

## ACCEPTANCE OF PURCHASE ORDER

- I. The purchase order, duly accepted by the Vendor, shall constitute the contract between the parties. Any provisions in the Vendor's acceptance inconsistent with these Terms and Conditions, including without limitation, any proposal, quotation or other similar document, shall be deemed to be waived by the City.
- II. The City's purchase order together with these Terms and Conditions, (collectively, the "**Purchase Order**") is an offer by the City to purchase Goods and/or Services. Acceptance of the Purchase Order shall be deemed given by the Vendor upon the earlier of acceptance, confirmation, shipment or other performance. The Purchase Order is conditional upon the Vendor's complete acceptance of the Purchase Order without modifications or additions. Unless specifically agreed to in a writing by an authorized representative of the City, no additional or different term or provision (except additional warranties given by the Vendor) of any quotation, invoice, acknowledgement or other form supplied by the Vendor shall become part of the Purchase Order.
- III. Any specifications, or other data attached to any quotation, provided by the Vendor shall be deemed to be a part thereof. Quotations provided by the Vendor are not intended as and shall not be construed as constituting an offer to the City unless specifically indicated on the front of such document. Any quotation of the Vendor is subject to, and shall not become binding upon the City until actual receipt by the Vendor of the City's Purchase Order based on all the Terms and Conditions stated herein.
- IV. **Application of Terms and Conditions.** Unless superseded by other related documents and agreements, these Terms and Conditions are included in the Purchase Order document and will apply to and be binding on the Vendor of any Goods and/or Services to the City.
- V. **Complete Agreement.** The Purchase Order, and any specifications thereto, shall constitute the entire agreement between the parties for the Goods and/or Services covered by the Purchase Order.
- VI. **Purchase Order Number.** The City Purchase Order number(s) must appear on all bills of lading, waybills, invoices, progress billing, packing slips, containers, packages and correspondence.
- VII. **WHMIS.** If applicable to any of the Goods purchased, WHMIS labels are to be affixed to individual products. Current MSDS sheets are to be supplied with the initial shipment.
- VIII. **F.O.B Destination.** Unless otherwise agreed to in writing, all delivered terms are to be "Free on Board (F.O.B.) destination – freight prepaid. All other freight charges are to be prepaid and charged on the invoice. If cash discount is not permitted on freight charges, then specific notation of this must be shown on the invoice.
- IX. **Delivery.** The Vendor will, at its expense, arrange transportation and delivery of any equipment and materials required by the Vendor to deliver the Goods and/or Services of the Purchase Order. Packing lists must be delivered with the shipment containing the City's Purchase Order number.

- X. **Vendor Terms Rejected.** In the event that the Vendor issues an invoice, packing slip, sales receipt, or any similar document to the City, the City accepts the document on the express condition that any terms and conditions in it which constitute terms and conditions which are in addition to or which establish conflicting terms and conditions to these Terms and Conditions are expressly rejected by the City.
- XI. **Termination of Purchase Order.** The City reserves the right to cancel the Purchase Order, by giving written notice to the Vendor, if, in the opinion of the City, the Goods and/or Services being provided by the Vendor fail to meet the needs of the City.

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 In these Terms and Conditions:

- (a) “**City**” means the City of Burnaby;
- (b) “**Fees**” means the price quoted by the Vendor and accepted by the City for the provision of the Goods and/or Services, unless otherwise agreed by the parties in writing, except applicable taxes;
- (c) “**Goods**” means materials, equipment, supplies, commodities and/or equipment;
- (d) “**Purchase Order**” means the numbered document issued by the City to the Vendor identifying the nature of the Goods and/or Services to be provided by the Vendor under these Terms and Conditions and the amounts payable therefore and confirming the purchase of such Goods and/or Services;
- (e) “**Vendor**” means the consultant, contractor, supplier, or other provider of Goods and/or Services, its officers, agents, servants, employees, vendors and subvendors who act on behalf of the entity under these Terms and Conditions with the City; and
- (f) “**Services**” means the provision of labour only or supply and installation services as described generally in the Purchase Order including anything and everything required to be done for the fulfilment and completion of the Purchase Order.

