

## Standard Terms and Conditions for Purchase Orders (PO)

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### 1. APPLICATION OF TERMS AND CONDITIONS

These Terms and Conditions are incorporated into any duly issued City of Kelowna (the "City") PO will apply to, and be binding on, the identified Supplier on the PO.

### 2. COMPLETE CONTRACT

The PO, including the following terms and conditions, the specifications hereto and any additional terms and conditions incorporated into and attached hereto, shall constitute the entire agreement between the parties for the goods and/or services covered by the PO. No revisions or modifications of the terms of the PO shall be binding on the City unless given in writing by an authorized employee or agent of the City and confirmed by an official amendment to the PO.

These Terms and Conditions are superseded when a duly executed contract between the parties takes precedence.

### 3. REQUIRED DOCUMENTATION

Failure to meet these requirements may result in the goods being returned at the Supplier's cost or invoices being rejected.

1. The PO number must be shown on all related invoices, shipping papers, transportation bills, packages, packing lists and correspondence.
2. A separate invoice must be generated for each shipment or delivery.
3. A packing list is to be included with each shipment.
4. Where applicable, serial numbers are to be shown on the invoice including serial numbers of trade-in equipment.
5. The Supplier will provide the appropriate labels and Material Safety Data Sheets (MSDS) for WHMIS regulated products.
6. No product containing asbestos shall be supplied at any time without written authorization.

### 4. PRICE AND PRICE ADJUSTMENTS

The price(s) agreed to by the City and the Supplier may not be adjusted unless accepted in writing by an authorized officer, employee or agent of the City.

### 5. INVOICES AND PAYMENT

All invoices shall be sent to:

**Accounts Payable at:** [FinanceAP@kelowna.ca](mailto:FinanceAP@kelowna.ca)

Unless otherwise stated, payment terms are net thirty (30) days from the invoice date.

Prices are to include all packing, handling, duties and are otherwise all-inclusive.

Taxes are to be shown separately on all invoices.

### 6. SUBSTITUTIONS

The substitution of product and/or materials will not be accepted unless it conforms to the City specifications and is equal or better in performance, durability, availability and value. A substitution must be authorized in writing by an authorized officer, employee or agent of the City before it is provided.

## **7. DELIVERY AND/OR COMPLETION**

Delivery of the goods and/or completion of the services will be made free and clear of all liens and encumbrances within the time frame, and to the destination stipulated by the City.

In the event of failure to meet this Condition, the City may, at its sole discretion, cancel the purchase of the goods and/or services without liability or penalty, and the Supplier will be held liable for any and all expenses or losses resulting from such failure. The City will also be entitled to the return of all monies paid by the City with respect to the purchase.

The Supplier will ensure and fully comply with the Transportation of Dangerous Goods Act and Regulations when shipping goods to the City.

## **8. CUSTOMS**

For any shipments originating outside of Canada, the Supplier shall attach all required customs documents to the shipment. Payment of duties will be as per the terms of the PO. The City's Custom Broker Contact Information:

Summit Customs Brokers,

1621 Bertram Street, Kelowna, BC, V1Y 2G5.

Phone 250 762-0414, Fax 250 762-2423

## **9. ORDER FULFILLMENT**

Time is of the essence. The Supplier must immediately advise the Buyer identified on the PO of a shortage or delay of any kind. If delivery of goods and services is not completed by the delivery date, the City reserves the right to terminate this PO in whole or in part and to purchase substitute goods and services elsewhere and charge the Supplier with any incidental or consequential damages that might be incurred.

## **10. EXPEDITING, INSPECTION AND ACCEPTANCE**

All goods and/or services may be subject to expediting, inspection and testing by the City and/or its representative and, in the event that the goods and/or services are defective in material or workmanship or otherwise not in accordance with the description or specifications, the City will have the right to reject the goods and/or services or require their correction.

The City will notify the Supplier of the rejection of any goods and/or services which are defective in material or workmanship or otherwise not in accordance with the description or specifications. All such rejected goods and/or services will be held subject to disposition at the Suppliers risk and expense. No acceptance by, or on behalf of, the City will release the Supplier of its obligations under guarantees as further stated hereunder.

Transfer of title will occur at time of final inspection and acceptance by the City.

## **11. WARRANTY**

Without limitation to any additional warranties provided by the Supplier, whether indicated on the PO or otherwise provided, the Supplier warrants that:

1. all goods shall be of merchantable quality and free from defects in workmanship and materials;
2. all goods shall strictly conform to applicable samples, specifications and drawings;
3. all goods and services shall be fit for the purpose intended by the City;
4. all goods shall be free and clear of all liens, charges and encumbrances;
5. the goods and services shall comply with the standards set forth by applicable federal, provincial, municipal and industry regulatory agencies;
6. the shipping and handling of any hazardous material will be made in accordance with all applicable laws and regulations; and

7. the goods and services shall comply with all applicable environmental protection laws and regulations.

