

Standard Terms and Conditions to Purchase Orders for Goods, Services, Products and Work

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1.0 - CONTROLLING EFFECT OF TERMS AND CONDITIONS

- 1.1 The following terms and conditions (the “**Terms and Conditions**”) shall apply to the provision by a supplier (the “**Supplier**”) of any and all Products (as defined below) pursuant to a written or electronic purchase order setting forth price, quantities, delivery, payment, and any other terms (each, a “**Purchase Order**”) issued on behalf of McDonald’s Restaurants of Canada Limited (“**McDonald’s**”) or any of its respective subsidiaries or affiliates (each, as applicable, a “**Purchaser**”).
- 1.2 In the event that the Supplier has a written agreement with the Purchaser that is pre-existing at the time when the Purchase Order is issued (the “**Existing Agreement**”) and there is a discrepancy between the terms of this Purchase Order and the Existing Agreement, the discrepancy shall be resolved in favour of the Existing Agreement.

2.0 - TERMS AND DEFINITIONS

- 2.1 “**Confidential Information**” - includes, but is not limited to, any and all ideas, information, material, data or documents of the Purchaser or any Purchaser Affiliate that have been furnished to Supplier or Supplier Affiliates by the Purchaser or any Purchaser Affiliate either orally, in writing, by inspection or by means of computer, tape or other electronic, magnetic, mechanical or visual media and that relate to (1) any proposed or actual Product or Deliverable; (2) the business, assets, financial condition, operations, trade secrets, know-how or prospects of the Purchaser or any Purchaser Affiliate; or (3) the McDonald's System. "Confidential Information" also includes any analyses, compilations, studies, summaries, extracts or other documents or records (regardless of the format in which maintained) prepared by the Supplier or Supplier Affiliates which contain or otherwise reflect or are generated from the foregoing.
- 2.2 “**Deliverables**” - includes, but is not limited to, all reports, spreadsheets, working papers, compositions, processes, formulas, recipes, techniques, innovations, discoveries, ideas, names, concepts, developments, writings, inventions, technology improvements, trade secrets, trade names, trademarks, service marks, designs and know-how related thereto and all intellectual property and other proprietary rights, whether or not patentable, copyrightable or otherwise subject to intellectual property protection, to be delivered by Supplier and/or Supplier Affiliates in connection with Services.
- 2.3 “**Disabling Code**” - means computer instructions, features or functions that may permit Supplier and/or Supplier Affiliates or a third party to, or may automatically: (i) alter, destroy or inhibit the software and/or the processing environment of Purchaser or any Purchaser Affiliate; (ii) erase, destroy, corrupt or modify any data, programs, materials or information used by Purchaser or any Purchaser Affiliate or store any data, programs, materials or information on Purchaser or any Purchaser Affiliate's computers without the consent of Purchaser or the Purchaser Affiliate; (iii) discontinue Purchaser's effective use or any Purchaser Affiliate's effective use of the software; or (iv) bypass any internal or external software security measure to obtain access to any hardware, software or data (data includes, but is not limited to, any data or information belonging to Purchaser or any Purchaser Affiliate, as well as any data or information belonging to another party that is in the possession of Purchaser or any Purchaser Affiliate) of Purchaser or any Purchaser Affiliate without the written consent of an officer of Purchaser, including, but not limited to, other programs' data storage and computer libraries. Disabling Code includes, but is not limited to, programs that

self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function.

- 2.4 “**Goods**” – means any and all tangible or intangible goods (including software and intellectual property) provided to the Purchaser or Purchaser Affiliates by the Supplier or Supplier Affiliates.
- 2.5 “**McDonald’s System**” - means the comprehensive system for the ongoing development, operation and maintenance of McDonald's restaurants and includes among others, McDonald's Restaurants of Canada Limited and McDonald’s Corporation, each of their respective subsidiaries and affiliates, franchisees and suppliers.
- 2.6 “**Products**” – means any combination of Goods, Services and/or Work.
- 2.7 “**Purchaser Affiliates**” - includes all direct or indirect subsidiaries and affiliates of a Purchaser, all franchisees in and suppliers (other than Supplier and Supplier Affiliates) to the McDonald's System, and all officers, directors, employees, agents, consultants, independent contractors, representatives or others acting on behalf of a Purchaser and such direct or indirect subsidiaries, affiliates, franchisees and suppliers (other than Supplier and Supplier Affiliates).
- 2.8 “**Services**” – means any and all services provided to the Purchaser or the Purchaser Affiliates by the Supplier or Supplier Affiliates and may include Deliverables.
- 2.9 “**Supplier Affiliates**” - includes all direct or indirect subsidiaries and affiliates and all officers, directors, employees, agents, consultants, independent contractors, subcontractors, representatives or others acting on behalf of the Supplier and such direct or indirect subsidiaries and affiliates.
- 2.10 “**Supplier’s IP**” - means any intellectual property that is owned by, or licensed to, the Supplier or Supplier Affiliates prior to any contact, discussion or other communication with Purchaser or Purchaser Affiliates relating to the supply of a Product or Deliverables, provided that Supplier establishes such prior possession or ownership by contemporary documentation reasonably acceptable to Purchaser.
- 2.11 “**Work**” – means any combination of Goods and Services when used in connection with the development and construction of McDonald’s restaurants, offices, warehouses or other commercial or industrial buildings and includes site work in connection therewith.

