

Brun-Way Operations General Conditions	Approved & Issued by: Sr. Director, Strategic Procurement
Issue & Revision Date: July 31 2015 Version 1.1	Sch-SP-Brunway-1.1

## 1. Definitions

“**Agreement**” shall mean the Order requirements collectively including the General Conditions, the Specific Conditions and the SCP.

“**Brun-Way**” shall mean Brun-Way Highways Operations Inc.

“**Client**” shall mean Brun-Way’s Client for whom the Work is being provided.

“**General Conditions**” shall mean the general terms and conditions contained herein or within the Order.

“**Goods**” shall mean the supplies, materials, commodities and other things required to be furnished or provided by the Supplier.

“**Order**” shall mean the work order or P.O. issued by Brun-Way in relation to the Work as specified therein.

“**P.O.**” shall mean the purchase order or the payment order.

“**SCP**” shall mean the Supplier Compliance Package in effect on the date of commencement of the Work.

“**Services**” shall mean any and all work, services, labour and Goods required to be performed, supplied, installed, purchased, licensed, repaired, modified, upgraded, erected, or otherwise provided by the Supplier.

“**Specific Conditions**” shall mean any additional specific conditions, documents, schedules, specifications and procedures attached to or referred to in a work order or P.O.

“**Supplier**” shall mean the persons, company or entity supplying the Work to Brun-Way under this Agreement.

“**Work**” shall collectively mean the supply of Goods and/or Services under this Agreement.

## 2. Relationship of the Parties

Supplier is an independent contractor and all persons employed or contracted by Supplier in connection with the Work shall not be deemed to be the employees, representatives or agents of Brun-Way or its Client in any respect. Nothing in this Agreement shall be deemed to create a partnership or joint venture between the parties nor shall either party have the power or authority to bind or obligate the other party.

## 3. Supplier Capability

Supplier represents and warrants and is able to demonstrate that all persons it employs or retains to perform the Work are professional, competent, qualified and skilled in their trades and if required by applicable law, certified, licensed and insured. Supplier expressly agrees that Brun-Way has the right to rely upon the Supplier’s expertise, opinions and conclusions in performing the Work.

## 4. Scope

Supplier shall perform the Work in accordance with this Agreement to the highest applicable standards of workmanship and shall comply with all applicable laws, statutes, ordinances, rules, regulations and codes, whether federal, provincial or local, including required environmental protection and health and safety regulations. Supplier shall be fully responsible for the professional quality, technical accuracy, timeliness and completeness of the Work and at all times shall act diligently, prudently, ethically, and in the best interest of Brun-Way, its Client and the Client’s properties.

## 5. Terms

If the Supplier has previously executed an alternative written agreement (i.e. term contract, stipulated price contract, etc.) with Brun-Way with respect to the Work in the Order, then the terms and conditions of that alternative written agreement shall apply to the Work to the exclusion of this Agreement. If the Work to be performed is for a Client requiring Client Specific Conditions as stipulated in the SCP and no alternative written agreement has been executed, such Client Specific Conditions shall also apply. In the event of any inconsistency in terms, the following order of precedence shall apply: Specific Conditions, Client Specific Conditions, General Conditions.

## 6. Acceptance

Fulfillment of any part of an Order constitutes acceptance of Supplier to the Agreement. Brun-Way objects to any countered terms or acknowledgements proposed by Supplier that add to, vary from, or conflict with Brun-Way’s terms and conditions. Any such proposed terms, conditions or acknowledgements shall be deemed a counter-offer and shall not be binding upon Brun-Way unless acceptance is made in writing to the Supplier. Performance of Supplier in the absence of written acceptance of such offer or counter-offer by Brun-Way shall be deemed to be performance in accordance with the terms of the Agreement.

## 7. Changes

At any time, Brun-Way may make changes to the Work to be performed. In such an event the contract price and timetable shall be modified accordingly in writing. Supplier may not modify or substitute any of the Work until written authorization has been received from Brun-Way, at which time the changes become part of the Agreement.

## 8. Assignment, Delegation and Subcontracting

Supplier shall not assign, delegate, subcontract or otherwise transfer this Agreement or any part thereof without the express written consent of Brun-Way. If Supplier delegates or subcontracts any part of the Work to a third party, Supplier is not relieved of any obligations hereunder and shall remain fully responsible for the performance and compliance of the third party to Brun-Way’s requirements under the Agreement. Brun-Way may assign this Agreement by notice to Supplier.

