

City of Kamloops General Terms and Conditions

1. APPLICATION:

- a. The following Terms and Conditions shall govern this Agreement unless otherwise agreed to in writing by the City.

2. DEFINITIONS: The definitions will mean the following otherwise agreed to in writing by the City:

- a. "Supplier" means an individual, corporation, or partnership contracted with the purposes of supplying the labour, materials or both for the performance of the Work.
- b. "Work" means the whole of the goods, services or materials required to be done, furnished, delivered and/or performed by the Supplier in order to carry out the Agreement.
- c. "City" means the City of Kamloops.

3. PERFORMANCE OF WORK:

- a. The Supplier shall exercise the same degree of care, skill and diligence in the provision and performance of the Goods and/or Services as is ordinarily exercised by best industry practices, adhere to procedures, policies, guidelines, laws, regulations, codes, standards and/or safety requirements in Federal, Provincial, City, Territorial authorities, and all other authorities having jurisdiction.
- b. The Supplier shall furnish all skills, labor, supervision, materials, equipment and supplies necessary thereof and, if permitted to subcontract, shall be fully responsible for all work and services performed by sub-Contractors.
- c. The Supplier shall perform all Work in substantial compliance with Supplier's safety procedures and those of the particular City site safety procedures the Supplier has been instructed to follow and been provided copies of in writing prior reasonably in advance of provision of Work to that site, where the same do not conflict with applicable law.
- d. The Supplier shall interfere minimally with the City's operations or that of other Contractors.
- e. Upon completion of the Work, the Supplier shall leave the work site clear of all tools, equipment, and rubbish.
- f. The Supplier shall not, without prior written authorization of the City, make any alterations or substitutions in the work, or perform extra work. The Supplier is not entitled to any payment for unauthorized work.

4. PERMITS AND LICENSES:

- a. The Supplier shall obtain and maintain all permits and licenses required to authorize it to perform the Work.

5. TERMS OF SHIPMENT:

- a. All goods shall be shipped F.O.B. City of Kamloops, unless otherwise specified.

6. DELIVERY ON SITE:

- a. No goods or services shall be delivered to any site within the City without an Official City of Kamloops Purchase Order document.

7. TIME OF THE ESSENCE:

- a. Time is of the essence for this Agreement and all Work performed relative to this Agreement.
- b. The Supplier must advise immediately of any shortage or delay of any kind. If delivery of goods and services is not completed by the delivery date, the City reserves the right to terminate this purchase order in whole or in part and to purchase substitute goods and services elsewhere and charge the Supplier with any incidental or consequential damages that might be incurred.

8. QUALITY AND INSPECTION OF WORK:

- a. The Work and any and all parts thereof shall be subject to inspection and acceptance by the City, notwithstanding prior payment to obtain cash discount.
- b. Before advancing any payment to the Supplier, the City reserves the right to determine, in its sole and absolute discretion, whether the Work was performed to the satisfaction of the City. Where applicable,

material bid must meet city specifications and be on the approved materials list as detailed in the City specification document.

- c. In the event that the Work was not performed to the satisfaction of the City, the City may take such action as it deems necessary to correct the Supplier's default, including, without limitation, the following:
 - i. Direct Supplier to re-perform the Work in whole or in part for the Work that was not completed to the City's satisfaction;
 - ii. Withhold payment due or accrued due to the Supplier for the Work performed pursuant to the Agreement;
 - iii. Set off any expenses incurred by the City in remedying any or all default or failures of the Supplier in having performed the Work satisfactorily against payment due or accrued due to the Supplier;
 - iv. Require the Supplier pay all transportation charges both ways on rejected materials;
 - v. Right to purchase in the open market and hold the Supplier responsible for any excess cost occasioned thereby;
 - vi. Terminate or Cancel the contract and /or seek indemnification from the Supplier for losses suffered by the City as a result of such default;
 - vii. Remove the Supplier from the bidding list.
- d. No payment or acceptance by City shall constitute a waiver of the foregoing, nor shall any provision herein be construed to exclude or limit the effect of this provision.

