

THE CORPORATION OF THE CITY OF MISSISSAUGA



MATERIEL MANAGEMENT

**Standard Terms and Conditions
of Contract for Goods**

2010

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1. Acceptance or Acknowledgement

This order including conditions becomes a contract when the purchaser receives a written acceptance hereof or upon the vendor making shipment of the goods or part thereof ordered hereunder. The term goods includes but is not limited to materials, components, services, plant and facilities. The vendor by returning this acceptance to the purchaser, or by shipment aforesaid, shall be deemed to understand and agree that the terms and conditions herein shall bind both parties. Any offer accepted by the purchaser shall be deemed to be and form part of this order and such offer, order, and any schedules attached to this order constitute the entire agreement between the parties and no other terms and conditions whether oral or written and whether precedent or subsequent in time shall have any force or effect unless agreed to in writing by both vendor and purchaser. The failure of either party to enforce its rights hereunder shall not constitute a waiver of such rights or any other rights in the offer or this contract.

2. Vendor's Quotation

Reference in this order to vendor's quotation does not imply acceptance of any terms and conditions in such quotation unless they are expressly adopted herein. Any terms and conditions in such quotation which amend or add to or are inconsistent with these terms and conditions contained in the bid form or this order shall be deemed to be null and void and of no effect.

3. Processing of Order

The vendor understands and agreed as follows:

- (a) If no prices are specified, the price shall not exceed:
 - (i) the tendered or quoted price;
 - (ii) the lowest price charged to the purchaser by the vendor for similar goods/services; or
 - (iii) the lowest price charge by the vendor for similar goods/services to other purchasers, whichever is the lower.
- (b) That it will mail two copies of invoices and bills of lading to office of mailing indicating discount terms for prompt payment.
- (c) That it will show the number of this order on all invoices, packages, bills of lading, etc. and all communications in reference thereto.
- (d) Drafts will not be honoured under any circumstances.
- (e) Unless otherwise stated, the price shown on the order shall include all packing and shipping costs to the point shown as the destination of the goods.
- (f) The receipt of the goods by a carrier shall not be deemed receipt thereof by the purchaser and title to the goods shall not pass to the purchaser until same are delivered at their destination to the designated receiver.
- (g) The vendor will be held liable for any loss resulting from an improper value shown on shipping papers.

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4. Inspection

Except as otherwise agreed to in writing, all shipments shall be subject to final inspection for safety, performance and compliance with manufacturer's specifications prior to acceptance. The warranty period shall begin on the date that incoming inspection is passed. New equipment and equipment on trial must be accompanied with a minimum of two complete user manuals which include instructions for use, warnings of potential hazards, parts lists, schematics and service and maintenance requirements. Payment to the vendor will not be authorized until these conditions are fulfilled.

5. Rejection

If any of the goods are found at any time to be defective in material, workmanship, quality or otherwise not in strict conformity with the specifications or requirements of the tender and this order, the purchaser, in addition to any rights which it may have under warranties or otherwise shall have the right to reject and return such goods for full credit, all charges collect including incoming charges. Without limiting the foregoing right of rejection, the purchaser shall have the right to require prompt replacement, repair or correction of defective work or goods at vendor's risk and expense. If the vendor is unable or unwilling to effect such replacement, repair or correction, the purchaser may do so by using its own workers, goods, or facilities or by outside contract and shall be entitled to charge the vendor fair excess costs directly or indirectly occasioned thereby.

6. Cancellation

Unless otherwise specified herein, the right is reserved by the purchaser to cancel at anytime, this order in whole or in part, upon written notice to the vendor. The purchaser shall not by cancellation, waive any rights or remedies it may have at the date of cancellation.

7. Assignment

No assignment of the contract shall be made by the vendor without the written consent of the purchaser.

8. Delivery

Time of delivery shall be of the essence of the contract and failure of the supplier to deliver all or any part of the goods ordered at the time or times specified shall confer on the purchaser the right to cancel the contract at its option. In the event that unauthorized deliveries are made in advance of date specified in this contract, the purchaser has the option to return any such items or goods delivered at the cost of the vendor.

9. Substitutions

Substitutions are not permitted without written approval of the purchaser.

10. Hazardous Materials

The vendor warrants that any "Hazardous Materials" or "Hazardous Physical Agent" supplied on this order, shall be properly labelled and accompanied by prescribed M.S.D.S. information as may be required by the Occupational Health and Safety Act, or any legislated Federal, Provincial, International or Municipal Act or Regulation covering a shipment of "Hazardous Material" or "Hazardous Physical Agent".

11. Electrical Equipment

All electrical equipment must have C.S.A. or Ontario Hydro approval.

12. Plans and Specifications

If the order on the attached refers to plans or specifications, same shall be deemed to be incorporated in and be a part of this order and of the contract, and any such plans or specifications furnished by the purchaser to the vendor shall not be published or disclosed by the vendor to any other person or corporation and shall be returned to the purchaser upon completion of the order.

13. Risk

If services and or other goods are being supplied, such other goods remain at the complete risk, responsibility and loss of the vendor until this contract is fully completed. If damage, loss, theft, robbery or impairment occurs to any goods, the vendor shall replace such goods at the vendor's sole cost and expense. In the event the vendor terminates or abandons the services, either temporarily or permanently, the purchaser may take all necessary steps to complete the services and the seller is responsible for all damages incurred by the purchaser.

14. Overshipments

All overshipments made are the vendor's responsibility. The purchaser reserves the right to reject and return, at the vendor's expense, any goods in excess of the quantity ordered.

15. Indemnity

The vendor, the vendor's employees, servants and agents will comply with all statutes and regulations of Canada and Ontario. Vendor (contractor) hereby agrees to indemnify, defend, and hold harmless purchaser from and against any claims for bodily or personal injury or death, or property damage for which vendor (contractor) may be wholly or partially liable.

The vendor shall forfeit all claims under the contract, and for all work done or materials, goods, wares or merchandise furnished under it, if it shall appear that an employee of the purchaser is at any time given or agreed to be given an interest therein.

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16. Advertising

The vendor shall not, except with the consent of the purchaser in writing, release information relating to this order for advertising promotional or technical purposes or otherwise give it publicity in any fashion nor shall the name of the purchaser be used for or in connection with any advertising or promotional purpose of the vendor.

17. Patent

The vendor agrees to indemnify and save harmless the purchaser from any claim or action arising from the alleged infringement of any patent or trade mark as a result of the use or sale of these goods.

18. Extras

No charge for extras will be allowed unless they have been ordered in writing by the purchaser and the price agreed upon.

19. Warranty

All goods and services shall carry a one year warranty from the time of receipt or time of installation, whichever is later.

20. Compliance with Laws

The purchaser and vendor agree that the bid, this document and any schedules attached to this purchase order shall be governed by and construed according to the laws of the Province of Ontario where the purchaser's office issuing the order is located and the courts of such Province of Ontario shall have sole jurisdiction. The vendor agrees to submit to the jurisdiction of the Province of Ontario including all executions and processes issued there from.

21. Shipments From Outside Canada

Properly certified customs invoices in four parts must be mailed separately to the purchaser's Accounts Payable office at the time shipment is made or shipment will be returned by Canada Customs. In the case of truck shipments, an extra copy of customs invoices is to accompany the bill of lading.

22. Discount Terms

If a discount is allowed for payment within a certain time, the time for taking the discount will not begin to run until the date of the receipt of the invoice or the date of the delivery of the goods whichever is later. However, if an invoice is returned for correction, the time for taking the discount will not begin to run until the date of the receipt of the corrected invoice.