## 9. Set-Off and Holdback

In the event that Supplier is in any way indebted to Brun-Way or the Client, either under the terms of this Agreement or for any other reason, Brun-Way shall have right of set-off to the extent of such debt. Brun-Way may withhold any payments owed to Supplier as required by law or court order. Any other holdback requirements shall be specified in the Specific Conditions.

## 10. Invoicing and Payment

Supplier agrees to submit detailed, itemized invoices that clearly outline labour and material cost breakdown, the work location, the correct P.O. number and any other information required in the Specific Conditions after the Work has been completed. Any applicable taxes that are to be collected by the Supplier shall be stated separately on the invoice. Upon satisfactory completion of the Work, Brun-Way shall pay the amount due within sixty (60) days following receipt of a correctly presented invoice from Supplier. In the event that Brun-Way determines that Supplier’s invoice is not correct, the Work was not satisfactorily rendered or if the invoiced amount is disputed, Brun-Way shall notify Supplier and may reject the invoice and withhold payment until the issue has been resolved. Payment shall not constitute Brun-Way’s acceptance of the Work nor impair Brun-Way’s right to inspect or audit the Work or exercise any of its remedies, including its right to recover back from Supplier any amount already paid for the Work.

## 11. Dispatch of Work from the Customer Support Centre (“CSC”)

In the event that Supplier is dispatched from the CSC to provide Work, Supplier agrees to contact the CSC at the location indicated on the face of the work order for approval to proceed if Supplier determines that the Work to be performed is expected to exceed the dollar amount authorized at dispatch, or is different than what has been requested. Supplier agrees to contact the CSC to confirm completion of the Work and at this time will be provided with a P.O. valued notwithstanding the authorized amount. Supplier agrees to submit its detailed invoice indicating the labour and

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material breakdown for the actual amount being charged which shall in no event exceed the authorized amount and in accordance with the provisions of Article # 10, Invoicing and Payment. An invoice that solely references the work order number will be rejected as not correctly prepared.

**12. Insurance, Licenses and Permits**

Supplier represents and warrants that it has and shall maintain, at its own cost, during the term of this Agreement all permits, insurances, licenses, certifications or authorizations (“Qualification Documents”) required by law to perform the Services. Supplier shall provide a certificate of insurance evidencing proof of the following minimum insurance coverage before Services are commenced:

- a) **Commercial General Liability** insurance written on a broad form basis, including but not limited to coverage for products/completed operations and contractual liability with combined single limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury and property damage.
- b) **Comprehensive Automobile Liability** insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement, with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage.
- c) **Workers’ Compensation** coverage as required by law for all of Supplier’s employees entering onto Brun-Way’s or Client’s premises.
- d) **Other insurance coverage** required in the Specific Conditions or in the SCP, including any insurance required by municipal, provincial or federal law.

Brun-Way and its Client must be named as additional insured on the insurance policies. The insurance certificate shall also specify that 30 day written notice must be provided to Brun-Way in the event of reduction, non-renewal or cancellation of the above mentioned insurance coverage. Supplier’s obligations to maintain such minimum insurance coverage shall in no way limit the liability or obligations assumed by Supplier under this Agreement.

**13. Liability, Indemnity**

Supplier shall be liable for all damages/losses and claims sustained as a result of Supplier’s employees, agents, subcontractors and vendor acts, omissions, violations, delays, performance, non-performance, negligence and defects and any and all statutory liability. To the fullest extent permitted by law, Supplier agrees to at all times indemnify, defend and hold harmless Brun-Way, its affiliates, its Client, and their respective directors, officers, agents and employees against all losses, damages, claims (including claims made by Supplier’s personnel and subcontractors), fines, penalties, actions, awards and judgments as well as all expenses and costs (including judicial and extra-judicial costs) incurred by Brun-Way or the Client in connection therewith. In no circumstance shall Brun-Way or the Client be liable for indirect, consequential or punitive damages, including loss of profit or business shutdown.

**14. Notifications**

Supplier shall immediately notify Brun-Way of any actual or possible environmental, health or safety problems, including any issues that need to be reported to regulatory agencies, that are attributable to the Work delivered hereunder. Supplier also agrees to provide Brun-Way with reasonable advance notice of potential labour disputes, material shortages, its insolvency or any other matters that may delay or interfere with its performance under this Agreement.

**15. Confidentiality and Conflict of Interest**

Any and all information concerning Brun-Way or the Client’s business is strictly confidential and Supplier shall not disclose any such information to any other person, or use such information for any purpose other than performing its obligations to supply the Work under this Agreement. Supplier shall conduct its business and provide its Work in such a manner as not to create a situation of conflict of interest with Brun-Way or the Client.

