



PURCHASE ORDER TERMS AND CONDITIONS

ARTICLE 1 – INTERPRETATION

1.01 Defined Terms

When used in the Contract, the following words or expressions have the following meanings:

“City” means the City of Nanaimo;

“Conflict of Interest” includes, but is not limited to, any situation or circumstance where the Supplier’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under the Contract;

“Contract” means the undertaking by the parties to perform their respective duties, responsibilities and obligations as provided in the Purchase Order and the Purchase Order Terms and Conditions;

“Deliverables” means all goods and services described in the Purchase Order;

“Indemnified Parties” means the City, its elected and appointed officials, directors, officers, agents, employees, and volunteers;

“Industry Standards” apply to, but are not limited to: (a) the provision of all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by parties providing goods or services similar to the Deliverables in similar situations in British Columbia; and (b) adherence to commonly accepted norms of ethical business practices, which shall include the Supplier establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by the City;

“Notice” has the meaning given in section 2.02 of the Purchase Order Terms and Conditions;

“Purchase Order” means the purchase order issued by the City to which these Purchase Order Terms and Conditions are attached;

“Rates” means the price, in Canadian funds, to be charged for the Deliverables, as set out in the Purchase Order;

“Related Entities” includes directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors.

“Requirements of Law” means any and all laws, enactments, statutes, codes, building codes, acts, ordinances, orders, decrees, injunctions, bylaws, rules, regulations, official plans, permits, licences, authorizations, directions, professional standards and specifications that are applicable to the provision of the Deliverables, as they are in force from time to time or in the latest current version, as the case may be;

“Supplier” means the person or entity identified as the supplier in the Purchase Order.

ARTICLE 2– GENERAL TERMS

2.01 Governing Law

The Contract shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein.

2.02 Notices

Any notice, direction, demand, approval, certificate or waiver (a “Notice”) shall be in writing and shall be delivered by mail, personal delivery or email address to the applicable address identified on the Purchase Order, or to such other address or email address of which notice has been given as provided in this section, to the attention of the applicable contact person identified on the Purchase Order.

A Notice, if delivered personally or by mail, shall be considered given on the day that it is delivered or, if sent by email, shall be considered given on the day that it is sent, provided that if in either case the day of delivery or sending is not a business day, then the Notice shall be considered given on the next following business day after delivery or sending, as the case may be. In this section, business day means a day other than a Saturday, Sunday or B.C. statutory holiday.

2.03 Time is of the Essence

Time shall be of the essence of this Contract.

2.04 Freedom of Information and Protection of Privacy Act

The Supplier acknowledges and agrees that the City is subject to the provisions of British Columbia’s *Freedom of Information and Protection of Privacy Act* (FOIPPA) under which the City may be obligated to provide a person with access to any record (as defined in FOIPPA) in the custody or under the control of the City and that the authority of the City to refuse to disclose a record containing third party confidential information is limited as set out in section 21 of FOIPPA.

2.05 Entire Agreement

This Contract is the entire agreement between the parties, and it terminates and supersedes all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of this Contract.

2.06 Amendment

This Contract may not be amended except by a written instrument signed by the City and the Supplier.

2.07 Waiver

Waiver of any default by either party shall be express and in writing to be effective, and a waiver of a particular default does not waive any other default.

2.08 Severability

If any term or condition of the Contract, or the application thereof, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition (except to the extent to which it is held invalid or unenforceable), shall not be affected.

2.09 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event of *force majeure*, including a labour dispute, strike, fire, unusual delay by common carrier, abnormal weather conditions, or any other cause beyond the party’s control other than those resulting from the party’s acts or omissions or breach of this Contract or financial hardship. If a party seeks to rely on a *force majeure* event, that party shall immediately notify the other party of the reason for the delay or



PURCHASE ORDER TERMS AND CONDITIONS

failure to perform and the anticipated period of any delay.

2.10 Survival

All obligations of each of the parties which expressly or by their nature survive termination or expiration of this Contract, will continue in full force and effect subsequent to and notwithstanding such termination or expiration and until they are satisfied or by their nature expires.

ARTICLE 3 – NATURE OF RELATIONSHIP BETWEEN CITY AND SUPPLIER

3.01 Supplier's Power to Contract

The Supplier represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other party that would in any way interfere with the rights of the City under this Contract. The Supplier represents and warrants that all known existing or imminently arising Conflict(s) of Interest have been disclosed to the City, in writing.

3.02 Supplier Not a Partner, Agent or Employee

The Supplier shall have no power or authority to bind the City or to assume or create any obligation or responsibility, express or implied, on behalf of the City. The Supplier shall not hold itself out as an agent, partner or employee of the City. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the City and the Supplier or any of the Supplier's Related Entities.

3.03 Responsibility of Supplier

The Supplier agrees that it is liable for the acts and omissions of its Related Entities. The Supplier shall advise its Related Entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract.

3.04 No Subcontracting or Assignment

The Supplier shall not subcontract or assign the whole or any part of the Contract without the prior written consent of the City. Such consent shall be in the sole discretion of the City and subject to the terms and conditions that may be imposed by the City. Nothing in the Contract, or in such consent, creates a contractual relationship between any subcontractor and the City.