3.0 - PRODUCTS (GENERAL)

- 3.1 The Purchaser strives to maintain quality and uniformity throughout the McDonald's System by identifying standards, procedures, specifications and requirements (collectively "**Standards**") for the manufacture, distribution and purchasing, preparation and service of Products. The Purchaser considers these Standards to be of critical importance to the continued success of the McDonald's System.
- 3.2 The Supplier understands and agrees and will advise Supplier Affiliates, as applicable, and cause them to agree that: (1) a commitment to purchase any Product will arise only at such time that a Purchaser issues a Purchaser Order; (2) neither Purchaser nor any Purchaser Affiliate makes any promises, commitments (except to the extent of valid Purchase Orders issued by and in the name of a Purchaser) or guarantees of sales, profit or future business; and (3) the Purchaser is not

responsible for and does not guarantee payment of any past due invoices or delinquent accounts of any Purchaser Affiliates.

- 3.3 The Supplier will strictly adhere to all applicable federal, provincial and local laws, regulations, ordinances and administrative orders and rules of Canada, its territories and all other countries in which each Product is produced or delivered with respect to the operation of their production facilities and their other business and labour practices, including laws, regulations and prohibitions governing the working conditions, wages, hours and minimum age of work force.
- 3.4 The Supplier further agrees to protect the Product from damage or injury of any kind, and the Supplier will be solely responsible for all Products until final acceptance of the completed Product by the Purchaser.
- 3.5 The Supplier warrants that it has or will have at the time of delivery to the Purchaser good and marketable title to the Product and that on payment for the Product, the Purchaser will obtain such title to the Product free and clear of all liens, charges and encumbrances.
- 3.6 The Supplier warrants that neither the supply of any Product to the Purchaser nor the use of that Product by the Purchaser will constitute an infringement of any patent, copyright, trade-mark, trade secret or other intellectual property right of any third party.
- 3.7 The Supplier warrants that it will not use any trade name, trade-mark, service mark or other intellectual property of the Purchaser or any Purchaser Affiliate, or any other trade name, trademark or service mark incorporating the "Mc" or "Mac" formative, in any manner whatsoever, including, without limitation, on or in connection with any Product or other products or services, without first obtaining the express written consent of the Purchaser.
- 3.8 Unless the parties otherwise agree in writing, the Supplier shall supply and pay for all labour, materials, supplies, equipment, facilities, approvals and licenses necessary or advisable to perform its obligations under these Terms and Conditions.
- 3.9 The Supplier agrees, and will cause Supplier Affiliates to agree, that in addition to all other remedies available to any Purchaser, any Product may be rejected by such Purchaser and abandoned, returned or held at Supplier's or Supplier Affiliate's expense and risk, when such Product (1) is not produced, sold, shipped and/or delivered in compliance with the terms of these Terms and Conditions or the applicable Purchase Order; (2) violates or allegedly violates federal, provincial and local laws, regulations, ordinances and administrative orders and rules of in Canada, its territories and all other countries in which the Product is produced or delivered; or (3) infringes or allegedly infringes any patent, trademark, service mark, trade name, copyright, trade secret or other intellectual or proprietary right.
- 3.10 The Supplier shall at all times comply with the Purchaser's then-current safety, environmental and security policies and procedures whenever on any of the Purchaser's premises.
- 3.11 The Supplier will strictly adhere to the current McDonald's Code of Conduct for Suppliers (the "**Code**"), as it may change over time. The Supplier acknowledges that a failure to strictly comply with the Code may result rejection of the Product and return at the Supplier's expense without the Purchaser being required to provide notice.

A copy of the Code may be found at:

http://www.aboutmcdonalds.com/content/dam/AboutMcDonalds/Sustainability/Library/Supplier_Code_of_Conduct.pdf.

4.0 - GOODS (GENERAL)

- 4.1 The Supplier covenants, warrants, and represents that the Goods:
- a. will conform to any samples, specifications, drawings or other description furnished by the Purchaser or furnished by the Supplier and expressly accepted by the Purchaser;
 - b. will be new, of merchantable quality, free from any defect in material or workmanship, and fit for any purpose expressly disclosed by the Purchaser to the Supplier; and
 - c. where applicable, will be produced, packaged, tagged, labeled, packed, shipped and invoiced in compliance with the applicable requirements of federal, provincial and local laws, regulations, ordinances and administrative orders and rules of in Canada, its territories and all other countries in which such Product is produced or delivered; including without limitation any French language requirements.
- 4.2 A Purchase Order number must be shown on each package, packing slip and invoice. Invoices must be rendered in duplicate not later than the day following shipment. A bill of lading or express receipt must be attached to each invoice.
- 4.3 No additional charges of any kind, including charges for boxing, packing, cartage, or other extras, are allowed unless specifically agreed to in writing in advance by Purchaser, except for freight and applicable taxes.
- 4.4 The specific quantity ordered must be delivered in full and is not to be changed without the Purchaser's written consent by issuance of a revised or new Purchase Order by the Purchaser expressly incorporating the changed terms. Any unauthorized quantity is subject to the Purchaser rejection and return at Supplier's expense. The Purchaser reserves the right, but not the obligation in its sole judgment and discretion, to make a partial payment where less than a full order has been received or to withhold payment until the full order is received.
- 4.5 Where the Goods ordered hereunder are chemical substances, the Purchaser shall not be obligated to make payment until the Supplier has furnished a Material Safety Data Sheet for each chemical substance.
- 4.6 In the event the Goods include software, the Supplier warrants, and will cause Supplier Affiliates to warrant that they have taken all reasonable steps to test any software provided hereunder (including software modifications) for Disabling Code and that the software is and shall be free of Disabling Code as of the date of delivery by the Supplier and/or Supplier Affiliates, and that Supplier and/or Supplier Affiliates shall continue to take such steps with respect to future enhancements or modifications to the software. Supplier and/or Supplier Affiliates shall not invoke any Disabling Code on any systems of the Purchaser or any Purchaser Affiliate.
- 4.7 In the event the Goods include software, the Supplier warrants and will cause Supplier Affiliates to warrant that it shall maintain a master copy of each version of the software free and clear of any Disabling Code. Upon the Purchaser's request, the Supplier and/or Supplier Affiliates agree to make such master copy available to the Purchaser, with appropriate provisions for security thereof, for

