



## **Conestoga Meat Packers Ltd. Terms and Conditions**

Any Product and/or Service ordered, delivered or used by Conestoga from the Supplier as outlined in an Order Document entered into between Conestoga and the Supplier shall be subject to and governed by these Terms and Conditions (“T&Cs”), and such terms and conditions as may be contained in any relevant attachments or schedules included from time to time. All defined terms used herein, unless otherwise defined in the Order Document, shall have the meanings set out below.

1. **DEFINITIONS.** As used in this Agreement, the following terms shall have the respective meanings assigned to them below:

“**Agreement**” means collectively, this Agreement, all Order Documents and all addenda thereto, as may be amended from time to time.

“**Confidential Information**” means all business, financial, scientific, technical and other data and information related to the business of Conestoga, all of which is deemed to be of proprietary value to Conestoga including without limitation, any and all intellectual property and rights thereto, all information and data relating to business methods and operations, products, developmental work, marketing materials, customer and supplier names, strategies, studies, reports and evaluations, the terms and payment of the Agreement, and all information disclosed during the Term of the Agreement, whether orally or in writing, as well as all information received by the Supplier from third parties that the Supplier is obligated to treat as confidential, and which by virtue of the circumstances should be considered to be confidential.

“**Order Document**” means any Purchase Order (“**PO**”) and/or Statement of Work (“**SOW**”) attached to this Agreement outlining the Products and Services to be provided by the Supplier to Conestoga, and all the contract details specific to the agreement between the Parties, as may be attached or amended from time to time.

“**Pricing**” means the prices for the Products and/or Services as set out in the Order Document.

“**Products**” means collectively those Products meeting the Specifications which are manufactured, packaged, delivered, and/or installed by Supplier in accordance with this Agreement, and as outlined in an Order Document.

“**Services**” means collectively services as further described, and meeting the Specifications outlined, in the SOW.

“**Specifications**” means the attributes of the Products and Services as outlined in the Order Document, as may be modified from time to time upon agreement of both Parties.



## 2. PURCHASE AND SUPPLY OF PRODUCTS AND SERVICES

- (a) Statements of Work. Subject to the terms and conditions of this Agreement, the Supplier agrees to supply to Conestoga the Products and/or Services as outlined in any Order Document delivered by Conestoga to Supplier from time to time during the Term of the Agreement. Conestoga shall have the right to submit Order Documents using electronic medium, and all rights, duties and obligations of the Supplier under the Order Document become effective upon receipt of the Order Document which shall be deemed to be upon confirmation of electronic delivery.
- (b) Transportation of Products. Supplier, at its own risk, shall package and ship all Products in accordance with the Order Document and any other instructions received from Conestoga, in accordance with good commercial practice and all applicable laws, so as to ensure that no damage results to the Products as a result of weather, transportation or any other cause. The Supplier shall deliver Products with a delivery slip showing the applicable Order Document number. Conestoga shall have the right to inspect the Products upon receipt, and shall notify the Supplier forthwith if any Product is not fully satisfactory, and shall have the right to return such unsatisfactory Product to the Supplier, all at no cost to Conestoga.

3. **INVOICING AND PAYMENT.** Supplier shall invoice Conestoga after each shipment of Products, and each invoice shall include the applicable PO or SOW number and identify separately all amounts for sales, Products, Services and taxes, VAT or other similar taxes imposed in connection with the sale for which Conestoga is responsible or which are otherwise reflected in the Pricing. Any additional costs for which Conestoga is responsible must be as agreed in writing in advance, and accompanied by supporting documentation. Conestoga shall not be liable for any quantity of Products in excess of the quantities specified in the PO or SOW, and any excess quantity delivered to Conestoga may be returned by Conestoga to Supplier at Supplier's risk and expense.

