

General Purchase Order Terms and Conditions

TO THE EXTENT THAT THE FOLLOWING TERMS CONFLICT WITH THE TERMS ON THE FACE OF THIS PURCHASE ORDER, THE TERMS ON THE FACE OF THIS PURCHASE ORDER WILL GOVERN

1. **Applicability.** (a) The terms and conditions set out in this document apply to this purchase order from the City of Medicine Hat ("the City") for the purchase of goods (the "Goods") or performance of services (the "Services") specified on the face of the purchase order, which together shall constitute an offer from the City to the party to whom this purchase order is addressed (the "Supplier") in accordance with and subject to these terms and conditions (the "Terms"); together with the terms and conditions on the face of the purchase order (the "Order"). This Order, together with any documents incorporated herein by reference including but not limited to drawings, specifications, and descriptions, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. Once accepted, this Order may only be amended by written change order signed by both parties. The Order expressly limits Supplier's acceptance to the terms of the Order. Unless otherwise specified, these Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Supplier's general terms and conditions of sale or any other document issued by Supplier in connection with this Order. (b) These Terms apply to any repaired or replacement Goods provided or Services re-performed by Supplier hereunder. (c) The City is not obligated to any minimum purchase or future purchase obligations under this Order.

2. **Acceptance.** Supplier is deemed to have accepted the Terms, and the rest of the Order, upon the earlier of: (a) written notice given by Supplier to the City that it has accepted and agreed to the Terms and the rest of the Order; or (b) commencement of the provision of the Services or the Goods by Supplier.

3. **Delivery Date.** Supplier shall deliver the Goods or perform the Services on the date(s) specified in this Order or as otherwise agreed in writing by the parties (the "Delivery Date"). Timely delivery of the Goods or performance of the Services is of the essence. If Supplier fails to deliver the Goods in full or perform the Services on the Delivery Date, the City may terminate the Order immediately by providing written notice to Supplier and Supplier shall indemnify the City against any losses, claims, damages, and reasonable costs and expenses directly attributable to Supplier's failure to deliver the Goods or perform the Services on the Delivery Date.

4. **Delivery Location.** All Goods shall be delivered to the address specified in this Order (the "Delivery Location") during the City's normal business hours or as otherwise instructed by City.

5. **Shipping Terms.** Unless otherwise specified on the face of the Order, all shipments are to be Delivered At Place (DAP) in accordance with INCOTERMS 2010, as may be amended from time to time, with the Supplier bearing all costs and risk of loss until the Goods are unloaded in accordance with the freight terms and at the place as specified on the face of the Order. The City will not accept any shipments sent C.O.D. (Cash on Delivery) and will return them at Supplier's risk and expense. The Order number must appear on all shipping documents, shipping labels, invoices, correspondence and any other documents pertaining to the Order.

6. **Title.** Title to the Goods shall pass to the City upon acceptance of the Goods or Services by the City in accordance with **Section 9**.

7. **Packaging.** All Goods shall be packed for shipment according to the City's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition, and will be accompanied by all necessary documentation, including but not limited to, any and all applicable packing slips, customs documentation, freight bills, regulatory documentation (MSDS, ABSA, ASME, CRN, CSA, MTRs, etc.), customs and commercial invoices, and NAFTA Certificates of Origin.

8. **Amendment and Modification.** No change to this Order is binding upon the City unless it is in writing, specifically states that it amends this Order and is signed by an authorized representative of the City.

9. **Inspection and Rejection of Nonconforming Goods or Services.** The City has the right to inspect the Goods or Services on or after the Delivery Date. The City, at its sole option, may inspect all or a sample of the Goods or Services, and may reject all or any portion of the Goods or Services if it determines the Goods are nonconforming or defective, or the Services are unsatisfactory. If the City rejects any

portion of the Goods or Services, the City has the right, effective upon written notice to Supplier, to: (a) rescind the Order in its entirety; (b) accept the Goods or Services at a reasonably reduced price; (c) reject the Goods or Services and require replacement of the rejected Goods or re-performance of the Services; or (d) if Supplier fails to timely deliver replacement Goods or re-perform the Services, the City may replace them with Goods or Services from a third party and charge Supplier the cost thereof and terminate this Order for cause pursuant to Section 19. If the City requires replacement of the Goods or re-performance of the Services, the Supplier shall, at its expense, promptly replace the nonconforming Goods or reperform the Services, and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Goods and the delivery of replacement Goods. Any inspection or other action by the City under this Section shall not reduce or otherwise affect Supplier's obligations under the Order, and the City shall have the right to conduct further inspections after Supplier has carried out its remedial actions.