Unless a longer warranty period is specified on the PO or is otherwise provided, the foregoing warranty shall be valid for one year from the date of acceptance of the goods and services by the City. If at any time prior to the expiration of any applicable warranty period, any weakness, deficiency, failure, breakdown or deterioration in workmanship or material should appear or be discovered in the goods and services furnished by the Supplier, or if the goods and services do not conform to the terms and conditions of the PO, the City may at its option:

1. require the Supplier to promptly replace, redesign or correct the defective and non-conforming goods and services at no expense to the City, or
2. the City may replace or correct the defective goods and services and charge the Supplier with all expenses incurred by the City. The Supplier agrees to indemnify and save harmless the City, its members, officers, employees, assigns, agents, clients and the public from any liability, loss, cost and expense arising either directly or indirectly, from breach of any warranty given by the Supplier hereunder.

## **12. CANADIAN STANDARDS ASSOCIATION (CSA) AND ELECTRICAL SAFETY**

All items produced as a result of the PO must meet or exceed CSA standards where this standard applies.

Any electrical equipment used in performance of the PO must be certified by an accredited certification organization acceptable to the City. All costs of approval will be at the Supplier's expense.

## **13. SOFTWARE**

It is the Supplier's responsibility to ensure that the City has all licenses required to use any software that may be supplied by the Supplier pursuant to the PO.

## **14. PERMITS AND LICENSES**

The Supplier, their employees, agents and vehicles shall have and maintain valid permits and licenses as required by law for the execution of services detailed in the PO.

The Supplier shall conform to all federal, provincial, and city acts and regulations that may apply to the operation of the PO. The Supplier is required to obtain and pay for all necessary permits, licenses and inspection fees.

Certified copies of required permits/licenses will be made available upon request by the City.

## **15. INSURANCE**

All Suppliers/Contractors providing services to the City are required at a minimum to carry the following insurance:

### **TYPE OF INSURANCE**

### **LIMIT OF LIABILITY**

- |   |                                 |
|---|---------------------------------|
| 1. Comprehensive General Liability which includes:  |                                 |
| • Products/Completed Operations;  | Bodily Injury & Property Damage |
| • Blanket Contractual;  | \$2,000,000 event/aggregate     |
| • Contractor's Protective;  |                                 |
| • Personal Injury;  |                                 |
| • Contingent Employer's Liability;  |                                 |
| • Broad Form Property Damage  |                                 |
| • Non-Owned Automobile; Cross Liability Clause.   |                                 |
| 2. Automobile Liability   | Bodily Injury & Property Damage |
| Please submit APV47   | \$2,000,000 inclusive           |
| 3. Any Deductible or Reimbursable Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Supplier. |                                 |

## **16. WORKSAFE BC**

Any Supplier providing services to the City will strictly comply with all rules and regulations under the Worker's Compensation Act or any successor legislation and will provide a letter of good standing from WorkSafeBC prior to commencement of Work at the designated site(s).

The Supplier agrees that it is the "Prime Contractor" for the purposes of the Worker's Compensation Act and Regulations, unless otherwise advised and accepted in writing by an authorized officer, employee or agent of the City.

## **17. INDEMNIFICATION**

The Supplier shall be liable for all direct and consequential losses, damages, costs and expenses (including legal fees and disbursements on a solicitor and own client basis) incurred or suffered by the City, its past and present elected officials, officers, employees and agents (the "Indemnitees") including but not limited to damage to or loss of property, loss of use of property, and injury to or death of a person or persons resulting from the negligent acts, errors or omissions of the Supplier in its performance of this Contract, save and except to the extent that such losses, damages, costs and expenses are as a result of the negligent acts, errors or omissions of the Indemnitees and are actionable and sustainable against the Indemnitees pursuant to British Columbia law.

The Supplier shall defend, indemnify and hold harmless the Indemnitees from and against all claims, demands, actions, proceedings and liabilities whatsoever, and all losses, damages, costs and expenses (including legal fees and disbursements on a solicitor and own client basis) incurred in connection therewith, resulting from the negligent acts, errors or omissions of the Supplier in its performance of this Contract, save and except to the extent that such claims, demands, actions, proceedings, liabilities, losses, damages, costs or expenses arise out of the negligent acts, errors or omissions of the Indemnitees and are actionable and sustainable as against the Indemnitees pursuant to British Columbia law.