comparison with, and if necessary, correction by the Supplier and/or Supplier Affiliates of the Purchaser's copy of the software.

5.0 - SERVICES (GENERAL)

- 5.1 Supplier agrees to perform the Services in a professional, workmanlike and efficient manner, exercising reasonable skill, care and diligence and using the highest standard of care of professional providers of like services within the Supplier's industry, and in accordance with all applicable laws.
- 5.2 To the extent that any computer equipment is used by the Supplier and/or Supplier Affiliates in conjunction with any Product and/or the Supplier and/or Supplier Affiliates provides software or equipment to the Purchaser, the Supplier and/or Supplier Affiliates must use up-to-date anti-virus software on all such equipment and systems, which shall constitute commercially reasonable efforts to deliver all software and equipment virus free. As used in the preceding sentence, "**up-to-date anti-virus software**" shall mean that the Supplier and/or Supplier Affiliates use virus definition files made available by the anti-virus software publisher no more than seven (7) days prior to the date of the complained of incident.
- 5.3 With respect to any Supplier and/or Supplier Affiliate's equipment or software which may interface directly with the network system of the Purchaser or any Purchaser Affiliate (the "**Corporate Network**"), the Supplier and/or Supplier Affiliates will provide the Purchaser's Technology Assurance & Security group the Supplier's and/or Supplier Affiliate's standard software load on a representative Supplier and/or Supplier Affiliate's laptop prior to accessing any portion of the Corporate Network or shared resources for a technical review to determine if the Supplier and/or Supplier Affiliates is in compliance with the Purchaser's standards. Any Supplier and/or Supplier Affiliates hardware or software not in complete compliance with the Purchaser standards will not be allowed to access any portion of the Corporate Network or shared resources.
- 5.4 If a request is made for the Supplier and/or Supplier Affiliates to use remote access to the Corporate Network and the Purchaser approves such a request, Supplier and/or Supplier Affiliates shall use only the Purchaser approved method(s) for remote access to the Corporate Network. All such requests for remote access must be submitted to Purchaser's Technology Assurance and Security group.

6.0 - WORK (REAL ESTATE & CONSTRUCTION)

- 6.1 Where the Work involves remodeling, repair, modification or other Work to a McDonald's restaurant while it remains open for business, Supplier shall schedule and perform the Work in such a manner so as not to disrupt the operation of the McDonald's restaurant on the premises and shall coordinate with the Purchaser so there will be no interference with restaurant operations during peak business times.
- 6.2 Where the Work involves the use of flame, spark or hot ember producing equipment, such as but not limited to, welding, blow torch and metal grinding type equipment and equipment using internal combustion engines ("**Hot Work**"), McDonald's Hot Work safety procedures must be followed. In the event that the Supplier has not received the McDonald's Hot Work safety procedures, the Supplier shall obtain a copy of the procedures from McDonald's.

