

## **TERMS OF USE – SASKATCHEWAN SUPPLIER DATABASE SASKATCHEWAN INDUSTRIAL & MINING SUPPLIERS ASSOCIATION**

Last Updated: September 1, 2018

This Terms of Use agreement (the “**Agreement**”) creates a binding legal agreement between you (the “**User**”) and the Saskatchewan Industrial & Mining Suppliers Association Inc. (“**SIMSA**”) regarding your use of and access to the website <http://saskatchewansupplierdatabase.ca> and Saskatchewan Supplier Database (collectively, the “**Site**”).

PLEASE READ THIS AGREEMENT CAREFULLY. BY ACCESSING THE SITE YOU ACKNOWLEDGE AND AGREE THAT: (1) YOU HAVE READ AND AGREE TO BE BOUND BY THIS AGREEMENT, INCLUDING THE **PRIVACY POLICY** WHICH IS INCORPORATED BY REFERENCE (THE “**PRIVACY POLICY**”); (2) IF AN INDIVIDUAL, YOU ARE 18 YEARS OR OLDER AND BE FULLY ABLE AND COMPETENT TO ENTER INTO THE TERMS AND CONDITIONS OF THIS AGREEMENT; (3) YOU MEET THE OTHER QUALIFICATIONS SET FORTH IN THIS AGREEMENT; (4) IF YOU ARE ENTERING THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, IN WHICH CASE, THE TERM “USER” WILL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THIS AGREEMENT, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SITE.

### **– OWNERSHIP OF SITE AND CONTENT**

The Site, including all software code, its content and design, is protected under applicable intellectual property and other laws, including without limitation the laws of Canada and other countries (“**Content**”). For clarity, Content further includes all information you submit to the Site to SIMSA through the Site including, but not limited to, any submissions, ads, messages, images, articles, text, illustrations, graphics, photographs, information, audio or video clips, or other information (or any combination thereof) submitted through any section of the Site. All Content and intellectual property rights therein are the property of SIMSA, unless otherwise agreed in a prior written agreement with SIMSA. You do not acquire ownership rights to any Content, whether viewed or otherwise accessed, through this Site. Except as otherwise provided herein, none of this Content may be used, copied, reproduced, distributed, reverse engineered, republished, downloaded, modified, sold, rented, shared, displayed, posted or transmitted in any form or by any means, including, but not limited to, electronic or mechanical copying, photocopying, recording, or otherwise, without SIMSA’s express prior written permission.

The Site contains trademarks, service marks, trade dress, designs, logos, product and service names, and graphics (collectively, “**Trademarks**”) that are owned by SIMSA or by third parties. You are not authorized to display copy or use the Trademarks in any manner without the prior written permission of the rights owner.

### **– USE OF SITE**

SIMSA hereby grants you a right to access and use of the Site if you comply with all of these Terms of Use and the Privacy Policy, and such right is granted in accordance with these Terms of Use and the Privacy Policy.

You certify, represent and warrant that when using the Site, you will comply with all applicable laws and regulations, including, without limitation, those relating to the internet, data, email, messaging, privacy, and the transmission of technical data exported from Canada or the country in which you reside.

You are responsible for obtaining and maintaining all telecommunications, broadband, computer hardware, software, equipment and services required to connect to, access, and use the Site.

You are solely responsible for the retrieval and use of the Content. You should apply your own judgment in making any use of any Content, including, without limitation, the use of the information as the basis for any conclusions.

