in writing by both parties. Acceptance of the Products delivered under this Purchase Agreement will not constitute acceptance of Vendor's terms and conditions. Vendor shall not assign this Purchase Order or any part of it or any sums due hereunder without the written consent of SBCH.

## 3. PROVISION OF GOODS AND/OR SERVICES.

Vendor will provide Products as specified in the Purchase Order. Materials not conforming to this Purchase Order or to approved samples are subject to return to Vendor at Vendor's risk and expense.

## 4. SHIPMENT AND DELIVERY

### a. Timing.

Vendor will immediately notify SBCH if Vendor's timely performance under the Purchase Agreement is delayed or likely to be delayed. SBCH's acceptance of Vendor's notice will not constitute SBCH's waiver of any of Vendor's obligations.

**b. Terms.**

Unless otherwise expressly agreed to in writing, delivery is to ship to address as indicated on purchase order. The prices are F.O.B. destination and include all charges for parking, loading, unloading and transportation unless otherwise specified herein.

**c. Incorrect Delivery.**

Incorrect deliveries are Products delivered: (i) in excess of the amounts stated on this Purchase Agreement; (ii) more than three (3) business days prior to the delivery date listed on this Purchase Agreement (“Delivery Date”); or (iii) after the Delivery Date. At SBCH’s option and Vendor’s risk and expense, SBCH has the right to store such Products for a reasonable amount of time, or reject such Products and return to Vendor.

**d. Billing Instructions.**

Vendor agrees to follow the billing instructions on the Purchase Order. No payment in full or in part to Vendor shall be construed to be an acceptance of defective work or materials.

**e. Packing.**

Vendor will preserve, pack, package, and handle the Products to protect them from loss or damage in accordance with good commercial practice. Vendor will be liable for and will promptly refund to SBCH the amount of any loss or damage due to Vendor’s failure to properly preserve, pack, package or handle such Products. Vendor will include with each shipment of Products an itemized packing list that sets forth the number of this Purchase Agreement, product numbers, a description and the quantity of each of the Products shipped, weight, and the date of shipment. The Purchase Order number will be plainly visible on every invoice, package, bill of lading, and shipping order provided by Vendor.

**f. Drawings and samples.**

Vendor shall furnish, for Architect’s approval such shop drawings and samples as architect may require.

**5. CHANGE ORDERS.**

SBCH has the right, at any time prior to the Delivery Date, by a written request (including via email or facsimile) to suspend its purchase of Products hereunder or make changes in: (i) the quantities, scope, or Delivery Date of Products ordered; (ii) applicable drawings, designs, and/or specifications;



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(iii) the method of shipment or packing; and/or (iv) the place of delivery or service location. If such a change by SBCH causes an increase in the cost of, or the timing required for Vendor's performance, and Vendor immediately notifies SBCH in writing, then the price and/or delivery schedule of the Products corresponding to such changed portion(s) of this Purchase Agreement will be equitably adjusted as mutually agreed upon by both parties, and the parties will modify this Purchase Agreement accordingly in writing. Vendor will request such an adjustment no later than five (5) days from the date of Vendor's receipt of SBCH's notification of change; however, such period may be extended upon SBCH's written approval. Nothing in this Section 5 is intended to excuse Vendor from performing pursuant to this Purchase Agreement as changed or amended. Up to the point of termination or suspension, SBCH will be responsible for expenses accrued by Vendor up to the date of notice. No agreement or other understanding in any way modifying the conditions of this Purchase Order will be binding upon SBCH unless made in writing and signed by its authorized representative.

## **6. PRICES.**

The prices for the Products provided hereunder will be as listed on the Purchase Order.

## **7. PAYMENTS.**

All payments due hereunder to Vendor will be paid to Vendor in Canadian dollars not later than thirty (30) business days following SBCH's receipt of a correct invoice. Expenses will be reimbursed only when pre-approved by SBCH and supported by appropriately detailed records. Except for governmental sales or use taxes levied on purchases under the Purchase Agreement and required by law to be collected by Vendor, SBCH will not be liable for any sales, use, excise, value added, ad valorem and other taxes unless otherwise specified in the Purchase Agreement. Vendor will separately state on all invoices any sales or use taxes imposed. Vendor will not collect or remit and SBCH will not be liable for, any such taxes if SBCH has provided Vendor with a tax exemption certificate. In the event any tax included was not required, Vendor will notify SBCH and promptly take all necessary and proper steps to procure a refund and pay such amount to SBCH. Vendor will comply with any reasonable request by SBCH regarding payments under protest, and regarding any refunds, claims, litigation, or proceedings with respect to any such taxes and will make appropriate adjustments to afford SBCH the benefit of any refund or reduction in such taxes.

