

## **Schedule "A" – GIBSON ENERGY Purchase Order Terms & Conditions**

### **1. Application of Conditions**

These Conditions, together with any Attachments hereto, shall govern this Purchase Order, to the entire exclusion of all other terms and conditions. This Purchase Order is the entire agreement between the Seller and Buyer with respect to the Goods and/or Services. If there is a conflict or inconsistency between these Conditions and any other part of this Purchase Order, these Conditions shall prevail. Seller's written acceptance of a Purchase Order or its shipment of Goods and/or performance of Services, shall constitute acceptance by the Seller of these Conditions. These Conditions shall relate to both the purchase of Goods and Services however should the Purchase Order relate only to the purchase of Goods, the language contained herein related to Services shall be not applicable and should the Purchase Order relate only to the purchase of Services, the language contained herein related to Goods shall be not applicable.

### **2. Standard of Performance**

Seller shall provide the Goods (a) safely, efficiently, diligently and carefully in a good and workmanlike manner exercising the level of skill, care and diligence expected of a reputable and experienced contractor specializing in the provision of goods similar to the Goods, (b) in strict conformance with this Purchase Order and any specification, drawing or other description supplied or advised by Buyer to Seller, and (c) in accordance with all applicable laws, ordinances, rules, regulations, code of ethics and permits. Seller shall furnish all skills, labour, supervision, equipment, materials and supplies required to provide the Goods to Buyer.

Seller shall perform the Services (a) competently, efficiently and diligently in accordance with good industry, safety and environmental practices, (b) in compliance with all Laws and with all environmental, health and safety rules of the Buyer, (c) with minimum interference to the Buyer's operations and with all necessary precautions to protect the Buyer's premises and property thereon from damage, (d) with all reasonable actions to leave the Buyer's premises clean and free of all waste material and rubbish, and (e) at its own expense and cost and all necessary machinery, tools, equipment, transportation, materials and whatever else is necessary to perform the Services shall be furnished and provided by the Seller at its own expense unless otherwise expressly agreed to by the Buyer.

Seller shall comply, and shall ensure that its employees and subcontractors comply, with all policies, procedures, and guidelines set forth by Buyer, as amended from time to time, relating to matters of conduct and ethics, health, safety, and the environment, drug and alcohol, respectful workplace, workplace violence, supplier code of conduct and ethics and IT acceptable use, which are applicable to the performance of the Services or delivery of the Goods, as applicable. Such policies, procedures and guidelines are accessible at [www.gibsonenergy.com](http://www.gibsonenergy.com) or are available from the Seller on request. Seller, by its commencement of the Services or delivery of the Goods, as applicable, confirms it has been given a copy of or access to such applicable policies, procedures and guidelines.

### **3. Term and Delay**

3.1 *Timing.* Time is of the essence herein with respect to Delivery of the Goods and/or performance of the Services. The Goods shall be Delivered and/or the Services performed at the location(s) specified on the Order Form by the Delivery Date(s) and/or Performance Date(s), or such other time periods specified herein.

3.2 *Notice of Delay.* Seller shall provide Buyer with prompt written notice if, at any time during the performance of this Purchase Order, Seller believes it will be unable to provide the Goods and/or perform the Services in accordance with the time-periods specified in this Purchase Order. Seller shall specify the reasons for such delay in writing.

3.3 *Acceptance.* The Goods shall not be deemed Delivered and/or the Services shall not be deemed Performed until Buyer has accepted the Goods and/or Services in writing, acting reasonably. Acceptance by Buyer shall in no way prejudice Buyer's rights or otherwise release or limit Seller's obligations hereunder.

### **4. Changes to the Goods and Services**

Seller shall not, without Buyer's prior written authorization in the form of a change order, alter, substitute, add or remove any of the Goods and/or Services or the timing for their Delivery and/or Performance as specified in this Purchase Order. Seller is not entitled to payment for any changes to the Goods or the supply of other goods and/or changes to the Services or the supply of other services unless specifically agreed to in writing by Buyer prior to such change being made. Buyer, by the issuance of a written change order may alter, substitute or add or remove any of the Goods and/or Services. Upon acceptance by the Seller, each change order will be incorporated into the Purchase Order. Change orders shall be executed by each of the Buyer Contact and the Seller Contact.

