



PURCHASING SECTION

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## **PURCHASE ORDER TERMS AND CONDITIONS**

### 1. Acceptance or acknowledgement

This purchase order including conditions becomes a contract when the purchaser receives a written acceptance hereof or upon the seller making shipment of the goods or part thereof ordered hereunder. The term goods include but is not limited to materials, components, and services. The seller by returning a written acceptance to the purchaser or by shipment aforesaid shall be deemed to understand and agree that the terms and conditions herein shall bind both parties. This purchase order and any schedules attached to this purchase order constitute the entire agreement between the parties and no other terms and conditions whether oral or written and whether precedent or subsequent in time shall have any force or effect unless agreed to in writing by both seller and purchaser. The failure of either party to enforce its rights hereunder shall not constitute a waiver of such rights or any other rights in this contract.

### 2. Seller quotations

Reference in this purchase order to the seller's quotation does not imply acceptance of any terms and conditions in such quotation unless they are expressly adopted herein. Any terms and conditions in such quotation which amend or add to, or are inconsistent with these terms and conditions, shall be deemed to be null and void and of no effect.

### 3. Processing of order

The seller understands and agrees as follows:

- (a) that this Purchase Order must not be filled at higher prices than quoted or last charged without advice;
- (b) that no charge will be allowed for boxing, packing or crating, carting or loading, unless expressly agreed to on the purchase order;
- (c) that it will show the purchase order number on all invoices, packages, bills of lading, etc., and all communications in reference thereto;
- (d) that it will render a separate invoice for each order or shipment.
- (e) that it will send invoices to office of mailing, indicating on invoices cash discount terms for prompt payment;
- (f) all goods must be shipped by the route designated by the purchaser and any additional freight or cartage costs incurred directly or indirectly through the seller failing to observe this condition will be charged to the seller's account.

#### 4. Inspection

Except as otherwise agreed in writing, all shipments shall be subject to final inspection by purchaser after receipt by purchaser at destination. Delivery to the purchaser is not to be an acceptance unless inspected and approved by purchaser subject to further rejection by:

1. Defective workmanship or goods rejected by the Purchaser within one year of the date of receipt at Destination, or
2. Latent defects, frauds and mistakes.

#### 5. Rejection

If any of the goods are found at any time to be defective in material, workmanship, quality, quantity or otherwise not in strict conformity with the specifications or requirements of this purchase order, the purchaser, in addition to any rights to which it may have under warranties or otherwise, shall have the right to reject and return such goods for full credit, all charges collect including incoming charges. Without limiting the foregoing right of rejection, the purchaser shall have the right to require prompt replacement, repair or correction of defective work or goods at seller's risk and expense. If the seller is unable or unwilling to effect such replacement, repair or correction, the purchaser may do so by using its own workmen, goods, or facilities or by outside contract, and shall be entitled to charge the seller for excess costs directly or indirectly occasioned thereby.

#### 6. Cancellation

The right is reserved to the purchaser to cancel at any time this purchase order in whole or in part upon notice to the seller. If cancellation takes place, delivery shall be accepted of all goods at the purchase order price completed prior to the notice of cancellation.

#### 7. Delay

In the event of delay in delivery or services, the purchaser may terminate the purchase order and hold the seller responsible for any damages.

#### 8. Risk

If services and/or other goods are being supplied, such other goods remain at the complete risk, responsibility, and loss of the seller until this purchase order is fully completed. If damage, loss, theft, robbery or impairment occurs to any goods, the seller shall replace such other goods at the seller's sole cost and expense. In the event the seller terminates or abandons the services, either temporarily or permanently, the purchaser may take all necessary steps to complete the services and the seller is responsible for all damages incurred by the purchaser.

#### 9. Over-shipment

All over-shipments made are the seller's responsibility. The purchaser reserves the right to reject and return, at the seller's expense, any goods in excess of the quantity ordered.

#### 10. Indemnity

The seller, the seller's employees, servants and agents will comply with all statutes and regulations of Canada and Ontario. Without the limitation of the foregoing, the purchaser relies upon the skill and judgment of the seller and the seller covenants and agrees that having

acquired full knowledge of the use, function, purchase and application of the goods to be supplied hereunder it shall include in its price for and forthwith advise the purchaser of any alterations which may be necessary to ensure that the goods are fit for the said use, function, purpose and application contemplated. The seller further covenants and agrees to indemnify and save harmless the purchaser from any and all claims, loss or damages (including special and consequential damage and damages for loss of use) arising directly or indirectly from any breach of the terms of this purchase order and from any claims, loss or damage of whatsoever nature and kind for injury to persons and the destruction of or damage to property arising directly or indirectly from the construction, installation and supply of goods to be furnished hereunder or from anything undertaken or done in fulfilling the provisions of this purchase order.

