

Purchase Order Terms and Conditions

1. Terms of Agreement

The purchase order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions, and other information, whether physically attached or incorporated by reference (collectively the “Agreement”), constitutes the entire and exclusive Agreement between The Corporation of the City of North Bay (“City”) and the vendor (“Vendor”) identified in the purchase order. The Vendor’s electronic acceptance, acknowledgement of this purchase order, or commencement of performance constitutes the Vendor’s acceptance of these terms and conditions. Notwithstanding the foregoing, if a master agreement covering procurement of the goods or services (“Deliverables”) described in the purchase order exists between the Vendor and the City, the terms of such master agreement shall prevail over any inconsistent terms herein.

2. Seller Quotations

Reference in this Agreement to the Vendor’s Pricing (as defined below) does not imply acceptance of any terms and conditions in such Pricing unless they are expressly adopted herein. Any terms and conditions in such Pricing 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.

3. Exclusivity

The City makes no guarantee of the value of the Deliverables to be assigned to the Vendor. This Agreement is not an exclusive Contract for the Deliverables. The City may contract with others for the same or similar Deliverables or may obtain similar Deliverables internally.

4. Contract price

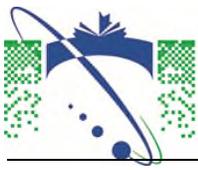
- i. The City shall pay the Vendor in accordance with the applicable rate(s) as specified in the pricing form, vendor quotation or purchase order (collectively “Pricing”) as applicable, and the total amount payable shall not exceed the total specified, subject to adjustments as provided in the Agreement.
- ii. Unless otherwise stated on the face of the Purchase Order, all Deliverables shall be Delivered Duty Paid (DDP) (Incoterms 2010) to the City’s location. 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, unless specifically agreed by the City in writing.
- iii. The Vendor shall pay all applicable taxes and duties, including excise taxes, incurred by or on the Vendor’s behalf with respect to the Agreement. There shall be no charges payable by the City to the Vendor other than the rates.
- iv. If the total specified in the Pricing is based on estimated quantities, the City is not bound to acquire the estimated quantities and reserves the right, at its sole discretion, to procure either more or less without compensation to the Vendor other than the applicable rate(s) specified.

5. Permits and Fees

The Vendor shall be responsible for obtaining, at the Vendor’s own expense, all permits, licences, inspections and certificates which are necessary for the provision or performance of the Deliverables. The Pricing includes the costs of such permits, licences, inspections and certificates and their procurement.

6. Acceptance Testing

All Deliverables must pass a City inspection and testing protocol for safety, performance and compliance with the specifications prior to acceptance by the City. If the Deliverables fail to perform as specified or by regulations, the Vendor will repair or replace the same at no cost to the City. Payment or partial payment by the City shall be conditional upon the goods or services passing acceptance testing and, where applicable, first use. In the event that Deliverables cannot be brought into compliance, the City in its sole discretion may require the removal of the Deliverables where applicable at the expense of the Vendor and a rebate in full of any payment previously made.



7. Representations and Warranties

It is a condition of this Agreement, and Vendor represents and warrants, that all Deliverables (as applicable) to be furnished hereunder will be: (a) free from defects in material and workmanship; (b) of merchantable quality; (c) fit for purpose; (d) of a grade and performance strictly conforming with all specifications, designs, drawings, approved samples, models, descriptions, instructions and other items referred to in this order; (e) processed, manufactured, packaged, labelled, advertised, stored, transported, installed, repaired, maintained and otherwise performed, as the case may be, in compliance with all applicable laws, regulations and orders; and (f) free of infringement of any property rights of third parties, including without limitation any patent, trade-mark, copyright, industrial design, intellectual property, integrated circuit topography right, right of privacy or trade secret. The Vendor will pass through any applicable manufacturer's warranty to the benefit of the City. If any such manufacturer's warranty is not assignable, the Vendor shall assist the City in pursuing any warranty claim with the manufacturer on the City's behalf. The warranty for Deliverables commences on the latter of the day the City takes physical possession of the Deliverables or the day the Deliverables have been performed or installed by the Vendor and is valid for the longer of twelve (12) months or the length of the Vendor's, or the manufacturer's, standard warranty period.