4. **REPRESENTATIONS, WARRANTIES AND COVENANTS.** Supplier represents, warrants and covenants that:

- (a) all Products and Services provided pursuant to the Agreement shall:
- i. conform to the Specifications outlined in the applicable Order Document, Supplier warrants that such Products and Services shall be fit for all their intended uses and purpose(s) and be merchantable;
  - ii. be free from defects in material-design and workmanship, and be performed in a first class and professional manner;
  - iii. conform to all applicable laws, bylaws, codes and regulations in effect on date of delivery, or any other laws or regulations specifically set forth in the Specifications;
- (b) it has, or at the time of performance shall have, and shall transmit to Conestoga good title to the Products and Services, free and clear of all encumbrances and liens of any kind whatsoever, and that all Products and Services provided pursuant to, or in connection with, any Order Document shall not



infringe the intellectual property rights of any other party existing as of the date of delivery of the Products and Services;

- (c) it shall assign to Conestoga any warranties it or its affiliates receive from any third party as relates to the Products and/or Services, as the case may be, and if the warranties cannot be assigned, Supplier agrees to make claims in a prompt and proper manner under the warranties on Conestoga's behalf, upon its request, without any charge to Conestoga whatsoever in such respect;
- (d) its liability under the above warranty is expressly limited to the repair or replacement, at Conestoga's sole option, of Products which breach the above warranty within the Warranty Period outlined in the applicable Order Document, or, if in Conestoga's sole opinion, repair or replacement is not reasonably feasible, available or practical, return of the Products to Supplier at Supplier's cost in exchange for refund to Conestoga of the entire purchase price paid for the Products and/or Services, pursuant to the Agreement where any part thereof is in breach of warranty
- (e) in acknowledgement and support of Conestoga's commitment to the health and safety of its employees and contractors/suppliers in the provision and delivery of any Products or Services on Conestoga's property, it will at all times:
  - i) ensure that all work is carried out in accordance with Occupational Health and Safety Act ("OHSA") and its regulations;
  - ii) identify any hazards associated with the Products being delivered or the Services being performed, assess the risks and develop appropriate control measures to protect worker safety;
  - iii) provide information and instruction to all Conestoga employees or other agents to ensure they are informed of the hazards inherent to the work and understand the procedures for minimizing the risk of injury or illness;
  - iv) notify Conestoga immediately of the occurrence of any and all work-related health and safety incidents and Ministry of Labour investigations or orders;
  - v) ensure any and all equipment used in the provision of the Services is at all times properly and safely maintained by duly qualified personnel and is at all times in good working order; and
  - vi) take every precaution reasonable in the circumstances for the protection of worker health and safety, as required by Conestoga and/or the OHSA.

**5. INSURANCE COVERAGE.** The Supplier shall maintain insurance coverage, at Supplier's sole cost and expense, throughout the Term, and shall provide such certificates and other evidence reasonably requested by Conestoga with respect thereto prior to the delivery of any Products or Services hereunder, as further outlined below:

- (a) for Products and Services, commercial general liability insurance written on an occurrence form, including blanket contractual liability coverage, completed operations, and products liability, against claims for bodily injury, death, and property damage affording minimum single limit protection of Three Million Dollars (\$3,000,000.00) per occurrence, and Five Million Dollars (\$5,000,000.00) in the aggregate, with respect to personal injury and property damage;



- (b) for Services, errors and omissions insurance in an amount of not less than \$3,000,000 per occurrence, and Five Million Dollars (\$5,000,000.00) in the aggregate;
- (c) Worker's Compensation insurance in accordance with the statutory requirements of the Province of Ontario, where the applicable Conestoga facility is located (or work is to be performed), and employer's liability insurance against claims for bodily injury and death, affording minimum single limit protection of Five Hundred Thousand (\$500,000) Dollars resulting from one occurrence; and
- (d) any other insurance or increased coverage or training records as requested by Conestoga from time to time, acting reasonably or which would be maintained by a prudent supplier.

Conestoga shall be named as an Additional Insured under the insurance coverage set out above, and all such insurance shall be primary to, and non-contributing by, insurance maintained by Conestoga, shall be purchased from reputable, duly qualified insurance companies reasonably satisfactory to Conestoga and shall be maintained during the applicable Warranty Period and for a minimum of two (2) years thereafter. Such insurance shall include an effective waiver of subrogation from each insurer, and be evidenced by a certificate delivered to Conestoga within 10 business days of execution of the Agreement (and in any event prior to the delivery of any Products or Services hereunder), and thereafter within 15 days of each policy's expiration date, and shall contain a provision that it cannot be cancelled, terminated, amended or not renewed without a minimum of 30 days prior written notice to Conestoga.. The specification of minimum insurance required to be maintained by Supplier shall not be inferred as a limitation on Supplier's liability, and the decision to forego maintaining further insurance shall be at the sole risk of Supplier. The Supplier shall deliver to Conestoga a WSIB Certificate of Clearance and complete training records (if required or requested) as further evidence of such coverage.

