



Hamilton

## PURCHASE ORDER CONDITIONS

### 1. ACCEPTANCE OR ACKNOWLEDGEMENT

1.1 This P.O. shall become a contract when,

1.1.1 the City issues an award letter in a public procurement process; or

1.1.2 the City receives from the Vendor written acceptance of this P.O.; or

1.1.3 the Vendor ships Goods, performs Services or undertakes Work (in part or in whole) ordered under this P.O.

1.2 These P.O. terms and conditions are deemed to be understood, agreed upon and binding on both the Vendor and the City of Hamilton (the "City") [collectively referred to as the "Parties"].

#### Contract Documents and Order of Priority:

1.3 Where a public procurement process has been issued the RFT, RFP, RFPQ, RFRC or other document issued by the City (the "Tender") is deemed to form a part of this P. O. along with any award letter that may be issued, the Vendor's Tender Submission and any addendum or any other schedules to the Tender shall constitute the Contract between the Parties.

In this circumstance, the terms and conditions of the Tender shall prevail and take priority to this P.O. except where a term or condition set out herein is not otherwise addressed or included in the Tender.

1.4 Where a formal written contract has been entered into between the Parties, the terms and conditions of that formal written contract shall form the Contract between the parties and shall prevail and take priority against this P.O.

1.5 Where a Tender has not been issued and a formal written contract has not been entered into between the Parties, this P.O. and any Vendor quotes or schedules referred to in it shall form the Contract between the Parties with the P.O. terms and conditions prevailing.

1.6 No other terms and conditions, whether oral or written, shall have any force or effect unless specifically agreed to in writing by both the Vendor and City.

1.7 None of the conditions contained on a Vendor's standard or general printed or electronic conditions of sale shall apply unless explicitly agreed to by the City and set forth in this P.O.

### 2. DEFINITIONS

2.1 "Good" means any product of any description required to be installed, supplied or consumed in order to complete the Work.

2.2 "Procurement Policy" means the procurement policies approved by City Council, as amended from time to time and includes procurement procedures and guidelines approved by the City's Director of Financial Services & Corporate Controller.

2.3 "Service" means a service of any description required in order to complete the Work, whether commercial, industrial, trade or otherwise, and includes all professional, technical and artistic service, the transporting, acquiring, supplying, storing and otherwise dealing in a Good.

2.4 "Work" means the whole of the work, the supply and delivery of a Good, the delivery and performance of any Service, material, matter and thing required to be completed, supplied, mentioned or referred to in performing or executing the work in



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full in accordance with the requirements set out in the Tender or P.O.

### 3. VENDOR QUOTES

Reference in this P.O. to a Vendor quote does not constitute or imply an acceptance of the terms of that quote unless they are expressly adopted herein. Any terms and conditions in the quote that amend, add to or that are inconsistent with the terms and conditions contained in either the Tender or this P.O. shall be deemed to have no effect.

### 4. PRICE, INVOICES AND PAYMENT

#### Price:

4.1 Vendors shall not:

- 4.1.1 fill this P.O. at higher prices than identified in the Tender or the price last quoted (where no Tender has been issued) and in any event not invoiced without the City's consent;
- 4.1.2 charge for boxing, packing, crating, carting or loading, unless expressly agreed to in this P.O.;
- 4.1.3 charge for extras unless they have been ordered by the City and the price has been agreed upon, both of which must be confirmed in writing; and
- 4.1.4 charge for interest on unpaid amounts, unless specifically provided otherwise in the Tender, contract or on the face of this P.O.

#### Invoices:

4.2 The Vendor shall:

- 4.2.1 render a separate invoice for each order or shipment;
- 4.2.2 deliver an original of invoices and bills of lading to the addresses identified for such delivery on the P.O. with any cash discount terms

for prompt payment clearly identified on them; and

- 4.2.3 show the number of this P.O. on all invoices, packages, bills of lading, and all communications in reference to it.

#### Invoice Review:

4.3 The City shall be entitled to take up to thirty (30) business days from the date of its receipt of the invoice for review, inspection and confirmation of receipt of Goods or performance of Services.

#### Payment:

4.4 The terms of payment of any invoice shall be net 30 days.

4.5 All payment shall be made in accordance with the City's Procurement Policy in effect at the time of payment.

4.6 The City shall require the Vendor to sign up for Electronic Funds Transfer (EFT) where all payments are made as a direct deposit to a Canadian chartered bank.

#### Setoff:

4.7 The City shall have the right to satisfy any amount owing by it to the Vendor under this or any other P.O. by way of withholding, deducting and setting-off against any amount owing by the Vendor to the City.

#### Discount Terms:

4.8 If a discount is allowed for payment within a certain time:

- 4.8.1 the time for taking the discount will not begin to run until the later of either the date the City receives the invoice or the date of the delivery of the Goods;
- 4.8.2 if an invoice is returned for correction, the time for taking the discount will not begin to run until



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the date the City receives the corrected invoice; and

- 4.8.3 any cash discount terms for prompt payment shall be clearly identified on the invoice and bills of lading.