- 6.3 The Supplier guarantees to use quality materials and to perform the Work in accordance with the best practice of high quality, first class Suppliers in a first class workmanlike manner and guarantees all Work against defects in material or workmanship for a period of one (1) year, or such longer period of time as may be required by any contract pertaining to the Work contemplated herein, the Existing Agreement, if any, or by the manufacturer or other third party, from the date of from completion to the Purchaser's satisfaction. Within thirty (30) days after written notice, the Supplier shall remedy and repair any defects in materials or workmanship, including any incidental and consequential damage, without expense to the Purchaser.
- 6.4 The Supplier will not allow any liens, of any nature, to encumber the real estate. In the event the Purchaser receives a notice of claim of lien due to the Work performed, the Supplier will act in the best interest of the Purchaser and shall promptly remove the lien or defend the claim and post an appropriate bond, if requested by the Purchaser. Additionally, the Supplier will deliver to the Purchaser such partial and/or final waivers of lien as may be requested by the Purchaser.
- 6.5 In the event the Work involves the electrical system in any way, then in such event, upon completion of the electrical wiring, the electrical Supplier shall complete McDonald's Electrician checklist and visual guide for POS (the "**Electrician's Checklist**"). In the event that the Supplier has not received the Electrician's Checklist, the Supplier shall obtain a copy from McDonald's. If applicable, the Supplier shall deliver a fully executed original Electrical Certification (on McDonald's Form properly signed by both the Supplier and electrician). Any changes made to the electrical system after the certification process has been completed shall require system re-certification.
- 6.6 Upon completion of the Work to the Purchaser's satisfaction, the Supplier shall submit a payment request including an invoice and if requested, completed contractor's sworn statement, partial lien waivers, if required by the Purchaser, final lien waivers, and such other documentation required by, and in a form approved by the Purchaser. Payment will be made within 45 days of receipt of the Supplier's payment request with required documentation.
- 6.7 If, in the Purchaser's sole opinion, the Supplier should refuse or fail to create the Work diligently or properly or to supply enough properly skilled workers or proper materials, or is otherwise in breach of any of the terms, conditions and stipulations of these Terms and Conditions or the relevant Purchase Order after receiving five (5) calendar days written notice of such deficiencies, then the Purchaser may terminate this Purchase Order and finish the Work by whatever method it may deem expedient and the Purchaser shall have all remedies available at law or in equity for the Supplier's failure to perform.
- 6.8 All Work delivered, performed or furnished shall be in compliance with all applicable codes, statutes, laws, rules, regulations, ordinances, or governmental interpretations including, but not limited to, Occupational Health and Safety Act ("**OHSA**") and the Accessibility For Ontarians with Disabilities Act ("**AODA**") (or equivalent Act, if any, in another province) and without use of asbestos, asbestos-containing materials, or other hazardous materials as defined from time to time by applicable federal, provincial or local laws, rules, and regulations.

7.0 - INSPECTION

- 7.1 Upon request from the Purchaser, the Supplier will provide the Purchaser with specific information, in such detail as Purchaser may reasonably request, as to the location(s) and methods(s) of the production of each Product.
- 7.2 The Purchaser reserves the right to conduct or have its designee conduct unannounced inspections of the Supplier and its business practices, records, facilities, and, where provided by the Supplier, housing accommodations, as well as private interviews with employees. The Supplier will keep all information necessary to document compliance with these standards readily accessible. If the Supplier refuses to allow such inspections or interviews, or does not comply with these standards, the Supplier is subject to immediate termination of its status as an approved supplier.
- 7.3 If the Purchaser determines that Goods must be inspected prior to its shipment to Canada or other country, such inspection will be performed at the sole expense of the Supplier or a Supplier Affiliate by an independent inspector approved by the Purchaser. Any inspection, documentation or corrective actions, if any, taken by the Purchaser or a Purchaser Affiliate with respect to such Goods will not be deemed an acceptance of any Goods, or a waiver of any nonconformities or defects in any such Goods and will not excuse any failure by the Supplier or a Supplier Affiliate to deliver such Goods in accordance with this Terms and Conditions or the terms of any Purchase Order.
- 7.4 The Supplier shall designate one or more of its management staff to be responsible for monitoring their factories and production facilities, and the production facilities of their subcontractors used in the production of Products for the Purchaser, for compliance with the standards set forth herein. The Supplier must conduct such monitoring no less frequently than on an annual basis.
- 7.5 Payment for any Product does not constitute an acceptance thereof.
- 7.6 Title and risk of loss shall not pass to the Purchaser until the Product called for in the Purchase Order actually have been received and accepted by the Purchaser at the destination specified.

8.0 - DELIVERABLES, OFF-THE-SHELF PRODUCTS

- 8.1 The Supplier agrees and will cause Supplier Affiliates to agree with the following:
 - a. Save and except for the Supplier's IP, which shall remain the sole and exclusive property of the Supplier, the Purchaser will be the exclusive owner and will have all proprietary and intellectual property rights to all Deliverables;
 - b. The Purchaser, Purchasers Affiliates and others designated by the Purchaser will have a non-exclusive, irrevocable, perpetual, royalty-free, worldwide license, with right of sublicense, to use, modify, make, have made, or sell the Deliverables incorporating Supplier's IP; and
 - c. The Purchaser will pay no separate compensation for the use, modification, manufacture, production, sublicensing or sale of the Supplier's IP.
- 8.2 The Supplier hereby grants and assigns, and will cause Supplier Affiliates to grant and assign, to Purchaser or any third party designated by Purchaser, all right, title and interest that the Supplier or the Supplier Affiliates may have in the Deliverables, including all proprietary and intellectual property rights, including, but not limited to patent, copyright, trade-mark, service-mark or trade

secret rights, and all goodwill associated therewith. In addition, the Supplier agrees and will cause the Supplier Affiliates to agree to sign, at no charge, such documents, at any time reasonably required by the Purchaser, including patent, copyright, trade-mark applications and assignments and waivers of moral rights to achieve such intellectual property status as the Purchaser deems appropriate to protect, perfect, register, record and maintain the Purchaser's rights in the Deliverables. The Supplier agrees that the Deliverables are works for hire for the Purchaser's sole and exclusive benefit and that neither the Supplier nor Supplier Affiliates will have any rights to disclose, make, have made, use, sell or otherwise exploit the Deliverables.

