



# DACRO INDUSTRIES INC

## PURCHASE ORDER TERMS & CONDITIONS

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### 1.0 DEFINITIONS

- **“Order”** means the PO, these terms and conditions, and all specifications, data sheets, drawings, and other documents described in, attached to, or expressly incorporated by reference.
- **“Purchased Order”** and **“PO”** mean the purchase order document to which these terms and conditions are attached and which forms part of this Order.
- **“Seller”** means the party named on the PO supplying the Work to Dacro.
- **“Work”** means the furnishing of all goods, materials, drawings, data, property, equipment, services, labor, and incidentals required to perform the scope described in, attached to, or referenced in this Order.

### 2.0 ORDER OF PRECEDENCE

If there is any inconsistency within or between the documents of this Order, the following order or precedence governs:

- the PO;
- the specifications, data sheets, and drawings (in that order); and
- these terms and conditions;
- any other documents, with those of more recent date taking precedence.

### 3.0 ENTIRE AGREEMENT

This Order constitutes the entire agreement between the Parties and supersedes all prior representations, negotiations, discussions, proposals, or agreements. No proposal, quotation, or similar document, or part thereof, that is not described in, attached to, or expressly incorporated by reference forms part of this Order nor modifies this Order.

### 4.0 ORDER ACCEPTANCE

Seller shall be deemed to have accepted this Order, to have agreed to perform the Work, and to have agreed to comply with all terms, conditions, and obligations of this Order if Seller: a) acknowledges this Order in writing, b) ships or delivers any part of the Work, or c) commences the Work and Dacro is aware of it.

### 5.0 TIME FOR PERFORMANCE

Seller shall promptly start and diligently prosecute the Work to achieve the milestone and delivery dates set out in this Order. Time is of the essence for all the Seller's obligations.

### 6.0 QUALITY & COMPLIANCE

Seller shall maintain a quality-management system consistent with ISO 9001 (or equivalent) and obtain all licenses, permits, Canadian Registration Numbers and ABSA approvals necessary to perform the Work.

### 7.0 PRICE AND PAYMENT

- **Price.** Unless expressly stated otherwise, the prices set out in this Order are firm, fixed prices, and include all costs, profit, overhead, packing, documentation, present and future taxes and duties, preservation, loading, unloading, and delivery to the destination identified in the Order. The prices shall not be changed, amended, or varied except as allowed for by this Order.
- **Invoicing.** Seller shall invoice as directed by this Order, referencing the PO number, line-item numbers, unit prices, description of Work performed, and supporting documentation (including work tickets signed by Dacro's representative where services are performed on site). GST/HST must be shown as a separate line item.



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- **Retention:** Dacro may, at its sole option, retain up to ten percent (10%) from the payment of any invoice until sixty (60) days after Dacro is satisfied that the Work, including delivery of spare parts and documentation, is fully completed and Seller has otherwise fulfilled all its obligations under this Order. If the Work is being delivered to a customer of Dacro, the Work is not completed until it is accepted by Dacro's customer under the terms of Dacro's agreement or contract with that customer.
- **Set-Off:** Dacro may set-off any amounts payable by Dacro to the Seller under this Order against any amounts the Seller owes to Dacro under this Order or otherwise.

### 8.0 CHANGES

Dacro may at any time change the scope, Work, schedule, price, or any other terms of this Order by issuing a written direction to the Seller ("**Change Order**"). Seller shall be deemed to have agreed to and accepted the Change Order if Seller: a) acknowledges the Change Order in writing, or b) proceeds with the Work after receiving the Change Order without giving Dacro written notice that it disputes the cost or schedule impact as shown on the Change Order. If, before proceeding with the Work, Seller gives Dacro written notice that it disputes the cost or schedule impact, Dacro may direct Seller in writing to proceed, in which case Seller shall continue with the Work in accordance with the Change Order (other than changes to the price or schedule), and Seller shall be entitled to a reasonable and equitable adjustment to the price or the schedule, or both.

This Order shall only be amended, varied, or changed by a Change Order. Failure to enforce the terms of this Order or insist on strict compliance on one occasion does not operate as an amendment, waiver, or release on any other occasion.

