



# Purchase Order Terms and Conditions

## SECTION A – INTERPRETATION

### 1.0 Defined Terms

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

“Contract” means the purchase order for the Deliverables issued by the County to the Contractor (the “Purchase Order” or “P.O.”), including these Purchase Order Terms and Conditions and any other documents referenced therein;

“Contractor” means the vendor identified on the face of the Purchase Order;

“Deliverables” means the goods, services or construction as described in the Purchase Order;

“Force Majeure” means a delay in the performance of the Deliverables provided other than as a result of the deliberate act or negligence of either party respectively, and which; could not have been reasonably foreseen, and was caused by an event beyond the reasonable control of each party respectively, and for the sake of greater certainty shall include any one or more of the following: acts of God; civil war; insurrections or riots; fires, floods, explosions, earthquakes or serious accidents; unusually severe weather, epidemics or quarantine restrictions; governmental priorities or allocation regulations or orders affecting materials, labour, equipment and facilities; strikes or labour troubles causing cessation, slowdown, interruption of work or other similar events relating to a person other than the Contractor (or any subcontractor) or to the County;

“County” means the Corporation of Haldimand County;

“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 Contractor 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 or delivering the Deliverables to the County at its address specified on the Purchase Order; (e) all insurance costs; and

“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.

## SECTION B – GENERAL TERMS

### 2.0 Acceptance

This P.O. shall become contract when,

**2.0.1** the County issues an award letter in a public procurement process; or

**2.0.2** the County receives from the vendor written acceptance of this P.O.; or

**2.0.3** the Vendor ships or performs the Deliverables (in part or in whole) ordered under this P.O.

### 2.1 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. Parties are bound by the Requirements of Law.

### 2.2 Entire Contract

The Contract, together with any additional documentation referenced in the Purchase Order, sets forth the entire Contract 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 Purchase Order Terms and Conditions and any terms and conditions contained in any acknowledgement, order or any other form issued by the Contractor, 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 County to the Contractor.



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## 2.3 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.

## 2.4 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.

## 2.5 No Indemnities from County

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

## 2.6 Force Majeure

- 2.6.1** In the event of the occurrence of a Force Majeure,
- a. the time for completing that portion of the supply of Goods or Services, or the completion of the work to which the Contract relates, which has been delayed by reason of the Force Majeure shall be extended by a period equal to the delay so caused;
  - b. the date for the payment of any portion of the price or any costs or fees shall be adjusted accordingly, without adjustment of the price; and subject to the foregoing, each party shall be excused from performance so long as the Force Majeure persists, and shall not be considered to be in default under this section, if and to the extent that its failure of, or delay in performance is due to that Force Majeure.
- 2.6.2** Where a Force Majeure remains in effect for more than 90 days, either party may terminate the Contract upon 30 days written notice to the other party, provided at the time when that notice is given the Force Majeure is then continuing.

- 2.6.3** While a Force Majeure subsists which prevents the Contractor from proceeding with the requirements under the Contract, the County may engage an alternate Contractor on an interim basis.

## 2.7 Acceptance and Change of a Purchase Order

The Contractor may request changes to this Purchase Order, by written notice to the County contact specified in this Purchase Order, in response to which the County may issue an amended Purchase Order, in its sole discretion. If the County is unwilling to accept the requested changes, the County may terminate this Purchase Order by providing written notice to the Contractor.

## 2.8 Survival

This paragraph and paragraphs 2.1, 2.4, 2.5, 3.1, 3.5, 4.01, 4.02 and 6.2 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.

## SECTION C – RELATIONSHIP BETWEEN COUNTY AND CONTRACTOR

### 3.0 Contractor's Power to Contract

The Contractor 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 County under this Contract.

### 3.1 Contractor Not a Partner, Agent or Employee

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



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## 3.2 Non-Exclusive Contract, Work Volumes

The County 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.

## 3.3 No Subcontracting or Assignment

The Contractor shall not subcontract or assign the whole or any part of the Contract without the prior written consent of the County.

## 3.4 Conflict of Interest

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

## 3.5 Advertising

The Contractor is not permitted in any manner to advertise or publish the fact that they have been contracted to furnish the County with the Deliverables, without first obtaining the written consent of the County.

## SECTION D – PERFORMANCE BY CONTRACTOR

### 4.0 Warranty

#### 4.0.1 Goods Warranties

Where the deliverable consists of a good, the Contractor warrants to the County that during the Goods Warranty Period all Goods provided hereunder shall be: (i) of merchantable quality; (ii) fit for the purposes intended; (iii) unless otherwise agreed to by County, new; (iv) free from defects in design, material and workmanship; (v) in strict compliance with the Specifications; (vi) free from any liens or encumbrances on title whatsoever; (vii) in conformance with any samples provided to County; and (viii) compliant with all applicable federal, provincial, and municipal laws, regulations, standards, and codes

#### 4.0.2 Service Warranties

Where the deliverable consists of a service, the Contractor shall perform all Services: (i) exercising that degree of professionalism, skill, diligence, care, prudence, judgment, and integrity which would reasonably be expected from a skilled and experienced service providing services under the same or similar circumstances as the Services under this Contract; (ii) in accordance with all guidelines, by-laws and codes of conduct applicable to Contractor; and (iii) using only personnel with the skills, training, expertise, and qualifications necessary to carry out the Services. The County may object to any of the Contractor's personnel engaged in the performance of Services who, in the reasonable opinion of the County, are lacking in appropriate skills or qualifications, engage in misconduct, constitute a safety risk or hazard or are incompetent or negligent, and the Contractor shall promptly remove such personnel from the performance of any Services upon receipt of such notice, and shall not re-employ the removed person in connection with the Services without the prior written consent of the County.