- 8.3 The Supplier warrants and will cause Supplier Affiliates to warrant that it or they, as applicable, are the sole owners of all rights to the Supplier's IP used in connection with the provision of the Services and the production and conveyance of the Deliverables, or have the authorization of the owners of such rights so as to be able to convey the rights to Purchaser or to a third party designated by Purchaser. Supplier further warrants and will cause Supplier Affiliates to warrant that the use of any Products or Deliverables incorporating Supplier's IP will not violate or infringe the proprietary or intellectual property rights of any person or entity.
- 8.4 Notwithstanding any of the foregoing, "**Off-the-shelf**" Products that are developed by the Supplier or Supplier Affiliates independent of Supplier's business relationship with Purchaser shall not be subject to the foregoing subsections 8.1 through 8.3. With respect to such Off-the-shelf Products, the Supplier warrants and will cause Supplier Affiliates to warrant that it or they, as applicable, are the sole owners of all rights to such Products or have the authorization of the owners of such rights so as to be able to sell such Products to the Purchaser. Supplier further warrants and will cause Supplier Affiliates to warrant that the use of any Products or Deliverables incorporating Supplier's IP will not violate or infringe the proprietary or intellectual property rights of any person or entity.

9.0 - CONFIDENTIALITY

- 9.1 For the purpose of these Terms and Conditions, Confidential Information does not include information or data that:
- 9.2 is already known by the Supplier or the Supplier Affiliates (through no improper action) prior to receipt, provided that Supplier or Supplier Affiliates, as the case may be, within 30 days of receipt of Confidential Information advises Purchaser in writing if any part or all of the Confidential Information is already known to it or them and supplies Purchaser with all relevant documents to support its or their position;
- 9.3 becomes (through no improper action) generally available to the public;
- 9.4 is independently developed by Supplier or Supplier Affiliates without the use of any Confidential Information for a party other than Purchaser or Purchaser Affiliates provided, however, that Supplier or Supplier Affiliates, as the case may be, will have the burden of establishing that whomever allegedly worked on the independent development did not have direct or indirect access to any Confidential Information; or
- 9.5 is approved for release by written authorization from Purchaser.
- 9.6 The Supplier agrees and will cause Supplier Affiliates to agree that all Confidential Information will be held in strict confidence, pursuant to the specific provisions set forth in this Section 9.0.

- 9.7 The nature and contents of Confidential Information will not be disclosed by the Supplier to any third party (except Supplier Affiliates, subject to the conditions described below) or used in any manner except pursuant to the terms of this Terms and Conditions without the prior written consent of the Purchaser.
- 9.8 The Supplier agrees to take all reasonable precautions necessary to keep Confidential Information secret and confidential with no less than the degree of care it uses in safeguarding its own confidential information and other proprietary information. With respect to any Confidential Information provided to the Supplier, the Supplier further agrees that each Supplier Affiliate given access to such Confidential Information must have a legitimate need-to-know and must agree to be bound by this Article 9.
- 9.9 If the Supplier or any Supplier Affiliate is required by applicable law or regulation or as a result of any judicial, administrative or governmental proceeding to disclose any Confidential Information, the Supplier agrees and will cause Supplier Affiliates to agree to provide Purchaser with written notice of such requirement promptly after learning of the same and to object to the production on the grounds that the information requested is confidential. Subject to the foregoing, the Supplier or Supplier Affiliates may furnish only that portion of the Confidential Information that, in the written opinion of its counsel reasonably acceptable to the Purchaser, Supplier or Supplier Affiliates are legally required to disclose. In addition, Supplier agrees and will cause Supplier Affiliates to agree to exercise their best efforts to obtain confidential treatment or a protective order with respect to such Confidential Information and allow Purchaser, in its sole discretion, to participate in such action or proceeding.
- 9.10 The Supplier agrees and will advise Supplier Affiliates and cause them to agree that:
- a. The Purchaser or any Purchaser Affiliate may engage other parties to work with the Purchaser or any Purchaser Affiliate on a project or projects in order to develop products or services that are similar or identical to any Product; and
 - b. any information, ideas, material, documentation, or other matter, including Products and Deliverables, either of which may incorporate Supplier's IP, may be shared by Purchaser or any Purchaser Affiliate with other parties. The Purchaser will cause such other parties to be bound by confidentiality provisions similar to those contained herein.
 - c. Upon request by the Purchaser, the Supplier and the Supplier Affiliates will immediately return to the Purchaser all Confidential Information. The Supplier acknowledges that it is aware, and that it will advise Supplier Affiliates and each of their directors, officers, employees and representatives who are informed as to the matters which are the subject of a Purchaser Order or these Terms and Conditions, that applicable securities laws restrict persons with material, non-public information concerning the Purchaser, its affiliated companies, its parents, and its subsidiaries, (including, without limitation, Confidential Information) from purchasing or selling securities of McDonald's Corporation or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.
- 9.11 The obligations described in this Article 9 shall survive any termination or expiry of any commercial relationship between the Purchaser or Purchaser Affiliates and the Supplier.

10.0 - COSTS OF DEVELOPMENT

10.1 All costs and expenses of development, research and testing that the Supplier or the Supplier Affiliates incur in connection with any Product (collectively "**Development Costs**") will be borne by the Supplier or the Supplier Affiliates and are not subject to any reimbursement by the Purchaser or any Purchaser Affiliate. In addition, the Supplier understands and agrees and will cause Supplier Affiliates to agree that no Development Costs will be reimbursed in reliance on securing any other business with Purchaser or any Purchaser Affiliate.

