

## TERMS AND CONDITIONS FOR PURCHASE OF GOODS

**1. Parties.** All orders for Goods, as defined below, submitted by ISCO Canada, Inc. dba ISCO-AH McElroy ("ISCO") to the supplier of the Goods identified on ISCO's purchase order ("Vendor") are subject to these Terms and Conditions for Purchase of Goods ("Agreement").

**2. Acceptance.** Together with this Agreement, any purchase order for Goods that ISCO delivers to Vendor becomes a contract upon the earlier of (a) ISCO's receipt of Vendor's written acknowledgement of ISCO's purchase order; provided that, if Vendor's written acknowledgement (including, but not limited to, an invoice generated by Vendor) contains a different description, price, or delivery schedule ("Difference"), then no contract is formed unless and until ISCO provides written approval of such Difference; or (b) the act of Vendor shipping all or any portion of the Goods described in ISCO's purchase order. For purposes of this Agreement, "Goods" includes all products, articles, materials and work associated with the items identified on ISCO's purchase order and the delivery of such items.

**3. Price.** Except as provided in Section 2(a) above, prices will be as set out by ISCO on the face of the purchase order, and may not be modified unless the modification is in writing and signed by an authorized representative of ISCO. ISCO will also be entitled to all discounts and rebates allowed by Vendor's payment and other terms. No subsequent events or changed conditions will allow Vendor to change prices, or to make delivery of the Goods contingent upon ISCO accepting new prices. Unless otherwise agreed or prohibited by law, Vendor will pay all taxes, fees, and duties assessed against Vendor or otherwise relating to the Goods, except federal, provincial, state and local sales taxes.

**4. Warranties.** Vendor expressly warrants as follows: (a) the Goods will conform to ISCO's specifications, whether contained in the purchase order or any other document(s); (b) the Goods delivered will be of good quality, material and workmanship, and otherwise merchantable and free from defects, so as to comply with all implied and actual warranties under applicable law; (c) any pipe and/or fittings, will comply with the ASTM F2620 standard, the PPI TR33 standard, and other technical reports or documents generally accepted by the polyethylene pipe industry regarding the fusion of pipe and fittings; (d) the Goods delivered will be fit for the intended purpose; (e) Vendor has marketable title to the Goods; (f) the Goods will be delivered to ISCO free of any security interests, liens, or other encumbrances; (g) the Goods and the delivery of the Goods shall comply with all applicable federal, provincial, state, and local laws, rules, regulations, and other legal requirements; and (h) with respect to hiring and employee matters, Vendor has and will comply with all applicable employment standards codes and workers' compensation legislation or equivalent legislation. These warranties will survive beyond the time of any inspection, delivery, acceptance or payment by ISCO for the Goods. **ISCO EXPRESSLY REJECTS ANY LIMITATIONS ON ANY OF VENDOR'S WARRANTIES AS MAY RELATE TO THE GOODS.**

**5. Warranty against infringement.** Vendor warrants that the sale, offer of sale, or use of the Goods will not infringe, either directly, jointly, or indirectly by reason of contributory infringement or of inducement to infringe any patents, trademarks or copyrights. ISCO may reject any Goods that do not satisfy this warranty. Vendor shall defend and shall indemnify and hold harmless ISCO from any costs, claims, or damages arising out of or related to Vendor's breach of this section.

**6. Delivery.** Time is of the essence of this Agreement. Goods must be delivered within the time specified in the purchase order. If Goods are not delivered within such time, or if ISCO reasonably believes that the Goods will not be delivered within such time, then ISCO may reject such Goods, cancel the order, and/or charge Vendor with any excess costs or expenses arising out of or caused by such delay (including, but not limited to, liquidated damages), without penalty or payment for any Goods not actually delivered at the time of cancellation. ISCO's rights and remedies under the Agreement or under applicable law shall not be limited by ISCO's exercise of any of the remedies described in this section.

**7. Packing.** Unless otherwise specified, each shipment will (a) be numbered and labeled with ISCO's order number, stock number, contents and weight; (b) contain an itemized packing slip; and (c) be properly prepaid for shipment so as to secure lowest transportation and insurance rates and to meet the carrier's requirements. No charges will be allowed Vendor for packing, breaking, freight, express or cartage unless specified in the purchase order.