10. **Software License Grant.** If Supplier provides software with the Goods that are proprietary to Supplier or Supplier's suppliers, Supplier grants the City a nonexclusive, perpetual license to use the software on and in conjunction with the Goods. The City agrees that title of that proprietary software remains with Supplier (and its suppliers). The City will maintain all proprietary marks on software provided by Supplier. The City may transfer this license if transferring the Goods. If the Goods include software or designs to be developed for the City, Supplier transfers and assigns title and all intellectual property rights to such software to the City upon delivery of such software or design. Supplier shall execute or cause to be executed all such documents necessary to effect the foregoing assignment and transfer.

11. **Price.** The price of the Goods or Services is the price stated in the Order (the "Price"). Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes (excluding GST and HST where applicable). No increase in the Price is effective, whether due to increased material, labour or transportation costs or otherwise, without the prior written consent of the City.

12. **Payment Terms.** Supplier shall issue an invoice to the City on or any time after the completion of delivery and only in accordance with the Terms. Subject to acceptance of the Goods or Services by the City in accordance with **Section 9**, the City shall pay all accurately invoiced amounts due to Supplier within 30 calendar days after the City's receipt of such invoice, except for any amounts disputed by the City in good faith.

13. **Holdback.** Payment of an invoice may be subject to applicable lien legislation holdback, which will be releasable to Supplier upon satisfactory performance of the Services.

14. **Set-off.** Without prejudice to any other right or remedy it may have, the City is entitled to set-off or back-charge any costs or expenses, accounts, claims, liens or charges against monies otherwise due to Supplier. Such rights of the City shall also extend to any monies due and owing to Supplier by the City pursuant to any other agreements between the City and Supplier relating to any other contract.

15. **Warranties.** Supplier warrants to the City that for a period of 12 months from the Delivery Date or as specified on the Supplier's quotation, (i) all Goods will: (a) be free from any defects in workmanship, material, design, errors, and omissions; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by the City; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; (f) not infringe or misappropriate any third party's patent or other intellectual property rights, and (ii) all Services will: (a) be free from any defects in workmanship, material, design, errors, and omissions; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by the City; and (c) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods or Services by the City. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of the City's discovery of the noncompliance of the Goods with the foregoing warranties. The Supplier shall further assign or otherwise pass-through any and all warranties and indemnities received from the manufacturer(s) or licensor(s) of the Goods or any component thereof, and to the full extent granted by such manufacturer(s) or licensor(s), to the City as the

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beneficiary of same upon transfer of title to the Goods. The Supplier shall further cooperate with the City to ensure such warranties and indemnities are fulfilled by the manufacturer(s) or licensor(s).

16. **General Indemnification.** Supplier shall defend, indemnify and save harmless the City, its agents, officers, elected officials and employees, (collectively, "Indemnitees") against any and all loss, damage, claim, expense or costs, including cost on a solicitor and its own client basis resulting from actions, suits or proceedings by third parties that arise out of, or are attributable to, Supplier's performance of the Order regardless of cause (collectively, "Losses") arising out of or occurring in connection with the Goods, Services, or Supplier's negligence, willful misconduct, recklessness or breach of the Terms. Such indemnity shall survive completion or termination of the Order.

17. **Intellectual Property Indemnification.** Supplier shall, at its expense, defend, indemnify and hold harmless the City and any Indemnitee against any and all Losses arising out of or in connection with any claim that the City's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Supplier enter into any settlement without the City's or Indemnitee's prior written consent.

