

**NEW BRUNSWICK POWER CORPORATION (NON-NUCLEAR)
GENERAL CONDITIONS FOR PERFORMANCE OF CUSTOM WORK**

1.0 DEFINITIONS

1.1 The following terms, wherever used in any Contract Documents, shall have the following meanings unless the context otherwise states:

“Custom Work” – Any of the Owner’s material or equipment that is sent off site to a contractor for repairs, rework, calibration, refilling or overhaul

“Contract” – The Contract between the Owner and the Contractor for the performance of the Work.

“Contract Documents” – The documents which together form the Contract including the Tender Document, the Tenderer’s Submission, Purchase Order, and any purchase order changes..

“Contractor” – The party or parties to whom the Owner has awarded a Contract for the Work to be performed under this Contract Document. This term shall also include any subcontractors associated with the Contractor.

“Engineer” – a person authorized by the Owner to perform on its behalf any function under the Contract.

“Owner” – New Brunswick Power Corporation, or its legally appointed representatives, successors and assigns, sometimes referred to as “NB Power”

“Site” – Various locations as indicated on the RFQ.

“Tender Documents” The Request for Quotation, Instructions to Tenderers, General Conditions for the Performance of Custom Work, Technical Specifications and Addendums.

“Work” – Includes all labour, plant, materials, equipment, services, supplies and acts required to be done, furnished or performed by the Contractor under the Contract.

1.2 Words in the singular include the plural and vice versa. Words implying gender include other genders where the context so requires.

2.0 TIME

Time is of the utmost importance of the Contract.

3.0 ENTIRE CONTRACT

The entire agreement of the parties consist solely of this Contract, as herein defined. Except as expressly incorporated herein, any and all previous or collateral agreements, negotiations, proposals, promises and conditions relating to the subject matter of this Contract are superseded by this Contract.

4.0 PROPER LAW OF THE CONTRACT

This document shall be regarded as a New Brunswick Contract and the laws of the Province of New Brunswick shall govern its interpretation and effect. The International Sale of Goods Act, S.N.B.c.I-12.21 shall have no application and shall be of no force and effect with respect to the formation of the contract of sale hereunder, nor shall it apply to the rights and obligations of the seller and buyer arising from such a contract.

5.0 LAWS, REGULATIONS AND PERMITS

The Contractor shall comply with all laws, by-laws, statutes, codes and regulations of federal, provincial and municipal governments which are applicable to the Work and its performance.

6.0 ASSIGNMENT AND SUCCESSION

6.1 The Contractor shall not assign this Contract without the prior written consent of the Owner, which consent shall not be unreasonably withheld.

6.2 This Contract will extend to and be binding upon the parties hereto and their respective successors and assigns.

7.0 SEVERABILITY

If any term or portion of the Contract is found to be invalid or unenforceable, the remainder of the Contract shall continue to be valid and enforceable.

8.0 NOTICES

8.1 Notices to the Owner shall be served in writing and addressed to:
New Brunswick Power Corporation
515 King Street, PO Box 2000,
Fredericton, N.B., E3B 4X1
ATTENTION:
Corporate Secretary and General Counsel

Such notices shall be effective upon receipt.

8.2 Notices to the Contractor shall be served in writing upon the Contractor or its accredited representatives.

8.3 Any notice or other communication required under the terms of the Contract shall be deemed to be well and sufficiently given on the part of the Owner if the same be left at the Contractor’s office, or is mailed in any post office to the Contractor or its accredited representative to its last known place of residence.

9.0 TITLE

The title to the Owner’s equipment and/or material delivered to the Contractor’s premises to have the Work completed on it shall remain with the Owner while it is in the possession of the Contractor.

10.0 PERFORMANCE

Should the Owner be of the opinion, and so inform the Contractor in writing, that the amount of labour, material, equipment or other items is insufficient or that the methods employed are not such as shall ensure the timely performance of the Work, then the Contractor shall, forthwith, increase the amount of labour, material, equipment or other items, as the case may be, or shall adopt other methods and practices all to the satisfaction of the Owner.

11.0 DELIVERY AND SHIPMENT

11.1 The Contractor shall use reasonable effort to meet all delivery dates stated herein. Any change to the delivery dates contained in the contract must be agreed to by the Owner. Upon notification of readiness of equipment by the Contractor to the Owner, the Owner shall promptly take delivery of the equipment. Delivery will be deemed to take place at the Contractor’s premises unless otherwise stated in the Contract.