## **8. WARRANTIES.**

### **a. Performance Warranties.**

Vendor warrants to SBCH for the longer of Vendor's normal warranty period or for one (1) year following the date of SBCH's acceptance of the Products that: (i) when received by SBCH from Vendor, the Products will be free from defects in design, material, workmanship and manufacture; (ii) the Products will conform to the applicable documentation, or to other

descriptions set forth in this Purchase Agreement; (iii) the Products will be suitable for the purposes for which they are intended including without limitation purposes made known to Vendor; and (iv) all Products will be new and unused, unless otherwise specified by SBCH. The foregoing warranties are in addition to all other warranties, whether express or implied, and will survive delivery, inspection, acceptance, or payment by SBCH. The Vendor warrants that it has the right to use and sell any patented devices or parts used in the goods purchased and agrees to indemnify SBCH against any claims for royalties, license fees or other claims or demands by reason of the use or sale thereof.

**b. Performance Remedies.**

Notwithstanding any acceptance by SBCH if any of the Products delivered by Vendor do not meet the warranties specified herein or otherwise applicable, SBCH has the right, at its option, to: (i) require Vendor to correct any defective or non-conforming products by repair or replacement at no charge to SBCH (ii) return such defective or non-conforming Products to Vendor at Vendor's expense and recover from Vendor all amounts paid heretofore; (iii) correct the defective or non-conforming Products itself and charge Vendor the cost of such correction; (iv) obtain a refund from Vendor for all amounts paid for any defective or non-conforming Products; or (v) utilize the defective Products and require an appropriate reduction in price. SBCH's approval of Vendor's product, services or design will not relieve Vendor of the warranties set forth herein, nor will waiver by SBCH of a requirement pertaining to any acceptance criteria, drawing or specification for one or more of the Products constitute a waiver of such requirements for the remaining Products to be delivered hereunder unless so stated by SBCH in writing.

**c. General Warranties.**

Vendor represents and warrants that: (i) Vendor has good, unencumbered title to the Products and has conveyed such good, unencumbered title to SBCH; (ii) the Products will be of professional quality and/or performed consistently with generally accepted industry standards; (iii) there exists no actual or potential conflict of interest concerning the Products; (iv) Vendor's performance under this Purchase Agreement does not require the breach of any agreement or obligation to keep in confidence the proprietary information of another party; (v) Vendor will comply with all Federal, Provincial, Municipal codes, ordinances and regulations relating there to. Vendor agrees to hold SBCH harmless from any violation thereof; (vi) Vendor and its directors, officers, employees and agents ("Personnel") will comply with all applicable anti-bribery laws, and have not and will not offer, pay, promise or authorize the payment, directly or through any other person or entity, of anything of value for the purpose of inducing or rewarding any favorable action or

influencing any act or decision in connection with SBCH's business; (vii) Vendor is an equal-opportunity employer, does not discriminate on the basis of age, race, creed, color, religion, sex, sexual orientation, national origin, disability, marital or veteran status or any other basis that is prohibited by law and will not so discriminate in providing the Products; (viii) Vendor shall not employ any labor that will interfere with the labor harmony on the project or building where the materials or installations are to be used or done; (ix) If Vendor delays its own work or the work of others so as to cause any damage for which SBCH becomes liable, Vendor shall reimburse SBCH for such damage; (x) Vendor agrees to indemnify and save harmless SBCH and its subsidiaries, and their agents, servants and employees, the owner and general contractor of the premises where the services are to be rendered, and their agents, servants, and employees, against any loss, damage or expenses whatsoever, arising out of injury to persons or damage to property resulting from the performances of such services, regardless of the negligence of any of the aforementioned indemnities or the breach by any of them of a statutory duty.

## **9. TERMINATION.**

### **a. Services.**

SBCH has the right to terminate this Purchase Agreement with respect to services, at any time, with or without cause, by providing Vendor with written notice. Termination is effective immediately unless otherwise specified in the termination notice, but SBCH will pay any fees previously accrued for services performed as set forth in this Purchase Agreement.

