

Purchase Order Terms and Conditions

The following terms and conditions are deemed accepted by all suppliers which provide the Purchaser with goods or services or both in response to a purchase order issued by the Purchaser. All purchase orders are conditional upon a supplier's acceptance of these terms and conditions and the Supplier will be deemed to have agreed to be bound by these terms and conditions by accepting the Purchase Order or supplying the Deliverables.

Article 1 – Interpretation

1.01 Defined Terms

When used in the Contract, the following words or expressions have the following meanings:

“Conflict of Interest” includes, but is not limited to, any situation or circumstance where the Supplier's other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under the Contract;

“Confidential Information” includes information, including Personal Information, whether oral, written, visual, electronic, or in any other form, relating in any way to the Purchase Order or other information made available by the Purchaser to the Supplier at any time in connection with the Contract or the Deliverables which is identified as confidential or which would reasonably be considered as being confidential but does not include information which (a) is or becomes public knowledge other than by breach of the Contract; (b) has been independently developed by the Supplier or acquired from a source which was not subject to a duty of confidentiality to the Purchaser;

“Contract” means the Purchase Order and includes the following:

- (a) these Purchase Order Terms and Conditions;
- (b) the procurement documents, if any; and
- (c) the scope of work and specifications, if any.

“Deliverables” means the goods and any related services as described in the Purchaser Order;

“Indemnified Parties” means the Purchaser, its elected officials, directors, officers, agents, employees and volunteers;

“Industry Standards” include, but are not limited to: (a) the provision of all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by parties providing goods or services similar to the Deliverables in similar situations in Canada and; (b) adherence to commonly accepted norms of ethical business practices, which will include the Supplier establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by the Purchaser;

“Personal Information” means as defined in the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as in effect at any time;

“Purchase Order” means the purchase order for the Deliverables issued by the Purchaser to the Supplier containing, among other things, a description of the Deliverables and includes these Purchase Order Terms and Conditions;

“Purchaser” means **The Corporation of the City of Kingston**;

“Rates” means the price, in Canadian funds, to be charged for the Deliverables, as set out in the Contract, representing the full amount chargeable by the Supplier for the provision of the Deliverables, including but not limited to: (a) all applicable duties and taxes; (b) all labour and material costs; (c) all travel costs; (d) all costs associated with insuring, transporting and delivering the Deliverables to the Purchaser at its address specified on the Purchase Order; (e) all insurance costs; and (f) all other overhead, including any fees or other charges required by law;

“Related Entities” include directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors;

“Requirements of Law” means all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions, and agreements with all authorities that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them, including but not limited to:

- *Human Rights Code*, R.S.O. 1990, c. H.19;
- *Ontario Regulation 191/11: Integrated Accessibility Standards Regulation, made under the Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11;
- *Ontario Regulation 429/07: Accessibility Standards for Customer Service, made under the Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11;
- *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M54;
- *City of Kingston By-law Number 134-2000, A By-law to Establish Purchasing Policies and Procedures*;
- *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1;

“**Supplier**” means the supplier identified on the face of the Purchase Order.

Article 2– General Terms

2.01 Governing Law

The Contract will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. In the event the Purchaser initiates any legal proceedings in any court or tribunal regarding the Deliverables or the Supplier’s performance under the Contract, the Supplier hereby irrevocably attorns to the jurisdiction of the court or tribunal of the Purchaser’s choice.

2.02 Entire Contract

The Contract, together with any additional documentation referenced in the Purchase Order, sets forth the entire agreement between the parties with regard to the provision of the Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise, existing between the parties. In the event of any ambiguity, conflict or inconsistency between these Purchase Order Terms and Conditions and any terms and conditions contained in any acknowledgement, order or any other form issued by the Supplier, these Purchase Order Terms and Conditions will prevail. Changes to the Contract will only be made by the issuance of an amended Purchase Order by the Purchaser to the Supplier.

In the event that the Supplier provides the Purchaser with the Supplier’s terms and conditions, those terms and conditions will not form part of the Contract unless the Purchaser expressly agrees in writing to be bound by all or any of those terms and conditions.

2.03 Notices

Notices will be in writing and will be delivered by mail, personal delivery or email and will be addressed to the contact identified on the face of the Purchase Order.

2.04 Severability

If any term or condition of the Contract, or the application thereof, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition (except to the extent to which it is held invalid or unenforceable), will not be affected.

