



CITY OF PENTICTON STANDARD TERMS AND CONDITIONS OF PURCHASE AND CONTRACT

OFFER AND ACCEPTANCE:

The Supplier, by the acceptance of this contract and/or purchase order enters into a binding agreement of purchase and sale with the City of Penticton (the "City") for the supply of the goods and services subject to these terms and conditions.

The City's placement of the contract and/or purchase order with the Supplier is expressly conditioned upon the Supplier's acceptance of all the terms and conditions.

1. REQUIRED DOCUMENTATION

Failure to meet these requirements may result in the goods and/or invoices being returned at the Supplier's expense.

1. The purchase order number must be shown on all related invoices, shipping papers, transportation bills, packages, packing lists and correspondence.
2. A separate invoice must be rendered for each shipment or delivery.
3. A packing list must be included with each shipment.
4. Where applicable, serial numbers are to be shown on the invoice, including serial numbers of trade-in equipment.
5. The Supplier shall provide all the necessary training and instruction to its personnel, representatives and agents in the storage, handling and use of any product classified as a "Controlled Product" under WHMIS. The Supplier will provide the appropriate labels and material safety data sheets (MSDS) for WHMIS regulated products. No product containing asbestos shall be supplied at any time without written authorization. The Supplier will ensure and fully comply with the Transportation of Dangerous Goods Act and Regulations (T.G.D.) when shipping goods to the City.

2. INVOICES AND PAYMENT

Invoices shall be sent to:

Accounts Payable
c/o 616 Okanagan Avenue East
Penticton, BC V2A 3K6
Email: purchasing@penticton.ca

Payment by the City shall be made after final acceptance by the City of the goods and services, notwithstanding any previous passing of title to the goods.

Unless otherwise stated, payment terms are net thirty (30) days. Payment terms begin the date the Accounts Payable Branch receives the invoices. No payment terms less than net fifteen (15) days will be accepted.

Prices are to include all packing, handling, taxes, duties and are otherwise all-inclusive.

3. TERMS OF SHIPMENT

Unless otherwise noted on the face of the contract and/or purchase order, shipping terms are Freight on Board (FOB) Destination - Freight Prepaid.

4. CUSTOMS

For any shipments originating outside of Canada, the Supplier shall attach all required customs documents to the shipment. Payment of duties will be as per the terms of the purchase order / contract. The City's Custom Broker Contact Information: Summit International Trade Services dba Customs Brokers, 369 Okanagan Avenue East, Penticton, BC V2A 8N3 Phone 250.492.8105, Fax 250.492-8179 or email shamilton@summitcb.com

5. DELIVERY

Time is of the essence. The Supplier must immediately advise the Buyer identified on the purchase order of a shortage or delay of any kind. If delivery of goods and services is not completed by the delivery date, the City reserves the right to terminate this contract and/or purchase order in whole or in part and to purchase substitute goods and services elsewhere and charge the Supplier with any incidental or consequential damages that might be incurred.

6. WARRANTY

Without limitation to any additional warranties provided by the Supplier, whether indicated on the face of the purchase order or otherwise provided, the Supplier warrants that:

1. all goods shall be of merchantable quality and free from defects in workmanship and materials;
2. all goods shall strictly conform to applicable samples, specifications and drawings;
3. all goods and services shall be fit for the purpose intended by the City;
4. all goods shall be free and clear of all liens, charges and encumbrances;
5. the goods and services shall comply with the standards set forth by applicable federal, provincial, municipal and industry regulatory agencies;
6. the shipping and handling of any hazardous material will be made in accordance with all applicable laws and regulations; and
7. the goods and services shall comply with all applicable environmental protection laws and regulations.

Unless a longer warranty period is specified in the contract and/or on the purchase order or is otherwise provided, the foregoing warranty shall be valid for one year from the date of acceptance of the goods and services by the City. If at any time prior to the expiration of any applicable warranty period, any weakness, deficiency, failure, breakdown or deterioration in workmanship or material should appear or be discovered in the goods and services furnished by the Supplier, or if the goods and services do not conform to the terms and conditions of the contract and/or purchase order, the City may at its option:

1. require the Supplier to promptly replace, redesign or correct the defective and non-conforming goods and services at no expense to the City, or
2. the City may replace or correct the defective goods and services and charge the Supplier with all expenses incurred by the City. The Supplier agrees to indemnify and save harmless the City, its members, officers, employees, assigns, agents, clients and the public from any liability, loss, cost and expense arising either directly or indirectly, from breach of any warranty given by the Supplier hereunder.

7. INSPECTION

All goods and services purchased hereunder are subject to inspection and approval by the City upon delivery. The City reserves the right to refuse acceptance of goods and services which are not in accordance with City's specifications or not in compliance with the Supplier's warranty (expressed or implied). Goods not accepted will be returned to the Supplier at the Supplier's expense. Payment for any good or service hereunder shall not be deemed an acceptance thereof.

8. CANADIAN STANDARDS ASSOCIATION (CSA) AND ELECTRICAL SAFETY

All items produced as a result of the contract and/or purchase order must meet or exceed CSA standards where this standard applies.

Any electrical equipment used in performance of the contract and/or purchase order must be certified by an accredited certification organization acceptable to the City. All costs of approval will be at the Supplier's expense.

9. SOFTWARE

It is the Supplier's responsibility to ensure that the City has all licenses required to use any software that may be supplied by the Supplier pursuant to the contract and/or purchase order.

10. PERMITS AND LICENSES

The Supplier, their employees, agents and vehicles shall have and maintain valid permits and licenses as required by law for the execution of services detailed in the contract and/or purchase order.

