



## Purchase Order Terms and Conditions

This purchase order is strictly limited to its terms and conditions. Any counter-offers or changes or terms proposed by supplier are hereby rejected, unless specifically agreed to in writing by The Corporation of the City of Richmond Hill (the "City"). The terms hereunder shall be binding on supplier by the commencement of performance hereunder. In the event of any conflict or inconsistency between this purchase order and any procurement document or agreement, the procurement document or agreement shall govern.

**1. Price:** The Supplier shall furnish and perform the deliverables described herein (the "Deliverables") for the price or rates set out in this Purchase Order (the "Price"). The Price shall be inclusive of all fees and charges of any kind, including patent, permit, inspection, royalty and license fees, charges for crating, boxing, cartage and restocking, and government tax levies, unless otherwise stated on the Purchase Order.

**2. Invoicing and Payment:** The Supplier shall display the complete Purchase Order number prominently on all packages, invoices, correspondence, and packing slips. Subject to legislative holdback requirements, payment shall be made to the Supplier in Canadian funds, in the case of goods or services related to construction, within 28 days of receipt by the City of a proper invoice as described in the Construction Act, and in the case of all other goods and services, within 28 days of receipt of an invoice or the satisfactory delivery of goods and services, whichever is later. Invoices shall be sent to the project lead or contact, City of Richmond Hill, 225 East Beaver Creek Road, Richmond Hill, ON, L4B 3P4.

**3. Time is of the Essence:** The Supplier shall provide the Deliverables in strict accordance with the delivery date, quantity and requirements as specified in this Purchase Order and any attached specifications.

**4. Inspection of Goods:** Any goods delivered to the City in providing the Deliverables shall be subject to inspection and approval by the City at the point of unloading, or the site or work or service for a period of not less than 60 days, notwithstanding prior payment. In the event the Deliverables are not approved by the City, the City may return the Deliverables at the Supplier's expense and the Supplier shall credit the City accordingly within 15 days of such return.

**5. Changes:** The City may at any time make changes to any specifications for the Deliverables. In the event any additional cost or savings result, the Supplier shall notify the City thereof and obtain written approval from the City before proceeding to provide the Deliverables. Changes shall be effected by written amendment signed by the parties. No changes shall be effective or carried out in the absence of such amendment.

**6. Personnel:** The Supplier shall ensure that individuals, consultants, or subcontractors providing the Deliverables are appropriately skilled and able to provide the necessary materials, tools, machinery to supply the Deliverables within the required timeframes.

**7. Subcontractors:** The Supplier must obtain the City's prior written approval to any subcontractors, and may not use subcontractors without such prior written approval.



**8. Independent Contractor:** The Supplier is engaged as an independent contractor for the sole purpose of providing the Deliverables. The Supplier will undertake its duties as an independent contractor and not as agent or in any other way representative of the City except as herein provided. Neither the Supplier nor any of the Supplier's employees or subcontractors shall be regarded as an employee of the City.

**9. Applicable Laws:** The Supplier and its personnel shall at all times comply with any and all statutes, laws, by-laws, regulations, orders and requirements of governmental or other public authorities and with all provisions of any insurance policies taken out in respect of the work. All information in relation to the Deliverables is subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*. Pursuant to O. Reg. 191/11, Accessibility Standards for Customer Service made under the *Accessibility for Ontarians with Disabilities Act, 2005*, all suppliers providing goods and services to the City must ensure that all employees, agents or others for whom they are responsible receive training in relation to the provision of those goods and services to persons with disabilities.

**10. OHSA:** The Supplier will be responsible for meeting all of the "employer" obligations under the *Occupational Health and Safety Act (Ontario)* (the "OHSA") and shall ensure that all Deliverables are provided in accordance with the OHSA and its regulations. In the event of (i) an accident causing death, (ii) critical injury or (iii) disabling injury to the Supplier's employee, the Supplier shall notify the City immediately and, within five (5) days of such event, provide the City with a detailed report of the event.

**11. Patent and Copyright:** The Supplier shall pay all royalties and patent license fees for the Deliverables. If the Deliverables or any part thereof is in any proceedings held to constitute an infringement, the Supplier shall forthwith either secure for the City the right to continue using the Deliverables or shall, at its expense, replace the infringing items with non-infringing deliverables or modify them so that the Deliverables no longer infringe. The City shall be the sole owner of any intellectual property created by the Supplier in the course of the performance of its obligations and contained in any of the Deliverables.