## 2. GOODS AND SERVICES

- 2.1 The Vendor covenants and agrees to provide the Goods and/or Services in accordance with the Purchase Order. The Goods and/or Services provided will meet the specifications and scope set out in the Purchase Order. Upon receipt of the Purchase Order, the Vendor shall ensure that all pertinent details are correct and, in the event of any discrepancies on the Purchase Order, the Vendor shall contact the City immediately.
- 2.2 The City may from time to time, by written notice to the Vendor, make changes to the Goods and/or Services. The Fees will be adjusted as applicable by written agreement of the City and the Vendor according to the Fees set out in the Purchase Order.

Any specifications, drawings, notes, instructions, engineering notices, or technical data expressly referred to in the Purchase Order shall be deemed to be incorporated herein by reference as if fully set forth herein.

- 2.3 The Vendor will, if required in writing by the City, provide additional Goods and/or Services on the same terms and conditions of the Purchase Order, subject to any additional fees for such additional Goods and/or Services which will generally correspond to the fees set out in the quotation. The Vendor will not provide any additional Goods and/or Services in excess of the Goods and/or Services requested in writing by the City.
- 2.4 The Vendor will provide Goods and perform the Services with that degree of care, skill and diligence normally provided by a qualified and experienced practitioner performing services similar to the Services, and on the understanding that the City is relying on the Vendor's experience and expertise. The Vendor represents that it has the expertise, qualifications, resources, and relevant experience to supply the Goods and/or Services.

### **3. TIME SCHEDULE**

- 3.1 The Vendor will provide to the City the Goods and/or Services upon receipt of the Purchase Order in accordance with the time schedule set out in the Purchase Order.
- 3.2 Time is of the essence.
- 3.3 The City's work schedules are based upon delivery by the Vendor to the City by the date specified on the face of the Purchase Order. If delivery of items or rendering of services is not completed by the time promised, the City shall have the right to terminate the Purchase Order by notice, effective when received by the Vendor, as to Goods not yet shipped and/or Services not yet rendered and to purchase substitute goods or services from other sources and charge the Vendor with any loss incurred thereby.
- 3.4 If the Vendor determines for any reason that the Vendor cannot meet the delivery date on the face of the Purchase Order, the Vendor shall promptly notify the City in writing of such delay and the expected duration of the same.

### **4. FIRM PRICES**

- 4.1 Prices shown on the Purchase Order are firm and not subject to escalation unless otherwise noted. Unless otherwise indicated on the Purchase Order, any federal, provincial sales, use, or similar taxes billed must be separately stated and identified.
- 4.2 The price(s) stipulated on the Purchase Order are those amounts agreed for the provision of the Goods and/or Services stipulated. No adjustment(s) to these agreed amounts will be accepted by the City unless prior approval has been given by the City to the Vendor prior to receipt of the Goods or performance of the Services. Payment by the City of the Fees will be full payment for the Goods and/or Services and the Vendor will not be entitled to receive any additional payment from the City.

- 4.3 For greater certainty, costs of general management, non-technical supporting services and general overhead are deemed to be covered by the Fees and will not be subject to additional payment by the City. The Fees shall also include without limitation all costs of boxing, packing, crating, and loading and unloading of the Goods at the prescribed destination.

## 5. INVOICE AND PAYMENT

- 5.1 The Vendor shall invoice the City for Goods and/or Services delivered to and accepted by the City. The invoice must be submitted to the City's accounting department, complete with the Purchase Order number, description of the Goods and/or Services, unit prices, extended totals, GST and PST (if applicable) shown separately.
- 5.2 The City shall pay the invoice via [Electronic Funds Transfer](#) (EFT) within thirty (30) calendar days after delivery of a proper and complete invoice and acceptance of the Goods and/or Services.
- 5.3 The Vendor shall pay any and all accounts for labour, (including Workers' Compensation, Employment Insurance assessments and wage and salary deductions required by law), services and materials used by them during the fulfillment of the Purchase Order as and when such accounts become due and payable, and shall furnish the City with proof of payment of such accounts in such form and as often as the City may request. Should payment of such accounts not be made when and as the same become due, the City shall be at liberty to pay the same and all monies so paid by the City shall be charged to the Vendor.
- 5.4 If the City reasonably determines that any portion of an Invoice is not payable, then the City will so advise the Vendor.

