

1. Definitions:

In these standard Purchase Order Terms and Conditions, the following definitions apply:

- (a) **“Agreement”** means the agreement between the Vendor and City for the purchase and sale of Goods and/or Services.
- (b) **“City”** means the City of Chilliwack
- (c) **“Delivery Date”** means the specified date of delivery for Goods or performance of Services.
- (d) **“Goods”** means the goods that are required to be delivered by the Vendor pursuant to a Purchase Order, and include all materials, component parts, packaging and labelling of such goods.
- (e) **“Purchase Order”** means the purchase order between the City and Vendor for the purchase and sale of Goods and/or Services, to which these Standard Purchase Order Terms and Conditions are incorporated.
- (f) **“Services”** means any services to be provided by Vendor to City pursuant to a Purchase Order.
- (g) **“Specifications”** means the requirements, attributes and specifications for the Goods or Services that are set out in the applicable Purchase Order. Specifications also include: (a) documentation published by the Vendor relating to the Goods or Services; (b) operational and technical features and functionality of the Goods or Services; (c) standards or levels of service performance for Services; and (d) City business requirements that are expressly set out in a Purchase Order.
- (h) **“Vendor”** means the party indicated on the face of the Purchase Order that is contracting with the City for the purchase and sale of Goods and/or Services.

2. Application:

These Standard Purchase Terms apply to and are binding on the Vendor in providing Goods or Services to the City, unless expressly superseded by a separate written agreement between the City and Vendor.

3. Agreement:

The Agreement consists of: (a) these Standard Purchase Terms; (b) the applicable Purchase Order; and (c) any Specifications or other documents expressly referenced in the Purchase Order.

4. Offer and Acceptance:

The Vendor, by the execution of the Purchase Order, or by the commencement of performance, enters into a binding agreement of purchase and sale with the City for the supply of the Goods and Services as listed on the face of the Purchase Order, subject to these terms and conditions.

The City's placement of the Purchase Order with the Vendor is expressly conditioned upon the Vendor's acceptance of all the terms and conditions in these Standard Purchase Terms.

Any terms and conditions proposed by the Vendor that are inconsistent with, or in addition to, the terms and conditions of these Standard Purchase Terms or the Purchase Order are void and of no effect, whether provided in an invoice, confirmation of purchase or other communication.

5. Goods and Services:

The Vendor agrees to supply the Goods and/or Services identified in the Purchase Order and all deliverables related thereto in accordance with the Agreement.

6. Required Documentation:

The Vendor, in providing Goods and Services to the City, will:

- (a) show the Purchase Order number on all related bills of lading, waybills, invoices, progress billing, packing slips, containers, packages and correspondence;
- (b) provide packing slips for all deliveries of Goods;
- (b) show on each invoice a unique invoice number, the Vendor's sales tax registration number and the sales taxes payable on all Goods or Services;
- (c) separately invoice each shipment and delivery;
- (d) if applicable for international orders, provide all required customs documents for the shipment;
- (e) if applicable, provide serial numbers for any Goods provided in an invoice; and
- (f) provide appropriate labels and material safety data sheets for Workplace Hazardous Materials Information System (WHMIS) regulated products.

The City may return any Goods or Services at Vendor's cost if the Vendor fails to meet the requirements under this section.

7. Shipment Terms:

Unless otherwise agreed to in writing, all delivered Goods are to be F.O.B. destination (freight prepaid). All other freight charges are to be prepaid and charged on the invoice.

8. Delivery:

If the Vendor does not provide the City the Goods or Services by the delivery date, the City may terminate this Purchase Order in whole or in part and purchase replacement Goods or Services from another vendor(s). The City may further charge the Vendor for any incidental or consequential damages it incurs as a result of the delay.

9. Notices to City:

If the Vendor becomes aware of any of the following, the Vendor will immediately notify the City of such:

- (a) any actual or probable delay in delivering Goods or Services; or
- (b) any recall notice, technical service bulletin, or other important notification affecting Goods.

10. Warranty:

Without limiting any additional warranties provided by the Vendor, the Vendor warrants that all Goods and Services:

- (a) will be new, of merchantable quality, free from defects in workmanship, design and materials;
- (b) will be fit for their intended purpose;
- (c) will strictly conform to applicable samples, specifications, drawings or other requirements furnished by the City;
- (d) will be transferred to the City free and clear of liens, charges and encumbrances;
- (e) will comply with all applicable environmental protection laws and regulations; and
- (f) comply with the standards set forth by applicable federal, provincial, municipal, and industry regulatory agencies.

If the City discovers that there are any weaknesses, deficiencies, failures, breakdowns, or deterioration in workmanship at any time prior to the expiration of any applicable warranty period, or if the Goods and Services do not conform to the terms and conditions of the Purchase Order, the City may:

- (a) require that the Vendor promptly replace, redesign, or correct the defective and non-conforming Goods and Services at no expense to the City, or
- (b) replace or correct the defective Goods and Services, and charge the Vendor with all of the expenses that the City incurs

11. Inspection and Acceptance:

All Goods and Services will be subject to inspection and acceptance by the City or its agents after the receipt thereof. The City will notify the Vendor in writing of the rejection of any Goods and Services which are not in accordance with the description or specifications stipulated in the Purchase Order and such Goods will then be held subject to disposition at the Vendor's risk and subject to all charges accruing as a result of such rejection.