11.2 The Contractor shall be responsible for properly packing the equipment and/or material in such a manner as to protect them from damage or deterioration during shipment to the Owner’s premises and shall be responsible for and make good any and all damage due to improper preparation for loading, shipment, and unloading.

11.3 The Owner will be responsible for shipment of the equipment from the Contractor’s premises. Therefore, freight and transit insurance charges shall not be included in the Contract price.

12.0 CONTRACTOR’S LIABILITY

12.1 General

12.1.1 The Contractor shall properly protect the equipment and/or material while it is at the Contractor’s premises for completion of the Work. It shall make good any damage sustained to the equipment and/or material from the date it is delivered by the Owner to the Contractor’s premises to the date of delivery of the equipment and/or material to the Owner upon completion of the Work as described herein.

12.1.2 The Contractor shall be responsible for any and all damages or claims for damages which may be occasioned by the acts or

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- omissions of itself, its servants or its subcontractors, or by any failure or defect, and the Contractor agrees to make good all such loss or damage and to hold harmless and to indemnify the Owner against all claims in respect thereof.
- 12.1.3 Acceptance of the Work shall not exempt the Contractor from, or preclude the Owner from bringing action for damages or indemnity for defective or faulty workmanship appearing within twelve months from installation.
- 12.1.4 Liability in the event of a nuclear incident shall be as determined by the Nuclear Liability Act of Canada.
- 12.2 Consequential Damages**
Neither the Owner nor the Contractor shall be liable to one another for indirect, special, or consequential damage or damages for loss of use arising directly or indirectly from any breach of contract or in tort or for any acts or omissions of their respective employees or agents
- 13.0 DEFAULT AND TERMINATION**
- 13.1 The Owner reserves the right at its exclusive option to immediately and without further notice, terminate this Contract, or part thereof, without further liability of any kind if the Contractor has:
- a.) failed to complete the Work within the time allowed for such completion by the Contract;
 - b.) committed an act of bankruptcy;
 - c.) abandoned the Work;
 - d.) committed a breach of a material condition of the contract, which has not been remedied by the Contractor within fourteen (14) days of notice of said breach by the Owner;
 - e.) made an assignment of the Contract without the required consent.
- The Owner may, without any other authorization, take all or any portion of the Work out of the Contractor's hands and may employ such means as it may see fit to complete the Work
- 13.2 In the event of termination, the Owner shall be obligated to reimburse the Contractor only for Work satisfactorily performed up to the date of termination. In no event shall the Owner be liable to the Contractor for loss of profit, interest loss or any other damages or loss occasioned to the Contractor by reason of such Contract termination.
- 13.3 Where the Work or any portion thereof has been taken out of the Contractor's hands under this Section the Contractor shall not, except as provided in Section 13.2, be entitled to any further payment in respect of the Work so affected, and the obligation of the Owner to make payments in respect thereof as provided for in the Terms of Payment shall be at an end with respect to that portion of the Work taken out of its hands. The Owner shall be entitled to recover from the Contractor all loss, damage and expense incurred by the Owner by reason of the Contractor's default (which may be deducted from any monies due or becoming due to the Contractor and any balance to be paid by the Owner to the Contractor).
- 13.4 Any termination of the Contract by the Owner, as aforesaid, shall be without prejudice to any other rights or remedies the Owner may have.
- 13.5 The Owner shall not be liable to the Contractor for loss of anticipated profit on the cancelled portion or portions of the Work.