9. WARRANTY:

- a. Without limitation to any additional warranties provided by the Supplier, whether indicated on the face of the purchase order or otherwise provided, the Supplier warrants that:
 - i. all Work shall be of merchantable quality and free from defects in workmanship and materials;
 - ii. all Work shall strictly conform to applicable samples, specifications and drawings;
 - iii. all Work shall be fit for the purpose intended by the City;
 - iv. all Work be free and clear of all liens, charges and encumbrances;
 - v. the Work shall comply with the standards set forth by applicable federal, provincial, municipal and industry regulatory agencies;
 - vi. the shipping and handling of any hazardous material will be made in accordance with all applicable laws and regulations; and
 - vii. the Work shall comply with all applicable environmental protection laws and regulations.
- b. Unless a longer warranty period is specified on the face of the purchase order or is otherwise provided, the foregoing warranty shall be valid for one year from the date of acceptance of the Work by the City. If at any time prior to the expiration of any applicable warranty period, any weakness, deficiency, failure, breakdown or deterioration in workmanship or material should appear or be discovered in the Work performed by the Supplier, or if the Work does not conform to the terms and conditions of this Agreement, the City may at its option:
 - i. require the Supplier to promptly replace, redesign or correct the defective and non-conforming Work at no expense to the City, or
 - ii. the City may replace or correct the defective Work and charge the Supplier with all expenses incurred by the City.
- c. The Supplier agrees to indemnify and save harmless the City, its members, officers, employees, assigns, agents, clients and the public from any liability, loss, cost and expense arising either directly or indirectly, from breach of any warranty given by the Supplier hereunder.

10. PASSAGE OF TITLE/RISK:

- a. Title to all supplies, material and equipment to be furnished by the Supplier hereunder shall remain with the Supplier upon arrival at any one of the City's sites, and the Supplier shall be responsible for all loss, damage or destruction thereof and of the work in progress until the Work is performed to the City's satisfaction, and replacement of items so lost, damaged or destroyed shall be accomplished promptly by the Supplier at its sole expense, provided that the City will be responsible for the risks normally covered by standard fire and extended coverage insurance on the work in progress and the said supplies, material and equipment and Supplier will not be liable to City for damage to such property arising out of such risks, but City will not be responsible for tools, equipment or personal property of Supplier or any sub-Supplier or employee that is not to be incorporated in the project.

11. DISPUTE RESOLUTION PROCEDURES:

- a. The Supplier and City agree to resolve any differences through the City of Kamloops' dispute resolution

procedure outlined below, provided however in the event of conflict among the documentation, the documents shall govern in the following order:

- i. the executed Agreement between the City and Supplier
 - ii. these General Terms and Conditions
 - iii. any Procurement Documents
 - iv. the Supplier's Bid Submissions
- b. Stage One: The City and Supplier acknowledge and agree to utilize all reasonable efforts to resolve any and all disputes in connection with this Agreement in a professional and amicable manner. It is understood that the disputing parties shall ensure continuity of communication and resources toward the resolve of any and all disputes.

Stage Two: Should dispute not be resolved after ten (10) business days of negotiation the City shall serve notice to the Chief Executive Officer of the Supplier outlining the dispute with recommendations for resolve. Supplier shall have ten (10) business days to resolve the dispute to the satisfaction of the City.

Stage Three: If conflict remains unresolved, the City, at its sole discretion, may serve Supplier with written notice of Termination of this Agreement to take effect thirty (30) days after delivery; or, have a third party assign an arbitrator to resolve the dispute. All disputes resolved by an arbitrator shall be final.

- c. Contractors who choose to use a public forum to air any differences may be eliminated from participating in future business opportunities with the City.

12. CHANGES/MODIFICATIONS/TERMINATION:

- a. The City reserves the right to cancel any Agreement if the Work has not been executed within a reasonable time.
- b. The City reserves the right to cancel or terminate this Agreement, in whole or in part, by thirty (30) days written notice, without cost or penalty.
- c. The City reserves the right at any time to make changes, in whole in or in part by written notice or verbal notice confirmed in writing to make changes in any one or more of the following: quantity, specifications, methods of shipment or packing, and place or timing of delivery. If any such change causes a change in the cost of or the time required for performance of this contract and/or purchase order, an equitable adjustment shall be made in the price or delivery schedule, or both.
- d. No agreement or understanding to modify the Agreement and/or purchase order shall be binding on the City unless in writing and authorized by the City's authorized agent.