### **5. SHIPPING AND INSPECTION**

5.1 All Goods shall be shipped by the route designated by the City. Any additional shipping costs incurred by the City as a result of the Vendor failing to observe this condition shall be charged back to the Vendor's account.

5.2 Unless otherwise agreed in writing, all shipments are subject to inspection by the City. Delivery does not constitute acceptance unless the Goods have been inspected and approved by the City and all Goods remain subject to rejection by the City.

5.3 Over-shipments made by the Vendor are the Vendor's responsibility. The City reserves the right to reject and return, at the Vendor's expense, any Goods in excess of the quantity ordered.

### **6. REJECTION AND CORRECTION OF DEFECTS**

6.1 Defective Work, Services, Goods or equipment shall be corrected whenever discovered by either the City or the Vendor or when brought to the Vendor's attention.

### **7. CANCELLATION OR TERMINATION**

7.1 The City shall have the right to cancel this P.O., in whole or in part, at any time by providing written notice to the Vendor. If cancellation takes place, delivery shall be accepted at the agreed upon price for the Goods delivered or Service provided prior to the City providing the notice of cancellation.

7.2 In the event of a delay in the delivery of Goods, provision of Services or completion

of Work, the City may terminate this P.O. and hold the Vendor responsible for all damages incurred by the City.

### **8. VENDOR REPRESENTATIONS**

The Vendor shall:

8.1 perform the whole of the Services or deliver all of the Goods required to complete the Work as set out in the Tender, contract or P.O.;

8.2 undertake, perform and complete all of the duties, obligations and responsibilities identified in the Tender, contract or P.O. in a good professional manner according to the best standards of practice of the industry or trade in which the Vendor carries on business with all due diligence, skill and competence; and

8.3 perform the Contract with utmost expeditiousness, using qualified and experienced workers and to only alter the Goods supplied or the Services performed at the request of the City.

### **9. RISK**

If Services or Goods or both are being supplied, such other Goods remain at the complete risk, responsibility, and loss of the Vendor until this P.O. is fully completed. If damage, loss, theft, robbery or impairment occurs to any Goods, the Vendor shall replace such Goods at the Vendor's sole cost and expense. In the event the Vendor terminates or abandons the Services, either temporarily or permanently, the City may take all necessary steps to complete the Services and the Vendor is responsible for all damages incurred by the City.

### **10. INSURANCE**

10.1 Where the value of the Good, Service or Work meets or exceeds \$10,000, the following minimum insurance shall be maintained by the Vendor throughout the



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term of the P.O. (including any renewal thereof):

Commercial General Liability Insurance, including but not limited to bodily and personal injury liability, property damage, and non-owned automobile and having an inclusive limit of not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate and endorsed to include the City as additional insured.

10.2 The City may require proof of such insurance in the form of a certificate of insurance at any time. Failure to provide proof in a form satisfactory to the City may result in termination of the P.O.

### **11. INDEMNITY**

The Vendor shall indemnify, defend and hold the City (including its officials, officers, directors, employees, agents, affiliates, and representatives) [collectively referred to as the "Indemnified Party"] harmless against any and all claims, demands, costs (including legal costs on a substantial indemnity basis), penalties, fines, fees, royalties, damages (including indirect, special, remote, and/or consequential damages) and causes of action, including without limitation, proprietary or personal injury (including death) that arise from, either directly or indirectly, or relate to, any act or omission of the Vendor, its officials, directors, officers, employees, agents, affiliates, partners (general or limited), joint ventures, contractors, Sub-Consultants, and other representatives, in connection with the Vendor's responsibilities pursuant to this P.O. and all other contract documents, including without limitation, the carrying out or failure to carry out any obligation under this P.O., provision of any and all Goods, Services and Work, as well as any patent, trademark, or copyright infringement or breach of any intellectual property right, except to the extent that

same was caused by the negligence or wilful misconduct of the Indemnified Party.

### **12. ADVERTISING**

The Vendor shall not, except with the prior written consent of the City, release information relating to this P.O. for advertising, promotional, or technical purposes or otherwise give it publicity in any fashion, nor shall the name of the City be used for, or in connection with, any advertising or promotional purpose of the Vendor.

### **13. PATENTS AND COPYRIGHTS**

13.1 The Vendor shall defend, indemnify and save harmless the City from all and every claim for damages, royalties, or fees for the infringement of any patented invention or copyright occasioned by them in connection with Work done or material furnished by them under this P.O.

13.2 The Vendor shall ensure that no illegal commerce or gray market Goods are supplied to the City and the Vendor shall be deemed to have warranted that any Goods or Services supplied to the City are genuine and lawfully supplied.