- 14.0 INSURANCE**
- 14.1 Contractor's Insurance**
- 14.1.1 The Contractor shall maintain for the term of this contract insurance policies to insure the material or equipment against loss or damage from any cause whatsoever, in the names of the Contractor and Owner, as their interests appear, up to the amount of the deductible of the Owner's insurance policy (currently \$2,000,000) while it is in the possession of the Contractor.
- 14.1.2 The above insurances shall include a requirement that the insurer provide the Owner within 10 days written notice prior to the effective date of any cancellation of the insurance.
- 14.2 Certificate of Insurance**
The Contractor shall, upon request, provide the Owner with a certificate of insurance evidencing all required coverage.
- 14.3 Claims**
- 14.3.1 From the finally determined amount of each and every loss, the deductible amount, if any, as shown in the Contractor's policy, shall be the responsibility of the Contractor.
- 14.3.2 The Owner may withhold from any monies due the Contractor, any deductible amounts for which the Contractor or any of its subcontractors are liable, and may pay the same to the injured party or the party entitled thereto. Any such payment shall be deemed to be and shall constitute a payment to the Contractor.
- 15.0 FORCE MAJEURE, OTHER DELAYS, AND EXTENSION OF TIME**
- 15.1 A party shall not be liable to the other for any loss, damage, delay or non-performance of its obligations under this Contract to the extent that performance of such obligations is delayed, hindered, or prevented by force majeure or other causes beyond the reasonable control of both parties and which by the exercise of due diligence such party could not avoid or reasonably circumvent through the use of alternate sources, work around plans or other means.
- 15.2 Force Majeure includes, but is not limited to acts of God, fires, floods, sabotage, explosion, epidemic, quarantine, riots, the act or order of any civil or military authority, and acts of war (declared or undeclared). For greater clarity, labour disruption is not a Force Majeure event, unless such labour disruption is the result of a Force Majeure event.
- 15.3 If the Contractor claims that it has been or will be delayed by reason of force majeure or other causes beyond its reasonable control in the progress of the Work, the Contractor shall, promptly notify the Engineer in writing of any material delay and shall make a written request to the Engineer for an extension of time within which to complete the Work. If the Engineer considers the claim to be valid, the Engineer may grant whatever extension of time it considers reasonable.
- 15.4 Both the Owner and the Contractor shall be prompt and diligent to remove all causes of interruption or delay in the Work, insofar as each is able so to do.
- 15.5 Should the Force Majeure event last longer than (30) days, either the Owner or the Contractor may terminate this Contract by notice to the other party without further liability, expense or cost of any kind.
- 16.0 QUALITY ASSURANCE**
- All Work and material supplied under this Contract shall be new and of the most suitable quality. The Contractor shall not substitute materials used in the Work without written approval from the Owner. Any change of design from that of the equipment supplied shall be approved by the owner prior to making any such change. Original Equipment Manufacturer (OEM) parts shall be used in all cases; prior approval by the owner is required if non-OEM parts are to be used. The Owner shall have the right to inspect the Work at all times and may reject any part thereof which is not in accordance with the Contract. Any of the Work so rejected shall forthwith be re-executed or corrected by the Contractor, at its sole expense and in a manner prescribed by the Contract, but if in the opinion of the Owner it is not feasible to re-execute or correct the rejected work, the Owner shall be bound to pay to the Contractor only such sums of money as, in the opinion of the Owner, represents the value of the Work to the Owner.
- 16.1 General**
- 16.1.1 The Contractor's Quality Assurance Program shall be