#### 4.0.3 Delivery

Unless otherwise stated on the face of the Purchase Order, all Deliverables shall be delivered Duty Paid (DDP) (Incoterms 2010) to the County's location, as specified on the face of the Purchase Order. No transportation or delivery charges of any kind, including, without limitation, packing, storage, cartage or customs brokerage charges, shall be paid by the County, unless specifically provided for on the face of the P.O. or as preapproved by the County.

#### 4.1 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 Contractor until the Deliverables are received by the County.

#### 4.2 Inspection and Acceptance

Receipt of the Deliverables at the County's location does not constitute acceptance of the Deliverables by the County. The Deliverables are



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subject to the County's inspection and acceptance within a reasonable period of time after delivery. If any of the Deliverables, in the opinion of the County, are inadequately provided or require corrections, the Contractor shall make the necessary corrections at its own expense as specified by the County in a rectification notice. The County reserves the right to reject or return quantities in excess of the quantity ordered.

## 4.3 Time

Time is of the essence. The County reserves the right to cancel this order in whole or in part if the Deliverables are not delivered by the required date. If the Contractor anticipates the delivery will be delayed, the Contractor shall give immediate notice to the County of the cause and extent of the anticipated delay. As a result, any costs or penalties incurred by the County due to late delivery may be borne by the Contractor.

## SECTION E – PAYMENT FOR DELIVERABLES

### 5.0 Payment According to Contract Rates

The County shall pay the Contractor within the number of days specified on the P.O for the Deliverables in accordance with the Rates; unless an earlier payment term is accepted by the County. Before invoicing, the Deliverables must have been received and accepted by the County.

All invoices submitted by the Contractor must include the amount invoiced, exclusive of all tax, and the amount of the tax shown separately.

The County may reduce any payment due to the Contractor under this Purchase Order by any amount which the Contractor must pay the County, including costs, charges, damages and expenses and any debts owed by the Contractor to the County on any account whatsoever. This does not limit the County's right to recover those amounts in other ways.

### 5.1 No Expenses or Additional Charges

The Contractor shall pay all applicable taxes and duties, including excise taxes, incurred by or on the Contractor's behalf with respect to the Contract. There shall be no charges payable by the County to the Contractor other than the Rates. The County shall not be subject to interest

charges in the event it fails to make payments as they become due under the terms and conditions of the P.O.

### 5.2 Price to be Invoiced

Except with prior written consent from the duly authorized representative, this order must not be shipped or invoiced at prices higher than those shown on the face of this order. Unless otherwise stated on the face of the Purchase Order, the price shall include all taxes, duties, levies, crating, packaging, freight, and like charges to the point of destination, and all amounts of money stated herein are in Canadian currency.

## SECTION F – INSURANCE AND INDEMNIFICATION

### 6.0 Insurance

Certificates of Insurance may be requested by the County as outlined in the bid document or other written requirements submitted to the Contractor prior to issuance of the P.O.

All Certificates of Insurance will provide for 30 days' written notice of cancellation, alteration or material change. The Certificate of Insurance shall identify the activity to which the Certificate applies. All policies shall apply as primary and not as excess of any insurance available to the County. Insurance companies providing coverage must be licensed to do business in Ontario.

The Contractor at its sole expense, shall purchase and maintain all insurance requirements.

### 6.1 Workplace Safety and Insurance Board (WSIB)

Prior to commencement of the Work, if the Contractor is subject to the insurance requirements under the Workplace Safety and Insurance Act (WSIA), the Contractor shall comply with its obligations under the WSIA and shall provide a certificate under the WSIA confirming compliance when requested by the County. The Contractor shall agree to maintain good standing with WSIB throughout the Contract period. The Contractor may be required to produce a Certificate of Clearance from the WSIB from time to time during the Contract and/or prior to final payment.



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## 6.2 Contractor Indemnity

The Contractor agrees to indemnify, defend and hold harmless the Corporation of Haldimand County, their elected officials, servants, agents and employees, from and against all losses, claims, demands, payments, suits, actions, recoveries, judgments and expenses, including legal fees, brought or recovered against or incurred by the Corporations, it's elected officials, servants, agents and employees, by reason of any act or omission or alleged act or omission of said Contractor, his agents, and employees, pursuant the activities carried out in accordance with this contract.

## SECTION G – TERMINATION

### 7.0 Immediate Termination of Contract

The County may immediately terminate the Contract upon giving notice to the Contractor for any reason, notwithstanding that the Contractor might not be in default under the Contract, and in such event the County shall be liable to the Contractor only for the payment of the Rates in respect of Deliverables accepted by the County 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 County under the Contract, at law or in equity.