#### 11. Advertising

The seller shall not, except with the consent of the purchaser in writing, release information relating to this order for advertising, promotional, or technical purposes or otherwise give it publicity in any fashion, nor shall the name of the purchaser be used for, or in connection with, any advertising or promotional purpose of the seller.

#### 12. Patents

The seller agrees to indemnify and save harmless the purchaser from any claim or action arising from the alleged infringement of any patent or trademark or infringement of copyright as a result of the use or sale of these goods.

#### 13. Extras

No charges for extras will be allowed unless they have been ordered in writing by the purchaser and the price agreed upon.

#### 14. Compliance with laws

The purchaser and seller agree that this purchase order and any schedules attached to this purchase order shall be governed by and construed according to the laws of the province of Ontario and the courts of such province of Ontario shall have sole jurisdiction. The seller agrees to and attorns to the jurisdiction of the province of Ontario including all executions and processes issued therefrom.

#### 15. Property furnished by purchaser

Unless otherwise agreed in writing all tools, equipment or material of every description furnished to the seller by the purchaser or specifically paid for by the purchaser, and any replacement thereof or any materials affixed or attached thereto, shall be and remain the personal property of the purchaser. Such property, and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by the seller as “property of The Corporation of the City of Welland” and shall be safely stored separate and apart from the seller’s property and shall remain free of liens and encumbrances. The seller shall not substitute any property for the purchaser’s and shall not use such property except in filling the purchaser’s orders. The seller’s custody or control shall be held at the seller’s risk, shall be kept insured by the seller at the seller’s expense in an amount equal to the replacement cost with loss payable to the purchaser and shall be subject to removal at the purchaser’s written request, in which event the seller shall prepare such property for shipment and shall redeliver to the purchaser in the same condition as

originally received by the seller, reasonable wear and tear excepted the purchaser shall have the right at all reasonable times upon prior request to enter the seller's premises to inspect any and all such property.

16. Discount terms

Cash discount periods will be computed either from the date of delivery and acceptance of the goods ordered, or the date of receipt of correct and proper invoices, whichever date is later.

17. Hazardous goods

Goods must be transported by the seller or seller's agent in accordance with all relevant federal and provincial legislation covering the handling and transportation of all hazardous and dangerous goods.

18. Occupational health & safety

The Seller shall conduct all work in accordance with the most recent edition of the Occupational Health and Safety Act of Ontario and all applicable Regulations, Codes, Standards and Guidelines.

19. W.H.M.I.S.

Material safety data sheets or information sheets as regulated under W.H.M.I.S. must be made available and where goods are being shipped or delivered must accompany the goods as required by law.

20. Accessibility Standards for Customer Service

It is the **Seller's** responsibility to ensure that they and all sub-contractors hired under this Purchase Order are in full compliance with Section 6 of Ontario Regulation 429/07, Accessibility Standards for Customer Service made under the Accessibility for Ontarians with **Disabilities Act**, 2005 as may be amended from time to time.

21. Supplier Performance

Purchasing Services expects the highest possible performance from all our suppliers. Suppliers are evaluated on actual performance in service/delivery and completion schedules, ability to respond to urgent requests, quality of workmanship, quality of goods and services, adherence to specifications, terms and conditions and contract compliance. The supplier is expected to act in partnership with Purchasing Services to maintain price competitiveness, efficient, cost effective delivery of goods and services and be innovative in generating new ideas and introducing new products to serve the residents of the City of Welland.

22. Trades Personnel

All trades persons shall be certified trade personnel, qualified apprentices or labourers in the respective area of work for which they are employed and provided in proportion to the requirements of the applicable legislative requirements in the Province of Ontario. The City

reserves the right to reject personnel from working on the site that are deemed to be unqualified or inexperienced in the line of work for which they are employed.

### 23. Force Majeure

Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any global pandemic or widespread contagion, including without limitation Covid-19 or government declared emergency, or by reason of act of God, fire, natural disaster, act of government, or any other similar cause beyond the reasonable control of such party ("Force Majeure"), provided that such party gives the other party written notice thereof promptly and, in any event, within ten (10) days of discovery thereof. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended and shall, subject to the provisions below, remain suspended until such time as the Force Majeure event has ended (the "Suspension Period"). If the Suspension Period exceeds thirty (30) days from the receipt of notice of the Force Majeure event, the City may immediately terminate this Agreement and all obligations pursuant to the agreement shall end, except as to payment for any work or services performed prior to the date of the commencement of the Suspension Period. During the Suspension Period all ongoing obligations and any and all events set to occur during the Suspension Period shall, unless the City authorizes otherwise in writing, be cancelled without compensation.