

## PURCHASE ORDER TERMS AND CONDITIONS

### PRECEDENCE OF DOCUMENTS:

If there is a written contract for the sale and purchase of the goods or services referred to on the first page of this purchase order (the "Supply"), which written contract has been entered into prior to the issuance of this purchase order and is existing between the person or company to which this purchase order is addressed (the "Vendor") and the City of Vancouver (the "City") as of the time of the issuance of this purchase order, then this purchase order shall not be construed as an amendment to, or as a waiver of any item of, or as a contract supplementary to, such pre-existing contract (the "Contract"). Rather, in such event, the Contract shall govern the Supply, and, notwithstanding any other statement herein, the terms and conditions herein shall have no effect, except as may be expressly referred to in the Contract, and save that this purchase order may be used for the City's accounts payable and supplier-management purposes and that the City requests that the Vendor include the number of his purchase order on all invoices and other documents relating to the Supply and that the Vendor direct invoices for the Supply to the address set forth above under "Please bill to." If there is no Contract (as defined above), a contract will be formed on the terms and conditions stated in this purchase order upon the Vendor's execution of this purchase order or the commencement of performance of the Supply, in the manner and to the extent stated under "Offer and Acceptance" below.

### REQUIRED DOCUMENTATION:

Failure to meet these requirements may result in the goods and/or invoices being returned at the Vendor's cost.

- a. The purchase order number must be shown on all related invoices, shipping papers, transportation bills, packages, packing lists and correspondence.
- b. A separate invoice must be rendered for each shipment or delivery and mailed or delivered with the goods to the Department/Division/Branch shown on the front of the purchase order. All invoices must bear a unique reference (invoice) number.
- c. A packing list must be included with each shipment applied against this purchase order.
- d. Where applicable, serial numbers are to be shown on the invoice including serial numbers of trade-in equipment.
- e. The Vendor shall provide appropriate labels and material safety data sheets for WHMIS regulated products. No product containing asbestos shall be supplied at any time without written authorization.

### OFFER AND ACCEPTANCE:

The Vendor, by the execution of this purchase order or by the commencement of performance enters into a binding agreement of purchase and sale with the City of Vancouver (the "City") for the supply of the goods and services as listed on the face of this purchase order subject to these terms and conditions.

The City's placement of this purchase order with the Vendor is expressly conditioned upon the Vendor's acceptance of all the terms and conditions contained on, attached to, or expressly incorporated by reference in this purchase order.

Any terms and conditions proposed by the Vendor that are inconsistent with or in addition to the terms and conditions of this purchase order are void and of no effect, whether provided in an invoice, confirmation of purchase or other instrument.

### PAYMENT:

Payment by the City shall be made after final acceptance by the City of the goods and services, notwithstanding any previous passing of title to the goods.

### PRICES/TERMS OF SHIPMENT:

Unless otherwise noted on the face of the purchase order:

- a. prices and shipping terms are DDP (Incoterms 2000); and
- b. prices include all packing, handling, cartage, taxes, duties and are otherwise all-inclusive.

### DELIVERY:

Time is of the essence. The Vendor must advise immediately of any 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 purchase order in whole or in part and to purchase substitute goods and services elsewhere and charge the Vendor with any incidental or consequential damages that might be incurred.

### WARRANTY:

Without limitation to any additional warranties provided by the Vendor, whether indicated on the face of the purchase order or otherwise provided, the Vendor warrants that: (a) all goods shall be of merchantable quality and free from defects in workmanship and materials; (b) all goods shall strictly conform to applicable samples, specifications and drawings; (c) all goods and services shall be fit for the purpose intended by the City; (d) all goods shall be free and clear of all liens, charges and encumbrances; (e) the goods and services shall comply with the standards set forth by applicable federal, provincial, municipal and industry regulatory agencies; (f) the shipping and handling of any hazardous material will be made in accordance with all applicable laws and regulations; and (g) the goods and services shall comply with all applicable environmental protection laws and regulations.

Unless a longer warranty period is specified on the face of the purchase order 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 Vendor, or if the goods and services do not conform to the terms and conditions of this purchase order, the City may at its option (a) require the Vendor to promptly replace, redesign or correct the defective and non-conforming goods and services at no expense to the City, or (b) the City may replace or correct the defective goods and services and charge the Vendor with all expenses incurred by the City. The Vendor 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 Vendor hereunder.

### INSPECTION:

All goods and services are subject to inspection and approval by the City upon delivery. The City reserves the right to refuse acceptance of goods and services which are not in accordance with City's specifications or not in compliance with the Vendor's warranty (expressed or implied). Goods not accepted will be returned to the Vendor at the Vendor's expense. The City will not be deemed to have accepted goods and services by virtue of a partial or full payment for them and in no event unless and until the City gives the Vendor written confirmation of acceptance following the City's receipt, inspection and approval of the goods and services.

### PASSAGE OF TITLE/RISK:

Despite any other term of this purchase order, risk of loss or damage to the goods and services will remain with the Vendor until the receipt, inspection and written approval of the goods and services by the City.

### INSURANCE:

The Vendor shall purchase and maintain insurance appropriate for a prudent supplier of the goods and services. The Vendor shall provide proof of such insurance, if so requested by the City.

### INDEMNITY:

The Vendor agrees to indemnify and save harmless the City, its members, officers, employees, assigns, agents and clients from any liability, loss, cost and expense arising directly or indirectly from claims, proceedings and investigations ("Losses") advanced by or on behalf of third parties to the extent such Losses are caused or contributed to by any breach of this agreement by the Vendor or negligence or willful misconduct by the Vendor or other party for whom the Vendor is responsible.

### WAIVER AND LIMITATIONS OF LIABILITY:

The Vendor 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 face of this purchase order) for any liability, loss, cost and expense arising directly or indirectly from its supply of the goods and services listed on the face of this purchase order.

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

### WORKSAFEBC:

The Vendor shall maintain registration with WorkSafeBC and adhere to all WorkSafeBC practices relevant to the goods and/or services to be delivered by the Vendor under the terms of this purchase order.

### CITY SUPPLIED PROPERTY:

Title to any items which have been supplied to the Vendor by the City, or paid for by the City, in advance of delivery by the Vendor of the goods and services ordered on the face of the purchase order, shall at all time be vested in the City. The risk of loss for such items shall remain with the Vendor until delivery to the City of such items, in the same conditions as originally received by the Vendor. The Vendor hereby agrees to be responsible for any and all loss or damage to the City's property while such property is in its possession or control.

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 Vendor pursuant to this purchase order shall be held in strict confidence by the Vendor and shall remain the exclusive property of the City and may not be copied or reproduced without the express written consent of the City.

### INTELLECTUAL PROPERTY:

The Vendor 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 Vendor 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.

### COMPLIANCE WITH LAWS:

In accepting this purchase order, the Vendor represents that it has complied and will continue during the performance of this purchase order to comply with the provisions of all applicable third party contracts, and all applicable laws. The laws of British Columbia govern this agreement, the courts of British Columbia have exclusive jurisdiction over any disputes under it, and all provisions of the International Sale of Goods Act (BC) are specially excluded.

### NO PROMOTION OF RELATIONSHIP:

The Vendor 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.

### ASSIGNMENT:

This purchase order shall not be assigned or subcontracted by the Vendor without the prior written consent of the City.

### CHANGES/MODIFICATIONS/TERMINATION:

The City reserves the right at any time, to cancel or terminate this purchase order 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 purchase order, an equitable adjustment shall be made in the price or delivery schedule, or both. No agreement or understanding to modify this purchase order shall be binding on the City unless in writing and signed by the City's authorized agent.