#### **- PROHIBITED USES**

Without limiting the generality of any other provision contained herein, the User agrees that it will not, and will not permit any person, to:

use the Site other than as permitted by this Agreement;

use the Site to violate, infringe or appropriate any person's privacy rights, publicity rights, defamation rights, intellectual property rights, proprietary rights, contractual rights or any other legal right;

distribute the Content for any purpose, including without limitation, compiling an internal database;

use the Site in a manner that is misleading, deceptive or fraudulent or otherwise illegal or promotes illegal activities, including engaging in phishing or otherwise obtaining financial or other personal information in a misleading manner or for fraudulent or misleading purposes;

use the Site to impersonate a SIMSA employee, or any other person, or falsely state or otherwise misrepresent your affiliation with any person or entity;

sublicense or transfer any of User's rights under this Agreement, except as otherwise provided in this Agreement, or otherwise use the Site for the benefit of a third party or to operate a service bureau;

copy, modify, alter, change, translate, decrypt, obtain or extract the source code of, create derivative works from, reverse engineer, reverse assemble, decompile, disassemble or reverse compile any part of the Site;

use or launch any automated system, including without limitation any "robot" or "spider" that accesses the Site;

license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit the Site;

access the Site or SIMSA Content in order to develop a competing product and/or website;

interfere with, or attempt to interfere with, the Site or any other networks or services connected to the Site, whether through the use of viruses, bots, worms or any other computer code, file or program that interrupts, destroys or limits the functionality of any computer software or hardware; and/or

alter, disable, or erase any computer data, computer programs or computer software without authorization.

#### **- MODIFICATION AND DISCONTINUANCE**

We reserve the right at any time and from time-to-time to modify, edit, delete, suspend or discontinue, temporarily or permanently, the Site (or any portion thereof) and/or the information, materials, forms, or other Content, of SIMSA, and other products and/or services available through this Site with or without notice. You agree that we shall not be liable to you or to any third party for any such modification, editing, deletion, suspension or discontinuance of this Site.

#### **- CONFIDENTIALITY AND SECURITY**

Portions of the Site Content are provided by third parties and not by SIMSA. The use of the Site and the Content is at your own risk and SIMSA assumes no liability or responsibility pertaining to the Content, your use of the Site or the Content, or the receipt, storage, transmission or other use of your information or personal information.

THE CONTENT ON THE SITE, PRODUCTS AND SERVICE AVAILABLE ON OR THROUGH THE SITE, MAY NOT BE ACCURATE, UP TO DATE, COMPLETE, ERROR FREE, OR UNTAMPERED, AND ARE NOT TO BE RELIED UPON. THE USER UNDERSTANDS THAT

#### **- LINKS TO THIRD-PARTY SITES**

This Site may contain links to other websites or webpages, or social networking sites or accounts, or other means to access websites that were not created by and are not maintained by SIMSA. Such links exist as a convenience to you. SIMSA does not assume responsibility for the accuracy or appropriateness of the information, data, opinions, advice, or statements contained at such other websites or webpages, or social networking sites or accounts, and when you access such other websites or webpages, or social networking sites or accounts, you are doing so at your own risk. In providing links to the other websites or webpages, or social networking sites or accounts, SIMSA is in no way acting as a publisher or disseminator of the material contained on those other websites or webpages, or social networking sites or accounts, and does not seek to monitor or control such other websites or webpages, or social networking sites or accounts. A link to another website or webpage, or social networking site or account, should not be construed to mean that SIMSA is affiliated or associated with same. SIMSA DOES NOT RECOMMEND OR ENDORSE ANY OF THE CONTENT, INCLUDING WITHOUT LIMITATION ANY HYPER-LINKS TO, OR CONTENT FOUND, ON OTHER WEBSITES OR WEBPAGES, OR SOCIAL NETWORKING SITES OR ACCOUNTS. The mention of another party or its product or service on this Site should not be construed as an endorsement of that party or its product or service.

#### **- DISCLAIMER OF WARRANTIES**

THE SITE IS PROVIDED "AS IS", "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND. SIMSA HEREBY DISCLAIMS ALL EXPRESS, IMPLIED, COLLATERAL OR STATUTORY WARRANTIES, REPRESENTATIONS OR CONDITIONS, WHETHER WRITTEN OR ORAL, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, SECURITY, RELIABILITY, COMPLETENESS, QUIET ENJOYMENT, ACCURACY, QUALITY, INTEGRATION OR FITNESS FOR A PARTICULAR PURPOSE. SIMSA DOES NOT WARRANT THAT THE SITE WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, SIMSA EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT ANY DATA OR INFORMATION PROVIDED TO USER IN CONNECTION WITH USER'S USE OF THE SITE (INCLUDING ALERTS AND RECOMMENDATIONS) IS ACCURATE, OR CAN OR SHOULD BE RELIED UPON BY USER FOR ANY PURPOSE WHATSOEVER.