11.0 - PAYMENT

11.1 The total compensation for the collective Products are set out in the Purchase Order. The compensation as set out in the Purchase Order shall be inclusive of all expenses incurred by the Supplier, and all fees for any subcontractors or suppliers engaged by the Supplier in relation to the Purchase Order.

11.2 The Purchaser may withhold or set off against any payment due to the Supplier any charge, liability or indebtedness owed by the Supplier to the Purchaser.

11.3 The Supplier may not withhold or set off against any payment due to the Purchaser any charge, liability or indebtedness owed by the Purchaser to the Supplier.

11.4 The Purchaser may, as a condition of making final payment due to the Supplier, require the Supplier to execute and deliver a full and final release and discharge in favour of the Purchaser, in such form as the Purchaser may prescribe.

11.5 Unless otherwise specified, all references to monetary amounts are in lawful Canadian currency.

12.0 - CHANGES

12.1 The Purchaser may make changes at any time and from time to time to any specifications or requirements relating to the Product.

12.2 No extras or other changes shall be undertaken or commenced without an authorized approval or change order issued by the Purchaser

13.0 - SUSPENSION OF PERFORMANCE AND TERMINATION OF THE PURCHASE ORDER

13.1 The Purchaser may, at any time, temporarily suspend the performance under or terminate this Purchase Order by written notice to the Supplier stating the effective date of the suspension or termination.

13.2 If the Purchaser terminates the Purchase Order, the extent of the Purchaser's liability to the Supplier is limited to payment for all compliant Products supplies in accordance with the Purchase Order up to and including the effective date of termination.

14.0 - INDEMNITY

14.1 Supplier agrees and will cause Supplier Affiliates to agree, to protect, defend, indemnify and hold harmless Purchaser and Purchaser Affiliates (each an "**Indemnified Person**") from and against any and all losses, claims, actions, suits or proceedings and any related judgments, damages, amounts paid in settlement, and any other expenses, costs or fees (including reasonable counsel fees,

disbursements, costs of investigation) (each a "**Loss**"), arising from or in any way relating to a Product, including but not limited to:

- a. any actual or alleged infringement or misappropriation of any patent, trademark, trade name, service mark, copyright, trade secret or other intellectual or proprietary right or any actual or alleged unfair competition relating to any Deliverables or Products;
- b. the death of or injury to any person, damage to any property, or any other damage or loss, by whomsoever suffered, resulting or claimed to result, in whole or in part, from any actual or alleged defect in a Product, whether latent or patent, including actual or alleged improper construction and/or design, or actual or alleged failure of such Product to comply with any Standards or with any express or implied warranties of the Supplier or any Supplier Affiliates, or any claim of strict liability (or like theory of law) tort relating to any Product;
- c. violation of any federal, provincial or local laws, regulations, ordinances or administrative orders or rules of in Canada or any other country, or political subdivisions thereof, in which any Product is produced, shipped or delivered;
- d. defects or alleged defects involving the packaging, tagging, labeling, packing, shipping and/or invoicing of any Product;
- e. failure to warn or inadequate warnings and/or instructions relating to a Product;
- f. improper or defective displays, assembly or installation of a Product; and
- g. the actual or alleged breach by the Supplier or any Supplier Affiliates of any of its or their representations, warranties, obligations, undertakings, agreements and covenants given under or pursuant to these Terms and Conditions (collectively "**Obligations**") or Alteration to these Terms and Conditions.

14.2 Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, suit or proceeding (collectively "**Proceeding**") or within a reasonable period of time after the discovery of facts that an Indemnified Person believes will likely give rise to a claim for indemnification from Supplier or a Supplier Affiliate (the "**Indemnitor**") hereunder, the Indemnified Person will notify the Indemnitor in writing, giving reasonable detail of the claim or the commencement of the Proceeding.

14.3 Failure to give, or any deficiency in, any such notice will not relieve the Indemnitor of its indemnification obligations hereunder, except and only to the extent that such failure or deficiency materially prejudiced the ability of the Indemnitor to minimize the Loss.

14.4 In each case, the Indemnified Person will be entitled to retain counsel and control the defense of the indemnified claim or Proceeding. In its defense of any such claim or Proceeding, the Indemnified Person will act reasonably and in accordance with its good faith business judgment with respect thereto, and will not settle or compromise any third party claim or Proceeding without the consent of the Indemnitor, which consent will not unreasonably be withheld. Alternatively, in the case of a third party demand, claim or Proceeding, the Indemnitor, at the request of the Indemnified Person, will assume the defense of any such demand, claim or Proceeding, employing counsel reasonably satisfactory to the Indemnified Person. In such a circumstance, the Indemnitor

will not settle or compromise any such demand, claim or Proceeding without the consent of the Indemnified Person, which consent will not be unreasonably withheld.

- a. In any circumstance involving a third party demand, claim or Proceeding in which an indemnity requirement as set forth in this Article 14 is determined not to be enforceable under applicable law, the Indemnitor and Indemnified Person will contribute to the payment of any Loss for which indemnification is not available, in proportion to the comparative degree of culpability of the Indemnitor and the Indemnified Person.