### **5. Warranty and Inspection**

5.1 *Warranty for Goods.* Seller warrants to Buyer that any Goods provided shall (a) be free from liens, encumbrances and other charges, (b) be in accordance with Seller's standard of performance specified in Section 2, (c) not constitute or induce an infringement of any third party intellectual property rights, (d) be of the best available design, materials, quality and workmanship, (e) be fit for use for their ordinary intended purpose, (f) be free from defects or deficiencies, and (g) be in strict compliance with this Purchase Order. Seller shall promptly re-provide, at its sole cost, any Goods that do not conform to the foregoing requirements.

5.2 *Warranty Period for Goods.* Seller's warranty for the Goods shall apply from the Effective Date until the earlier of either: (a) Eighteen (18) months after Delivery of the Goods; or (b) twelve (12) months after being put into usage. Upon notice from Buyer, Seller shall promptly re-provide any defective Goods during the warranty period above. If any Goods are re-provided pursuant to the aforementioned warranty, Seller shall warrant such re-provided Goods for the longer of (a) Eighteen (18) months from the date of Buyer's acceptance of such re-provided Goods, or (b) the remainder of the original warranty period. Seller shall commence such re-provisions of the Goods within ten (10) calendar days of any such written request from Buyer.

5.3 *Warranty for Services.* Seller warrants to Buyer that any Services provided shall (a) be free from defects, (b) be in accordance with Seller's standard of performance specified in Section 2, and (c) be in strict compliance with this Purchase Order. Seller shall promptly re-perform, at its sole cost, any Services that do not conform to the foregoing requirements.

5.4 *Inspection.* The Goods and/or Services provided hereunder shall at all times be subject to Buyer's inspection. Buyer's inspection, or failure to inspect, the Goods and/or Services shall not relieve Seller of any obligations under this Purchase Order. No informal acceptance or payment by Buyer shall constitute a waiver of the foregoing.

## 6. Compensation for Goods and Services and Taxes

6.1 *Compensation.* Unless a written change is agreed to pursuant to Section 4 herein, the Purchase Price shall be the sole compensation to the Seller for the Goods and/or Services. Seller represents and warrants that the rates and prices specified for the Goods and/or Services in this Purchase Order do not exceed Seller's current rates and prices for goods and services of the same or substantially similar quantity and quality to any other buyer. Any compensation for the Goods and/or Services shall be in Canadian funds.

6.2 *Taxes and Duties.* Any compensation owing to Seller is inclusive of all custom duties, charges, taxes and all other costs and expenses in connection with the performance of this Purchase Order other than GST. Seller shall obtain any available refunds or remission of duty paid by Seller which shall be to the credit of Buyer. Seller is exclusively liable for, and shall pay before delinquency, all custom duties, charges, taxes and other amounts owing for the Goods and/or Services (other than GST) and indemnify Buyer from all claims and liabilities arising from Seller's failure to do so. Seller represents and warrants that it is not a non-resident of Canada for purposes of the *Income Tax Act*.

6.3 *Property Interest.* Buyer shall acquire a property interest and title to the Goods provided by Seller on the earlier of Delivery of the Goods, or upon Buyer making payment for the Goods.

## 7. Payment Terms and Audit

7.1 *Invoicing.* Seller shall invoice Buyer on a monthly basis for the Goods Delivered and/or Services Performed in the amounts specified within the Purchase Order for such completed Goods and/or Services. Buyer shall have no obligation to make payment to Seller until Goods have been Delivered and/or Services have been Performed in accordance with this Purchase Order.

7.2 *Payment.* Buyer shall pay all undisputed amounts specified in each such invoice within thirty (30) calendar days of receipt. Each invoice shall reference this Purchase Order by number, and specify Seller's GST registration number. No amounts shall be considered due and owing by Buyer if subject to a bona fide dispute.

