

Purchase Order Terms and Conditions

The following terms and conditions are deemed accepted by Vendors supplying Goods, Services or deliverables under this Purchase Order with The Corporation of the City of Kingston (hereinafter referred to as the "City"), take precedence over those terms and conditions of the Vendors and are deemed incorporated into every procurement Contract resulting from a Purchase Order.

1. Signing Requirements

An e-mail acceptance of the Purchase Order from either the Vendor representative signing the offer or other representative with authority to bind the Vendor is required and will bind the Vendor to the supply of the Good or Service and these terms and conditions. This email in reply will also form part of the Contract, serving as proof of acceptance of the terms and conditions.

2. Applicable Law

This Purchase Order is subject to the provisions of all applicable laws, including:

- *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M54.*
- *Occupational Health and Safety Act, R.S.O. 1990, c.O.1:*
 - Each Vendor warrants that:
 - they have the experience, training and equipment to ensure all work performed under the Contract is done safely and in accordance with all applicable health and safety legislation; and
 - they have control over the workplace and are fully responsible for the health and safety of all employees and others present on the site.
 - Each Vendor also acknowledges that the City is relying on this warranty in its decision to award the Contract to the Vendor.
- The Integrated Accessibility Standards Regulation, Ontario Regulation 191/11 made under the *Accessibility for Ontarians with Disabilities Act, 2005*, section 5, requires the City to incorporate accessibility design, criteria and features when procuring or acquiring Goods, Services or facilities, except where it is not practicable to do so. The City has determined that it is not impracticable to incorporate accessibility design, criteria and features under this Purchase Order. Accordingly, Vendors are required to provide the information related to accessibility in the provision of the Goods and/or Services as described and requested herein or in relation to this Purchase Order.
- Accessibility Standards for Customer Service, Ontario Regulation 429/07 made under the *Accessibility for Ontarians with Disabilities Act, 2005* applies to provision of Goods and Services on and after January 1, 2012.
- *Human Rights Code, R.S.O. 1990, c. H.19* and other applicable human rights law:

- The Vendor acknowledges that the activities and/or deliverables resulting from this Contract must be undertaken and provided in accordance with the *Human Rights Code, R.S.O. 1990, c. H.19* and other applicable human rights law. Accordingly, the party contracting with the City through this Contract shall not refuse to employ or otherwise discriminate in any manner against any person because of that person's race, ancestry, place of origin, colour, ethnic origin, religion, age, sex, sexual orientation, gender identity, gender expression, marital status, disability, conviction for which a pardon has been granted, family status, or the receipt of public assistance or otherwise infringe upon the protected human rights of any person on a prohibited grounds.
- City of Kingston By-Law Number 134-2000, A By-law to Establish Purchasing Policies and Procedures, as amended.

3. Required Warranties

Vendors are deemed to expressly declare and warrant that:

- i. the Vendor/contractor supplying the deliverables is acting under the authority and within the scope of applicable professional standards;
- ii. the prices in the Purchase Order have been arrived at independently from those of any other prospective Vendor;
- iii. no attempt has been made, nor will be made, to induce any other person to not present similar Goods or Services to the City for the purpose of restricting competition;
- iv. pricing, Goods, and Services are in all respects fair and without collusion or fraud;
- v. there has been no violation of copyrights or patent rights in manufacturing, producing or selling the materials and/or Services shipped or ordered as a result of this Purchase Order;
- vi. all materials and/or Services proposed to be supplied to the City conform in all respects to the standards set forth by applicable Federal and Provincial agencies;
- vii. the Vendor:
 - a. is competent to perform the work described in this Purchase Order ("the work");
 - b. has the necessary qualifications, including knowledge, skill and experience to perform the work, together with the ability to use those qualifications effectively for that purpose;
 - c. shall supply everything necessary for the performance of the work;
 - d. shall carry out the work in a diligent and efficient manner;
 - e. shall ensure the work is of proper quality, material and workmanship; is in full conformity with the specifications; and meets all other requirements of this Purchase Order and any subsequent Contract;
- viii. the Vendor waives all rights of lien which might arise in relation to this Contract from under section 3(1) of the *Repair and Storage Liens Act, R.S.O. 1990, c. R.25*;

- ix. the Vendor has and follows a health and safety plan for employees and representatives who will be present on the property of the City as part of this Contract;
- x. all deliverables supplied under this Purchase Order shall be fit for use whether or not detailed specifications on the various components are not set out in the documents; and
- xi. the Vendor confirms that the price proposed is an upset limit above which the City is not required to pay and that where there is uncertainty as to price, the unit price shall govern.

4. Indemnification

The Vendor agrees to hold the City, its employees and agents harmless from any and all liability, loss, expense, action or suit occasioned by any breach of this Contract or arising from the materials, Services and deliverables supplied hereunder including any for payment or enforcement of any right or remedy that results from, or is alleged to result from, the creation of, or provision of the work, or the use or disposal of anything furnished in relation to the work.