**12. Warranty:** The Supplier represents, warrants and covenants to the City (and acknowledges the City is relying thereon) that the Deliverables supplied will be in accordance with the City's functional and technical requirements and, if applicable, will function or otherwise perform in accordance with such requirements. If applicable, the Deliverables shall be subject to the Supplier's warranty for a period of one (1) year from the date of delivery to the City, notwithstanding any inspection, testing, approval, acceptance or payment by the City, unless otherwise stated on the Purchase Order. Any Deliverable found to be defective, failed, or unsuitable for its intended use, shall be unconditionally replaced by an equivalent or better product at no additional costs, repaired, or returned for 100% credit within 15 days of the City's notification to do so.

**13. Insurance:** The Supplier shall obtain and maintain at all times during the term of this Purchase Order full and adequate insurance as specified by the City covering the provision of the Deliverables. The Supplier shall provide evidence of such insurance in the City's form of insurance available through the City's website ([richmondhill.ca](http://richmondhill.ca)) upon request.



**14. Indemnity:** The Supplier shall indemnify the City and its elected officials, officers, directors and employees, agents, and volunteers from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made, including for third party bodily injury or death, personal injury and property damage arising out of or attributable to (a) any breach, violation or non-performance; or (b) any errors, omissions, negligent acts or willful misconduct, by the Supplier or its employees, directors, officers, subcontractors or agents in relation to and in performance of the Deliverables.

**15. WSIB:** The Supplier is responsible for all costs associated with workplace accidents and all premiums or assessments owing to the Workplace Safety and Insurance Board (the "Board"), or applicable insurance company as related to the Deliverables. Upon request of the City, the Supplier shall furnish evidence of coverage for the Supplier and its sub-contractors, and their respective employees under the *Workplace Safety and Insurance Act* or the applicable insurance policy, as related to the Deliverables. The City may deduct from any monies payable or returnable to the Supplier, such sums of money sufficient to cover any of the Supplier's default to the Board or the insurance company for assessments or premiums and any costs for income replacement, medical aid or rehabilitation, arising from an accident.

**16. Construction Liens:** In the event that the City incurs expenses involving construction lien actions or other actions related to the Work, such expenses shall be paid by the Supplier on demand and the City will be entitled, subject to any notice of non-payment required pursuant to the *Construction Act*, to set off any such expenses against any payment to be made by the City pursuant to this Purchase Order. In the event that a claim is made against the City under the *Construction Act* in respect of the Work, in addition to any other remedy the City may have, the City may, subject to any notice of non-payment required pursuant to the *Construction Act*, withhold from any payment of the City the amount of the claim plus security for costs as provided for in the *Construction Act*.

**17. Cancellation or Termination:** Upon giving the Supplier not less than ten (10) days' prior written notice, the City may, at any time and without cause, cancel the Deliverables, in whole or in part. Failure of the Supplier to perform its obligations under the Agreement shall entitle the City to terminate the Agreement immediately. In the event of a cancellation or termination, the City shall not incur any liability to the Supplier apart from the payment for the Deliverables that have been satisfactorily delivered or performed by the Supplier at the time of cancellation or termination. Upon termination, any originals and copies of data, plans, specifications, reports, photographs, and other documents that have been accumulated and/or prepared by the Supplier shall be delivered to the City in a clean, readable format.

**18. Notice:** Any notice that the City may be required to give to the Supplier shall for all purposes be deemed to have been sufficiently and properly given if forwarded by facsimile, email or registered mail addressed to the Supplier at the address shown on this purchase order, and shall be presumed to have been received by the Supplier in the case of a facsimile or e-mail, 1 day following the date of transmission, and in the case of registered mail, on the 3rd day following such registration.



**19. Confidential Information:** The Supplier shall treat as confidential and shall not disseminate without the written permission of the City information that is of a confidential nature, including all confidential information in the custody or control of the City, whether recorded or not and however fixed, stored, expressed or embodied, that has been identified as confidential and which comes into the knowledge, possession or control of the Supplier, its employees, subcontractors and assigns.

**20. Conflict of Interest:** The Supplier shall not engage in any activity or provide any deliverables to the City where such activity or the provision of such deliverables, creates a conflict of interest (actually or potentially, in the sole opinion of City) with the provision of the Deliverables.

**21. Non-Assignment:** The Supplier shall not assign the whole or any part of its rights or obligations or any monies which may be due or which may become payable under this Purchase Order, without the written consent of the City, which consent shall not be unreasonably withheld. Such consent shall not, under any circumstance, relieve the Supplier of any or all liabilities and obligations assumed by it hereunder.

**22. Agreement with Other Public Sector Organization:** The Supplier may be requested to offer the Deliverables to other public sector organizations, including another municipality or federal or provincial ministry or agency, on the terms of a separate agreement between the Supplier and that organization that is similar to this agreement. The City shall have no obligation, cost or liability under such other agreement.

*Updated September 2019*