2.05 No Indemnities from Purchaser

Nothing in the Contract, whether express or implied, will directly or indirectly increase the indebtedness or contingent liabilities of the Purchaser beyond the obligation to pay the Rates in respect of Deliverables accepted by the Purchaser.

2.06 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control, such as natural disasters, acts of war, insurrection and terrorism. If a party seeks to rely on a force majeure event, that party shall immediately notify the other party of the reason for and anticipated period of any delay.

2.07 Survival

This paragraph and paragraphs 2.01, 2.04, 2.05, 2.09, 2.10, 3.02, 3.05, 4.02, 6.03, 6.04 will survive the termination or expiry of the Contract, as will any other provision which by its nature ought to reasonably survive such termination or expiry.

2.08 No Implied Waiver

The failure of either party at any time to require performance by the other party of any provision of the Contract will in no way affect that party's right thereafter to otherwise enforce such provision or to seek damages for the breach thereof.

2.09 Confidentiality

The Supplier shall safeguard and keep confidential all Confidential Information and shall use such Confidential Information only for the purposes of carrying out its obligations under the Contract.

The Supplier shall, within five (5) business days (or such other period agreed to in writing by the Purchaser) after a direction by the Purchaser to do so, return or destroy all Confidential Information in the Supplier's possession, custody or control.

If the City or the Supplier is required by law to disclose Confidential Information, it shall promptly notify the other party so that party may take action to prevent the disclosure.

The Supplier specifically acknowledges that the Purchaser is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56, and that the Purchaser may be compelled by law to disclose certain Confidential Information.

2.10 Privacy

Where the Supplier collects, obtains, uses or discloses Personal Information in connection with the Contract, the Supplier shall:

- (a) comply with all applicable privacy law; and
- (b) take all appropriate measures against the unauthorized or unlawful collection, use or disclosure of Personal Information and against accidental loss, destruction of, or damage to Personal Information.

Article 3 – Relationship between Purchaser and Supplier

3.01 Supplier's Power to Contract

The Supplier represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other party that would in any way interfere with the rights of the Purchaser under this Contract.

3.02 Supplier Not a Partner, Agent or Employee

The Supplier will have no power or authority to bind the Purchaser or to assume or create any obligation or responsibility, express or implied, on behalf of the Purchaser. The Supplier shall not hold itself out as an agent, partner or employee of the Purchaser. Nothing in the Contract will have the effect of creating an employment, partnership or agency relationship between the Purchaser and the Supplier or any of the Supplier's Related Entities.

3.03 Non-Exclusive Contract, Work Volumes

The Purchaser makes no representation regarding the volume of goods and services required under the Contract and reserves the right to contract with other parties for goods and services the same as or similar to the Deliverables.

3.04 Reservation of Rights

The Purchaser reserves the right to: (a) order additional units Deliverables or purchase parts of the Deliverables as will best serve the interests of the Purchaser in its opinion; (b) waive irregularities and technicalities in its sole discretion; and (c) set off or terminate the Contract where the Purchaser determines that the Supplier is in any way indebted to the Purchaser.

3.05 Responsibility of Supplier

The Supplier agrees that it is liable for the acts and omissions of its Related Entities. The Supplier shall advise its Related Entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract.

3.06 No Subcontracting or Assignment

The Supplier shall not subcontract or assign the whole or any part of the Contract without the prior written consent of the Purchaser. Such consent will be in the sole discretion of the Purchaser and subject to the terms and conditions that may be imposed by the Purchaser. Nothing in the Contract, or in such consent, creates a contractual relationship between any subcontractor and the Purchaser.

3.07 Conflict of Interest

The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) give notice to the Purchaser without delay of any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the Purchaser to resolve any Conflict of Interest.

3.08 Contract Binding

The Contract can be enforced by and is binding upon the parties and their successors, executors, administrators and their permitted assigns.

The Supplier is deemed to have agreed to be bound by these terms and conditions by accepting the Purchase Order or supplying the Deliverables. The Supplier is deemed to have satisfied itself as to all warranties, Industry Standards, Requirements of Law, conditions and other matters which it might encounter in supplying the Deliverables and acknowledges that the Purchaser shall not be liable for any claim based on the Supplier's lack of knowledge or satisfaction of such.

3.09 Disputes

In the event of a dispute as to whether Deliverables meet the requirements of the Contract or the Purchaser, the decision of such agent as the Purchaser may appoint will be final and binding.