### 9.0 SHIPPING, DELIVERY & RISK OF LOSS

Unless otherwise stated in Purchase Order. The Work will be delivered duty paid (DDP - Incoterms 2020) by the Seller to Dacro's designated site. Title and risk of loss pass to Dacro upon Dacro's written acceptance under Article 9. Seller shall give Dacro at least ten (10) Business Days' written notice before Seller is ready to ship and shall comply with all of Dacro's packing, marking and transport instructions.

### 10.0 INSPECTION, TESTING & ACCEPTANCE

Seller shall give Dacro advance notice, reasonable access, and facilities at Seller's and its sub-suppliers' premises to witness inspections and tests, and to review quality documentation. Acceptance occurs only when Dacro gives the Seller written notice that it accepts the work. No payment, test, inspection, or use of the Work shall itself constitute acceptance.

### 11.0 WARRANTY

**Warranty.** Seller warrants that the Work will:

- be of the best quality and free from defects in design, materials and workmanship;
- contain only new materials and components;
- conform strictly to this Order and applicable laws, codes, and industry standards;
- be fit for the intended purpose; and
- free from liens or encumbrances.

"**Warranty Period**" means the earlier of:

- twenty-four (24) months after Dacro accepts the Work; or
- twelve (12) months after the Work is first used for commercial operation.

**Warranty Obligations.** If during the Warranty Period the Work is discovered not to conform with the Seller's warranties set out above, the Seller shall, at its sole cost (including all associated transport, access, labor, removal, re-installation costs) and as directed by Dacro, promptly repair, replace, or re-perform the non-conforming Work. Work that is re-performed, repaired or replaced is warranted for a further twelve (12) months from the date it is re-performed, repaired or replaced. The warranties, duties, and obligations imposed upon the Seller by this Order, and the rights and remedies available to Dacro, are in addition to and not a limitation of any duties, obligations, rights, or remedies otherwise imposed or available by law.



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### 12.0 SUBCONTRACTING & ASSIGNMENT

The Seller shall not assign, novate, or subcontract this Order (including by change of control or operation of law), in whole or part, or any amounts payable thereunder, without Dacro's prior written consent. Should the seller, with Dacro's consent, subcontract any of the Work to a third party (a "Subcontractor"), Seller shall maintain in full force and effect all insurance coverage required by this Order, with Seller's certificate of insurance expressly referencing such Subcontractor. Further, Seller shall ensure any Subcontractor obtains the same insurance that the Seller is required to have under this Order and indemnifies Dacro as an intended third-party beneficiary to the same extent as Seller indemnifies Dacro under this Order. Dacro may assign this Agreement to an affiliate or to a successor.

### 13.0 SUSPENSION & TERMINATION

- **For Convenience.** Dacro may, at any time, by written notice, suspend or terminate this Order in whole or part for convenience. Seller shall immediately cease the affected Work and take steps to minimize cost. Upon termination for convenience, Dacro shall pay Seller: a) the agreed unit price for conforming Work delivered and accepted; b) reasonable, auditable direct costs incurred on unfinished Work plus a pro-rata fee for overhead not exceeding ten percent (10 %), the title and possession of which shall pass to Dacro; less previous payments and salvage value. In no event shall Seller recover anticipated profits on cancelled Work.
- **For Cause.** Dacro may terminate this Order for cause if Seller fails to promptly perform any of its obligations under this Order and then fails to cure such failure within seven (7) days after receiving notice from Dacro. Dacro may then complete the Work by whatever means Dacro chooses, withhold all further payment from Seller until the Work is completed, and recover from Seller all of costs, expenses and damages that Dacro incurs in completing the Work and otherwise as a result of Seller's failure to perform.