18. **Insurance.** During the term of the Order, Supplier shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, (a) workers' compensation coverage for all employees and other personnel engaged in the Services in accordance with statutory requirements of the provinces, and other jurisdictions where any portion of the Services are performed, and provide Workers' Compensation Board ("WCB") clearance letter upon request by the City to verify account is being maintained in good standing with the WCB; (b) Commercial General Liability insurance (including products/ completed operations liability contractual liability, tortious liability, protective liability, property damage liability and contingent employer's liability) on an occurrence basis, with a limit of no less than **\$2,000,000** and name the City as an additional insured; (c) Automobile Liability Insurance with minimum limits not less than **\$2,000,000**, and including bodily injury, property damage, and contractual automobile liability, for all owned, hired and non-owned vehicles that will be used in the provision of the Goods or performance of Services hereunder; and (d) such other insurance coverage as may be required pursuant to the applicable Order, with financially sound and reputable insurers. Upon the City's request, Supplier shall provide the City with a certificate of insurance from Supplier's insurer evidencing the insurance coverage specified in this Order. The certificate of insurance shall waive subrogation against the City's insurers and the City or the Indemnitees. Each of the insurance policies mentioned in this Section 18 shall be endorsed to provide the City with not less than thirty (30) days written notice in advance of any cancellation, change or amendment restricting coverage and shall be primary and non-contributing.

19. **Termination.** Unless specifically agreed to in writing by the City and Supplier in non-cancelable/non-returnable (NCNR) order, the City may terminate this Order, in whole or in part, at any time with or without cause for undelivered Goods or unperformed Services upon written notice to Supplier, provided however that such termination shall not affect the City's obligation for payment of the Goods or Services received and accepted by the City prior to the termination. In addition to any remedies that may be provided under these Terms, the City may terminate this Order with immediate effect upon written notice to the Supplier, either before or after the acceptance of the Goods or Services, if Supplier has not performed or complied with any of these Terms, in whole or in part. If the Supplier becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the City may terminate this Order upon written notice to Supplier. If the City terminates the Order for any reason, Supplier's sole and exclusive remedy is payment for the Goods or Services received and accepted by the City prior to the termination.

20. **Limitation of Liability.** Nothing in this Order shall exclude or limit (a) Supplier's liability under **Sections 15, 16, 17 and 19** hereof, or (b) Supplier's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

21. **Force Majeure.** Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("Force Majeure Event"). Supplier's economic hardship, changes in market conditions, labour strikes, or other labour difficulties are not considered Force Majeure Events. If a Force Majeure Event prevents Supplier from carrying out its obligations under the Order for a continuous period of more than 30 calendar days, the City may terminate this Order immediately by giving written notice to Supplier.

22. **Assignment.** Supplier shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of the City. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Supplier of any of its obligations hereunder.

23. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

24. **Rights and Remedies.** (a) No implied terms or obligations of any kind by or on behalf of the City shall arise from anything in the Order and the express covenants and agreements therein contained and made by the City are the covenants and agreements upon which any rights against the City are to be founded; (b) Any failure by the City to enforce or to require the strict performance of any of the provisions of the Terms shall not, in any way, constitute a waiver of those provisions and affect or impair those provisions or any right the City has at any time to avail itself of any remedies the City may have for any breach of these provisions or to require the Goods or Services to be delivered in accordance with the Order.

25. **City Business License.** Subject to City Bylaw #2339, Supplier providing Goods or Services pertaining to this Order may require a valid City of Medicine Hat Business License; proof of valid business license must be provided upon request by the City. Supplier's business license does not cover its subcontractor's activities. Supplier shall ensure its subcontractors take out their own business license in their own names.

26. **Notices.** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing. Notice may be delivered personally, delivered or sent by ordinary mail, facsimile transmission or sent by e-mail. A written notice or communication sent by mail shall be deemed to have been received ten (10) days from the date of posting. A notice or communication sent by facsimile transmission or by other means is effective when actually received by the party to which it is addressed.