13. ACCESS AND RESPONSIBILITY:

- a. The Supplier's authorized representatives and the City shall have access at all times to the installation site. The City shall use all reasonable precautions to prevent all other persons from entering the designated site where equipment is operating and shall not permit any persons other than authorized employees or representatives of the Supplier to operate, use, alter, repair, relocate, adjust or tamper with any equipment owned by Supplier unless agreed to in writing by the Supplier. While the equipment is on a City site, City shall defend Supplier's right, title, and interest in said equipment and keep them free of all liens and encumbrances.
- b. The Supplier shall have the right to remove, with a reasonable period of time after expiration or other termination of this Agreement, all of the Supplier's owned supplies, material and equipment installed or located at the City site.

14. STATUS OF SUPPLIER:

- a. The Supplier is engaged as an independent Supplier for the sole purpose of performing the Work and shall conduct all operations in Supplier's own name and not in the name of, or as agent for City.
- b. Neither the Supplier nor any of its personnel is engaged as an employee shall be deemed an employee of City and the Supplier will indemnify the City against all claims arising out of or in connection with the Supplier's employees.

15. PRICE/COST/RATE ADJUSTMENTS:

- a. Price, cost and/or rate adjustments will be:
 - i. Benchmarked against the 2017 British Columbia Consumer Price Index (BCCPI) that is reported by BCStats;
 - ii. Not exceed the twelve month average percent change; and

- iii. Adjusted on the anniversary of the Agreement commencement date.
- b. The Supplier shall provide the City, in writing, thirty (30) days prior to any price or rate adjustments and must include supporting and valid information to reinforce and justify any price adjustments. The City has the right to reject any unsubstantiated price adjustments.

16. ENVIRONMENTAL PURCHASING:

- a. The City will consider products, and services that are environmentally preferred. The City recognizes that procurement decisions by its employees can make a difference in pursuit of improving environmental performance and as such support the purchase of products, projects, and services that will minimize the negative impact on the environment when they are practical and can be obtained at a reasonable cost. The entire statement can be viewed at www.kamloops.ca/purchasing.

17. SUSTAINABILITY/RECYCLING:

- a. The supplier/contractor/concessionaire agrees that they will participate and support the City's waste management programs. The City expects all supplier/vendor/tenant in City owned and operated facilities, restaurants, concessions, cafes to participate and support existing and future Zero Waste programs. The supplier/tenant would be expected to flatten and recycle cardboard boxes, compost food waste, recycle packaging materials generated through operations, participate in waste audits, recycle or divert other waste materials as identified by the City as recyclable, and follow recommended waste reduction strategies.

18. NO PROMOTION OF RELATIONSHIP:

- a. The Supplier must not disclose or promote its relationship with the City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials without the express prior written consent of the City, except as may be necessary for the Supplier to perform the Supplier's obligations under the terms of the Agreement.

19. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT:

- a. The City is subject to the provisions of the *Freedom of Information and Protection of Privacy Act of BC*. As a result, while the Act offers some protection for third party business interests, the City cannot guarantee that any information provided to the City can be held in confidence.

20. CONFIDENTIALITY:

- a. The Supplier must keep confidential all information provided to the Supplier by or on behalf of the City in connection with the Work, including any information that is confidential or proprietary to third parties, and all information conceived, developed or produced by the Supplier as part of the Work when copyright or any other intellectual property rights in such information belongs to the City under the Agreement. The Supplier must not disclose any such information without the written permission of the City. The Supplier may disclose to a sub-Supplier any information necessary to perform the subcontract as long as the sub-Supplier agrees to keep the information confidential and that it will be used only to perform the subcontract.

21. INSURANCE:

- a. All Contractors providing services to the City are required at a minimum to carry insurance as outlined on the City of Kamloops Risk Management/Insurance Section (RMIS) Insurance Matrix which can be found on the City of Kamloops website at www.kamloops.ca under BUSINESS – Purchasing Opportunities. If you wish to be provided with a copy of the Insurance Matrix please contact the Purchasing Division.
- b. Any Deductible or Reimbursable Clause contained in the policy shall not apply to the City and shall be the sole responsibility of the Supplier.

22. WORKSAFEBC:

- a. The Supplier will strictly comply with all rules and regulations under the Worker's Compensation Act or any successor legislation and will provide a letter of good standing from WorkSafeBC prior to commencement of Work at the designated site(s). The Supplier agrees that it is the "Prime Supplier" for the purposes of the Worker's Compensation Act and Regulations, unless otherwise advised and accepted in writing by an authorized officer, employee or agent of the City.