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| | compliant with the Quality Assurance Program specified by the Owner. | 19.0 | <u>ENVIRONMENTAL PROTECTION</u> |
| 16.1.2 | Quality control for this contract is the prime responsibility of the Contractor who shall ensure that all Work is performed in accordance with the drawings and specifications. Where applicable the Contractor shall provide manufacturer's Inspections and Test Certificates for materials incorporated in the Work. | 19.1 | The Owner is committed to managing its environmental affairs consistent with the applicable acts, regulations, standards and guidelines established by the various regulatory authorities. |
| | | 19.2 | The Contractor is required to comply with all applicable environmental protection requirements stated above and shall take all practical measures to preserve the quality of the environment affected by the Contractor's operations. |
| 16.2 | <u>Owner's Inspection and Expediting</u> | 20.0 | <u>WARRANTY</u> |
| 16.2.1 | All Work covered by this Contract shall be subject to inspection and expediting by the Owner or its authorized representative for which purpose the Contractor (or subcontractors) shall allow access at all reasonable times during overhaul to: | 20.1 | Except where otherwise noted in the specifications, the Contractor shall warrant all Contractor Work for a period of twenty four months from delivery of the material and/or equipment or twelve months after installation of the material and/or equipment, whichever is sooner. |
| | 1) the premises in which the Work is being carried out; | | |
| | 2) the drawings and / or tooling involved; | | |
| | 3) gauges, instruments, devices, required for inspecting the Work; | 20.2 | If, at any time prior to twenty four months after delivery or one year after installation, whichever is sooner, any part of the Work becomes defective or fails due to defects in design, material or workmanship, installation or erection, or otherwise fails to meet the requirements of the Contract, then the Contractor, upon receipt of notification from the Engineer, shall make good every such defect or failure within the period of time specified by the Engineer and without cost to the Owner. The Contractor shall pay all transportation charges both ways between the Contractor's factory or repair depot and the Site. |
| | 4) the Contractor's drawings, if so requested by the Inspector. | | |
| 16.2.2 | If the technical specifications, the Engineer's instructions, laws, ordinances or any public authority require any Work to be specially tested or approved, the Contractor shall give the Engineer timely notice of its readiness for inspection, and if the inspection is by an authority other than the Engineer, the date fixed for such inspection. | | |
| 16.2.3 | Inspection by the Engineer shall be promptly made. The decision of the Engineer as to the quality and suitability of material or Work shall be final and binding. | 20.3 | Where the Contractor furnished technical direction of the original installation or erection of the Work, then it shall also be responsible for furnishing technical direction of the removal (including site disassembly if required), reinstallation or re-erection of any of the Work which requires repair or replacement hereunder. |
| 16.3 | <u>Owner's Quality Control and Audit</u> | 20.4 | If the Contractor, after notification of a defect or deficiency should delay or default in proceeding, then the Engineer may arrange to remedy the defect or deficiency and the Contractor shall be liable for all costs, charges and expenses incurred in connection therewith, all without prejudice to any other rights or remedies the Owner may have for breach of Contract. |
| 16.3.1 | The Owner may provide representatives who shall monitor the work performed by the Contractor to ensure it meets the quality control requirements of the Contract. This monitoring includes inspection, expediting, evaluation, analysis and verification of the Contractor's records, methods, procedures, products, and services to assure that the quality requirements for the Work are met. | 20.5 | Any part of the Work made good under this Clause shall be subject to the provisions hereof for a period of one year from the date when the same has been made good. The correction of defects period shall be extended on each portion of the Work which is made inoperative by the need for repair or replacement of any other portion of the Work by the amount of time it is so inoperative. |
| 17.0 | <u>TESTING</u> | 21.0 | <u>DISPUTES</u> |
| 17.1 | The Contractor's inspection, examination, and test activities shall include those specified by the Owner in the Contract documents including specifications, drawings, codes and standards. | | Should any dispute arise between the parties concerning this Contract or its interpretation or in connection with its execution, then the parties will attempt to resolve such disputes to their mutual satisfaction, and if such disputes cannot be resolved by agreement, then the parties may agree to take the dispute to arbitration under the Arbitration Act of New Brunswick. |
| 17.2 | An Inspection and Test Plan for all equipment and material covered under this Contract shall be submitted to the Owner on a timely basis for review prior to start of the Work. | | |
| 17.3 | The manufacturer's standard factory tests shall be carried out on the Equipment and material upon completion of the Work regardless of whether such tests are specifically called for in the Contract. | | |
| 17.4 | Upon completion of the Work, the Contractor shall give the Engineer reasonable notice of its readiness to carry out any final tests described in the Contract. | | |
| 17.5 | Interim tests may, at the option of the Engineer, be carried out on completion of any portion of the Work. | | |
| 17.6 | Source inspection may be applied to contracts when deemed necessary by the Owner. | 22.0 | <u>PROPRIETARY INFORMATION</u> |
| 18.0 | <u>FAILURE UNDER TEST</u> | | The Contractor and its employees shall consider all data and information pertaining to the Owner's Equipment and/or Material subject to this contract to be confidential and the sole property of the Owner. No such information shall be transmitted in any form unless approved in writing by the Owner's authorized representative. |
| 18.1 | Should any test or tests prove the existence of any fault or faults in the Work or in any part of it, or any failure to meet the requirements of the Contract, the Engineer may direct the Contractor in writing to remedy the defect or defects, or to repair, reconstruct, or replace the faulty Work, and the Contractor shall without delay, and at its own expense, carry out the orders of the Engineer in that respect, all according to the terms and requirements of the Contract. | 23.0 | <u>EXPORT CONTROL</u> |
| 18.2 | Complete new tests shall then be carried out by the Contractor and at its own expense to verify that the rework is acceptable. | | The Owner represents and warrants that equipment and material provided hereunder are intended for civil use only and will not be used directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons or for any direct or indirect nuclear end use other than for the production of electricity. The Owner agrees not to disclose, use, export or re-export, directly or indirectly, any information provided by the Contractor, except in compliance with applicable laws. |