### 14.0 FORCE MAJEURE

- **Force Majeure Event.** Neither party will be liable for a failure or delay in performing its obligations under this Order if that failure or delay is caused by any of the following events beyond its reasonable control (a "Force Majeure Event"): acts of God (such as severe weather, earthquakes, or floods); wars, riots, or acts of terrorism; Government actions, order, decrees, or changes of laws; pandemics, epidemics, or public health emergencies; labor disputes or strikes (excluding strikes by the claiming party's own workforce). A Force Majeure Event does not include a party's financial inability to perform its obligations or changes in economic or market conditions.
- **Notice.** To claim relief under this section, the party experiencing the Force Majeure Event (the "Claiming Party") must promptly provide written notice to the other party. The notice must include:
  - a) a description of the Force Majeure Event;
  - b) the expected duration of the delay; and
  - c) the specific obligations affected
- **Mitigation and Resumption.** The Claiming Party must use reasonable efforts to minimize the impact of the Force Majeure Event and resume performance as soon as possible. The Claiming Party must also provide regular updates to the other party about the status of the Force Majeure Event.
- **Allocation of Costs.** Each party will bear its own costs and expenses resulting from the Force Majeure Event. Neither party is entitled to compensation from the other for damages or losses caused by the Force Majeure Event.

### 15.0 INTELLECTUAL PROPERTY

Each Party retains ownership of the intellectual property it owned prior to this Order ("**Background IP**"). All drawings, calculations, data, software, and other deliverables specifically created for Dacro under this Order ("**Deliverables**") shall be Dacro's property. Seller grants Dacro a worldwide, royalty-free, irrevocable license to use Seller's Background IP incorporated in the Deliverables for operation, maintenance, repair, modification and sale of the Work.



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### 16.0 CONFIDENTIALITY

The terms of Dacro's *VENDOR / SUPPLIER NON-DISCLOSURE AGREEMENT* in use by Dacro as of the date of this Order form part of this Order and are incorporated by reference, whether or not Seller has separately executed that agreement.

### 17.0 HEALTH, SAFETY & ENVIRONMENTAL

If the Work includes Seller performing services at or on Dacro's property, Dacro's customer's property, or elsewhere other than Seller's own property, Seller shall:

- comply, and ensure that its employees, agents, and subcontractors comply, with all legislation, regulations, ordinances, site rules, and industry best practices relating to health, safety, and environment ("HSE Obligations");
- ensure that all its employees, agents, and subcontractors have a safe place of work;
- keep and leave the area where it works clean and ready for use, whether on Dacro's property, Dacro's customer's property, or elsewhere;
- take every reasonable precaution to prevent any spill or contamination of Dacro's or Dacro's customer's property;
- notify Dacro immediately if any spill or contamination occurs;
- bear and promptly pay all costs, expenses and damages to restore Dacro's or Dacro's client's property to the condition which existed before any spill or contamination to Dacro's satisfaction.
- bear and promptly pay all fines, penalties, and related costs (including reasonable attorney's fees and costs of dispute resolution necessary to compel Seller's compliance) arising out of or related to Seller's failure to comply with HSE Obligations;
- release, defend, and indemnify Dacro against all claims of any sort (including but not limited to claims of personal injury, death, and loss of property) and any theory of liability, costs, expenses, damages, actual legal fees disbursements and expenses, arising out of Seller's failure to comply with HSE Obligations; and upon Dacro's request, and at no cost or expense to Dacro, promptly remove any person under its control who violates or threatens to violate any HSE Obligation or who may cause or threatens to cause a breach of the peace, or any other disturbance of the Work.

### 18.0 INSURANCE

**Certificate of Insurance:** Before performing any Work and upon Dacro's request, Seller shall give Dacro a certificate executed by Seller's insurer showing that Seller has obtained the insurance required by this Order. Such certificate shall stipulate that the Dacro must receive at least THIRTY (30) DAYS written notice of cancellation or modification of the insurance. If Seller fails to maintain the insurance, Dacro shall have the right, but not the obligation, to purchase such insurance at Seller's expense. Upon Dacro's written request, Seller shall give Dacro certified copies of all policies of insurance required by this Order.