3.10 Cumulative Remedies

The rights and remedies of the Purchaser in the Contract are cumulative and in addition to any other rights and remedies at law or in equity.

Article 4 – Performance by Supplier

4.01 Supply of Deliverables

In consideration of the payment of the Rates by the Purchaser, the Supplier shall supply the Deliverables to the City in accordance with, and as specified in, the Contract.

4.02 Deliverables Warranties

The Supplier represents and warrants that:

- (i) it shall provide the Deliverables diligently in a professional and competent manner by persons qualified and skilled in their occupation in accordance with: (a) the Contract; (b) Industry Standards; and (c) the Requirements of Law;

- (ii) the Deliverables will be free from defects in material, workmanship and design, suitable for the purposes intended (whether or not detailed specifications are set out in the Contract), in compliance with all applicable specifications and free from liens or encumbrance on title;
- (iii) the Supplier shall supply everything necessary for the supply of the Deliverables;
- (iv) the Rates have been arrived at independently from the prices of any other prospective vendor and are in all respects fair and without collusion or fraud;
- (v) the Rates are an upset limit above which the City is not required to pay and that, where there is any uncertainty as to price, the unit price will govern;
- (vi) the City shall not be liable for any costs incurred by the Supplier in negotiating terms provided for in the Contract;
- (vii) it has made no attempt, and shall make no attempt, to induce any other person to not present similar Deliverables to the Purchaser for the purpose of restricting competition;
- (viii) it has the experience, training and equipment to ensure that the Deliverables will be provided safely and in accordance with all applicable health and safety legislation;
- (ix) it has control over the workplace and is fully responsible for the health and safety of all employees and other persons in the workplace;
- (vii) the production, use or sale of the Deliverables purchased under this Contract will not infringe any patent, copyright or trademark;
- (x) the Supplier shall assign to the Purchaser all manufacturer's warranties for Deliverables not manufactured by or for the Supplier, and shall take all necessary steps as required by such third party manufacturers to effect assignment of such warranties to the Purchaser; and
- (xi) the Supplier shall incorporate accessibility design and features in the Deliverables unless, prior to the supply of the Deliverables to the City, the Purchaser has received written notice that the City has determined that it is not practicable to incorporate accessibility design and features in the Deliverables.

The Supplier acknowledges that the Purchaser is relying on the foregoing warranties in its decision to award the Contract to the Supplier.

4.03 Remedies for Breach of Warranty

In the event of a breach of any of the warranties in this Contract, and without prejudice to any other right or remedy available to the Purchaser, the Supplier shall, at the Purchaser's option and the Supplier's expense, refund any payment by the Purchaser to the Supplier under this Contract, correct, replace or re-perform the affected Deliverables, or re-perform the affected Deliverables, within a reasonable period of time, as determined by the Purchaser, but in any event no later than 60 days after notice from the Purchaser to the Supplier of such warranty breach. The Supplier shall be responsible for all associated costs of such. If the Supplier fails to correct, replace or re-perform the affected Deliverables within the time period provided above, the Purchaser may have the affected Deliverables corrected, replaced or re-performed at the Supplier's expense.

4.04 Delivery

Unless otherwise stated on the face of the Purchase Order, the Supplier shall deliver all Deliverables F.O.B. Destination, Freight Prepaid. No transportation or delivery charges of any kind, including, without limitation, packing, storage, cartage or customs brokerage charges, will be paid by the Purchaser, unless specifically provided for on the face of the Purchase Order.

4.05 Packaging and Risk

The Supplier shall ensure that the Deliverables are suitably packed in such a manner as will ensure their safe transportation undamaged to their destination. The Deliverables will remain at the risk of the Supplier until the Deliverables are received by the Purchaser.

4.06 Inspection and Acceptance

Receipt of the Deliverables at the Purchaser's location does not constitute acceptance of the Deliverables by the Purchaser. The Deliverables are subject to the Purchaser's inspection and acceptance within a reasonable period of time after delivery. If any of the Deliverables, in the opinion of the Purchaser, are inadequately provided or require corrections, the Supplier shall make the necessary corrections at its own expense as specified by the Purchaser in a rectification notice.

