



THE CORPORATION OF THE CITY OF CAMBRIDGE 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 procurement process)

1. Ethical Behaviour – Code of Conduct

All Vendors must adhere to the following principles when conducting business with or on behalf of the City:

- All City staff and the successful Vendor's own workers will be treated with respect and dignity. Vendor shall ensure that City staff and its workers are not subjected to any form of physical, sexual, psychological, racial or verbal harassment or abuse during the course of any work for the City;
- The Successful Vendor shall adhere to the Human Rights Code of Ontario;
- The Successful Vendor shall refrain from any conduct contrary to the values of the City including the [City's Staff Code of Conduct](#) .
- The Successful Vendor shall learn and abide by the City's values and Code of Conduct;
- The Successful Vendor will be evaluated on its adherence to the requirements set out in this Article 22 – Ethical Behaviour. A Vendor's failure to abide by these requirements may result, at the City's sole discretion, in the termination of the Contract and any other contract with the City, probation on future work for the City or an outright ban on doing further business with the City.

2. Acceptance or Acknowledgement

This purchase order including conditions becomes a contract when the purchaser receives a written acceptance hereof or upon the vendor making shipment of the goods or part thereof ordered hereunder. The term goods includes but is not limited to materials, components, and services. The vendor 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 vendor 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.

3. Vendor Quotations

Reference in this purchase order to the vendor'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.

4. Processing of Order

The vendor 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 vendor failing to observe this condition will be charged to the vendor's account.

5. 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.

6. 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 vendor's risk and expense. If the vendor 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 vendor for excess costs directly or indirectly occasioned thereby.

7. 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 vendor. If cancellation takes place, delivery shall be accepted of all goods at the purchase order price completed prior to the notice of cancellation.

8. Delay

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

9. Risk

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

10. Over-shipment

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

11. Obligations

The vendor, the vendor'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 vendor and the vendor 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.

12. Advertising

The vendor 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 vendor.

13. Patents

The vendor 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.

14. Extras

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

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15. Compliance with Laws

The purchaser and vendor 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 vendor agrees to and attorns to the jurisdiction of the province of Ontario including all executions and processes issued therefrom.

16. Property Furnished by Purchaser

Unless otherwise agreed in writing all tools, equipment or material of every description furnished to the vendor 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 vendor as "property of The Corporation of the City of Cambridge" and shall be safely stored separate and apart from the vendor's property and shall remain free of liens and encumbrances. The vendor shall not substitute any property for the purchaser's and shall not use such property except in filling the purchaser's orders. The vendor's custody or control shall be held at the vendor's risk, shall be kept insured by the vendor at the vendor'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 vendor shall prepare such property for shipment and shall redeliver to the purchaser in the same condition as originally received by the vendor, reasonable wear and tear excepted the purchaser shall have the right at all reasonable times upon prior request to enter the vendor's premises to inspect any and all such property.

17. 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.

18. Hazardous Goods

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

19. Occupational Health & Safety Act of Ontario

The Vendor 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.

20. 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.

21. 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](#)

22. Workplace Safety and Insurance Board (WSIB) (if applicable)

The Vendor shall provide a valid signed and dated Workplace Safety and Insurance Board Clearance Certificate from the Ontario Workplace Safety and Insurance Board which confirms that, as of the date of the Tender, the Bidder maintains an account, and that its account is in good standing.

23. Insurance Provisions – Vendor (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 Cambridge**, 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 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 Cambridge**, 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.

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 Cambridge**:

a.) **General Liability Insurance:** The Vendor shall maintain liability insurance acceptable to the **Corporation of the City of Cambridge** throughout the term of this Agreement. Coverage shall consist of a comprehensive policy of public liability and property damage insurance, with all applicable coverage extensions/endorsements available, in an amount of not less than \$2,000,000 per occurrence. Such insurance shall name Corporation of the City of Cambridge, 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 (unless approved by risk management) 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 prior to the commencement of work and thereafter on or prior to the expiry of the insurance coverage to the **Corporation of the City of Cambridge**. 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 Vendor and that this coverage shall preclude subrogation claims against the **Corporation of the City of Cambridge** 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 Cambridge** and any other person insured under the policy shall be considered excess of the Vendor'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 Cambridge** 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 Cambridge**.

The **Corporation of the City of Cambridge** reserves the right to modify the insurance requirements as deemed suitable. If the **Corporation of the City of Cambridge** requests to have the amount of insurance increased or to obtain other special insurance for this Project then the Vendor shall endeavour forthwith to obtain such increased or special insurance at the **Corporation of the City of Cambridge's** expense.

c.) **Third Party Claims Process:** The **Corporation of the City of Cambridge'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 Cambridge** 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 Cambridge** shall be promptly investigated by the Vendor (its insurer or adjuster). The Vendor shall make contact with the third party claimant upon 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 (preferably by a qualified third party adjusting firm), with a copy to the **Corporation of the City of Cambridge**, of the status of their claim upon completion of this investigation. Such investigation shall be done in a professional manner and reasonable time frame consistent with Insurance Institute of Canada practices. Upon resolution of the claim, the Vendor shall issue a letter to the claimant, with a copy to the **Corporation of the City of Cambridge**, 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. If the Contractor fails to follow this procedure, the **Corporation of the City of Cambridge** may report such claims to the Contractor's insurer.

Nothing herein shall limit the right of the **Corporation of the City of Cambridge** to investigate and resolve any such claims notwithstanding the response of the Vendor and/or its Insurer and to seek indemnification from the Vendor or to exercise any other rights under this agreement.

The **Corporation of the City of Cambridge** may, without breaching this Purchase Order agreement, retain from the funds owing to the Vendor an amount that, as between the **Corporation of the City of Cambridge** and the Vendor, is equal to the balance in the **Corporation of the City of Cambridge's** favour of all outstanding debts, claims or damages, whether or not related to this agreement.