7.3 *Books, Records and Audit.* Seller shall keep books, accounts, records and documentation ("**Records**") for the purpose of verifying the proper performance by Seller of its obligations under this Purchase Order. Buyer may audit all such Records for the purpose of verifying the proper performance by Seller. Seller shall keep such Records, and Buyer's audit rights shall exist, at all times during this Purchase Order and for thirty six (36) months from the last day of the calendar year in which the Goods are Delivered and/or Services are Performed.

7.4 *Shipping.* An original bill of lading showing the Purchase Order number must accompany all shipments of Goods. Unless otherwise

agreed, freight, taxes and other related charges must be shown separately on each applicable invoice.

## 8. Insurance

8.1 Seller shall, without limiting its obligations or liabilities herein, obtain and maintain during the term of this Purchase Order, at Seller's sole cost and expense, reasonable insurance coverage, including the following minimum insurance coverage (with Buyer added as an additional insured to the GL policy article c below):

- (a) Workers Compensation covering all personnel engaged in the performance of this Purchase Order in accordance with the statutory requirements of the jurisdiction in which this Purchase Order is performed;
- (b) Automobile liability insurance covering all motor vehicles owned, leased or licensed by Seller with a minimum limit of five million dollars (\$5,000,000);
- (c) Commercial general liability insurance, on a per occurrence basis, with a bodily injury, death and property damage limit of five million dollars (\$5,000,000) inclusive, and contains contractual liability, cross liability and separation of insured coverage; and
- (d) Professional Liability, for engineer and other consultants, errors and omissions insurance with a minimum limit of five million dollars (\$5,000,000).
- (e) Limits requested can be achieved using primary, umbrella or excess liability policies;
- (f) Coverage: The Seller shall be liable, up to the insured amounts listed above, in the event that such coverage is terminated, cancelled, reduced, or the Seller fails to engage such insurance in response to a claim or loss.

8.2 *Certificates of Insurance.* Prior to the Delivery of Goods and/or Performance of Services, the Seller shall furnish Buyer with a certificate of insurance evidencing the coverages above, as applicable and include a 30 day notice of cancellation provision. In no event shall Company's review or acceptance of an insurance certificate that does not comply with Section 8, constitute a waiver of any requirement of this Agreement.

8.3 *Waiver of Subrogation.* Buyer shall be provided with a waiver of subrogation in connection with the policy referred to in Section 8.1(c) above.

8.4 *The insurance maintained by the Contractor shall be primary to any other insurance.*

8.5 *Subcontractors.* Should the Buyer approve the use of a subcontractor in connection with Section 14, Buyer shall ensure that such subcontractor carries the insurance coverages set out herein and will obtain certificates of insurance from their subcontractors prior to the Delivery of any Goods and/or the Performance of any Services.

## 9. Set off, Hold Backs and Back Charges

Buyer may withhold any sum due to Seller under this Purchase Order and apply such sum against Seller's obligations to third parties connected with this Purchase Order or as a set off against Seller's

indebtedness to Buyer either under this Purchase Order or under any other agreement between the parties.

#### **10. Liens**

10.1 All Goods and/or Services shall be free and clear of liens and other encumbrances. Seller shall promptly pay all debts incurred by Seller for labour, services, equipment, materials and supplies used in the performance of the Purchase Order. Seller shall forthwith remove any lien which may be placed against any Goods, Buyer's Site or property. Notwithstanding Section 7.2, if Buyer has reasonable grounds to believe there are unsatisfied claims or liens, it may request that the Seller furnish satisfactory proof to the Buyer that all such claims or liens have been satisfied. The Buyer shall have the right to withhold payment in accordance with any applicable Law or if the Buyer has notice of any unsatisfied claims or liabilities.

10.2 If any lien or encumbrance is not removed within ten (10) days after Seller receives notice of such lien or encumbrance, Buyer may take steps to remove or satisfy such lien or encumbrance and Seller shall immediately reimburse Buyer for all costs incurred by Buyer (including legal fees on a solicitor, client basis) removing or satisfying such lien or encumbrance.