## 6. MATERIALS AND WORKMANSHIP

- 6.1 The Vendor represents, warrants and guarantees that the Goods supplied under this Purchase Order are fit for the particular purpose or use for which they were purchased, and will perform in accordance with specifications. The Vendor represents, warrants and guarantees that the work is, and will be, free from all defects arising from faulty construction, manufacturing, installation, materials or workmanship in any part of the Goods and/or Services being supplied which appear within the longer of twelve (12) months from the date of:
- (a) Acceptance - for materials/equipment; or
  - (b) Commencement of Use - for construction and other services, or such other period specified in the Purchase Order documents.
- 6.2 If the City determines the Goods or any part do not conform to these warranties, the City shall notify the Vendor within a reasonable time after such discovery, and the Vendor shall then promptly correct such nonconformity at the Vendor's expense. Goods used to correct a non-conformity shall be similarly warranted for one year from the date of installation.
- 6.3 **Design.** The Vendor represents, warrants and guarantees that the Goods and/or Services are, and will be, free from all defects arising at any time from faulty design or application in any part of the Goods and/or Services that has been provided by the Vendor.

- 6.4 **Inspection.** All Goods are subject to inspection and approval upon delivery. If, upon inspection of the Goods received, any departure from the specifications is revealed, the entire shipment may be rejected and returned at the Vendor's expense and this Purchase Order may be cancelled without cost to or further obligation on the part of the City.
- 6.5 **Work Approval.** The whole of the Goods and/or Services and the manner of performing the same shall be done to the entire satisfaction and approval of the City and the City shall be the sole judge of the Goods delivered and/or Service performed in respect of both quantity and quality, and the City's decision with regard to Goods and/or Services shall be final and binding upon the Vendor.
- 6.6 **Personnel and Subcontractors.** The Vendor will provide professional personnel who have the qualifications, experience and capabilities to provide the Goods and/or perform the Services.
- Any sub-contractors or sub-contract under these Terms and Conditions, in whole or in part, are subject to the City's prior written approval.
- The Vendor will preserve and protect the rights of the City with respect to any Services performed under sub-contract and incorporate the Terms and Conditions of the Purchase Order into all sub-contracts as necessary to preserve the rights of the City under the Purchase Order. The Vendor will be as fully responsible to the City for acts and omissions of sub-contractors and of persons directly or indirectly employed by them as for acts and omissions of sub-contractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Vendor.
- 6.7 **Work Practices and Procedures.** The work of this Purchase Order must satisfy all Federal, Provincial and Municipal legislation and guidelines and must be in compliance with all Ministry of Labour and/or Workers' Compensation Board (WCB) regulations respecting work practices and procedures.
- 6.8 **Workers' Compensation.** The Vendor must be in good standing with the Workers' Compensation Board (WCB) of BC. The Vendor will submit to the City a Clearance Letter from WCB confirming that the Vendor is currently in good standing.
- 6.9 **Prime Contractor.** The Vendor will be the 'prime contractor' as defined by WCB for all work awarded in accordance with Workers' Compensation Board regulations.
- 6.10 **Business License.** Where the Purchase Order contracts for the provision of labour only or supply and installation Goods and/or Services the Vendor will obtain and maintain throughout the term of the Purchase Order a valid City of Burnaby business license.

## 7. TITLE

- 7.1 Title to any and all of the Goods shall not pass to the City until such time as the Goods are inspected and accepted by the City. The City will endeavour to notify the Vendor within forty-eight (48) hours of receipt, of any damage or discrepancies found.

- 7.2 The Vendor hereby sells, assigns and transfers to the City the right, title and interest required for the City to use and receive the benefit of all the reports, drawings, plans, designs, models, specifications, computer software, concepts, products, designs or processes or other such work product produced by or resulting from the Services rendered by the Vendor. This section does not give the City the right to sell any such work product to any third party and the City may sell the work product only with the prior approval of the Vendor. The Vendor may retain copies of the work product.
- 7.3 The Vendor will deliver the Goods and completion of the Services free and clear of all liens and encumbrances in the manner and to the destination stipulated on the Purchase Order. In the event of the Vendor's failure to meet this condition, the Vendor will, on written notice from the City, forthwith return all monies paid by the City on account of this Purchase Order and, in addition, the City may by written notice terminate the Purchase Order without liability, and in such event, in addition to the above, the Vendor will be liable for any and all expenses or losses incurred by the City resulting from such failure.

