



The Corporation of the Town of Aurora Purchase Order Terms and Conditions

These Terms and Conditions, as applicable, together with the Purchase Order form a legally binding agreement (the "Agreement") between the Supplier and The Corporation of the Town of Aurora (the "Town"). Any and all supplementary materials provided by the Town and/or the Supplier and attached to the Purchase Order shall be deemed to form part of these Terms and Conditions.

Acceptance of the Purchase Order by the Supplier constitutes acceptance of the Agreement and all of the Terms and Conditions.

In the event that a separate duly executed contract is entered into between the Supplier and the Town with respect to the provision of any goods and/or services to be provided pursuant to the Purchase Order, the terms of such contract supersede and govern over these Terms and Conditions.

In the event of any inconsistency between the provisions contained below in these Terms and Conditions and provisions contained in any supplementary materials attached to the Purchase Order, the provisions contained in these Terms and Conditions shall prevail. Further, these Terms and Conditions and the terms of this Purchase Order issued to the Supplier shall supersede and nullify the terms of any Supplier ordering document.

The term "Supplier" herein shall include a Supplier, consultant, service provider and/or contractor, as the case may be, providing the goods and/or services contemplated by the Purchase Order.

- 1) No responsibility will be accepted by the Town for any purchase order unless it is issued on the official Town purchase order form and duly signed by the Town. No variations, deletions, changes or additions to the purchase order will be recognized unless such variation has been approved, in writing, by the Town and prior to receipt of goods and/or services as outlined on the Purchase Order.
- 2) The Town reserves the right to cancel the Purchase Order at any time at the sole discretion of the Town and the identified Supplier on the purchase order agrees to abide by the Town's decision.

- 3) Prior to commencing any work, the Supplier is required to provide to the Town current copies of Workplace Safety and Insurance Act clearance, insurance certificates as required by the Town, AODA compliance and other documents as required by the Town with respect to the goods and/or services being provided by the Supplier.
- 4) The Supplier shall, at its cost, obtain and maintain insurance policies as required by the Town with respect to the goods and/or services being acquired pursuant to the Purchase Order. Further, to the extent applicable, the Supplier represents and warrants that it shall be in good standing with the Workplace Safety and Insurance Act throughout the term of this Purchase Order.
- 5) Unless otherwise specified, all goods are to be shipped prepaid, F.O.B. Destination freight prepaid and allowed. Unless otherwise specifically provided for in the Purchase Order, Supplier will pay all freight and other transportation charges and insurance covering the goods until they are delivered to the destination indicated herein, and all federal, state, provincial and local sales, use, excise, value-added and other taxes and duties which may be imposed on the goods ordered hereunder or by reason of their sale or delivery. It is also agreed that the Town reserves the right to refuse Cash on Delivery shipments.
- 6) All invoices, packing slips, packages and shipping notices of the Supplier relating to goods and/or services under the purchase order shall contain the applicable purchase order number and a signature of receipt must be received from a Town employee for all deliveries. The responsibility to ensure that the signature is being received from an authorized Town employee is the responsibility of the Supplier identified on the Purchase Order.
- 7) All goods and/or services purchased as per the Purchase Order are subject to approval by the Town prior to payment being made. Any rejection of goods and/or services resulting because of non-conformity to the terms and/or specifications of the Purchase Order, whether held by the Town or returned, will be at the Supplier's risk and expense.
- 8) The Town reserves the right to inspect any goods shipped after delivery and to return all or any portion thereof at the Supplier's expense if found to be defective or not in compliance with the requirements of the specification.
- 9) All goods and/or services specified or called for in or under the Purchase Order shall be supplied or performed at the price or prices and on the basis set forth or referred to in and in accordance with the Purchase Order.
- 10) With respect to delivery under the Purchase Order, time is of the essence and the order is subject to termination at no cost or penalty to the Town for failure to deliver on time. The acceptance by the Town of late performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the

requirements for the timely performance of any obligation remaining to be performed by the Supplier.

- 11) The Supplier is not entitled to any charge for boxing, packaging or cartage, unless agreed to on the Purchase Order.
- 12) The Supplier will be required to comply, at its sole expense, with all applicable federal, provincial and municipal laws, rules and regulations.
- 13) The Supplier acknowledges and agrees that any records, data or other information provided to the Town will be subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 and may be required to be disclosed to third parties.
- 14) The Supplier shall at all times be liable for and shall defend, indemnify and hold harmless the Town, its officers, employees, servants and agents, from and against all claims and losses by whomsoever made, brought or prosecuted in any manner relating to, in connection with, arising out of, resulting from or attributable, directly or indirectly, to the Supplier's or any subcontractor's performance or non-performance or breach of this Purchase Order, regardless of whether or not caused in part by the Town, or its officers, employees, servants or agents. It is expressly understood that the Supplier will save the Town, and its officers, employees, servants and agents, harmless from all claims and losses made by any party other than the Supplier itself relating to the services performed and furnished by the Supplier or by others under this Purchase Order.
- 15) The Supplier shall indemnify, defend and save harmless the Town, its officers, employees, servants and agents, from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgments (including legal fees and costs) arising from infringement, actual or alleged, by the Supplier or by any of the deliverables developed or provided or supplied under or used in connection with the products or services (including the provision of the product or services themselves), of any Canadian, American or other copyright, moral right, trade-mark, patent, trade secret or other thing with respect to which a right in the nature of intellectual/industrial property exists.
- 16) The Supplier and the Town agree and acknowledge that the relationship between the Town and the Supplier is that of an independent contractor and nothing contained herein shall be construed as creating an employer-employee relationship, a joint venture, a partnership, or any other type of relationship. The Supplier, as an independent contractor has agreed to assume all risk associated with its activities.
- 17) In addition to any warranty, expressed or implied by law or otherwise and notwithstanding prior acceptance by the Town, the Supplier shall replace the goods without cost to the Town if, within a period of twelve (12) months following acceptance, the goods are determined to be defective in design, material, performance, workmanship or are otherwise not in

accordance with the requirements of the Purchase Order. The warranty for fraud and latent defects shall be perpetual.

- 18) All information, data, plans, specifications, reports, estimates, summaries, photographs and all other documentation prepared by the Supplier in the performance of the services under the Purchase Order, whether they be in draft or final format, shall be the exclusive property of the Town, except as follows: Supplier will own its working papers, pre-existing materials and software, as well as any general skills, know-how, processes, or other intellectual property (including a non-Town specific version of any deliverables) which Supplier may have discovered or created as a result of the Services ("Supplier Materials"). The Town has a nonexclusive, non-transferable license to use any Supplier Materials included in the deliverables for the Town's own internal use as part of those deliverables.
- 19) The awarding of a Purchase Order to a Supplier shall not be a guarantee of exclusivity. The Supplier acknowledges that it is providing the Deliverables to the Town on a non-exclusive basis. The Town makes no representation regarding the volume of goods and services required under the Purchase Order. The Town reserves the right to contract with other parties for the same or similar goods and services as those provided by the Supplier and reserves the right to obtain the same or similar goods and services internally.
- 20) Failure of the Supplier to perform its obligations under the Purchase Order shall entitle the Town to terminate the Purchase Order upon notice to the Supplier. In the event of such termination, the Town shall not incur any liability to the Supplier.
- 21) If any one or more of the provisions of this Purchase Order shall for any reason be held to be invalid, illegal or unenforceable in any respect, any such provision shall be severable from the Purchase Order, in which event this Purchase Order shall be construed as if such provision had never been contained herein.
- 22) This Purchase Order shall be governed by and interpreted in accordance with the laws of the Province of Ontario.