10.3 Buyer reserves the right to retain a builders' lien holdback, if required under the *Builders' Lien Act* (Alberta).

#### **11. Indemnity and Liability**

Seller shall be liable for and indemnify and hold harmless Buyer, its directors, officers, employees, representatives, agents, and contractors and their respective representatives, agents and employees (collectively, the "**Buyer Indemnified Parties**") from and against all actions, injury, claims, liabilities, loss, damages, demands, penalties, fines, expenses (including legal expenses on a solicitor client basis), costs, obligations and causes of action of every kind and nature whatsoever, that may be asserted or brought against, or suffered or incurred by, the Buyer Indemnified Parties for or in respect of, or arising in any way whatsoever, out of the negligence of, action or omission of fault or, the breach of this Purchase Order by Seller, its employees, agents, representatives, subcontractors or suppliers, or their respective employees, agents, representatives, subcontractors or suppliers.

#### **12. No Consequential Liability**

Neither party shall be liable to compensate or indemnify the other party or its affiliates for any indirect or consequential damages, lost profits, loss of opportunity or increased costs of operations unless such compensation or indemnification is covered by available insurance proceeds. Notwithstanding the foregoing, Seller's liability for (a) any third party claims suffered by Buyer arising from Seller's negligent acts or omissions or other acts or omissions of fault; (b) a breach of its confidentiality or intellectual property obligations specified hereunder; (c) its gross negligence or willful misconduct; or (d) taxes pursuant to Section 6.2, shall not be limited by this Section.

#### **13. Confidentiality**

Seller shall maintain in confidence all proprietary information provided by Buyer, including the Conditions of this Purchase Order. Seller shall not disclose any such confidential information to any third party nor use such information for any purpose other than the performance of this Purchase Order, without the prior written consent of Buyer, except for information: (a) known to Seller prior to obtaining it from Buyer; (b) which, at the time of disclosure by

Seller, is in the public domain; or (c) obtained by Seller from a third party who did not receive it in confidence directly or indirectly from Buyer or its representatives. Seller shall return all information provided by Buyer upon the Delivery of all Goods and/or Performance of all Services, written request of Buyer or termination of this Purchase Order.

#### **14. Assignment and Subcontracts**

Seller shall not assign this Purchase Order or use a subcontractor without the Buyer's consent. Seller shall be responsible for all acts or omissions of its employees, agents, consultants, suppliers or subcontractors providing any Goods and/or Services and any such acts or omissions shall be deemed those of Seller. The Seller shall ensure that its subcontractors, if any, comply with these Conditions.

#### **15. Independent Contractor**

Seller is an independent contractor. Neither the Seller, nor anyone used or employed by the Seller, shall be deemed for any purpose to be an agent, servant or representative of the Buyer unless authorized by the Buyer in writing.

#### **16. Termination**

16.1 Buyer may, at any time, terminate this Purchase Order upon two (2) days advance written notice to Seller whereupon Buyer shall be relieved of all further obligations under this Purchase Order except for the payment of the balance outstanding for the Goods satisfactorily Delivered and/or the Services satisfactorily performed as of the effective date of termination, as determined by Buyer, which shall be Seller's sole relief in the event of such termination. The termination of this Purchase Order shall be without prejudice to the rights and remedies of the parties accrued prior to termination.

16.2 If Buyer terminates this Purchase Order because Seller breached any of its obligations or became insolvent, bankrupt, made an assignment to creditors or a similar event occurred, Seller shall, promptly upon receipt of notice from Buyer, reimburse Buyer for any and all resulting costs and expenses. Upon termination Buyer may remove from Seller's possession all Goods, for which Buyer has paid or is obligated to pay to the date of termination, (whether fabricated or not) without hindrance by Seller or anyone claiming through Seller.

#### **17. Remedies**

Without prejudice to any other right or remedy which Buyer may have, if any Goods and/or Services are not provided in accordance with, or Seller fails to comply with, any of the provisions of this Purchase Order, Buyer may avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods and/or Services have been accepted by Buyer: (a) terminate this Purchase Order or the provision of any of the Goods and/or Services; (b) reject all or some of the Goods and/or Services; (c) provide Seller the opportunity at Seller's expense either to remedy any deficiency in the Goods and/or Services or provide any other necessary goods and/or services; (d) refuse to accept any further Goods and/or Services without liability to Seller; (e) take any action at Seller's expense to make the Goods and/or Services comply with this Purchase Order; (f) claim such damages as may have been sustained by Buyer in consequence of Seller's breach of this Purchase Order; (g) backcharge Seller for any reasonable costs or expenses incurred by Buyer related thereto; or (h) any other remedy available to Buyer at law.