3.05 Conflict of Interest

The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) give notice in writing to the City without delay of any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the City to resolve any Conflict of Interest.

3.06 Contract Binding

The Contract shall enure to the benefit of and be binding upon the parties and their respective successors, executors, administrators and their permitted assigns.

ARTICLE 4 – PERFORMANCE BY SUPPLIER

4.01 Standard of Care

The Supplier shall provide to the City the Deliverables with such degree of care, skill and diligence as would reasonably be expected from a supplier qualified in British Columbia to perform services and deliver goods similar in scope, nature and complexity as the Deliverables. The Supplier represents and warrants that it has the expertise, qualifications, resources, and relevant experience to supply the Deliverables.

4.02 Deliverables Warranty

(a) The Supplier represents and warrants that the Deliverables:

(i) shall be provided diligently in a professional and competent manner by persons qualified and skilled in their occupation in accordance with:

- (a) the Contract;
- (b) Industry Standards; and
- (c) the Requirements of Law; and

(ii) shall be free from defects in material, workmanship and design, suitable for the purposes intended, in compliance with all applicable specifications, and of merchantable quality.

(b) The Supplier represents and warrants that the use or sale of the Deliverables purchased under this Contract will not infringe any patent, copyright or trademark.

4.03 Inspection and Acceptance

(a) The Deliverables are subject to inspection and acceptance by the City. The City will inspect the Deliverables within a reasonable period of time following delivery of the Deliverables to the City. The City will accept the Deliverables by providing notice of its acceptance of the Deliverables to the Supplier of such inspection, unless:

- (i) the Deliverables are not fit for the purpose for which they are intended;
- (ii) the Deliverables are not of merchantable quality; or
- (iii) the Deliverables do not meet all of the requirements of the Contract.

(b) If, for any of the above reasons, the City does not wish to accept the Deliverables, without limiting any other right or remedy the City may have under this Contract or at law, the City may notify the Supplier of its reasons for not accepting and the Supplier will immediately address such reasons, at its sole expense, to the City's satisfaction within two (2) days of such notice and the City's rights under this section will apply again upon the Supplier indicating that it has addressed the City's reasons.

4.04 Non-Exclusive Contract, Work Volumes

The City makes no representation regarding the volume of goods and services required under the Contract and reserves the right to contract with other parties for goods and services the same as or similar to the Deliverables.

4.05 Delivery and Liens

(a) The Supplier shall sell the Deliverables to the City free and clear of all interests, claims, liens, charges and encumbrances, whether registered or unregistered, and represents and warrants to the City that the Deliverables will be free and clear of all liens, claims, charges, encumbrances and interests on the date the Supplier delivers the Deliverables to the City in accordance with this Contract.

(b) The Supplier will deliver the Deliverables to the City at the time, in the manner and to the destination specified in the Purchase Order.

(c) Without limiting any other rights or remedy of the City under the Contract, if the Supplier fails to deliver the Deliverables in accordance with paragraph (a) or (b) of this section 4.05, the City may terminate this Contract in accordance with section 7.01.

4.06 Packaging and Risk

The Deliverables will be suitably packed in such a manner as will ensure their safe transportation undamaged to their destination. The Supplier shall be solely responsible for all risks in connection with the Deliverables during manufacture and delivery, including, without limiting the generality of the foregoing, the risk of theft, loss, damage, deterioration, and all consequential losses to the Deliverables. Such risk shall be passed to the City upon acceptance of the Deliverables by the City.



PURCHASE ORDER TERMS AND CONDITIONS

ARTICLE 5 – PAYMENT FOR DELIVERABLES

5.01 Payment According to Contract Rates

(a) The City shall pay the Supplier for the Deliverables accepted by the City in accordance with the Rates. The parties acknowledge and agree that the Rates represent the full amount chargeable by the Supplier for the provision of the Deliverables, including but not limited to: (a) all applicable duties and taxes; (b) all labour and material costs; (c) all travel costs; (d) all costs associated with insuring, transporting and delivering the Deliverables to the City at its address specified on the Purchase Order; (e) all insurance costs; and (f) all other overhead, including any fees or other charges required by law. For clarity, the Supplier shall not be entitled to any compensation whatsoever from the City, including reimbursement for the Supplier's costs, except in accordance with the Rates.

(b) The City shall pay the Supplier for the Deliverables accepted by the City within thirty (30) days of receipt by the City of a satisfactory invoice from the Supplier requesting payment for such Deliverables.

(c) All invoices submitted by the Supplier must include the Purchase Order number, the amount invoiced, exclusive of tax, and the amount of taxes shown separately.

ARTICLE 6 – INSURANCE, INDEMNIFICATION AND BUSINESS LICENCE

6.01 Insurance

The Supplier shall obtain and maintain commercial general liability insurance, in a form acceptable to the City, in an amount not less than \$5,000,000, with the City added as an additional insured. The Supplier will also obtain and maintain such other additional insurance policies as required by the City and in the form and on terms as required by the City. The Supplier shall provide the City with evidence of such insurance immediately upon request by the City.