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24.0 PRICES, TAXES, AND TERMS OF PAYMENT

24.1 Price(s)

- 24.1.1 The contract price(s) do not include any Taxes.
- 24.1.2 The Contractor will separately quote the amount of Taxes applicable to the contract price.
- 24.1.3 Further to clause 24.1.2 where the Contractor is registered for Goods and Services Tax/Harmonized Sales Tax (GST/HST) purposes and the contract price represents consideration for a taxable supply made in Canada for purposes of the Excise Tax Act the Contractor commits to provide the Owner with a formal invoice for work performed by the contractor containing all of the documentary evidence required under the Excise Tax Act to enable the owner to claim an input tax credit for GST/HST paid to the Contractor.
- 24.1.4 Further to clause 24.1.2 with respect to sales taxes other than GST/HST, the Contractor commits to provide the owner with a statement regarding the applicability of the sales tax to the contract price.

24.2 Canadian Withholding Taxes

- 24.2.1 The Canadian Income Tax Act, Section 153 and Income Tax Regulation 105 requires the Owner to withhold and remit to the Canada Revenue Agency (CRA) 15% of the gross amount of a payment to a non-resident Contractor for services rendered in Canada unless the Contractor has obtained and provided to the Owner, a waiver from withholding tax requirements issued by CRA.
- 24.2.2 To the extent that the non resident Contractor provides services both inside and outside of Canada, the non-resident Contractor will provide to the Owner a detailed allocation of services performed within and outside Canada, together with supporting documentation, in a manner acceptable to the Owner. To the extent that an allocation and supporting documentation is not provided to the Owner, the Owner shall withhold 15% of the total payment amount to the non-resident Contractor. The amount shall be withheld from every payment made to the non-resident Contractor by the Owner. The Owner undertakes to provide the non-resident Contractor the T4-NR reporting form as required under applicable Canadian tax laws.

24.3 Canadian Customs Duty and Taxes

The Owner shall be the importer of record for all goods entering or reentering Canada under this Contract, and will be required to pay the Goods and Services Tax (GST) to the Canada Border Services Agency.

24.4 Terms of Payment

- 24.4.1 Subject at all times to the satisfactory execution of the Work in accordance with the Contract, the Owner shall pay the Contractor in accordance with the following terms.
- 24.4.2 The terms of payment are net 30 days after receipt of an acceptable invoice. Invoices shall be submitted upon or after completion of the Work.

25.0 INVOICES

Invoices shall be prepared in a format acceptable to the Owner and shall be submitted in accordance with the "Terms of Payment".

26.0 AUDIT

For cost reimbursable contracts, the Contractor shall provide proper and detailed accounts and records related to the cost of the Work performed hereunder as supporting documentation for invoice (s) submitted and shall at all reasonable times during business hours make such records, accounts and other documents available for inspection and audit by the Owner or any authorized representative of the Owner. Fixed hourly rates or fixed fees shall not be subject to audit.

27.0 PAYMENT NOT FINAL ACCEPTANCE

A payment by the Owner shall not be construed as evidence that the Work or any part thereof is complete, is satisfactory or is in accordance with the Contract as such shall not be considered as Final Acceptance.

28.0 COUNTERFEIT, FRAUDULENT, AND SUBSTANDARD ITEMS

The Contractor is hereby notified that the delivery or use of suspect and/or counterfeit, fraudulent, and substandard items (CFSIs) is of special concern to the New Brunswick Power Corporation (the Owner). If any parts covered by the Contract are described using a manufacturer part number or using a product description and/or specified using an industry standard, the Contractor shall be responsible to assure that the replacement parts supplied by the Contractor meet all requirements of the latest version of the applicable manufacturer data sheet, description and/or industry standard. If the Contractor is not the manufacturer of the goods, the Contractor shall make a reasonable efforts to assure that the parts and components supplied under the contract or used to manufacture the equipment covered in this order are made by the Original Equipment Manufacturer (OEM) and meet the applicable manufacturer data sheet or industry standard. Should the Contractor desire to supply or use a part that may not meet the requirements of this paragraph, the Contractor shall notify The Owner of any exceptions and receive The Owner's written approval prior to shipment or use of the replacement parts to The Owner. If suspect and/or CFSI parts are furnished under the contract or are found in any of the goods delivered hereunder, such items will be dispositioned by the Owner and may be returned to the Supplier. The Contractor shall promptly replace such suspect and/or CFSI parts with parts acceptable to The Owner and the Contractor shall be liable for all costs, including but not limited to The Owner's internal and external costs, relating to the removal and replacement of said parts. To mitigate the CFSI risk to The Owner's nuclear facility in particular, Point Lepreau Generating Station requires our approved contractors to recognize this risk by introducing into their Quality Assurance program a documented process to prevent, detect and disposition suspect CFSIs.