## 18. Laws

This Purchase Order shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and the parties attorn to the exclusive jurisdiction of the laws of the Province of Alberta.

## 19. Miscellaneous

(a) In these Conditions the following words shall have the following meanings unless the context dictates otherwise:

"**Attachments**" those documents attached to this Purchase Order other than these Conditions and which are specified on the Order Form of this Purchase Order.

"**Buyer**" means Gibson Energy Inc. or any of its affiliates as specified on the Purchase Order attached.

"**Buyer Contact**" means the person specified as such on the Order Form of this Purchase Order.

"**Conditions**" means these Gibson Energy Purchase Order Terms and Conditions.

"**Delivery**" means the delivery of the Goods to the delivery location(s) specified in the Purchase Order and acceptance by Buyer in accordance with this Purchase Order and "**Deliver**" or "**Delivered**" shall have the same meaning.

"**Delivery Date(s)**" means the date(s) for Delivery of the Goods as specified on the Order Form.

"**Effective Date**" means the date this Purchase Order was executed by both parties hereto.

"**Goods**" means those goods to be supplied and Delivered by Seller in accordance with this Purchase Order and as described on the Order Form.

"**Laws**" means federal, provincial and municipal laws or regulations pertaining to the location or locations where the Goods are Delivered and/or the Services are Performed.

"**Order Form**" means the document containing specifications of Goods to be Delivered and/or Services to be Performed pursuant to this Purchase Order.

"**Perform**" means the performance of the Services to the service location(s) specified in the Purchase Order and acceptance by Buyer in accordance with this Purchase Order and "**Perform**" or "**Performed**" shall have the same meaning.

"**Performance Date**" means the date(s) for Performance of the Services as specified on the Order Form.

"**Purchase Order**" means the document containing the Order Form, the Conditions, and any other attachments thereto.

"**Purchase Price**" means the amount Buyer shall pay the Seller for the Goods and/or Services as more particularly described on the Order Form.

"**Seller**" the person, firm or company who accepts Buyer's

Purchase Order and includes its employees, agents and subcontractors.

"**Seller Contact**" means the person specified as such on the Order Form of this Purchase Order.

"**Services**" means those services to be supplied and Performed by Seller in accordance with this Purchase Order and as described on the Order Form.

"**Site**" means the site or sites owned or controlled by Buyer to which the Goods are to be Delivered and/or at which the Services are to be Performed.

(b) Buyer's right to require strict performance shall not be affected by any previous waiver or course of dealing.

(c) Notices shall be in writing and may be delivered personally or by facsimile, courier, electronically (with a read receipt) or registered mail to the individual and at the physical or electronic address or phone number referenced on the Order Form of this Purchase Order.

(d) The invalidity or unenforceability of any provision of this Purchase Order shall not affect the validity or enforceability of any other provision of this Purchase Order.

(e) The rights and remedies provided by this Purchase Order are cumulative and are not exclusive of any rights or remedies provided in law, equity or otherwise and shall extend to Buyer, its successors and assigns.

(f) The covenants and conditions contained in this Purchase Order, shall survive termination and expiry of this Purchase Order for the benefit of the party to whom they are given. In addition, the expiry or termination of this Purchase Order does not discharge or release either party from any liability or obligation hereunder.

(g) This Purchase Order may be executed and delivered by the parties in counterparts and by facsimile or other electronic means and when a counterpart has been executed and delivered by each of the parties, by facsimile, electronic copy or otherwise, all such counterparts, facsimiles and electronic copy shall together constitute one agreement.

(h) The parties hereto certify that they have been represented and/or have had the opportunity to be represented by counsel in the negotiation and formulation of this Purchase Order. No provision in this Purchase Order shall be interpreted for or against any party because that party or its legal counsel drafted such provision, and the contra proferentum rule of construction shall have no application in the interpretation of the Purchase Order.