#### **- LIMITATION OF LIABILITY**

IN NO EVENT WILL SIMSA, ITS AFFILIATES, AGENTS, LICENSORS, SUPPLIERS, THIRD PARTIES ENGAGED BY SIMSA, THIRD PARTIES THAT ASSIST SIMSA, OR THEIR RESPECTIVE DIRECTORS, OFFICERS OR EMPLOYEES BE LIABLE FOR:

ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, AGGRAVATED, ECONOMIC OR CONSEQUENTIAL DAMAGES, HOWSOEVER CAUSED IN RELATION TO THE CONTENT OR THE SITE, OR OTHERWISE IN RELATION TO ANY ACTION OR OMISSION BY SIMSA;

ANY DAMAGES OR LOSSES WHATSOEVER, HOWSOEVER CAUSED, RESULTING FROM: SUBMISSIONS POSTED BY THIRD-PARTIES, INDEPENDENT INDIVIDUALS OR SIMSA. SIMSA DOES NOT RECOMMEND OR ENDORSE ANY OF THE CONTENT OR PRODUCTS/SERVICES OF THIRD-PARTIES, AND INFORMATION POSTED AS RECOMMENDATIONS, RATINGS, COMMENTS, ETC. ON THE SITE BY SIMSA OR ANY OTHER PARTY;

ANY DAMAGES OR LOSSES WHATSOEVER, HOWSOEVER CAUSED, RESULTING FROM: INTERRUPTIONS, SUSPENSIONS, DELAYS, OMISSIONS, VIRUSES, WORMS, INFECTIONS, TROJAN HORSES, CONTAMINATING CODE, DATA CORRUPTION, FAILED MESSAGES, TRANSMISSION ERRORS OR PROBLEMS; TELECOMMUNICATIONS SERVICE PROVIDERS; LINKS TO THIRD-PARTY SOCIAL NETWORKING SITES OR ACCOUNTS, WEBSITES OR WEBPAGES; THE INTERNET BACKBONE; CLOUD ERRORS OR PROBLEMS; PERSONAL INJURY; THIRD-PARTY CONTENT, PRODUCTS OR SERVICES (INCLUDING OF THIRD PARTIES ENGAGED BY OR ASSISTING SIMSA); SUBMISSIONS OR OTHER INPUT YOU SUBMIT TO THIS SITE; DAMAGES OR LOSSES CAUSED BY YOU, OR YOUR RESPECTIVE EMPLOYEES, AFFILIATES, AGENTS OR SUBCONTRACTORS; LOSS OF USE OR LACK OF AVAILABILITY OF FACILITIES INCLUDING COMPUTER RESOURCES, ROUTERS AND STORED DATA; THE USE OR INABILITY TO USE THIS SITE OR THE CONTENT; ANY OTHER WEBSITE OR WEBPAGE, OR SOCIAL NETWORKING SITE OR ACCOUNT, ACCESSED TO OR FROM THIS SITE; OR EVENTS BEYOND THE REASONABLE CONTROL OF SIMSA, EVEN IF SIMSA OR ANY OF ITS LAWFUL AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIM;

IN NO CASE WILL SIMSA'S, ITS AFFILIATES', AGENTS', LICENSORS', SUPPLIERS', THIRD PARTIES' (ENGAGED BY OR THAT ASSIST SIMSA), AND THEIR RESPECTIVE DIRECTORS', OFFICERS' AND EMPLOYEES' CUMULATIVE TOTAL LIABILITY ARISING UNDER ANY CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, TORT, NEGLIGENCE, GROSS NEGLIGENCE, OR OTHERWISE, BE FOR MORE THAN THE AMOUNT, IF ANY, PAID BY YOU UNDER THIS AGREEMENT TO ACCESS THIS SITE, IN THE YEAR IN WHICH THE CLAIM AROSE. OUR LIABILITY IS LIMITED TO THE FULLEST EXTENT OF THE LAW.

