

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:

“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 purchase order for the Deliverables issued by the Purchaser to the Supplier (the **“Purchase Order”**), including these Purchase Order Terms and Conditions;

“Deliverables” means the goods and any related services as described in the Purchaser Order;

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

“Industry Standards” include, 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 Canada 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 Purchaser;

“Purchaser” means the Corporation of the City of Port Colborne;

“Rates” means the price, in Canadian funds, to be charged for the Deliverables, as set out in the Contract, representing 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 Purchaser 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;

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

“Requirements of Law” means all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions, and agreements with all authorities that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them; and

“Supplier” means the supplier identified on the face of 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 Ontario and the federal laws of Canada applicable therein.

2.02 Entire Contract

The Contract, together with any additional documentation referenced in the Purchase Order, sets forth the entire agreement between the parties with regard to the provision of the Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise, existing between the parties. In the event of any ambiguity, conflict or inconsistency between these Purchaser Order Terms and Conditions and any terms and conditions contained in any acknowledgement, order or any other form issued by the Supplier, these Purchase Order Terms and Conditions shall prevail. Changes to the Contract shall only be made by the issuance of an amended Purchase Order by the Purchaser to the Supplier.

2.03 Notices

Notices shall be in writing and shall be delivered by mail, personal delivery or email and shall be addressed to the contact identified on the face of the Purchase Order.

2.04 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.

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2.05 **No Indemnities from Purchaser**

Nothing in the Contract, whether express or implied, will directly or indirectly increase the indebtedness or contingent liabilities of the Purchaser beyond the obligation to pay the Rates in respect of Deliverables accepted by the Purchaser.

2.06 **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 beyond its reasonable control, such as natural disasters, acts of war, insurrection and terrorism. If a party seeks to rely on a force majeure event, that party shall immediately notify the other party of the reason for and anticipated period of any delay.

2.07 **Survival**

This paragraph and paragraphs 2.01, 2.04, 2.05, 3.02, 3.04, 4.01, 6.02 shall survive the termination or expiry of the Contract, as shall any other provision which by its nature ought to reasonably survive such termination or expiry.

ARTICLE 3 – RELATIONSHIP BETWEEN PURCHASER 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 Purchaser under this Contract.

3.02 **Supplier Not a Partner, Agent or Employee**

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

3.03 **Non-Exclusive Contract, Work Volumes**

The Purchaser 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.

3.04 **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.

3.05 **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 Purchaser. Such consent shall be in the sole discretion of the Purchaser and subject to the terms and conditions that may be imposed by the Purchaser. Nothing in the Contract, or in such consent, creates a contractual relationship between any subcontractor and the Purchaser.

3.06 **Conflict of Interest**

The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) give notice to the Purchaser 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 Purchaser to resolve any Conflict of Interest.

3.07 **Contract Binding**

The Contract can be enforced by and is binding upon the parties and their successors, executors, administrators and their permitted assigns.

ARTICLE 4 – PERFORMANCE BY SUPPLIER

4.01 **Deliverables Warranty**

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 free from liens or encumbrance on title. 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.

4.02 **Delivery**

Unless otherwise stated on the face of the Purchase Order, all Deliverables shall be delivered F.O.B. Destination, Freight Prepaid. No transportation or delivery charges of any kind, including, without limitation, packing, storage, cartage or customs brokerage charges, shall be paid by the

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Purchaser, unless specifically provided for on the face of the Purchaser Order.

4.03 **Packaging and Risk**

The Deliverables will be suitably packed in such a manner as will ensure their safe transportation undamaged to their destination. The Deliverables will remain at the risk of the Supplier until the Deliverables are received by the Purchaser.

4.04 **Inspection and Acceptance**

Receipt of the Deliverables at the Purchaser's location does not constitute acceptance of the Deliverables by the Purchaser. The Deliverables are subject to the Purchaser's inspection and acceptance within a reasonable period of time after delivery. If any of the Deliverables, in the opinion of the Purchaser, are inadequately provided or require corrections, the Supplier shall make the necessary corrections at its own expense as specified by the Purchaser in a rectification notice.

4.05 **Time**

Time is of the essence of this Contract.

ARTICLE 5 – PAYMENT FOR DELIVERABLES

5.01 **Payment According to Contract Rates**

The Purchaser shall pay the Supplier for the Deliverables in accordance with the Rates within thirty (30) days of receipt by the Purchaser of a satisfactory invoice from the Supplier requesting payment for Deliverables that have been received and accepted by the Purchaser.

All invoices submitted by the Supplier must include the amount invoiced, exclusive of HST, and the amount of HST shown separately.

The Purchase Order number must appear on all documentation relating to the Contract, including, but not limited to, invoices and delivery/packing slips. Invoices that do not include the applicable Purchase Order number, item number and order description shall not be processed, and shall be returned to the Supplier until the appropriate information is provided.

5.02 **No Expenses or Additional Charges**

The Supplier shall pay all applicable taxes and duties, including excise taxes, incurred by or on the Supplier's behalf with respect to the Contract. There shall be no charges payable by the Purchaser to the Supplier other than the Rates.

ARTICLE 6 – INSURANCE AND INDEMNIFICATION

6.01 **Insurance**

The Supplier shall put into effect commercial general liability insurance, in a form acceptable to the Purchaser, in an amount not less than \$5,000,000, with the Purchaser as an additional insured. The Supplier will also put into effect such other additional insurances as required by the Purchaser. The Supplier shall provide the Purchaser with evidence of insurance upon request.

6.02 **Supplier Indemnity**

The Supplier agrees to indemnify and save harmless the Indemnified Parties from all losses, claims, damages, actions, causes of action, costs and expenses that the Indemnified Parties may sustain, incur, suffer or be put to at any time, either before or after this Contract ends, including for infringement of third-party intellectual property rights or for third party bodily injury (including death), personal injury and property damage, arising or occurring, directly or indirectly, by reason of any act or omission of the Supplier or its Related Entities, except to the extent that such liability arises out of the independent acts or omissions of the Indemnified Parties.

ARTICLE 7 – TERMINATION

7.01 **Immediate Termination of Contract**

The Purchaser may immediately terminate the Contract upon giving notice to the Supplier for any reason, notwithstanding that the Supplier might not be in default under the Contract, and in such event the Purchaser shall be liable to the Supplier only for the payment of the Rates in respect of Deliverables accepted by the Purchaser up to the date of termination. The express rights of termination in the Contract are in addition to and shall in no way limit any rights or remedies of the Purchaser under the Contract, at law or in equity.