Acceptance or rejection of the Goods and Services will be made as promptly as practicable after delivery, but failure to inspect and accept or reject Goods and Services will not relieve the Vendor from responsibility for such Goods and Services as are not in accordance with the specifications.

The Vendor will be responsible for transportation and charges both ways on rejected materials.

12. Passage of Title and Risk:

Despite any other term of this Agreement, 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.

13. Insurance:

The Vendor will maintain at its own expense, Commercial General Liability coverage in the amount of \$5,000,000 with the City added as an additional insured, or such additional insurance as the City may require from time to time and the Vendor will provide proof of coverage to the City upon request.

14. Intellectual Property:

The Vendor will defend, indemnify and hold harmless the City its elected officials, officers, employees, and agents 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 will, at its own expense, defend or assist in the defense of, at the City's option, any action of any alleged infringement.

15. Indemnity:

The Vendor will indemnify and save harmless the City, its elected officials, employees, agents and volunteers ("City Parties") from any losses, claims, damages, actions, causes of action, costs and expenses the City Parties may sustain, incur, suffer or be put to at any time, either before or after the delivery of Goods or Services, which are based upon, arise out of or occur, directly or indirectly, from the Vendor's performance of the delivery of Goods or Services, including any Claims arising from or related to:

- (a) any act or omission by the Vendor or any of the Vendor's agents, employees, officers, directors, or sub-contractors under the Agreement or in providing the delivery of Goods or Services;
- (b) any personal injury or damage to property caused by the Vendor; and
- (c) any liens for the Vendor's failure to pay for labour or materials, Workers' Compensation assessments, unemployment insurance, or Federal or Provincial taxes.

Neither party will be liable to the other party or any other entity for any consequential losses including loss or anticipated loss of profit, loss or anticipated loss of revenue, loss or anticipated loss of business opportunity or business interruption.

16. Waiver and Release of Liability:

The Vendor waives and disclaims any claim against the City 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, other than for payment of the purchase price indicated on the face of the Purchase Order.

If, regardless of the foregoing, the City becomes liable on any basis to the Vendor, its liability will not exceed the purchase price set forth on the face of this Purchase Order.

17. Termination:

The City may immediately terminate all or any part of this Agreement by giving written notice to the Vendor.

18. Invoices & Payment:

The Vendor will submit invoices to the **City of Chilliwack, 8550 Young Road, Chilliwack, BC V2P 8A4**, to the attention of **Accounts Payable** in a form that is acceptable to the City of Chilliwack. Vendor may submit invoices electronically to apbilling@chilliwack.com.

Payment by the City will be made within 30 days after approval of invoice. All invoice payments will be paid by electronic funds transfer therefore the Vendor must supply banking transfer information to Accounts Payable by e-mail to apbilling@chilliwack.com.

19. Force Majeure:

Both parties will not be liable for any excess costs if failure to perform caused by circumstances beyond reasonable control of the non-performing party. Such circumstances include, but are not limited to abnormal weather conditions, flood, earthquake, fire, epidemic, war, riot and other civil disturbance. If any such circumstances occur, the non-performing party will, as soon as possible after being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

20. Freedom of Information and Protection of Privacy Act:

The Vendor acknowledges that the City is subject to the *Freedom of Information and Protection of Privacy Act* and that disclosure of information may be required pursuant thereto.

21. Compliance with Laws:

- (a) The Vendor acknowledges that it has complied and will continue to comply during the performance of this Purchase Order, with the provisions of all applicable third-party contracts and all applicable laws in accepting this purchase order.
- (b) If the Vendor carries on business in the City, the Vendor must have a valid City of Chilliwack or Inter-Municipal Business License.
- (c) The Vendor must be registered with WorkSafeBC and adhere to all WorkSafeBC practices relevant to the Goods and/or Services.

22. Confidentiality:

The Vendor will treat as confidential all information supplied to, obtained by or which comes to the knowledge of the Vendor as a result of the performance of the Services, and not permit its disclosure without the City's prior written consent except:

- (a) as required to perform the Vendor's obligations under this Agreement or to comply with applicable law; or
- (b) it is information that is generally known to the public.

23. No Promotion of Relationship:

The Vendor will not disclose or promote its business relationship with the City through any promotional or marketing materials or statements, in any medium and including verbal statements, without the express written consent of the City.

24. General:

- (a) **Governing Law:** The laws of the Province of British Columbia will apply to and govern the interpretation of this Agreement and the Parties will attorn to the courts of British Columbia.
- (b) **Modifications in Writing:** The Parties will not modify this Agreement without the written consent of both Parties.
- (c) **No Assignment:** The Vendor may not assign or subcontract this Purchase Order without the prior written consent of the City.
- (d) **No Waiver:** The City's failure to enforce or rely on any right under this Agreement will not constitute waiver of that right and any waiver by the City must be in writing.
- (e) **Pricing, Currency and Taxes:** Unless otherwise noted on the Purchase Order, all prices will be in Canadian dollars and will remain firm for the duration of the Purchase Order.
- (f) **Time of Essence:** Time is of the essence for this Agreement.