## 6. TERMINATION OF AGREEMENT.

- (a) **For Convenience:** Conestoga may at any time and for any reason cancel this Agreement and/or any Order Document for Products or Services, in whole or in part, by written notice to Supplier, and the obligations of the Parties with respect thereto shall be at an end, provided that the Supplier shall fully fulfil and perform its obligations with respect to any Order Document then in effect. Upon notification of termination, Supplier's only remedy against Conestoga shall be to claim reimbursement for its reasonable costs of manufacturing such Products or performing such Services incurred up to the effective date of termination or with respect to fulfilment of any Order Document (provided Supplier is not then in default of any obligation under the Agreement), and Supplier shall do all acts, and act with all expediency in order to limit costs to Conestoga, and Supplier shall in all events be responsible and liable for any and all costs related to any work of subcontractors with respect to the Products and/or Services.
- (b) **On Default:** If Supplier defaults in performance of any provision of the Agreement, and has not remedied such default to Conestoga's reasonable satisfaction within ten (10) days of written notice thereof, or such shorter time period identified by Conestoga acting reasonably, Conestoga may terminate this Agreement and/or any Order Document and cancel delivery of Products or Services in



whole or in part without any liability whatsoever in respect of the cancelled Products or Services. In the event of such occurrence, as contemplated in this section, Supplier shall be liable for all damages arising from Supplier's failure to perform, including direct and indirect damages. Remedies available to Conestoga shall be cumulative and not exclusive, and are in addition to any other remedies Conestoga may have at law.

- (c) **On Bankruptcy/Insolvency:** In the event of the insolvency or bankruptcy of the Supplier, or should any proposal be made by the Supplier to its creditors regarding postponement of payment of its debts, or if the Supplier shall assign or purport to assign the Agreement without the written consent of Conestoga or breach any obligation relating to intellectual property or confidential information, any Order Document then in effect with Supplier may be cancelled and terminated by Conestoga in whole or in part at Conestoga's sole discretion at any time, and Conestoga may terminate the Agreement without notice.

**7. CONFIDENTIAL INFORMATION.** During the Term, either Party may have or may be provided access to the other's confidential information, which shall include without limitation any information concerning the business, affairs or finances, of the Party (the "**Confidential Information**"). Each Party will maintain the Confidential Information of the other in strict confidence and limit disclosure to its agents (who have agreed to be bound by these confidential obligations) on a need to know basis for purposes of performing its obligations of this Agreement only, and shall take all reasonable precautions to prevent unauthorized disclosure, and treat such Confidential Information at least as carefully as it treats its own Confidential Information of a similar nature. Each of the parties will indemnify the other for a breach of this provision, and all obligations shall survive termination of this Agreement. The foregoing confidentiality obligations shall not be applicable to information which:

- (a) was in the receiving Party's possession prior to the disclosure as demonstrated by written, dated documentation in the possession of the receiving Party;
- (b) was in the public domain at the time of the disclosure or subsequently enters into the public domain through no act of the receiving Party; or
- (c) comes into the receiving Party's possession from a lawful source without any restrictions on its disclosure or use by the receiving Party; or
- (d) is required to be disclosed by law or any court or governmental or regulatory authority, agency or commission provided the Party compelled to make the disclosure provides prior written notice to the disclosing Party and reasonably co-operates with the disclosing Party to limit the information only to the extent required to be disclosed pursuant to such law or proceeding; or
- (e) has been independently developed by the disclosing Party without use directly or indirectly of the Confidential Information.

Each of the Parties agrees that all right, title and interest in and to the Confidential Information of a Party is and shall remain with such Party, and the other Party shall not acquire any right or license in or to any of



the other Party's Confidential Information. Immediately upon request by the other, and in any event immediately upon termination or expiration of this Agreement, each of the Parties shall deliver and return to the other all copies of Confidential Information (including all copies thereof, in any form whatsoever) disclosed and/or in its possession, care or control.