## 8. CONFIDENTIALITY

- 8.1 The contents of this Purchase Order and any information pertaining to the City, its customers, or individuals, which is obtained by the Vendor as a result of the work, is confidential and must not be disclosed without prior written authorization from the City. The Vendor agrees to and will keep strictly confidential any information supplied to, obtained by, or which comes to the knowledge of the Vendor as a result of the performance of the Goods and/or Services and the Purchase Order, and will not, without the prior express written consent of the City, publish, release, disclose or permit to be disclosed any such information to any person or corporation, either before, during or after termination of the Purchase Order, except as reasonably required to complete the Goods and/or Services.

## 9. INDEMNITY AND INSURANCE

- 9.1 **Indemnification.** The Vendor shall indemnify and save harmless the City and its elected officials, officers, servants, employees, volunteers, and agents from and against all claims, demands, proceedings, suits, losses, damages, costs and expenses of whatsoever kind or nature (including but not limiting the generality of the foregoing, in respect of death, injury, loss or damage to any person or property) arising in any way out of or connected with the Goods and/or Services supplied by the Vendor under this Purchase Order, except to the proportionate extent that such actions, claims, demands, proceedings, suits, losses, damages, costs and expenses were caused by the fault of the indemnified parties or any of them.
- 9.2 **Patent and Copyright Infringement.** The Vendor shall indemnify and hold the City harmless against all claims, liabilities, losses, damages, judgements, awards and costs (including reasonable legal fees and expenses) incurred in the defence of any claim brought against the City by third parties alleging that the City's use of any Vendor supplied equipment, materials, software, and documentation infringes upon or misappropriates any patent, copyright, or trade secret rights.

- 9.3 **Insurance.** Prior to the commencement of the work, the Vendor shall provide proof of general liability insurance as specified in:
- (a) Attachment A – Contractor Insurance Requirements and Attachment A1 – Certificate of Insurance; and
  - (b) Attachment B – Consultant’s Insurance Requirements and Attachment B1 – Certificate of Insurance.

These minimum insurance requirements must be maintained throughout the term of the Purchase Order.

## **10. DEFAULT AND TERMINATION**

- 10.1 In the event the Vendor does not ship the Goods by the shipping date specified in the Purchase Order, or does not deliver the Goods by the delivery date specified in the Purchase Order, then:
- (a) the City reserves the right to terminate the Purchase Order, in whole or in part, and in the event of such termination no payment will be owing by the City on account of the Purchase Order and the Vendor will be liable for any and all expenses or loss resulting from such failure or delay and will return all monies paid by the City; or
  - (b) if the City does not terminate the Purchase Order for late delivery or performance, the City may deduct and setoff from any payments owing to the Vendor all additional costs the City reasonably incurs on account of the late delivery or performance.
- 10.2 The City may by written notice at any time cancel the Purchase Order with respect to Goods which, as of the date of cancellation, have not been shipped.
- 10.3 The City may at any time and for any reason by written notice to the Vendor terminate the Purchase Order before the completion of all Goods and/or Services, such notice to be determined by the City at its sole discretion. Upon receipt of such notice, the Vendor will perform no further Goods and/or Services other than the work which is reasonably required to complete the Goods and/or Services. Despite any other provision of these Terms and Conditions, if the City terminates the Purchase Order before the completion of all the Goods and/or Services, the City will pay to the Vendor all amounts owing under the Purchase Order for Goods and/or Services provided by the Vendor up to and including the date of termination, plus reasonable termination costs in the amount as determined by the City in its sole discretion. Upon payment of such amounts no other or additional payment will be owed by the City to the Vendor, and, for certainty, no amount will be owing on account of lost profits relating to the portion of the Goods and/or Services not performed or other profit opportunities.
- 10.4 The City may terminate the Purchase Order for cause as follows:
- (a) If the Vendor is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of its insolvency, or if a receiver is appointed because of its insolvency, the City may, without prejudice to any other right or remedy the City may have, terminate the Purchase Order by giving the Vendor or receiver or trustee in bankruptcy written notice; or