15.0 - INSURANCE

15.1 If the Supplier is providing Work to the Purchaser, the Supplier shall not commence work unless and until it obtains at its sole expense the following insurance coverage with insurance with companies having a financial rating of at least category A-VIII in Best's Insurance Reports. Such insurance must be maintained throughout the agreement. Moreover, such insurance must list McDonald's Restaurants of Canada Limited, any parent, subsidiaries and affiliates, the McDonald's franchisees and any landlord as additional insured with applicable coverage as listed below. Such insurance shall be primary insurance for all such insureds and not on a contributory basis.

- a. Worker's Compensation Insurance in accordance with the statutory requirements, including Employer's Liability Insurance with limits not less than \$1,000,000.00 each accident.
- b. Commercial General Liability Insurance including Products/Completed Operations coverage, with Bodily Injury and Property Damage limits of \$5,000,000.00 per occurrence/\$5,000,000.00 general aggregate, including coverage for advertising and personal injury limits of \$1,000,000.00 per person or organization. This insurance shall include contractual liability which shall include both cross liability and severability of interest clauses.
- c. Commercial Automobile Liability Insurance, including owned, non-owned, and hired vehicles, with combined limits not less than \$1,000,000.00 per accident.
- d. Professional Liability Insurance with a limit of at least \$1,000,000.00 per occurrence. Such coverage shall be maintained through completion of the Work contemplated herein, and for a period of three (3) years after completion of the Work.
- e. Coverage for the Supplier's indemnification obligations hereunder.
- f. In addition to the above, the Supplier shall also satisfy any insurance requirements required by any governmental authority.

All applicable coverage shall include a waiver of subrogation in favour of the Purchaser.

15.2 If the Supplier is providing Goods or Services, other than Work, to the Purchaser, the Supplier shall acquire and continuously maintain the following insurance coverage throughout the agreement, at its sole expense and with companies that have a financial rating of at least category A-VIII in Best's Insurance Reports:

- a. Worker's Compensation Insurance in accordance with the statutory requirements, including Employer's Liability Insurance with limits not less than \$1,000,000.00 each accident;

- b. Commercial General Liability Insurance including Products/Completed Operations coverage, with Bodily Injury and Property Damage limits of \$5,000,000.00 per occurrence/\$5,000,000.00 general aggregate, including coverage for advertising and personal injury limits of \$1,000,000.00 per person or organization. This insurance shall include contractual liability which shall include both cross liability and severability of interest clauses.
- c. Commercial Automobile Liability Insurance, including owned, non-owned, and hired vehicles, with combined limits not less than \$1,000,000.00 per accident
- d. Umbrella liability insurance in excess of the amounts described in subsections (a), (b), and (c) above;
- e. Crime coverage; and
- f. Coverage for the Supplier's indemnification obligations hereunder.

All applicable coverage shall include a waiver of subrogation in favour of the Purchaser.

- 15.3 If not previously provided to the Purchaser, the Supplier shall deliver to the Purchaser certificate(s), the form of which shall be acceptable to the Purchaser evidencing such insurance coverage(s) upon receipt of this Purchase Order, and immediately upon any renewal of such insurance policies, and at any time upon request by the Purchaser, the Supplier shall deliver insurance certificates as required herein for each project Supplier provides services to the Purchaser.
- 15.4 Unless specified otherwise, coverage limits shall be provided in amounts acceptable to the Purchaser, but in no event shall the amount be less than five million dollars (\$5,000,000.00) per occurrence for the policies listed above.
- 15.5 Policy deductibles greater than ten thousand dollars (\$10,000.00) will not be allowed without prior approval from the Purchaser.
- 15.6 The Supplier shall cause the Purchaser's Indemnified Persons to be named as additional insured for policies listed above and such policies shall be endorsed to provide that their coverage of the Purchaser's Indemnified Persons is primary and non-contributory to coverage under any other policies.
- 15.7 All above-mentioned insurance policies shall provide that coverage thereunder will not be canceled, non-renewed or coverage materially changed without at least thirty (30) days prior notice to the Purchaser.
- 15.8 Approval of these insurance policies by the Purchaser's will not relieve the Supplier of any obligation contained herein, including without limitation the Supplier's indemnification obligations set forth herein. The Supplier's fulfillment of the insurance obligations hereunder shall not otherwise relieve the Supplier of any obligations liabilities assumed by the Supplier hereunder or modify in any way the agency's obligations to indemnify the Purchaser hereunder.

16.0 - SUBCONTRACTORS

- 16.1 Supplier agrees that all Products delivered, performed or furnished shall only be performed by Supplier, and/or those subcontractors pre-approved by the Purchaser in writing. Subcontracting shall not relieve the Supplier of any of its obligations hereunder unless otherwise specifically

provided in writing. The Supplier shall be responsible for all acts and/or omissions of its subcontractors in the performance of its obligations.

- 16.2 Subcontractors are subject to the same insurance provisions as the Supplier. Suppliers are responsible for obtaining confirmation from their Subcontractors and providing such confirmation to the Purchaser at its request.
- 16.3 Personnel supplied by the Supplier will be considered employees of the Supplier and will not for any purposes be considered employees or agents of the Purchaser. The Supplier assumes full responsibility for the actions of such personnel while delivering, performing or furnishing the Product and the Supplier shall be responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and employment insurance), disability benefits and the like.
- 16.4 The Supplier and its personnel (including subcontractors) shall at all times comply with the Purchaser's then current safety, environmental and security policies and procedures whenever on any of the Purchaser's premises.