### **b. Goods.**

SBCH has the right to terminate this Purchase Agreement with respect to goods, in whole or in part, at any time, with or without cause, by providing Vendor with written notice. Termination is effective immediately unless otherwise specified in the termination notice. Upon such termination, Vendor will, to the extent and at the times specified by SBCH; (i) stop all work under this Purchase Agreement; (ii) place no further orders for materials to complete such work; (iii) if requested by SBCH, assign to SBCH all of Vendor's rights, title and interests under terminated subcontracts and orders; (iv) settle all claims hereunder (after obtaining SBCH's prior written approval); (v) protect all property in which SBCH has or may acquire an interest; and (vi) transfer title and make delivery to SBCH of all articles, materials, work in process, and other things held or acquired by Vendor in connection with the terminated portion of this Purchase Agreement. Vendor will promptly comply with SBCH's instructions respecting each of the foregoing without awaiting settlement or payment of any amounts it may claim against SBCH. Within six (6) months after such



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termination, Vendor may submit to SBCH its written claim, with supporting documentation, for any unavoidable material costs resulting from the termination. Failure to submit such claim within such six (6) month period will constitute Vendor's waiver of all claims against SBCH and a release of all of SBCH's liability arising out of the termination. The parties may, after conferring with each other in good faith, agree upon the amount to be paid by SBCH to Vendor for such termination. Absent such agreement, SBCH will pay Vendor the following amounts: (a) the price set forth in this Purchase Agreement for all goods rendered in accordance with this Purchase Agreement to the extent not previously paid for; (b) the reasonable actual costs incurred and paid by Vendor which are properly allocable under recognized commercial accounting practices to the terminated portion of this Purchase Agreement; and (c) the reasonable actual costs incurred and paid by Vendor in making settlement hereunder and in protecting property in which SBCH has or may acquire an interest. Payments made under this section will not exceed the aggregate price of the goods specified in the terminated portion of this Purchase Agreement, less payments otherwise made or to be made by SBCH. Any amounts payable to Vendor by SBCH under this section will exclude amounts relating to goods that are lost, damaged, stolen, or destroyed. Upon the occurrence of any one of the following events, SBCH will have the unrestricted right, at its option, to cancel and terminate this Purchase Agreement without cost or liability to SBCH: (1) Vendor's insolvency or inability to meet obligations as they become due; (2) filing of voluntary or involuntary petition of bankruptcy by or against Vendor; (3) institution of legal proceedings against Vendor by creditors or stock holders; or (4) appointment of a receiver for Vendor by any court of competent jurisdiction.

## **10. CONFIDENTIALITY.**

Vendor agrees that all information, data, and material it obtains from SBCH in connection with this Purchase Agreement will be "Confidential Information" and is the sole property of SBCH. Vendor will use Confidential Information solely for the purposes of providing Products under this Purchase Agreement. Vendor will not disclose or make Confidential Information available to any third party, except as specifically authorized by SBCH in writing. Upon SBCH's written request, Vendor will promptly return all confidential Information and copies, and/or certify in writing that it has destroyed all such materials. Vendor will not bring to SBCH or use in connection with the Products any information, data, materials, or documents of a third party considered confidential or proprietary without the written authorization of such party and SBCH. Confidential Information does not include information that: (i) was known to Vendor without restriction before receipt from SBCH; (ii) is publicly available through no fault of Vendor; (iii) is rightfully received by Vendor from a third party without a duty of confidentiality; or (iv) is independently developed by Vendor without reference to any Confidential Information. Vendor may disclose Confidential Information when compelled to do so by law if it provides reasonable prior notice to SBCH.



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#### **11. INDEMNIFICATION.**

Vendor will indemnify, defend and hold SBCH and its officers, directors, agents, employees, successors and customers harmless against any and all claims, liabilities, losses, damages, settlements, costs and expenses (including attorneys' fees) made against or sustained by SBCH arising from: (i) any property damage, personal injury or death related to the Products; (ii) all loss, liability, and damages arising from or caused directly or indirectly by any act or omission of Vendor's agents, employees, or subcontractors; (iii) any breach of Section 10 by Vendor or anyone acting on Vendor's behalf; and (iv) royalty claims, liens or any other encumbrances on the Products supplied hereunder.

#### **12. INSURANCE.**

Vendor shall furnish at its own expense, insurance for worker's compensation and employer's liability, as well as general public liability and automobile liability, and will furnish to SBCH evidence of the existence thereof before performing such service.

#### **13. NO EXCLUSIVITY.**

Nothing herein is intended nor will be construed as limiting SBCH's ability to procure any products and/or services from other providers.

#### **14. NO PUBLICITY.**

Without the prior written approval of the other party, neither party will issue any public statements or promotional materials disclosing the existence of this Purchase Agreement or the delivery and/or performance of Products.

#### **15. BACKGROUND CHECKS.**

If SBCH requires Vendor to conduct background checks on Vendor's Personnel, Vendor will do so according to the policies provided by SBCH, and will provide confirmation of the results of such checks to SBCH or its third-party vendor upon request. If SBCH requests its own background checks, Vendor will obtain written consent from its Personnel and supply information reasonably requested by SBCH. Vendor will require its Personnel performing services to provide prompt notice of any change of status after the initial background check, and will notify SBCH of any change of status.