**16. Brun-Way’s Clients**

If the ultimate user of the Work is the Client, Supplier’s warranties, guarantees, and obligations, including obligations to indemnify and hold harmless shall be in favour of both Brun-Way and Client and both Brun-Way and Client shall have the right to enforce them. In the event that Brun-Way is acting as agent for the Client, it shall be stipulated in the Agreement.

**17. Risk of Loss or Damage**

Risk of loss or damage to the Goods shall remain with Supplier until their delivery to Brun-Way’s designated location, at which time risk of loss or damage shall pass to Brun-Way.

**18. Remedies**

Brun-Way and the Client shall have the right to inspect, anywhere and at any time, all Work covered by this Agreement. Notwithstanding any audit, inspection, test, approval, payment, delay or failure to discover any defect or other non-conformance, Supplier is not relieved of any obligations under this Agreement and will not limit, revoke or waive any right or remedy of Brun-Way with respect to Supplier’s performance hereunder. Brun-Way shall not be deemed to have waived any matter under this Agreement unless it has given Supplier a written notice of such waiver. If, in Brun-Way’s judgment, the Work does not conform with the requirements of this Agreement, Brun-Way shall have the right to reject the Work and, in addition to any other rights and remedies it may have, Brun-Way may, in its sole discretion: (a) withhold payment, seek reimbursement, credit, replacement, or repair as Brun-Way may direct; or (b) rework and/or repair the Work with all costs associated therewith to be charged to and paid by Supplier. All Goods shall be received subject to Brun-Way’s inspection and acceptance and are subject to Brun-Way’s right to reject and return at Supplier’s expense Goods which fail to strictly conform to the Order requirements.

**19. Warranty**

Supplier warrants that the Work has been provided in accordance with the requirements of the Agreement and shall be free from failure, defects in material or workmanship and be of the best quality, shall comply with applicable industry standards and practices, shall be free and clear of all liens, attachments and claims and shall be fit for the purpose intended. Supplier warrants that all Services will be performed in a professional and workmanlike manner and that the Goods will correspond with the specifications, drawings, samples, or other description furnished or adopted by Brun-Way and with applicable laws. Unless otherwise specified in the Specific Conditions, Supplier’s warranty shall be for no less than one (1) year after satisfactory completion of the Work and Brun-Way and the Client shall further benefit from all legal and manufacturers’ guarantees available in connection with the Work. At the completion of the term of the Agreement, all applicable warranties shall be transferred to the Client. Supplier agrees to expeditiously repair, replace or re-perform, at its own expense (including all associated costs such as transportation, replacement, removal, reinstallation and re-inspection costs) any Goods and any portion of the Services which are found to be in breach of these warranties, when notified of such non-conformity by Brun-Way. In the event of Supplier’s failure to promptly remedy or replace non-conforming Work, Brun-Way may, upon reasonable notice to Supplier, undertake or arrange for the undertaking of remedial works at Supplier’s expense. All warranties shall survive inspection, acceptance and use of the Work and completion, termination or cancellation of this Agreement.

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**20. Audit**

Supplier agrees to maintain complete and accurate accounting, invoices, payrolls, work orders, records, reports and any other supporting documents applicable to the Work for a period of at least seven (7) years after the satisfactory completion of the Work. Brun-Way or its Client may audit anywhere and at any time, without prior notice, any of the items relating to the Work supplied under this Agreement.

**21. Suspension of Work**

Unless Brun-Way orders the Work or part thereof to be suspended, the Supplier shall not stop or suspend any part of the Work pending the settlement or resolution of any difference between the parties arising out of the Agreement. Brun-Way may at any time, by written notice, order Supplier to suspend or stop all or part of the Work under this Agreement for a period of up to 180 days. Supplier shall immediately comply with any such order in the manner that minimizes the cost of doing so. While such an order is in effect, Supplier shall not remove any part of the Work without the prior written consent of Brun-Way. Unless Brun-Way terminates the Agreement with cause or Supplier abandons the Agreement, Supplier shall be entitled to be paid its reasonable additional costs incurred as a result of the suspension.