**8. Risk of Loss.** Title and risk of loss or damage to the Goods shall not pass to ISCO until such time that ISCO or ISCO's customer accepts the Goods, whichever occurs first. Any loss, injury or destruction of the Goods will not release Vendor from any obligation under the Agreement or the purchase order. For purposes of this section, "Vendor" includes any agents, employees, subsidiaries, affiliates, shippers, contractors, or suppliers of Vendor, as well as any entity acting on behalf of, under the direction of, or under the control of Vendor.

**9. Nonconforming goods; nonconforming tender.** Goods delivered (whether paid for or not) are subject to inspection, testing and approval by ISCO or its customer before acceptance. If ISCO or its customer reasonably believes that any of the following have occurred, then ISCO may reject the Goods or any portion of the Goods, and may return the rejected Goods at Vendor's expense and risk: (a) the Goods do not fully comply with the warranties provided by Vendor; (b) the Goods do not fully comply with applicable specifications; (c) the Goods are shipped contrary to shipping instructions or specifications, or, in the absence of written shipping instructions or specifications, contrary to generally accepted packing and loading standards for such Goods; (d) the quantity of Goods shipped or delivered exceeds the quantity stated in ISCO's Purchase Order; or (e) except as provided in Section 2(a) above, the Goods are tendered conditional upon to Vendor's acknowledgment, invoice, form, contract, terms and conditions, or any other communication inconsistent with, or in addition to, or which purports to alter or limit this Agreement in any way.

**10. Damages.** Vendor will be liable for all actual, direct, indirect, special, compensatory, and punitive damages, including but not limited to lost profits and consequential damages, which arise out of or are caused by (a) Vendor's failure to satisfy any of its obligations, warranties, representations, or requirements arising under the Agreement; (b) any defective product or service delivered by Vendor under the Agreement; or (c) Vendor's negligent or wrongful conduct, acts, errors, or omissions under the Agreement. **ISCO EXPRESSLY REJECTS ANY LIMITATIONS ON VENDOR'S LIABILITY OR ISCO'S REMEDIES UNDER THIS AGREEMENT.**

**11. Indemnification.** Vendor shall defend and shall indemnify and hold harmless ISCO, its agents, employees, successors, assigns, affiliated entities, customers, and users of Goods, from and against, all claims, product recalls or withdrawals, losses, liabilities, damages, costs, and expenses (including attorney's fees) arising out of or related to (a) Vendor's failure or alleged failure to satisfy any of its obligations, warranties, representations, or requirements arising under this Agreement or the purchase order; (b) any alleged or actual defect in a Good or service, whether latent or patent; or (c) Vendor's alleged or actual negligent or wrongful conduct, acts, errors, or omissions under the Agreement.

**12. Insurance.** Vendor shall obtain and maintain, at its own expense, the following insurance coverages: (a) commercial general liability insurance and product liability insurance, as is necessary to cover any claims, product recalls or withdrawals, losses, liabilities, damages, costs, and expenses (including attorney's fees) arising out of or related to bodily injury or property damage; and (b) automobile liability insurance. Vendor shall name ISCO as an additional named insured under such policies. The limits under these policies must be at least \$1,000,000 per occurrence, \$2,000,000 in the aggregate. Vendor may satisfy these limits by obtaining and maintaining primary insurance coverage, or by the aggregate of primary and excess or umbrella insurance coverage. Vendor must provide at least thirty (30) days written notice to ISCO in the event of any cancellation, termination, or modification of the insurance policies required herein.

**13. Force Majeure.** The parties understand that causes reasonably beyond Vendor's control may render it unable to perform its obligations under the Agreement. Such causes may include natural catastrophe, war, or terroristic acts. If Vendor should declare that an event under this section has rendered it unable to perform: (a) Vendor must use commercially reasonable efforts to remove or mitigate the effects of any such condition and resume performance as soon as practical; (b) if Vendor's negligence was not a factor in rendering it unable to perform, then Vendor will be excused from performance for as long as the condition exists to a degree that it reasonably prevents Vendor's performance; and (c) without incurring any liability to Vendor, at its sole discretion, ISCO may seek an alternative supplier for the Goods that Vendor declares it is unable to provide timely due to such cause(s). ISCO may terminate the Agreement without penalty or obligation to Vendor in the event any such delays continues for a period of more than thirty (30) consecutive days. When and if Vendor resumes performance, Vendor may not charge ISCO a price greater than what was set forth in ISCO's purchase order or otherwise agreed upon in writing.