5. No Obligation to Contract

The City reserves the right to:

- Order additional units and/or part purchase at the price submitted or such combination as shall best serve the interests of the City in the opinion of the City. The Vendor is to assume the tax regime to which the period of Contract delivery relates in determining all pricing. All prices should be quoted net of applicable taxes.
- Waive irregularities and technicalities and to do so in its sole discretion.
- Set off and/or terminate where the City determines that the Vendor is in any way indebted to the City, or in its sole discretion, is of the opinion that it is in the City's best interests that the offer be rejected.

The City is not liable for any costs incurred by the Vendor in negotiating terms provided for under this Purchase Order.

6. Termination

Notwithstanding anything contained in the Contract to the contrary, the City may, at any time prior to the completion of the Services, terminate this Contract by written notice to the Vendor. Upon a termination notice being given, the Vendor shall immediately cease Services in accordance with, and to the extent specified in the notice. In the event of a termination notice being given in accordance with this Contract, the Vendor shall be entitled to be paid, to the extent that costs have been reasonably and properly incurred for purposes of performing the Services and for which the Contractor has not already been so paid or reimbursed by the City. The City may, at any time or from time to time, give one or

more additional termination notices with respect to any or all parts of the Services not terminated by any previous termination notice.

7. Contract Payments

Unless otherwise specified, should the Purchase Order be accepted, the Corporation of the City of Kingston will make payment of accounts by electronic funds transfer within thirty (30) days of either the date on which the materials and/or Services have been accepted to the satisfaction of the Corporation of the City of Kingston, or the date on which the invoice is received, whichever is later.

8. Dispute

In cases of dispute as to whether or not deliverables meet the requirements of The Corporation of the City of Kingston, the decision of such agent as The Corporation of the City of Kingston may appoint will be final and binding.

9. No Assignment

The Vendor shall not assign or subcontract any aspect of this procurement without the written consent of the Corporation of the City of Kingston.

10. No Implied Waiver

The failure of either party at any time to require performance by the other party of any provision hereof, shall in no way affect his right thereafter to otherwise enforce such provision or to seek damages for the breach thereof.

11. Governing Law

Vendors, including those outside the Province of Ontario, agree that the rights of all parties shall be governed by the laws of the Province of Ontario and that the venue for dispute shall be within the Province of Ontario. The Vendor, if required by the Corporation of the City of Kingston, must demonstrate their ability to perform the work under the law of the Province of Ontario and provide such security as might be required and enforceable under the law of the Province of Ontario.

12. Force Majeur

Neither party shall be held responsible for any remedy arising from delay or failure to perform obligations under this Purchase Order when such delay or failure is due to fires, strikes, floods, acts of God or the Queen's enemies, lawful acts of public authorities, or delays or defaults caused by common carriers, which cannot reasonably be foreseen or provided against.

13. Deemed Satisfaction

Submission of the acceptance of Purchase Order shall be deemed conclusive proof that the Vendor has satisfied itself as to all the requirements set out herein, all the conditions which may be encountered, what materials and/or Services he/she will be required to supply, or any other matter which may enter into the carrying out of the Purchase Order. No claims will be entertained by the Corporation of the City of Kingston based on the assertion by the Vendor that it was uninformed as to any of the requirements set out herein.

14. Default under Project

In case of a default of performance by the Vendor under this Purchase Order, The Corporation of the City of Kingston reserves the right to transfer the procurement to another source. All additional expenses arising from such transfer will be charged to the Vendor and are due forthwith.

15. Title and Intellectual Property Interest Right to the Work

Title and intellectual property interest ("IP") to the work described in this Purchase Order and any part remains with the Vendor subject to a royalty-free perpetual, irrevocable and non-transferrable license to the City to use the deliverables for any City project or purpose. The risk of loss or damage to the work or part thereof shall remain with the Vendor until its delivery of the work in full.

16. Insurance

Except as otherwise stated herein, any selected Vendor shall be required to provide Commercial General Liability Insurance, structured on a "per occurrence" basis, in the amount of no less than five million dollars (\$5,000,000.00) and motor vehicle liability in the amount of no less than two million dollars (\$2,000,000.00). WSIB coverage shall be provided as required by or available under law. Additional insurance may also be required depending on the nature of bids submitted. Policies shall be in a form satisfactory to the City and shall be kept in full force during the complete period. The City shall be named as an additional Insured on the Commercial General Liability policy, and any successful Vendor shall provide evidence of all insurance coverage required by completing the Insurance Certificate provided by the City, and proof of WSIB coverage, before the Vendor shall enter into this Contract, and throughout the life of the Purchase Order.

17. Enforcement

This Purchase Order constitutes a legally binding Contract with The Corporation of the City of Kingston. Where any breach of the terms of this Contract should occur, the City shall review all legal remedies available to it and use any appropriate remedies to protect the interests of The Corporation of the City of Kingston including law suit or application before the appropriate court or tribunal. The Vendor hereby acknowledges and attorns to the jurisdiction of the choice of the City of Kingston in any such legal process.