The Supplier shall conform to all Federal, Provincial, and City acts, regulations and bylaws that may apply to the operation of the contract and/or purchase order. The Supplier is required to obtain and pay for all necessary permits, licenses and inspection fees.

Certified copies of required permits/licenses will be made available upon request by the City.

11. INSURANCE

All Suppliers/Contractors providing services to the City are required at a minimum to carry the following insurance:

<u>TYPE OF INSURANCE</u>	<u>LIMIT OF LIABILITY</u>
Commercial General Liability which includes:	
• Products/Completed Operations;	Bodily Injury & Property Damage
• Blanket Contractual;	\$2,000,000 event/aggregate
• Contractor's Protective;	
• Personal Injury;	
• Contingent Employer's Liability;	
• Broad Form Property Damage	
• Non-Owned Automobile; Cross Liability Clause.	
2. Automobile Liability submit APV47	Bodily Injury & Property Damage \$2,000,000 inclusive

12. ADDITIONAL TERMS

1. Any Deductible or Reimbursable Clause contained in the policy shall not apply to the City of Penticton and shall be the sole responsibility of the Supplier.
2. The City of Penticton is named as an Additional Insured (on CGL Insurance). 30 Days prior written notice of material change and/or cancellation will be given to the City of Penticton.

13. WORKSAFE

Any Supplier providing services to the City will strictly comply with all rules and regulations under the *Worker's Compensation Act* or any successor legislation and will provide a letter of good standing from WorkSafeBC prior to commencement of Work at the designated site(s). The Supplier agrees that it is the "Prime Contractor" for the purposes of the Worker's Compensation Act and Regulations, unless otherwise advised and accepted in writing by an authorized officer, employee or agent of the City.

14. INDEMNIFICATION

The Supplier shall be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the City, its elected officials, officers, employees and agents (the Indemnitees) including but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the performance, purported performance, or non-performance of this Contract, expecting only where such loss, costs, damages and expenses are as a result of the sole negligence of the Indemnitees.

The Supplier shall defend, indemnify and hold harmless the Indemnitees from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performances, or non-performance of this Contract, excepting only where such claim, demand, action, proceeding or liability is based on the sole negligence of the Indemnitees.

15. BUSINESS REGISTRATION

All Suppliers conducting business with the City will have a valid City of Penticton or inter-community business licence if required as per City of Penticton Business Licence Bylaw 2012-5020.

16. SUPPLIERS EMPLOYEES

The Supplier's representatives shall be under the exclusive supervision of the Supplier. All responsibility and authority for hiring, training, supervision, direction, compensation, discipline, termination, and administration of the Supplier's representatives, and any and all cost or expenses related thereto, rest exclusively with the Supplier.

17. WAIVER AND LIMITATIONS OF LIABILITY

The Supplier hereby waives and disclaims any right of action or claim against the City (other than for payment of the purchase price set forth on the face of the purchase order) for any liability, loss, cost and expense arising directly or indirectly from its supply of the goods and services listed on the face of the contract and/or purchase order.

If, regardless of the foregoing, the City becomes liable on any basis to the Supplier, its liability shall not in the aggregate exceed the purchase price set forth on the face of the contract and/or purchase order.

18. CONFIDENTIALITY

Technical information, specifications, drawings, designs, building and floor plans and other documentation relating to the business or activities of the City disclosed by the City to the Supplier pursuant to this contract and/or purchase order shall be held in strict confidence by the Supplier and shall remain the exclusive property of the City and may not be copied or reproduced without the express written consent of the City.

19. CONFLICT OF INTEREST

It is the Supplier's sole responsibility to disclose to the City if any current employee or Council member for the City or any person who was an employee or Council member for the City at any time during the previous 6 months, has or will have a direct or indirect pecuniary interest in this order and/or any contract executed with the City.

20. INTELLECTUAL PROPERTY

The Supplier shall defend, indemnify and hold harmless the City, its members, officers, employees, agents, clients, 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 Supplier shall at its own expense defend or assist in the defence of, at the City's option, any action in which such infringement is alleged.

21. COMPLIANCE WITH LAWS

In accepting the contract and/or purchase order, the Supplier represents that it has complied and will continue during the performance of this contract and/or purchase order to comply with the provisions of all applicable third party contracts, and all applicable Federal, Provincial and municipal laws and regulations. The laws of British Columbia govern these Terms and Conditions.

22. NO PROMOTION OF RELATIONSHIP

The Supplier must not disclose or promote its relationship with the City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials without the express prior written consent of the City.

23. ASSIGNMENT

No right of interest in this contract and/or purchase order shall be assigned by either party without the written consent of the other and no delegation of any obligation owed, or of the performance of any obligation by either the City or Supplier shall be made without the written consent of the other party.

24. CHANGES/MODIFICATIONS/TERMINATION

The City reserves the right at any time, to cancel or terminate this contract and/or purchase order in whole or in part by written or verbal notice confirmed in writing or to make changes in any one or more of the following: quantity, specifications, methods of shipment or packing, and place or timing of delivery. If any such change causes a change in the cost of or the time required for performance of this contract and/or purchase order, an equitable adjustment shall be made in the price or delivery schedule, or both. No agreement or understanding to modify this contract and/or purchase order shall be binding on the City unless in writing and authorized by the City's authorized agent.

25. FORCE MAJEURE

The Supplier is not liable for failure to perform the obligations as set out in the contract and/or purchase order as a result of acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, war, labour dispute, strike, lockout. If the Supplier asserts Force Majeure as an excuse for failure to perform their obligations, they must prove that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that the Supplier substantially fulfilled all non-excused obligations, and that the City was timely notified of the likelihood or actual occurrence of the event which invoked the force majeure.

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