**Worker's Compensation:** Seller shall maintain Worker's Compensation Insurance as required by law.

**Commercial General Liability:** Seller shall maintain commercial general liability insurance with a combined single limit of \$5,000,000 per occurrence for bodily injury and property damage. The insurance must protect Dacro, its customer, the affiliates of each, their employees, agents, directors, officers, and representatives against bodily injury (including death) and property damage arising out of Seller's operations. The commercial general liability insurance shall include products liability, blanket contractual, personal liability, completed operations, broad form property damage, and shall expressly cover the contractual liability assumed by Seller under this Order, including under Article 17. The policy shall name Dacro, its customer and their affiliates as additional insured parties.

**Automobile Liability:** If Seller uses automobiles in performing the Work, Seller shall maintain Automobile Liability Insurance with a combined single limit of \$2,000,000 per occurrence for bodily injury and property damage. Insurance must cover use and operation of owned, non-owned and hired vehicles. The policy shall name Dacro, its customer and their affiliates as additional insured parties.

**No Limitation of Liability:** The fact that Seller has obtained the insurance required by this Order shall in no manner lessen nor affect Seller's obligations or liabilities arising out of or set forth in this Order. All insurance provided by Seller (including any self-insurance or deductible amounts) shall be primary to any insurance maintained by Dacro or Dacro's customer.

**Waiver of Subrogation and Additional Insureds:** Seller shall obtain from its insurers for all insurance coverages applicable to the Work or required under this Order, a waiver of subrogation in favor of Dacro, its customers, and their agents, employees, officers, and directors. Dacro, its



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customer and their affiliates shall be named as an additional insured on Seller's automobile, commercial general and excess liability policies and such policies shall state that this contract is an insured contract and contain a severability of interest clause.

### 19.0 INDEMNITY

In addition to all other obligations of the Seller under this Order and at law, Seller shall release, defend, indemnify, and hold harmless Dacro, Dacro's customer, the related entities and affiliates of both, directors, officers, employees, agents, and assigns of Dacro and its related entities and affiliates ("**Indemnitees**") from all claims, demands, actions, or lawsuits for loss, expenses, damage, liability, legal cost (including without limitation, actual lawyers fees, disbursements, and expenses) that may arise in connection with the performance of this Order or the Work including any injury, including death, to any person including any employee of Seller or other person whom Seller caused to be on the property of Purchaser or Purchaser's client, and damage or injury to any property of Dacro, Dacro's customer, the seller, and any other person. Seller's obligation to release, defend, indemnify, and hold harmless applies regardless of whether the loss, expense, damage liability, or legal cost is caused in whole or in part by the fault, negligence, or strict liability of an Indemnitee.

### 20.0 LIMITATION OF LIABILITY

To the maximum extent permitted by law, Dacro will not be liable to the Seller for any indirect, special, incidental, or consequential damages arising out of or related to this Order. This exclusion applies regardless of whether the claim is based on contract, tort (including negligence), or any other legal theory, and even if Dacro has been advised of the possibility of such damages. For clarity, this exclusion means that Dacro will not be liable for losses such as: lost profits or revenue, loss of business opportunities or goodwill, or loss of data or use of data.

### 21.0 GOVERNING LAW AND DISPUTE RESOLUTION

This Order is governed by the laws of the Province of Alberta and the applicable laws of Canada, without regard to conflict of laws rules. At either Party's option and upon written notice to the other Party, any dispute arising out of or relating to this Order may be referred to arbitration before a single arbitrator, and the arbitrator's decision will be final and binding on the Parties. Otherwise, the Parties attorn to the exclusive jurisdiction of the courts of Alberta.

### 22.0 SURVIVAL

Seller's obligations and Dacro's rights under Articles 5, 6, 10, 11, 15, 16, 17, 18, 19, 20 and 21 survive expiry or termination of this Order and continue in effect.

### 23.0 SEVERALITY

If any term or part of this Order is unenforceable, it will be severed to the minimum extent necessary, and the remainder will continue in effect.

### 24.0 CURRENCY

All monetary references are in Canadian dollars unless expressly stated otherwise.

### 25.0 HEADINGS

Headings are for convenience only and do not affect interpretation.

### 26.0 COUNTERPARTS & ELECTRONIC EXECUTION

This Order may be executed in counterparts and delivered electronically, each of which is deemed an original and all of which together constitute one instrument.