23. CONTRACTORS COORDINATION PROGRAM:

- a. The City of Kamloops Contractors Coordination Program requires that before a Supplier can be hired to do the Work for the City, the following information must be on file:
 - i. A copy of your current WorkSafeBC Clearance Letter.

- ii. A copy of your current City of Kamloops business licence.
- iii. A copy of your insurance acceptable to the City of Kamloops
- iv. An up-to-date copy of your Occupational Health and Safety Program acceptable to the City of Kamloops.
- v. For companies with more than 20 employees the City will require a copy of the Supplier's Occupational Health and Safety Program for review to ensure that it meets the criteria set by the WorkSafeBC Regulation 3.3. The manual must also contain safe work procedures regarding the type of work the Supplier is being hired to do.
- vi. For companies with less than 20 employees there must be proof that employees have been properly trained in the work they have been hired to do and evidence there is a commitment to safety by the Supplier.

24. CANADIAN STANDARDS ASSOCIATION AND ELECTRICAL SAFETY:

- a. All Electrical or Mechanical equipment must bear Canadian Standards Association or such local approval as required under Provincial and Municipal Laws and Regulations governing the sale and usage of such equipment.

25. INDEMNITY:

- a. The Supplier hereby indemnifies and saves harmless the City, including all of its, agencies, organizations and municipal corporations, at all times from all loss, damages, actions, suits, claims, demands, costs, expenses, fines and liabilities of any nature whatsoever by whomsoever brought, made or suffered for which any such indemnitees shall or may become liable, incur or suffer by reason of any injury to person (including death) or loss or damage to property or economic loss:
 - i. arising directly or indirectly from a breach or non-performance of this Agreement by the Supplier, its directors, officers, employees, shareholders, agents, Contractors, licensees, invitees or any other persons for whom the Supplier is responsible at law;
 - ii. arising directly or indirectly from the Supplier fulfilling its obligations pursuant to this Agreement;
 - iii. arising directly or indirectly from any act or omission of the Supplier, its directors, officers, employees, shareholders, agents, Contractors, invitees or any other persons for whom the Supplier is responsible at law in the use of the any of the City's lands or premises which form part of, or are referenced in, this Agreement.
 - iv. arising from any infringement or alleged infringement of third party intellectual property rights including any patent, copyright, industrial design, trademark or trade secret with respect to goods and services and their process of manufacture.
- b. This provision shall survive expiry or termination of this Agreement.

26. INTELLECTUAL PROPERTY:

- a. The Supplier shall pay all royalties and license fees relating to any intellectual property rights in Work performed by the Supplier and shall ensure that the City is entitled to enjoy the benefits of services, free from any claims by any third party.

27. APPLICABLE LAWS:

- a. This Agreement shall be governed in all respects by the laws of British Columbia. The Supplier and City shall:
 - i. agree that any suit, action of legal proceedings arising directly or indirectly in connection with, out of, relating to, or from this Agreement or the Supplier's responsibilities thereunder, shall be brought to the Province of British Columbia; and
 - ii. consent to personal jurisdiction in each court of British Columbia.

28. ACCOUNTS AND LIENS:

- a. The Supplier shall promptly pay all debts incurred by the Supplier for labour, services, equipment, materials and supplies used in the performance of the Work. If any lien or charge is registered in respect of the Work, the Supplier at its sole expense shall promptly effects its discharge and shall hold the City harmless for all loss, cost, damage, or expense incidental thereto.

29. WAIVER:

- a. No party will be deemed to have waived the exercise of any right that it holds under this Agreement unless such waiver is made in writing. No waiver made with respect to any instance involving the exercise of any such right will be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right.

30. ASSIGNMENT:

- a. The Agreement, or the right to receive payment hereunder, shall not be assigned or subcontracted, in whole or in part, by the Supplier without the City's prior written consent.

- b. Assignment or sub-contracting of the Agreement shall not relieve the Supplier from any obligations under the Agreement or impose any liability upon the City, unless otherwise agreed to in writing by the City.

31. SURVIVAL:

- a. All Supplier obligations under this Agreement that necessarily extend beyond termination of this Agreement in order to fully achieve their intended purpose shall survive termination of this Agreement, including without limiting the generality of the foregoing, all indemnification provisions, intellectual property provisions, and confidentiality provisions.