The Supplier's obligations under this section do not limit or affect any other rights or remedies the City may have against the Supplier in relation to the Supplier's performance or breach of this Contract.

This section shall survive termination of this Contract.

## **18. LIABILITY FOR BREACH**

In the event that the Supplier breaches this Contract, and regardless of the City's rights under Section 28 of this Contract, the Supplier shall be liable to the City for all direct and consequential losses, damages, costs and expenses (including legal fees and disbursements on a solicitor and own client basis) incurred or suffered by the City as a result of the Supplier's breach..

## **19. BUSINESS REGISTRATION**

All Suppliers conducting business with the City will have a valid City of Kelowna or multi-region business licence if required as per City of Kelowna Business License and Regulation Bylaw No. 7878.

## **20. WAIVER AND LIMITATIONS OF LIABILITY**

The Supplier hereby waives and disclaims any right of action or claim against the City (other than for payment of the purchase price set forth on the PO) for any liability, loss, cost and expense arising directly or indirectly from its supply of the goods and services listed on the PO.

If, regardless of the foregoing, the City becomes liable on any basis to the Supplier its liability shall not in the aggregate exceed the purchase price set forth on the PO.

## **21. CONFIDENTIALITY**

Technical information, specifications, drawings, designs, building and floor plans and other documentation relating to the business or activities of the City disclosed by the City to the Supplier pursuant to this PO shall be held in strict confidence by the Supplier and shall remain the exclusive property of the City and may not be copied or reproduced without the express written consent of the City.

## **22. CONFLICT OF INTEREST**

It is the Supplier's sole responsibility to disclose to the City if any Council member for the City or any person who was a Council member for the City at any time during the previous 6 months, has or will have a direct or indirect pecuniary interest in this order with the City.

## **23. INTELLECTUAL PROPERTY**

The Supplier shall defend, indemnify and hold harmless the City, its members, officers, employees, agents, clients, and the public from any expense, cost, loss, claim, damage, judgment or liability for infringement or alleged infringement of third party intellectual property rights including any patent, copyright, industrial design, trademark or trade secret with respect to the goods and services and their process of manufacture. The Supplier shall at its own expense defend or assist in the defence of, at the City's option, any action in which such infringement is alleged.

The Supplier irrevocably grants to the City an unrestricted licence for the City to use and make copies of for the City's purposes and activities any work whatsoever generated by or on behalf of the Supplier in performing the Services in which copyright may exist, including all drawings, plans, specifications, reports and other documents produced by or for the Supplier in connection with the Services and the foregoing license shall include the right to adopt, use and modify such work for any purpose and the Supplier hereby waives any moral rights the Supplier may have in relation to such work. Without limiting the foregoing, the Supplier irrevocably grants to the City the unrestricted licence for the City to use for the City's purposes and activities all technical information and intellectual property, including inventions, conceived or developed, or first actually reduced to practice, in performing the Services. For clarity, the licences granted by this section shall survive the expiry or earlier termination of this Contract.

## **24. GOVERNING LAW**

This Purchase Order will be governed by, and construed according to, the laws of the Province of British Columbia, Canada and the Supplier agrees to attorn to the courts of British Columbia.

## **25. NO PROMOTION OF RELATIONSHIP**

The Supplier must not disclose or promote its relationship with the City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials without the express prior written consent of the City.

## **26. ASSIGNMENT**

No right of interest in this PO shall be assigned by either party without the written consent of the other and no delegation of any obligation owed, or of the performance of any obligation by either the City or Supplier shall be made without the written consent of the other party.

## **27. CHANGES/MODIFICATIONS/TERMINATION**

The City reserves the right at any time, to cancel or terminate this PO in whole or in part by written or verbal notice confirmed in writing or to make changes in any one or more of the following: quantity, specifications, methods of shipment or packing, and place or timing of delivery. If any such change causes a change in the cost of or the time required for performance of this PO, an equitable adjustment shall be made in the price or delivery schedule, or both. No agreement or understanding to modify this PO shall be binding on the City unless in writing and authorized by the City's authorized agent.

## **28. FORCE MAJEURE**

The Supplier is not liable for failure to perform the obligations as set out in the PO as a result of acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, war, labour dispute, strike, lockout. If the Supplier asserts Force Majeure as an excuse for failure to perform their obligations, they must prove that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that the Supplier substantially fulfilled all non-excused obligations, and that the City was timely notified of the likelihood or actual occurrence of the event which invoked the force majeure.