8. **INDEMNITY.** Supplier agrees at all times to indemnify Conestoga and its agents, employees, shareholders, officers and directors against any claims, losses, damages, actions, costs, penalties or demand whatsoever at law or in equity (including but not limited to legal fees), arising or by reason of a breach of any representation, warranty, covenant or other obligation under or provision of this Agreement, any alleged infringement by the Products or Services of any party's intellectual property rights, any action taken by Supplier outside the scope of its authority hereunder, or by reason of any wrongful or negligent act or omission (whether or not such wrongful or negligent act or omission constitutes negligence, a breach of contract, a tort, or a criminal offence) of Supplier or those for whom it is responsible at law, notwithstanding the termination or expiration of this Agreement and/or any Order Document.

9. **PUBLICITY.** The Supplier shall not, without the prior written consent of Conestoga with respect to use, content and style, market, advertise, display, use or promote any Products and/or its relationship with Conestoga, or the trademarks, logos, tradenames or other identifying marks of Conestoga, or discuss or reveal any aspect of the Agreement to the public or with any form of media, whether in print (including annual reports), on television or radio, or conduct any form of public relations activities including trade shows in connection with any of the foregoing.

10. **NOTICE.** Any notice, direction or other communication required or contemplated by any provision of this Agreement (a "Notice") will be in writing and given by personal delivery, by registered mail, by electronic mail transmission, by overnight courier or by telecopier and addressed to the Supplier, at the address identified in the Order Document, and to Conestoga at:

Conestoga Meat Packers Ltd.  
313 Menno Street  
Breslau, Ontario  
N0B 1M0  
Fax: 519-648-3421  
E-mail: [tmillington@conestogameats.com](mailto:tmillington@conestogameats.com)

11. **GENERAL.**

- a) **Assignment.** Neither Party may assign or otherwise transfer this Agreement, or assign or subcontract any rights hereunder, without the prior written consent of the other Party. This Agreement will bind and inure to the benefit of each Party's successors and permitted assigns.
- b) **Non-Solicitation/Non-Interference.** Each of the Parties agrees that it will not solicit or hire any employees, independent contractors or agents of the other (either directly or indirectly), at



any time during the Term, and for a period of two (2) years following termination of this Agreement.

- c) **Survival.** Termination of the Agreement and/or any Order Document for any reason will not affect, or release a Party from, any obligation or liability that expressly in this Agreement, or by their nature, survive termination, or any rights that accrued before the termination of the Agreement, and no termination shall affect the use by any third party of the Products or Services.
- d) **Independent Legal Advice.** The Parties acknowledge that they have been provided the opportunity to seek legal counsel, and have either obtained such advice or chosen not to do so.
- e) **Waiver.** Failure of Conestoga to insist on strict performance of any covenant, term or condition shall not constitute a waiver of the performance of the covenants, terms and conditions of the Agreement with respect to that, or any other, or subsequent breach, or of its rights at any time thereafter to require strict compliance with all terms and conditions.
- f) **Dispute resolution.** The Parties will use good faith efforts to settle any dispute with respect to this Agreement and/or any Order Document within thirty days of written notice of the dispute being delivered from one Party to the other, failing which the dispute may, at the option of Conestoga, be finally settled by arbitration in accordance with the *Arbitration Act* (Ontario). The arbitration award shall be final and binding upon the parties and judgment thereon may be entered in any court having competent jurisdiction. The costs of the arbitrator shall be borne by the unsuccessful party to the arbitration.
- g) **Force Majeure.** Neither Party hereto shall be liable to the other for delay in any performance or for the failure to render any performance of obligations when such delay or failure is a direct result of any present or future statute, law, ordinance, regulation, order, failure to deliver on the part of its suppliers, judgment or decree, act of God, earthquake, epidemic, explosion, lockout, boycott, strike, labor unrest, riot, war, or similar catastrophic occurrence.
- h) **Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without reference to conflicts of law principles. Each of the parties irrevocably attorns to the exclusive jurisdiction of the courts of Ontario with respect to any dispute or legal proceeding which may arise from this Agreement.
- i) **Entire Agreement.** This Agreement, together with any and all Order Documents and addenda attached from time to time, constitute the entire agreement and understanding between the Parties with respect to the subject matter herein, and supersedes any and all prior written or verbal agreements, proposals or representations. No modification, amendment, or waiver of any provision of this Agreement or any Order Document will be effective unless in writing and signed by authorized representatives of both Parties. Both Parties agree that this Agreement and any related documents shall be in English.