32. AUDIT:

- a. The City or any of its duly authorized representatives shall for the purpose of audit and examination have access to and be permitted to inspect the Supplier's books, records, documents and any other evidence for inspection, copying and audit for a period of three years after the termination, for any reason, of this Agreement.

33. EMISSIONS TRACKING:

- a. The Supplier will provide fuel consumption data (Data) to the City from all vehicles, equipment and machinery as part of the delivery of the Work described in this Agreement.
- b. The Supplier shall provide the Data, at the end of each month, to the City's representative that ordered the Work.
- c. The Data provided will include the following information:
 - i. Supplier name;
 - ii. The City's representative (full name and department) that ordered the Work;
 - iii. Number of vehicles, by vehicle class (heavy duty, light duty, off road);
 - iv. Type of fuel consumed by each vehicle class (e.g. diesel/ gasoline/ natural gas/ ethanol blend/ biodiesel blend); and
 - v. Fuel consumed in litres in each vehicle class; and
 - vi. The date when the Work was performed.

34. INVENTORY

- a. Supplier shall carry one (1) month of reserved stock on all awarded product. Volumes as determined by City's estimated annual usage. The stock shall be solely reserved for the City purchases only.
- b. Reserved stock delivery default: Failure to ship reserved product three (3) consecutive times within a twelve month period may subject the Agreement to cancellation without cost or penalty to the City.
- c. Reserved stock default remedy: Should Supplier fail to ship reserved stock, the City reserves the right to purchase the identical or "like" product from a competitor, and Supplier shall pay all costs greater than the Supplier's contract price, including freight, duty, and any rush shipping costs.
- d. Consignment Inventory: The City will assume risk (upon official receipt) on all consignment inventory, and incumbent shall maintain title up to installation or consumption of the consignment product.
- e. Supplier shall supply the City with thirty (30) day written notice on all product changes.
- f. Supplier shall supply the City with thirty (30) day written notice on all declared obsolete products. It is the expectation of the City that the Supplier make every reasonable effort to offer substitute product prior to stock depletion.

35. OPERATING/SERVICE MANUALS:

- a. The Supplier shall provide comprehensive operating and service manuals where applicable.

36. TECHNOLOGICAL ADVANCES:

- a. Supplier shall disclose intent to upgrade, modify, change out, or discontinue any equipment and consumables. Any act during the term of the Agreement that proposes intent to implement any change to the Goods thereof, shall be considered a breach. Subject to breach, Supplier shall upgrade all Goods at Contractor's sole expense. All pricing within this Agreement shall transfer to the newly introduced or implemented Goods. The City shall not pay any increased costs whatsoever.

37. PREFERRED VENDOR LIST (LIST):

- a. At the sole discretion of the City, the City has the unfettered right to contact any Supplier on the List based on the City's Work requirements.

- b. There are no guarantees of volumes and no exclusivity to any one Supplier is offered but the City anticipates 80% of the requirements will be undertaken utilizing the List.
- c. The City reserves the right to hire contractors outside of the List if:
 - i. the Contractors are unavailable,
 - ii. the Contractors are non-responsive, or
 - iii. the City deems the Contractors' does not have the required Goods.

38. PERFORMANCE EVALUATION:

- a. The City may conduct Supplier performance evaluations.
- b. If the Supplier fails to meet performance expectations, the City at its sole discretion may:
 - i. Remove and replace the Supplier from the work site at anytime,
 - ii. Remove the Supplier from the call-out list,
 - iii. Restrict the Supplier from participating in any future competitive-bids, or
 - iv. Conduct any future services for the City.

39. BRITISH COLUMBIA CORPORATE SUPPLY ARRANGEMENT (BCCSA):

- a. The City reserves the right to purchase goods and services from the British Columbia Corporate Supply Arrangement (BCCSA).¹

40. GENERAL:

- a. Where the Supplier consists of more than one person, the liability to perform the Work herein by the Supplier shall be joint and several. The Agreement shall be binding on the parties hereto and their respective successors and assigns.
- b. Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same will be construed as meaning the singular, plural, masculine, feminine, neuter or body corporate where the context so requires.
- c. The headings, titles and margin notes in this Agreement are inserted for convenience of reference only and will not form part of nor affect the interpretation of the Agreement.
- d. The City may and reserves the right to purchase subsequent goods and/or services.

¹ <http://www.pss.gov.bc.ca/csa/csa.html>