13.3 The price set out in this P.O. shall include all payments made or to be made to any third party in respect of any right, patent, design, trademark or copyright used for the purpose of the Vendor performing its obligations under this P.O.

### **14. PERMITS, LICENSES AND APPROVALS**

14.1 The Vendor shall be responsible for applying for, obtaining and maintaining, at its own cost all necessary permits, licences, consents and approvals relating to the provision of Goods or Services in accordance with the Tender, contract or P.O.



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### **15. WSIB**

15.1 The Vendor shall comply with all requirements of the *Workplace Safety and Insurance Act, 1997*, or any successor legislation, its regulations and any directive issued by the Workplace Safety and Insurance Board ("WSIB") or the Workplace Safety and Insurance Appeals Tribunal ("WSIAT") including providing to the City as required during the term of this P.O. any reports or proof of good standing with the WSIB that may be required to continue to conduct business with the City and perform the Work of this P.O.

### **16. LIENS TO BE DISCHARGED**

16.1 The Vendor shall pay punctually all amounts owing to its suppliers in respect of all services and materials supplied by them with respect to this P.O., including any applicable interest, taxes, costs and other charges, and shall forthwith cause every lien preserved or perfected by any person with respect to this P.O. or the subject matter of this P.O. to be vacated or discharged, and as between the Vendor and the City all costs relating thereto shall be paid by the Vendor and shall be at its expense.

### **17. USE OF CITY PROPERTY AND CONDUCT OF EMPLOYEES**

17.1. Where any part of the Goods or Services are to be provided or carried out on property owned or occupied by the City, the Vendor shall use that property and require its employees and sub-contractors to use that property, only for such purposes as are reasonably within the scope of this P.O.; use reasonable care to avoid causing any damage to any person or thing on that property or any neighbouring property; comply, and cause its agents, directors, officers, employees and sub-contractors to comply, with the City's zero tolerance of violence policy.

17.2. The Vendor and its employees, agents, servants and sub-contractors shall neither bring onto nor allow the introduction or use of tobacco (except in strict compliance with the City's Smoking By-law), alcohol or illegal narcotics or controlled substances or any paraphernalia associated with any of these substances, upon any City property.

### **18. CONFLICT OF INTEREST**

18.1 The Vendor agrees to act diligently, honestly and in good faith and in the best interests of the City in discharging its obligations under this P.O. And in so doing shall notify and fully disclose to the City in writing any potential or actual conflict of interest that exists or may arise during its performance of any obligations under this P.O.

18.2 If the City determines that a conflict of interest exists, the City may, at its sole discretion, suspend or defer the Services, delivery of Goods or the Work until the conflict is removed to the satisfaction of the City or terminate this P.O. In which case, the Vendor shall be responsible and indemnify the City for all of the City's costs, expenses, losses and damages whatsoever which may be incurred or arise as a result of the Vendor's breach of this obligation including but not limited to all costs incurred to replace the Services, Goods or Work of the Vendor, all delay costs, legal and other professional service costs, and lost revenue and opportunities.

### **19. CONFIDENTIALITY OF INFORMATION**

19.1 Confidentiality of records and information of the City relating to this P.O. must be maintained at all times. Documentation and communications, written and verbal, related to this P.O., whether provided by the City or on the City's behalf, are deemed confidential unless expressly provided otherwise.



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19.2 This P.O. and information exchanged between the City and the Vendor in performance of them is subject to the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA") and (where they apply) the *Personal Health Information Protection Act* ("PHIPA") as well as the *Personal Information Protection and Electronic Documents Act, 2000, c. 5*. The Vendor shall strictly comply with any applicable requirements of such legislation.

19.3 All correspondence, documentation and information provided to the City or the City's representatives by the Vendor in connection with or arising out of this P.O. will become the property of the City and a record of the City. The foregoing records and this P.O. are subject to the provisions of the MFIPPA and PHIPA and the City's obligations thereunder and may be released pursuant to such Acts.

### **20. ASSIGNMENT**

The Vendor shall not assign or transfer this P.O. or any part thereof, without the written consent of the City, duly approved and executed.

### **21. GOVERNING LAW**

21.1 This P.O. and any schedules attached to it shall be governed by, enforced and interpreted in accordance with the laws of the Province of Ontario. The courts of the province of Ontario shall have sole jurisdiction. The Vendor agrees to attorn to the jurisdiction of the province of Ontario including all executions and processes issued therefrom.

21.2 The Vendor shall comply with all relevant federal, provincial and municipal statutes, regulations and by-laws. The Vendor is responsible for ensuring similar compliance by its suppliers and subcontractors.

### **22. CURRENCY**

All dollar amounts expressed herein shall be payable in Canadian currency unless expressly indicated otherwise in this P.O.

### **23. WAIVER**

The failure by either Party to enforce its rights hereunder shall not constitute a waiver of such rights or any other rights set out in this P.O.