

# Purchase Order Terms and Conditions -

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## 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 City of Thorold 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 City of Thorold, its elected officials, 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 City of Thorold;

**“The City of Thorold”** means the City of Thorold and its consolidated agencies, boards and commissions;

**“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 City of Thorold 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, licences, 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 be only by written amendment signed by the parties.

### **2.03 Notices**

Notices shall be in writing and delivered by mail, personal delivery, or email, and shall be addressed to the contact identified on the face of the Purchase Order. A notice delivered by personal delivery shall be deemed to have been received on the date it is actually delivered. A notice sent by mail shall be deemed to have been received five (5) Business Days after the date of mailing. A notice sent by email shall be deemed to have been received on the date it is sent, provided it is sent during normal business hours. If the email is sent after business hours, it shall be deemed to have been received on the next Business Day. For the purposes of this section, "Business Day" means any day other than a Saturday, Sunday, or statutory holiday in the Province of Ontario.

### **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.

### **2.05 No Indemnities from The City of Thorold**

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

### **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 the City of Thorold 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 City of Thorold under this Contract.

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

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

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

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

### **3.06 Conflict of Interest**

The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) promptly disclose to the City of Thorold any actual, potential, or perceived Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the City of Thorold to resolve or otherwise manage the Conflict of Interest to the satisfaction of the City.

For the purposes of this section, a “Conflict of Interest” includes any situation or circumstance where the Supplier or any of its employees, agents, or subcontractors has or could be perceived to have an interest that conflicts with the interests of the City of Thorold or that could improperly influence the Supplier’s performance of its obligations under the contract.

### **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 further 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 Duty Paid (DDP) (Incoterms 2010) to The City of Thorold’s location, as specified on the face of the Purchase Order. No transportation or delivery charges of any kind, including, without limitation, packing, boxing, storage, cartage or customs brokerage charges, shall be paid by The City of Thorold, unless specifically agreed by The City of Thorold in writing. Goods shall be delivered on the date(s) specified in the Purchase Order and time shall be of the essence.

#### 4.03 Packaging and Risk

The Supplier shall ensure that all Deliverables are suitably and securely packaged in accordance with generally accepted industry standards so as to prevent damage during shipment and handling. The risk of loss or damage to the Deliverables shall remain with the Supplier, and title shall not pass to the City of Thorold, until such time as the Deliverables have been received **and formally accepted** by the City of Thorold in accordance with Section 4.04 of this Agreement.

For greater certainty, receipt of the Deliverables by the City of Thorold shall not, in and of itself, be deemed to constitute acceptance. Acceptance shall only occur upon the City's completion of its inspection process and confirmation that the Deliverables conform to the requirements of the Agreement.

#### 4.04 Inspection and Acceptance

All Deliverables shall be subject to inspection by the City of Thorold upon delivery and within a period of **ten (10) Business Days** following receipt (the "Inspection Period"), unless otherwise agreed to in writing. For the purposes of this Agreement, "reasonable time" shall mean the Inspection Period specified herein. Notwithstanding receipt of the Deliverables, the City shall not be deemed to have accepted any Deliverable unless and until the City has completed its inspection and verified, to its satisfaction and in its sole discretion, that the Deliverables conform in all material respects to the specifications, requirements, and terms of this Agreement.

If, during the Inspection Period, the City determines that any of the Deliverables are incomplete, defective, damaged, non-conforming, or otherwise not provided in accordance with this Agreement, the City shall issue a written rectification notice to the Supplier. Upon receipt of such notice, the Supplier shall, at its sole cost and without delay, and no later than **five (5) Business Days** from the date of the rectification notice (or such other period as may be agreed to in writing by the City), repair, replace, or otherwise correct the Deliverables to the full satisfaction of the City.

The City shall not be liable for any costs, losses, or damages incurred by the Supplier as a result of the rejection, return, or replacement of non-conforming Deliverables.

## Article 5 - Payment for Deliverables

### 5.01 Payment According to Contract Rates

The City of Thorold shall pay the Supplier for the Deliverables in accordance with the Rates within thirty (30) days of receipt by The City of Thorold of a satisfactory invoice from the Supplier requesting payment for Deliverables that have been received and accepted by The City of Thorold, unless another term of payment is specified in the Contract or on the face of the Purchase Order.

All invoices submitted by the Supplier must include: (a) the amount invoiced, exclusive of HST; (b) the amount of HST shown separately; (c) the HST # and (d) the Purchase Order Number.

### 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 City of Thorold 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 City of Thorold, in an amount not less than \$5,000,000 (unless another quantum is specified in the Contract or on the face of the Purchase Order), with The City of Thorold as an additional insured. The Supplier will also put into effect such other additional insurances as specified on the Purchase Order. The Supplier shall provide The City of Thorold with evidence of insurance on The City of Thorold's form of Certificate 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 City of Thorold may terminate the Contract, in whole or in part, at its sole discretion and for any reason, by providing written notice of termination to the Supplier. Termination shall be effective **upon the Supplier's receipt of such written notice**, which shall be determined in accordance with the notice provisions in Section 2.03 of this Agreement.

For clarity, the effective date of termination shall be as follows:

- (a) If notice is delivered by personal delivery, termination shall be effective on the date the notice is actually delivered to the Supplier.
- (b) If notice is delivered by mail, termination shall be effective on the fifth (5th) Business Day following the date of mailing.
- (c) If notice is delivered by email, termination shall be effective on the date the email is sent, provided it is sent during normal business hours. If the email is sent after business hours, termination shall be effective on the next Business Day.

In the event of termination under this Section, the City shall be liable only for payment of the Rates in respect of Deliverables that have been received and accepted by the City up to the effective date of termination. The Supplier shall have no claim for damages, loss of anticipated profit, or any other compensation arising from such termination.

The express rights of termination under this Agreement are in addition to, and shall not limit, any other rights or remedies available to the City of Thorold under this Agreement, at law, or in equity.

## Article 8 - Dispute Resolution

### 8.01 Dispute Resolution

If a dispute arises between the Supplier and the City of Thorold in relation to the interpretation, application, or performance of this Contract, the parties shall make reasonable efforts to resolve the matter through direct negotiation in good faith.

If the dispute remains unresolved after fifteen (15) Business Days of negotiation, the parties may, subject to the prior written approval of the Council of the City of Thorold, agree to submit the matter to **mediation**. Mediation shall be conducted by a mutually agreed mediator in the Province of Ontario. Each party shall bear its own legal costs and shall share the mediator's fees equally.

If the dispute is not resolved through mediation within thirty (30) calendar days of the appointment of the mediator, and subject again to the prior written approval of the Council of the City of Thorold, the parties may agree to submit the matter to **binding arbitration** under the *Arbitration Act, 1991* (Ontario), or any successor legislation. The arbitration shall be conducted in English and shall take place in the City of Thorold or another agreed location in Ontario. The arbitrator's decision shall be final and binding, and judgment upon the award may be entered in any court of competent jurisdiction.

Nothing in this section shall preclude the City of Thorold from seeking injunctive relief or any equitable remedy at law to preserve its legal rights or prevent immediate or irreparable harm.