8. Governing Law

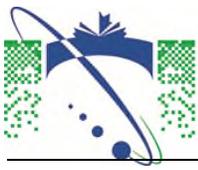
The Vendor shall comply with the laws of Ontario and Canada in the provision of the Deliverables. Without limiting the generality of the forgoing, the vendor shall comply with Occupational Health and Safety Act. (Ontario) If the Vendor is in breach of an Ontario or Canadian statute, the City may terminate the Agreement, in whole or in part, without incurring liability for any costs, fees, charges or surcharges of any kind whatsoever.

9. Payment

Payment to the Vendor shall be made within thirty (30) days of the latter of: (a) receipt by the City of a correctly prepared invoice; or (b) acceptance by the City of the Deliverables. The City may withhold payment, in whole or part, to such extent as may be necessary to protect the City from loss due to: (a) claims filed or reasonable evidence indicating probable filing of claims related to the contract; (b) defective Deliverables not remedied; or (c) damage to City property incurred in the provision or performance of the Deliverables.

10. Termination

- i. The Purchaser may immediately terminate the Agreement upon giving notice to the Vendor for any reason, notwithstanding that the Vendor might not be in default under the Agreement, and in such event the City shall be liable to the Vendor only for the payment of the rates as specified in the Pricing, in respect of Deliverables accepted by the City up to the date of termination. The express rights of termination in this Agreement are in addition to and shall in no way limit any rights or remedies of the City under the Agreement, at law or in equity.
- ii. The City may terminate this Agreement without fault and without liability, immediately, upon giving written notice to the Vendor, if the Vendor makes an assignment for the general benefit of its creditors, a notice of intention to make a proposal, or a proposal, under the Bankruptcy and Insolvency Act, or a receiver is appointed, or the Vendor becomes bankrupt.
- iii. The City shall not by termination waive any rights or remedies it may have at the date of termination. Termination shall not relieve the Vendor from the Vendor's warranties and other responsibilities relating to the Deliverables supplied or performed or money paid, or both, up to and including the date of termination.
- iv. Upon the expiration or termination of this Agreement, sections related to representations and warranties; indemnification; insurance and WSIB, acceptance testing; and confidentiality, shall survive and remain in full force and effect.
- v. Time shall be of the essence and if the Vendor fails to perform its obligations at the times fixed for performance under the terms of this Agreement, the City may elect to terminate the Agreement. In the event of a termination due to a delay in the provision or performance of the Deliverables, the City may hold the Vendor responsible for any damages. No extension or variation of this Agreement shall operate as a waiver of this provision.
- vi. If the Vendor is in material breach of this Agreement, the City may terminate this Agreement as follows:



- a. in the case of any breach that is capable of being cured, the City may notify the Vendor that they are in default of their contractual obligations and instruct the Vendor to correct the default within a specified time. If the default cannot be corrected within the specified time, the Vendor shall be in compliance with the City's instructions if the Vendor commences correction of the default within the specified time; and provides the City with a schedule acceptable to the City for such correction; and corrects the default in accordance with such schedule. and
- b. in the case of any breach that is not capable of being cured, the City may terminate this Agreement by immediate notice provided to the Vendor.
- vii. Upon termination, the City shall pay the Vendor for the Deliverables satisfactorily provided or performed by the Vendor, in accordance with the rates as specified in the Pricing, up to the effective date of termination which shall not include any amounts for lost profit or revenue.

