

**THE CORPORATION OF THE CITY OF KITCHENER
PURCHASE ORDER TERMS AND CONDITIONS**

(These Terms and Conditions are applicable, unless other terms and conditions have been agreed to through a formal contract or formal purchasing process)

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 includes 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. Obligations

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 judgement 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.

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 Kitchener" 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 Act of Ontario

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. Workplace Hazardous Materials Information System (WHMIS)

Material safety data (MSD) sheets or information sheets as regulated under WHMIS must be made available and where goods are being shipped or delivered must accompany the goods as required by law.

20. Accessibility for Ontarians with Disabilities Act, 2005 (AODA)

Under the Accessibility for Ontarians with Disabilities Act, 2005, as may be amended from time to time, the vendor providing the services contemplated herein shall ensure that every person in relation to this contract, who deals with members of the public or other third parties on behalf of the City or provides goods, services, or facilities on behalf of the City, has received all training required by [Section 6 of Ontario Regulation 429/07, Accessibility Standards for Customer Service](#), and [Section 7 of Ontario Regulation 191/11, Integrated Accessibility Standards](#)

21. Insurance Provisions (if applicable)

Indemnification Provision:

The Vendor, both during and after the term of this Agreement, shall at all times, and at its own cost, expense and risk, defend, indemnify and hold harmless The Corporation of the City of Kitchener, its elected officials, officers, employees, volunteers, agents, contractors, and all respective heirs, administrators, executors, successors and assigns from any and all losses, damages (including, but not limited to, incidental, indirect, special and

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consequential damages, or any loss of use, revenue or profit by any person, organization or entity), fines, penalties and surcharges, liabilities (including, but not limited to, any and all liability for damage to property and injury to persons, including death), judgments, claims, demands, causes of action, contracts, suits, actions or other proceedings of any kind (including, but not limited to proceedings of a criminal, administrative or quasi criminal nature) and expenses (including, but not limited to, legal fees on a substantial indemnity basis), which the indemnified person or persons may suffer or incur, howsoever caused, arising out of or in consequence of or directly or indirectly attributable to the Services required to be performed by the Vendor, its agents, employees and sub-contractors on behalf of The Corporation of the City of Kitchener, provided such losses, damages, fines, penalties and surcharges, liabilities, judgments, claims, demands, causes of action, contracts, suits, actions or other proceedings of any kind and expenses as defined above are due or claimed to be due to the negligence, breach of contract, and/or breach of law of the Vendor, its agents, employees or sub-contractors.

Failure to follow this procedure shall permit The Corporation of the City of Kitchener to investigate and resolve any such claims.

Insurance Provisions:

It is the responsibility of the Vendor and/or their Insurance Broker to review all potential operations and exposures to determine if the coverage and limits noted below are sufficient to address all insurance related exposures presented by the specifications of this Project, Work or Supply. The Vendor shall insure its undertaking, business and equipment under the following coverage so as to protect and indemnify and save harmless The Corporation of the City of Kitchener:

a.) **General Liability Insurance:** The Vendor shall maintain liability insurance acceptable to The Corporation of the City of Kitchener throughout the term of this Agreement. Coverage shall consist of a comprehensive policy of public liability and property damage insurance, with all coverage endorsements applicable, in an amount of not less than \$2,000,000 per occurrence. Such insurance shall name The Corporation of the City of Kitchener, and any other person or party identified in the contract documents, as an additional insured with a cross liability endorsement and severability of interests provision. The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit.

b.) **Provisions:** All Insurers must be licensed in Ontario. The Vendor shall forward Certificates of Insurance evidencing this insurance to The Corporation of the City of Kitchener. The Certificates shall state that coverage will not be cancelled, terminated, amended or otherwise changed or modified except after thirty (30) days (fifteen (15) days if cancellation is due to non payment of premium) prior written notice by certified mail to the Region.

It is also understood and agreed that in the event of a claim any deductible or self-insured retention (SIR) under these policies of insurance shall be the sole responsibility of the Vender and that this coverage shall preclude subrogation claims against The Corporation of the City of Kitchener and any other person insured under the policy and be primary insurance in response to claims. Any insurance or self-insurance maintained by The Corporation of the City of Kitchener and any other person insured under the policy shall be considered excess of the Vender's insurance and shall not contribute with it. The minimum amount of insurance required herein shall not modify, waive or otherwise alter the Vendor's obligation to fully indemnify The Corporation of the City of Kitchener under this Agreement. Any failure to comply with any provision of the insurance policy by the Vendor shall not affect coverage provided to The Corporation of the City of Kitchener.

The Corporation of the City of Kitchener reserves the right to modify the insurance requirements as deemed suitable.

c.) Third Party Claims Process:

The Corporation of the City of Kitchener's claims process for Third Party claims is to refer the claimant directly to the Vendor and to leave the resolution of the claim with the Vendor. This applies regardless of whether or not it is an insured loss.

As The Corporation of the City of Kitchener has a responsibility to the taxpayers, we must ensure that claimants are dealt with in a fair and efficient manner. Claims reported to the Vendor, either directly by a third party or through The Corporation of the City of Kitchener shall be promptly investigated by the Vendor. The Vendor shall make contact with the third party claimant within 48 hours of receipt of notice of a claim. The Vendor shall initiate an investigation of the claim immediately upon notice, and advise the third party claimant in writing, with a copy to The Corporation of the City of Kitchener, of the status of their claim within 21 calendar days of the notice. Upon resolution of the claim, the

Vendor shall issue a letter to the claimant, with a copy to The Corporation of the City of Kitchener, which will include the reasons for their position.

Should this position not resolve the claim and be accepted by the third party claimant, the Vendor shall immediately report the claim to its Insurer for a further review. (Insurer for this purpose is defined as either the Claims Department of the Vendor's Insurance Company or the Claim's Administrator at the Vendor's Insurance Broker.) The Vendor's Insurer upon receipt of this claim shall advise the third party claimant by letter, with a copy to The Corporation of the City of Kitchener, that they are now investigating the claim. When a final position on the claim has been determined, the Vendor's Insurer shall advise the third party claimant by letter, with a copy to The Corporation of the City of Kitchener.