4.07 Intellectual Property Rights

All intellectual property rights in and to each Deliverable will vest in the Purchaser free and clear of all liens and encumbrances on receipt of payment by the Purchaser for each Deliverable. To the extent that any Deliverables contain any intellectual property of the Supplier, the Supplier hereby grants the Purchaser a worldwide, royalty-free, non-exclusive, perpetual license to use, copy, modify and distribute such intellectual property as part of the Deliverables. The Supplier shall provide the Purchaser with all assistance

reasonably requested by the Purchaser to perfect the rights described herein, including obtaining all assignments and waivers of moral rights necessary or appropriate to vest the entire right, title and interest in the Deliverables in the Purchaser and its successors and assigns.

4.08 Time

Time is of the essence of this Contract.

4.09 Permits, Licenses, Consents, Approvals

The Supplier shall obtain all applicable permits, licenses, consents and approvals required for the Supplier to provide the Deliverables in accordance with the Contract.

4.10 Waiver of Lien Rights

Upon receipt from the Purchaser of amounts invoiced in accordance with Article 5, the Supplier waives and releases all rights to, and at its sole cost shall obtain the prompt removal of, any mechanics', repairer's, storer's, construction or other lien or encumbrance against the Purchaser or its property which then exist or may thereafter arise in relation to the Contract or Deliverables.

Article 5 – Payment for Deliverables

5.01 Payment According to Contract Rates

The Purchaser shall pay the Supplier for the Deliverables in accordance with the Rates within thirty (30) days of receipt by the Purchaser of a satisfactory invoice from the Supplier requesting payment for Deliverables that have been received and accepted by the Purchaser.

All invoices submitted by the Supplier must include the amount invoiced, exclusive of HST, and the amount of HST shown separately.

The Purchase Order number must appear on all documentation relating to the Contract, including, but not limited to, invoices and delivery/packing slips. Invoices that do not include the applicable Purchase Order number, item number and order description will not be processed, and will be returned to the Supplier until the appropriate information is provided.

5.02 No Expenses or Additional Charges

The Supplier shall pay all applicable taxes and duties, including excise taxes, incurred by or on the Supplier's behalf with respect to the Contract. There will be no charges payable by the Purchaser to the Supplier other than the Rates.

5.03 Withholding of Payment

The Purchaser may withhold payment of any invoiced amounts that are disputed in good faith until the parties reach an agreement with respect to such disputed amounts and such withholding of disputed amounts will not constitute a breach of the Contract and the Supplier shall not charge any on interest on such amounts.

Article 6 – Insurance and Indemnification

6.01 Insurance

The Supplier shall put into effect commercial general liability insurance, in a form acceptable to the Purchaser, in an amount not less than \$5,000,000, with the Purchaser as an additional insured. The Supplier shall also put into effect such other additional insurances as required by the Purchaser. The Supplier shall provide the Purchaser with evidence of insurance upon request.

6.02 Workplace Safety and Insurance Board

The Supplier shall at all times be registered with the Workplace Safety and Insurance Board under the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sched. A, and shall maintain its accounts with the Workplace Safety and Insurance Board in good standing. Upon request by the Purchaser, the Supplier shall provide the Purchaser with evidence of such good standing.

6.03 Supplier Indemnity

The Supplier agrees to indemnify and save harmless the Indemnified Parties from all losses, claims, damages, actions, causes of action, costs and expenses that the Indemnified Parties may sustain, incur, suffer or be put to at any time, either before or after this Contract ends, including for infringement of third-party intellectual property rights or for third party bodily injury (including death), personal injury and property damage, arising or occurring, directly or indirectly, by reason of any act or omission of the Supplier or its Related Entities, except to the extent that such liability arises out of the independent acts or omissions of the Indemnified Parties.

6.04 Limitation of Liability

In no event will the Purchaser be liable to the Supplier or any other person for any indirect, incidental, consequential or punitive damages, including any lost profit, data, goodwill, or business opportunity for any matter relating to the Contract.

Article 7 – Termination

7.01 Immediate Termination of Contract

The Purchaser may immediately terminate the Contract for any reason upon giving notice to the Supplier, notwithstanding that the Supplier might not be in default under the Contract, and in such event the Purchaser shall be liable to the Supplier only for the payment of the Rates in respect of Deliverables accepted by the Purchaser up to the date of termination. The express rights of termination in the Contract are in addition to and shall in no way limit any rights or remedies of the Purchaser under the Contract, at law or in equity.

Upon such a termination notice being given by the Purchaser, the Supplier shall immediately cease supplying Deliverables in accordance with and to the extent specified in the termination notice. The Purchaser may, at any time or from time to time, give one or more additional termination notices with respect to any or all Deliverables or parts of Deliverables not terminated by any previous termination notice.