**22. Termination**

Brun-Way may terminate this Agreement in whole or in part for cause forthwith with notice in the event of (i) death or injury to any person; (ii) damage to Brun-Way's or the Client's property; (iii) disruption of Client's Operations; (iv) failure by Supplier to provide its Qualification Documents within five (5) days of a request from Brun-Way; (v) failure by Supplier to remedy a default or comply with its obligations within five (5) days of a written notice from Brun-Way advising of such default or non-conformance; (vi) if Supplier is adjudged bankrupt, or makes a general assignment in bankruptcy or if a receiver is appointed; (vii) failure by Supplier to provide reasonable assurances of future performance; (viii) upon the Client's request or upon the termination of the Client-Brun-Way contract; or (ix) force majeure including labour disruption. In any such event, Brun-Way shall be entitled to complete the Services in a manner it deems appropriate, and Supplier will be responsible for any resulting costs and fees. Brun-Way may terminate this Agreement in whole or in part, without cause, upon prior written notice to Supplier. In the event that the specified term of this Agreement is over one (1) year, the notice shall be 30 days. Brun-Way's and the Client's sole liability in connection with this Agreement and its termination for whatever reason shall be the payment of approved invoices for Work performed up to the date of termination. Supplier shall have no claim for compensation, loss of profit, allowance, damages or otherwise by reason of, or directly or indirectly arising out of, termination invoked in accordance with this Article 22.

**23. Security Clearance**

Any person involved in the performance of the Work will be required to meet the Client's security clearance requirements as outlined in the SCP.

**24. Hazardous Materials**

Supplier shall ensure that all hazardous materials are properly handled and stored in accordance with all Client, regulatory and code requirements. Supplier must be able to demonstrate that its employees have received appropriate WHMIS training and are knowledgeable in spill response. In the event that Supplier encounters toxic or hazardous materials or substances, Supplier shall take all reasonable steps to ensure that no person suffers injury, sickness or death and that no property is damaged or destroyed as a result of exposure to or the presence of the substances or material; shall suspend all work at the location in which Supplier encountered the toxic or hazardous substance or material; and shall immediately report its findings to Brun-Way and confirmed in writing. Supplier will be permitted to continue its work only upon Brun-Way's removal of the work suspension.

**25. Governing Law**

This Agreement is governed by the laws of the province, territory or state, including the laws of Canada, where the Work is predominantly executed or provided and any litigation shall be tried in such province, territory or state.

**26. Conditions relating to construction, renovations and repairs work**

In the event that the Work performed by the Supplier is defined as construction work under the relevant provincial legislation ("Construction Work"), the following additional conditions shall apply:

- a) Before tendering a bid, the Supplier must inspect the premises where the Construction Work is to be performed. Once a bid is submitted the Supplier may not claim error or omission or failure to assess the nature and scope of its obligations;
- b) The Supplier recognizes and declares that it is solely responsible for directing, monitoring and performing the Construction Work undertaken, that it is the person undertaking the Construction Work and is the Constructor or Prime Contractor or Principal Contractor pursuant to the applicable health and safety legislation (the "Constructor") in connection with the Construction Work being performed and that it shall assume all of the obligations of the Constructor pursuant to such legislation;
- c) Throughout the Construction Work, the Supplier must leave the premises clean and tidy;
- d) A holdback of 10% will be applied on Construction Work valued at over \$100,000 unless otherwise specified in the Specific Conditions;
- e) Brun-Way undertakes to pay the Supplier within the delays specified in the Specific Conditions (and if none are specified, on the latter of a) forty-five (45) days following the receipt of the correct invoice or b) receipt of payment by the Client) and receipt of the Qualification Documents and the following documents: i) discharges or waivers of all liens and prior claims; ii) as-built drawings; iii) construction permits required; iv) contractor warranties for equipment, systems and materials; and
- f) The Supplier irrevocably and without condition renounces any lien or legal hypothec which it could invoke with relation to the Construction Work executed in virtue of the present Agreement and undertakes to obtain such renunciation from its subcontractors and suppliers.

**27. Language**

The parties have agreed that this Agreement, as well as any other related documents, be drawn up in the English language. *Les parties ont convenu que ce bon de commande soit rédigé en anglais.*

**28. Code of Conduct**

Supplier acknowledges having received a copy of the SNC-Lavalin Group Inc.'s ("SNC-Lavalin") *Code of Ethics and Business Conduct* (the "SNC-Lavalin Code"), which is available upon request or from SNC-Lavalin's website, at [www.snclavalin.com](http://www.snclavalin.com), and which shall form an integral part of the General Conditions as if recited herein at length. Supplier undertakes to conduct itself, and will cause its employees, representatives and agents to conduct themselves, in all matters concerning the Work or that may reasonably be perceived as concerning the Work, in a manner consistent with the SNC-Lavalin Code. The Supplier will not do (or fail to do) anything that, if done (or failed to be done) by an SNC-Lavalin employee, would constitute a breach of the SNC-Lavalin Code. Any breach of this clause shall, in addition to any other rights or remedies, entitle SNCL O&M to terminate this Agreement and/or any other agreement or relationship it may have with the Supplier, without regard to any provision allowing the Supplier the benefit of a notice and cure period.