11. Indemnification

Vendor will defend, protect, indemnify and hold harmless the City, its Mayor, Councillors, and its employees, from all liability, loss, damage, cost or expense, including legal fees, paid or incurred by reason of the breach or the claim of breach of any of the conditions, representations or warranties of this order, including without limitation all claims relating to product liability or injury or damage to people or property. The City's rights and remedies set forth in this order are cumulative and in addition to all other rights and remedies under applicable law.

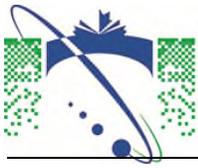
12. Force Majeure

The City shall not be liable for failure to accept the Deliverables, if such failure is caused by strikes; walkouts; labour troubles; industrial disturbances; inability to procure materials or services; failures; fluctuations or non-availability of electrical power, heat, light, ventilation or air-conditioning; governmental or quasi-governmental laws, regulations, orders, declarations or controls; riots; civil commotions; insurrections; anarchy; acts of a foreign enemy; revolution; acts of sabotage; acts of terrorism, bioterrorism or cyber-terrorism; invasions; rebellion; military or usurped power; war (whether declared or not) or warlike operations; blockades; epidemics; pandemics; washouts; nuclear and radiation activity or fallout; explosions; acts of God (including without limitation, earthquakes, blizzards, floods, hurricanes, lightning, storms and other natural disasters); damage caused by any aircraft; or any other reason whether or similar in nature or not which is not the fault of the City.

13. Insurance and WSIB

- i. The Vendor shall procure and maintain commercial general liability for all aspects of their operations in the provision of the Deliverables against claims for personal injury, bodily injury or property damage or loss, to the inclusive limit of not less than Five Million Dollars (\$5,000,000.00) on a per occurrence basis; and
- ii. Where the performance of the Deliverables requires the use of an automobile, the Vendor shall procure and maintain automobile liability insurance in respect of vehicles that are required by law to be insured under a contract by a motor vehicle liability policy to the inclusive limit of not less than Two Million Dollars (\$2,000,000) on a per occurrence basis for bodily injury, death and damage to property, covering all vehicles owned or leased by the Vendor; and
- iii. Where the Vendor is providing professional services, the Vendor shall procure and maintain professional liability insurance of not less than One Million Dollars (\$1,000,000.00) per claim, Two Million Dollars (\$2,000,000.00) per project, Four Million Dollars (\$4,000,000.00) in aggregate with a maximum deductible of Twenty Five Thousand Dollars (\$25,000.00); and
- iv. The Vendor shall be registered and in good standing with WSIB.

At the request of the City, the Vendor shall furnish an appropriate certificate of insurance and WSIB clearance certificate. Such insurance shall specifically state by its wording or by endorsement that The Corporation of the City of North Bay is included as an additional insured under the policy. The insurance shall not be terminated or cancelled unless written notice of such termination or cancellation is given by the insurers to the City at least thirty (30) clear days before the effective date thereof.



14. Assignment

The Vendor will not assign the Agreement, or any part thereof, without the prior written approval of the City, which approval may be withheld by the City, in its sole discretion, or may be given subject to such terms and conditions as the City may impose.

15. Severability

If any term or condition of the Agreement, or the application thereof, is to any extent invalid or unenforceable, the remainder of the Agreement, and the application of such term or condition (except to the extent to which it is held invalid or unenforceable), shall not be affected.

16. Representation and Notices

All communications between the City and the Vendor in respect of this Agreement shall be conducted by the following respective representatives at the following addresses:

City: The Corporation of the City of North Bay
 200 McIntyre Street East
 North Bay, ON P1B 8V6
 Attn: Purchasing Manager
 purchasing@northbay.ca

Vendor: Shall be addressed to the person, partnership, corporation or other legal entity
 identified on the face of the Purchase Order.

17. Freedom of Information

The Vendor acknowledges that the City is bound by the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990 c.M.56, as amended, and that this Agreement and any information provided to the City in connection with it, is subject to disclosure in accordance with the requirements of that Act. This acknowledgement shall not be construed as a waiver of any rights to object to the release of this Agreement or any information provided in connection with it.