17.0 - PERMITS & APPROVALS

- 17.1 Supplier shall be properly licensed and to the extent necessary, obtain all permits, approvals, and certificates necessary to deliver the Product described in the relevant Purchase Order.

18.0 - OFFICE OF FOREIGN ASSET CONTROL ("OFAC")

- 18.1 The Supplier, nor any person or entity that directly owns 10% or greater equity interest in it nor any of its officers, directors or managing members are not, and shall not become a person or entity (each, a "**Prohibited Person**") with whom U.S. persons or entities are restricted from doing business under the regulations of the OFAC of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under Executive Order 13224 (the "**Executive Order**") signed on September 24, 2001, and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), or other governmental action.

19.0 - FOREIGN CORRUPT PRACTICES ACT ("FCPA")

- 19.1 The Supplier will, at all times, remain in compliance with the FCPA, including its prohibition against taking actions corruptly in furtherance of any offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give or authorization of the giving of anything of value, either directly or indirectly, to government officials, candidates of political parties, or to any person, while knowing that all or some portion of the consideration given to that person will be offered, given or promised to government officials or candidates of political parties, for the purpose of:
- a. influencing any act, decision or failure to act by a government official in his or her official capacity;
 - b. inducing such official to use his or her influence with a government to affect any act or decision of the government; or

- c. securing an improper advantage in order to obtain, retain or direct business; further, they will not take any actions that would result in a violation of the FCPA by the Purchaser, and will not use any part of payments received from the Purchaser for any purpose that would constitute a violation of the FCPA; and
- d. they are not owned or controlled by government officials or candidates of political parties to whom payments are regulated by the FCPA, or any other persons who might assert illegal influence on their behalf.

20.0 - ENTIRE AGREEMENT

20.1 These Terms and Conditions and the relevant Purchase Order (including any documents or components referenced as part of the Purchase Order) constitutes (together with any change orders, addenda, revisions, amendments and supplementary agreements in effect from time to time) the entire agreement between the parties with respect to the subject matter set out herein. With the exception of an Existing Agreement, the terms and conditions set out herein supersede and replace all prior agreements between the Purchaser and the Supplier with respect to the same.

21.0 - CHOICE OF LAW

21.1 These Terms and Conditions and the relevant Purchase Order shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Supplier agrees to attorn to the jurisdiction and venue of the courts of Ontario in connection with all suits, actions, proceedings or other disputes relating to these Terms and Conditions and the relevant Purchase Order provided, however, mechanics lien foreclosure actions shall take place in the county where the site is located. Should either party employ legal counsel to enforce any of the provisions of these Terms and Conditions or the relevant Purchase Order or to recover damages for the breach of these Terms and Conditions or the relevant Purchase Order, the non-prevailing party shall pay to the prevailing party all reasonable costs, damages and expenses, including lawyer's fees, expended or incurred in connection therewith, and any judgment entered in such enforcement action shall include such amount as a specific line item.

22.0 - GENERAL PROVISIONS

- 22.1 The provisions of these terms and conditions shall (whether or not expressly stated) survive the completion of the performance of this Terms and Conditions or the relevant Purchase Order.
- 22.2 A waiver by the Purchaser of any of its rights shall not be deemed to be a waiver of any other right nor a continuing waiver of that particular right.
- 22.3 Time is of the essence regarding this Purchase Order. The Products are to be supplied in accordance with the schedule provided by the Purchaser or, if not schedule is provided, in accordance with the dates indicated on the Purchase Order. The Purchaser reserves the right to make reasonable adjustments from time to time to the said schedule or dates.
- 22.4 The headings in this Purchase Order are for convenience of reference only and shall not affect the construction of this Purchase Order or any provision hereof.
- 22.5 Should any provision of these Terms and Conditions or the relevant Purchase Order be or become illegal, invalid or unenforceable, it shall be considered separate and severable from this Purchase Order and the remaining provisions shall remain in force and binding.

- 22.6 Whenever the singular or masculine or neuter is used in these Terms and Conditions or the relevant Purchase Order, the same shall be construed to include the plural or feminine or body corporate where the context of this Purchase Order or the parties hereto may so require. The words “include” or “including” as used herein shall not be construed as words of limitation.
- 22.7 All notices, demands or other writing to be given, made or sent by either party to the other shall be in writing and shall be deemed to have been fully given, made or sent when deposited in the Canada Mail certified or registered and postage prepaid and addressed as follows:
- McDonald's Restaurants of Canada Limited
1 McDonald's Place
Toronto, ON M3C 3L4
Attention: Legal Department
- 22.8 Supplier acknowledges and agrees that the time for performance shall commence upon the later of the date of issuance of this Purchase Order by the Purchaser or the date stated in the Supplier proposal and the time for completion of the Work or delivery of the Product shall be as stated therein.
- 22.9 No right or remedy conferred upon or reserved to the Purchaser is intended to be exclusive of any other right or remedy allowed by law or these Terms and Conditions, but each shall be cumulative and in addition to every other right or remedy given in these Terms and Conditions or now or hereafter existing at law or in equity or by statute.
- 22.10 The Supplier will not assign these Terms and Conditions or the relevant Purchase Order without the express written consent of the Purchaser.
- 22.11 These Terms and Conditions will enure to the benefit of the Purchaser and its successors, heirs and assigns and will be binding on the Supplier and its successors, heirs, and assigns.