6.02 WorkSafe BC – Workers Compensation Act

The Supplier shall, at all times, in providing the Deliverables and otherwise performing its obligations under this Contract, comply with the *Workers Compensation Act* (British Columbia) and all regulations and orders from time to time in force thereunder, including the Occupational Health and Safety Regulation. The Supplier is solely responsible for the Supplier's registration, maintenance of an account in good standing and payment of assessments for coverage as required under the *Workers Compensation Act* (British Columbia). If requested by the City, the Supplier shall immediately provide evidence of any required registration under the *Workers Compensation Act* (British Columbia) and evidence of compliance with any requirement under that Act to make any payments or pay assessments. The Supplier's account must include coverage for all Related Entities who are present or may have cause to be at a work site belonging to, or controlled by, the City.

6.03 Supplier Indemnity

The Supplier shall indemnify and save harmless the Indemnified Parties from and against all losses, damages, actions, liabilities, causes of action, proceedings, costs and expenses (including legal fees and disbursements) that the Indemnified Parties may sustain, incur, suffer or be put to at any time, either before or after this Contract ends, including any claim of infringement of third-party intellectual property rights, arising, directly or indirectly, by reason of any act or omission of the Supplier or its Related Entities, or breach of this Contract by the Supplier, except to the extent that such liability arises out of the independent acts or omissions of the Indemnified Parties.

6.04 Limitation of Liability

The City's liability to the Supplier for any loss, claims, damages, costs and expenses relating to or arising from any breach of this Contract by the City or any act or omission in its performance of this Contract shall be limited to the amount of direct damages incurred by the Supplier. In no event shall the City be liable to the Supplier for any special, incidental, indirect, consequential or punitive damages.

6.05 Business Licence

If the Supplier conducts business within the boundaries of the City, including by performing services on City property, the Supplier shall obtain and maintain a valid City of Nanaimo business licence for the duration of the Contract.

ARTICLE 7 – TERMINATION

7.01 Termination for Supplier's Default

The City may terminate the Contract, in whole or in part, by giving written notice of termination to the Supplier, which is effective upon delivery of the notice, if:

(a) the Supplier breaches this Contract, and the Supplier has not cured the breach, within five (5) days after notice of the breach is given to the Supplier by the City; or

(b) the Supplier becomes bankrupt or insolvent, a receiving order is made against the Supplier, an assignment is made for the benefit of its creditors, an order is made or resolution is passed for the winding up or dissolution of the Supplier, or the Supplier takes the benefit of any enactment relating to bankrupt or insolvent debtors.

Without limiting any other right or remedy available to the City under this Contract, the City may procure, upon such terms and conditions and in such manner as the City considers appropriate, replacement of all or part of the Deliverables from another supplier, and the Supplier will be liable to the City for any expenses reasonably and necessarily incurred by the City in engaging the services of another supplier to provide the Deliverables (including the amount by which the fees, disbursements and other costs payable by the City exceed those that would have been payable to the Supplier for the provision of the Deliverables under this Contract). The City may set off against, and withhold from amounts otherwise due to the Supplier, such amounts as the City estimates shall be required to cover the City's costs of correcting any breaches of the Supplier's obligations under this Contract and to be incurred by the City, including to procure all or part of the Deliverables.

7.02 Termination for Convenience

The City may, in its sole discretion and without reason, terminate the Contract upon fourteen (14) days' notice to the Supplier. If the City terminates this Contract under this section, the Supplier shall be entitled to be paid for all the Deliverables that, as of the effective date of termination, have been accepted by the City in accordance with the Contract. The Supplier is not entitled to and irrevocably waives and releases the City from any and all claims for, any damages or compensation for costs incurred, loss of profit or loss of opportunity, directly or indirectly arising out of termination of this Contract.

7.03 Remedies Include Set-Off

Termination by the City under sections 7.01 and 7.02 is without prejudice to the City's rights and remedies under the Contract, by law or in equity, including the right to set off amounts owing for Deliverables accepted by the City against amounts that the City may claim against the Supplier.

ARTICLE 8 – DISPUTE RESOLUTION

8.01 Dispute Resolution Steps

If a dispute arises between the parties concerning any matter relating



PURCHASE ORDER TERMS AND CONDITIONS

to this Contract, the dispute shall be settled in accordance with this section as follows:

(a) The disputing party will send to the other party a written request to begin formal negotiations to resolve the dispute. The parties' respective representatives shall make all reasonable efforts to resolve the dispute by amicable negotiations and in a respectful manner;

(b) If the parties cannot resolve the dispute within five (5) business days, or such other period of time as may be mutually agreed, after they first meet, or if the parties fail to meet within ten (10) business days of the first request for a meeting, then, if the parties have agreed to submit the dispute to arbitration by subsequent agreement, the dispute shall be submitted to and finally resolved by arbitration in accordance with the provisions of the *Arbitration Act* (British Columbia). Unless the parties otherwise agree in writing, the parties shall share equally the costs of arbitration other than those relating to production of expert evidence or representation by counsel.

(c) If no agreement to submit the dispute to arbitration is made, then either party may submit the dispute to the courts at such party's discretion.