**14. No delegation or assignment; offset.** Vendor may not delegate or assign any duties, rights, or claims under the purchase order or the Agreement without ISCO's prior written consent. All claims for monies which are due or may become due from ISCO will be subject to deduction by ISCO for any setoff or counterclaim, whether actual or potential, arising out of this or any other contract between ISCO and Vendor.

**15. Confidentiality.** Vendor acknowledges that the information contained in a purchase order from ISCO, or which Vendor may otherwise obtain from ISCO, including the existence of business relationship between Vendor and ISCO itself, is confidential and is treated as such by ISCO. Such information includes, but is not limited to, customer lists, pricing, marketing plans and information, business

plans, and financial information. Vendor may not, without ISCO's prior written consent, disclose to third parties any business, commercial, proprietary, or technical information obtained from ISCO.

**16. Entire Agreement.** The Agreement, and the documents and descriptions referred to in Section 2 above, contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all other agreements between Vendor and ISCO, whether entered into prior or subsequent to the date of ISCO's purchase order. **UNLESS EXPRESSLY AGREED IN WRITING BY ISCO, NO OTHER TERMS AND CONDITIONS OTHER THAN THOSE SET OUT HEREIN SHALL FORM A PART OF ANY AGREEMENT BETWEEN THE PARTIES, AND ANY PROVISIONS CONTAINED IN ANY ACKNOWLEDGEMENT, INVOICE, FORM, CONTRACT, TERMS AND CONDITIONS, OR ANY OTHER COMMUNICATION FROM VENDOR THAT ARE INCONSISTENT WITH OR IN ADDITION TO THIS AGREEMENT WILL HAVE NO FORCE OR EFFECT.**

**17. No Waiver.** Failure of ISCO to insist upon strict performance of this Agreement or to enforce any of its rights will not constitute a waiver of such rights or of any other rights.

**18. Severability.** The provisions of this Agreement are intended to be construed so as to be valid, binding, and enforceable to the fullest extent provided by law. However, if any provision of this Agreement is deemed to be invalid or unenforceable by a court of competent jurisdiction, the other provisions of this Agreement will remain valid, binding, and enforceable.

**19. Changes.** ISCO shall have the right to make changes to the purchase order by a notice in writing to Vendor, and if such change causes an increase or decrease in the amount due under the purchase order or the time required for performance an equitable adjustment may be made and the purchase order modified in writing accordingly. Any claim for adjustment must be asserted by Vendor in writing within fifteen (15) days of the date the change is ordered. Nothing herein shall relieve Vendor from proceeding without delay in the performance of any such changes. **THIS AGREEMENT MAY NOT BE MODIFIED OR AMENDED BY ANY COURSE OF DEALING OR PERFORMANCE.**

**20. Compliance with Law.** Vendor is in compliance with and shall comply with all applicable laws, regulation, and ordinances. Vendor has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that are required to perform Vendor's obligations under this Agreement. Vendor shall comply with all export and import laws and regulations of all countries involved in the sale of Goods under this Agreement, and Vendor assumes all responsibility for shipments of Goods requiring any government import clearance. Vendor represents and warrants that it has not and covenants that it will not pay anything of value to any government official in connection with the purchase and sale of the Goods.

**21. Applicable Law; Forum Selection.** The Agreement will be governed by and construed in accordance with the laws of the Province of Manitoba and the federal laws of Canada applicable therein without given effect to principles of conflicts of laws. Vendor and ISCO irrevocably attorn and submit to the exclusive jurisdiction of the Manitoba courts situated in the City of Winnipeg and waive objection to the venue of any proceeding in such court or that such court provides an inconvenient forum. The *United Nations Convention on Contracts for the International Sale of Goods* (the "Convention") and any other legislation applying the terms of the Convention within a particular jurisdiction are hereby expressly disclaimed with respect to this agreement.