- (b) If the Vendor is in breach of any term or condition of the Purchase Order, and such breach is not remedied to the reasonable satisfaction of the City within five (5) days after delivery of written notice from the City to the Vendor, then the City may, without prejudice to any other right or remedy the City may have, terminate the Purchase Order by giving the Vendor further written notice.
- 10.5 If the City terminates the Purchase Order as provided by Section 10.4, then the City may:
- (a) enter into contracts, as it in its sole discretion sees fit, with other persons to complete the Goods and/or Services;
  - (b) withhold payment of any amount owing to the Vendor pursuant to the Purchase Order for the performance of the Goods and/or Services;
  - (c) set-off the total cost of completing the Goods and/or Services incurred by the City against any amounts owing to the Vendor under the Purchase Order, and at the completion of the Goods and/or Services pay to the Vendor any balance remaining; and
  - (d) if the total cost to complete the Goods and/or Services exceeds the amount owing to the Vendor, charge the Vendor the balance, which amount the Vendor will forthwith pay.
- 10.6 The City will not accept nor be responsible for any restocking charges for any Goods shipped to the City and then, for whatever reason, returned to the Vendor pursuant to the Purchase Order. The Vendor is to bear all costs including shipping and handling of returned Goods.
- 10.7 If the Vendor is in default of any of its obligations under the Purchase Order, then the City may without terminating the Purchase Order, upon five (5) days written notice to the Vendor, remedy the default and set-off all costs and expenses of such remedy against any amounts owing to the Vendor. Nothing in these Terms and Conditions will be interpreted or construed to mean that the City has any duty or obligation to remedy any default of the Vendor.
- 11. MISCELLANEOUS**
- 11.1 **Dispute Resolution.** The parties will make reasonable efforts to resolve any dispute or claim arising out of the Purchase Order, or related to the Purchase Order (“**Dispute**”) using the following dispute resolution procedures:
- (a) **Negotiation.** The parties will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.
  - (b) **Mediation.** If all or any portion of a Dispute cannot be resolved by good faith negotiations within thirty (30) days, either party may by written notice to the other party refer the matter to mediation. Within seven (7) days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of a mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will

continue to negotiate in good faith to resolve the Dispute through mediation. The place of mediation will be Burnaby, British Columbia. Each party will equally bear the costs of the mediator and other out-of-pocket costs, and each party will bear its own costs of participating in the mediation.

- (c) Litigation. If within ninety (90) days of the request for mediation the Dispute is not settled, or if the mediator advises that there is no reasonable possibility of the parties reaching a negotiated resolution, then either party may without further notice commence litigation.
- 11.2 **Ownership of Proposals and Freedom of Information.** All documents, including proposals and quotations, submitted to the City become the property of the City. They will be received and held in confidence by the City, subject to the provisions of the *Freedom of Information and Protection of Privacy Act*.
- 11.3 **Successor in Interest.** Whenever the City is not the ultimate consumer of the Goods or Services, all rights, benefits and remedies conferred upon the City are for the express benefit of the City and the City's successor(s) in interest.
- 11.4 **Binding on Successors.** This Purchase Order shall operate and take effect for the benefit of, and be binding upon the City and the Vendor and their respective successors and, in the case of the City, its assigns, and in the case of the Vendor, its permitted assigns.
- 11.5 **Assignment.** This Purchase Order, or any part of it, or any benefit or interest in it, shall not be assigned by the Vendor without the prior written consent of the City and shall be deemed not to be an asset of the Vendor in the event of bankruptcy.
- 11.6 **Force Majeure.** The Vendor shall not be liable for any excess costs if failure to perform is due to strike or lockout beyond the control of the Vendor, or Acts of God. The City shall not be liable where work sites are not available due to strike or lockout beyond the control of the City, or Acts of God.
- 11.7 **Governing Law.** This Purchase Order will be governed by and be in accordance with the laws of the Province of British Columbia.
- 11.8 **Compliance with Environmental Laws.** The Vendor shall comply, and cause any other person acting under its authority or control to comply, in all material respects, with all environmental laws (including, but not limited to, obtaining any required permits or similar authorities) relating to the Goods and/or Services being supplied.
- 11.9 **Respectful Workplace and Professional Conduct.** The Contractor shall ensure that all personnel performing services under this Contract maintain a professional and respectful workplace and comply with all applicable WorkSafeBC requirements related to workplace health and safety, bullying and harassment prevention, discrimination, and workplace violence. The City may require the Contractor to take corrective action, including the removal of personnel, where conduct is inconsistent with these requirements. Failure to comply with this section may be considered a breach of the Contract and may result in corrective actions or remedies available to the City under the Contract, including suspension of work, removal of personnel, or termination of the Contract



**PURCHASE ORDER TERMS AND CONDITIONS**

**- END OF PURCHASE ORDER TERMS AND CONDITIONS -**