#### **- INDEMNITY**

You agree at all times to indemnify, defend and hold harmless SIMSA, its agents, suppliers, affiliates, third parties engaged by or that SIMSA, and their respective directors, officers and employees against all actions, proceedings, costs, claims, damages, demands, liabilities and expenses whatsoever (including legal and other fees and disbursements) sustained, incurred or paid by SIMSA directly or indirectly in respect of:

- (a) any information, submissions, or any other Content you provide on or through this Site or which is sent to SIMSA by email or other correspondence, or any activities you engage in through the Site as a member or in any other capacity;

- (b) any third party claims whatsoever, including but not limited to any intellectual property infringement claims, other infringement of rights claims, or privacy or personal information claims, that relate to any information, submissions or any other Content you provide on or through this Site, or any activity or omission relating to the Site by you; or
- (c) your use or misuse of any Content, or this Site.

## – GENERAL PROVISIONS

**Amendments.** SIMSA reserves the right, in its discretion, to amend this Agreement at any time by posting amendments on the Site. You are responsible for periodically reviewing the amendments on the Site and you are deemed to be aware of such amendments. If you do not agree to the amended terms and conditions, you shall immediately stop using the Site. Access to the Site or use of the Site after any amendments have been posted shall constitute your acknowledgement and acceptance of the amended terms and conditions of this Agreement.

**Termination.** This Agreement is effective until terminated by SIMSA with or without cause, in SIMSA's sole and unfettered discretion. SIMSA may terminate this Agreement without notice to you if you fail to comply with any of its terms. Any such termination by SIMSA shall be in addition to and without prejudice to such rights and remedies as may be available to SIMSA, including injunction and other equitable remedies.

**Survival.** The disclaimers, limitations on liability, ownership, termination, interpretation, your license to SIMSA, your assignment to SIMSA, your warranty and the indemnity provisions of this Agreement shall survive the termination or expiry of this Agreement.

**Assignment.** Any assignment of this Agreement is conditional upon the assignee agreeing in writing to be bound to the terms of this Agreement which shall be binding upon and enure to the benefit of the parties' successors and assignees.

**Governing Law, Jurisdiction and Venue.** This Agreement and any action related thereto shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and the federal laws of Canada applicable therein, without regard to conflicts of law principles.

**Arbitration.** You and SIMSA agree that arbitration will be the exclusive forum and remedy at law for any disputes arising out of or relating to this Agreement or your use of this Site, including any disputes concerning the validity, interpretation, violation, breach, or termination of this Terms of Use. Arbitration under this Terms of Use will be held in Saskatoon, Saskatchewan, Canada and will be held in accordance with the most recently effective commercial arbitration rules released by the Canadian arbitration association, or other applicable law. The arbitrator will have the discretion and authority to award costs and attorneys' fees to the prevailing party and will decide the arbitration proceeding under the legal principles and laws of the Province of Saskatchewan. The losing party will be required to pay the prevailing party's reasonable attorneys' fees. You and SIMSA agree that both parties will be required to be present within the Province of Saskatchewan in order to perform their obligations under this Agreement. You and SIMSA agree to submit to the personal jurisdiction of any such arbitrator or arbitration proceeding.

**Entire Agreement.** This Agreement is the entire understanding and agreement of the parties, and supersedes any and all previous and contemporaneous understandings, agreements, proposals or representations, written or oral, between the parties, as to the subject matter hereof. Only a writing signed by both parties may modify it.

**Severability and Waiver.** In the event that any provision of this Agreement is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of this Agreement will remain in full force and effect. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. All waivers must be in writing. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**Relationship of the Parties.** The parties to this Agreement are independent contractors, and no agency, partnership, franchise, joint venture or employee-employer relationship is intended or created by this Agreement.